

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

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UNITED STATES OF AMERICA and  
STATE OF INDIANA,

Case No. 1:24-cv-00235-TWP-MJD

Plaintiffs,

v.

1500 SOUTH TIBBS LLC,

Defendant.

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**CONSENT DECREE FOR REMEDIAL DESIGN AND REMEDIAL ACTION**

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WHEREAS, the United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Indiana (“the State”), on behalf of the Commissioner of the Indiana Department of Environmental Management (“IDEM”), filed a complaint in this matter under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), Indiana Code (“IC”) 1312-3-2, and the Indiana Hazardous Substances Response Trust Fund at IC 13-25-4 et seq.

WHEREAS, the United States and the State in the complaint seek, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice (“DOJ”) and costs incurred by IDEM and the Indiana Office of the Attorney General for response actions at the Reilly Tar & Chemical Corp. (“Indianapolis Plant”) Superfund Site in Indianapolis, Marion County, Indiana (“Site”), together with accrued interest; and (2) performance by 1500 South Tibbs LLC (“1500 South Tibbs” or “Settling Defendant”) of a response action at the Site consistent with the National Contingency Plan, 40 C.F.R. part 300 (“NCP”).

WHEREAS, in accordance with the NCP and section 121(f)(1)(F) of CERCLA, EPA notified the State of Indiana (“State”) on February 7, 2022, of negotiations with potentially responsible parties (“PRPs”) regarding the implementation of the remedial design and remedial action (“RD/RA”) for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and to be a party to this Consent Decree (“Decree”) and the State has chosen to be a party.

WHEREAS, in accordance with section 122(j)(1) of CERCLA, EPA notified the Department of the Interior, Fish and Wildlife Service, on February 8, 2022, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Decree.

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

WHEREAS, in accordance with section 105 of CERCLA, EPA listed the Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 49 Fed. Reg. 37070.

WHEREAS, in response to a release or a substantial threat of a release of hazardous substances at or from the Site, a prior Site owner, Reilly Industries Inc. (“Reilly Industries”), completed a Remedial Investigation for the Site on August 6, 1991, and a Feasibility Study for the Site on November 27, 1991, in accordance with 40 C.F.R. § 300.430.

WHEREAS, the 1992 OUI Record of Decision provided the remedial action for groundwater contamination at the Site, which consisted of groundwater extraction, off-Site treatment, and monitoring of groundwater.

WHEREAS, the 1993 OU2 Record of Decision provided the remedial action for certain areas of soil within the Site designated as “hot spots” of high contamination. The OU2 ROD provided for the remediation of four areas of soil contamination within the Site through excavation, low temperature thermal desorption, replacement of the treated soils into the excavation areas, and capping with six inches of soil and vegetation. The remedial action for a fifth area containing contaminated sludge was in situ solidification and capping with soil and vegetation. The OU2 Explanation of Significant Differences partially changed the remedial action because some soil was found to contain extremely high BTU levels rendering it unacceptable for low temperature thermal desorption. In lieu of on-Site thermal desorption, these soils were transported to an off-Site facility for thermal treatment.

WHEREAS, the 1996 OU3 and OU4 Record of Decision provided the remedial action for soil contamination at the Site. For OU3, this ROD provided for the placement of a soil cover and groundwater monitoring. For OU4, this ROD provided for the treatment of two hot spots by soil vapor extraction, treatment of soil vapor condensate, and maintenance of gravel caps over the hot spots. A third hot spot was to be remediated through the installation of a concrete cover. Additionally, the OU3 and OU4 Record of Decision provided for industrial use deed restrictions and groundwater and source monitoring.

WHEREAS, the 1997 OU5 Record of Decision provided for natural attenuation with long-term groundwater monitoring for off-Site groundwater contamination.

WHEREAS, EPA, the State of Indiana, and Reilly Industries, entered into multiple Past Consent Decrees obligating Reilly Industries and its successors to perform remedial action work to clean up the Site and to reimburse costs incurred by EPA and the State of Indiana in overseeing that remedial action work, and Reilly Industries and its successors did perform that work and reimburse those costs until the Site was sold.

WHEREAS, the Past Consent Decrees entered into with Reilly Industries were designed to implement the selected remedies for contamination at the Site for OU1, OU2, OU3, OU4, and OU5.

WHEREAS, Reilly Industries became known as Vertellus Specialties Inc., and Vertellus Specialties, Inc. did comply with and implement the remedies in the Past Consent Decrees until the Site was sold after Vertellus Specialties Inc. declared bankruptcy.

WHEREAS, in the *Vertellus Specialties, Inc. et al.* bankruptcy proceeding, Case No. 16-11290-CSS, EPA, DOJ, the State of Indiana, the State of Utah, the State of Illinois, the State of West Virginia, Vertellus Specialties Holdings Corp., Vertellus Specialties, Inc., Vertellus Agriculture & Nutrition Specialties LLC, Vertellus Specialties PA LLC, Vertellus Health & Specialty Products LLC, Vertellus Specialties MI LLC, Vertellus Performance Materials Inc., Rutherford Chemicals LLC, Tibbs Avenue Company, Solar Aluminum Technology Services, d/b/a S.A.L.T.S., and MRM Toluic Company, Inc., and, where applicable, the respective estates thereof, the committee of unsecured creditors, and Valencia Bidco LLC entered into a settlement agreement that the United States Bankruptcy Court for the District of Delaware approved on September 27, 2016. In this settlement, Valencia Bidco LLC or its designee, as part of an asset purchase, agreed to comply with the Past Consent Decrees for the Site, and EPA and IDEM

committed to consider biosparging as a more cost-efficient and effective alternative remedy for OU1. Vertellus Integrated Pyridines LLC, was the designee of Valencia Bidco LLC.

WHEREAS in accordance with the settlement from the bankruptcy proceeding and 40 C.F.R. § 300.430, Vertellus Integrated Pyridines LLC completed another feasibility study on November 3, 2020 relating to OU1.

WHEREAS, in accordance with section 117 of CERCLA and 40 C.F.R. § 300.430(f), EPA published notice of the completion of the Feasibility Study and of the proposed plan for remedial action for the OU1 revised remedy on June 3, 2021, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting and comments received are available to the public on the Site webpage at <https://cumulis.epa.gov/supercpad/cursites/csinfo.cfm?id=0501215> as part of the administrative record, which the Director of the Superfund & Emergency Management Division, EPA Region 5, considered in the selection of the response action.

WHEREAS, EPA selected an alternative remedial action to be implemented at the Site, barrier biosparging, which is embodied in the OU1 Record of Decision Amendment, executed on August 19, 2021, on which the State has given its concurrence. The amendment includes a summary of responses to the public comments. Notice of the final plan was published in accordance with section 117(b) of CERCLA.

WHEREAS, Vertellus Integrated Pyridines LLC complied with the Past Consent Decrees and performed work at the Site including operation of the prescribed remedy for OU1, maintenance of soil caps and vegetation at OU2, OU3, and OU4, and off-Site groundwater monitoring for OU5 during the period of its ownership through July 14, 2023.

WHEREAS, on July 14, 2023, the name of Vertellus Integrated Pyridines LLC was changed to Aurorium Indianapolis LLC.

WHEREAS, on August 31, 2023, the name of Aurorium Indianapolis LLC was changed to 1500 South Tibbs LLC.

WHEREAS, this Consent Decree supersedes all Past Consent Decrees for this Site and requires the Settling Defendant to perform all remaining work required by the Records of Decision at each of the Operable Units.

WHEREAS, based on the information currently available, EPA and the State have determined that the Work will be properly and promptly conducted by the Settling Defendant if conducted in accordance with this Decree.

WHEREAS, the Parties recognize, and the Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith, that implementation of this Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Decree is fair, reasonable, in the public interest, and consistent with CERCLA.

NOW, THEREFORE, it is hereby **ORDERED** and **DECREED** as follows:

## I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1367, and 1345, and sections 106, 107 and 113(b) of CERCLA, and personal jurisdiction over the Parties. Venue lies in this District under section 113(b) of CERCLA and 28 U.S.C. §§ 1391(b), and 1395(a), because the Site is located in this judicial district. This Court retains jurisdiction over the subject matter of this action and over the Parties for the purpose of resolving disputes arising under this Decree, entering orders modifying this Decree, or effectuating or enforcing compliance with this Decree. Settling Defendant may not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

## II. PARTIES BOUND

2. This Decree is binding upon the United States and the State and upon Settling Defendant and its successors. Unless the United States otherwise consents, (a) any change in ownership or corporate or other legal status of the Settling Defendant, including any transfer of assets, or (b) any Transfer of the Site or any portion thereof, does not alter any of Settling Defendant's obligations under this Decree. Settling Defendant's responsibilities under this Decree cannot be assigned except under a modification executed in accordance with ¶ 64.

3. In any action to enforce this Decree, Settling Defendant may not raise as a defense the failure of any of its officers, directors, employees, agents, contractors, subcontractors, or any person representing Settling Defendant to take any action necessary to comply with this Decree. Settling Defendant shall provide notice of this Decree to each person representing Settling Defendant with respect to the Site or the Work. Settling Defendant shall provide notice of this Decree to each contractor performing any Work and shall ensure that notice of the Decree is provided to each subcontractor performing any Work.

## III. DEFINITIONS

4. Subject to the next sentence, terms used in this Decree that are defined in CERCLA or the regulations promulgated under CERCLA have the meanings assigned to them in CERCLA and the regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Decree, the following definitions apply:

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

“Consent Decree” or “Decree” means this consent decree, all appendices attached hereto (listed in Section XVIII), and all deliverables incorporated into the Decree under ¶ 7.6 of the SOW. If there is a conflict between a provision in Sections I through XXIII and a provision in any appendix or deliverable, the provision in Sections I through XXIII controls.

“Day” or “day” means a calendar day. In computing any period under this Decree, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“DOJ” means the United States Department of Justice.

“Effective Date” means the date upon which the Court’s approval of this Decree is recorded on its docket.

“EPA” means the United States Environmental Protection Agency.

“ERC” or “Environmental Restrictive Covenant” means the land use and groundwater use restrictions imposed on the property as part of the prior consent decrees and entered into on February 9, 2012. The ERC is attached as Appendix D.

“Fund” means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 I.R.C. § 9507.

“Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States: (a) pays between June 1, 2023 and the Effective Date; and (b) pays after the Effective Date in implementing, overseeing, or enforcing this Decree, including: (i) in developing, reviewing and approving deliverables generated under this Decree; (ii) in overseeing Settling Defendant’s performance of the Work; (iii) in assisting or taking action to obtain access or use restrictions under ¶ 11.e; (iv) in securing, implementing, monitoring, maintaining, or enforcing Institutional Controls, including any compensation paid; (v) in taking action under ¶ 20 (Access to Financial Assurance); (vi) in taking response action described in ¶ 49 because of Settling Defendant’s failure to take emergency action under ¶ 5.4 of the SOW; (vii) in implementing a Work Takeover under ¶ 8; (viii) in implementing community involvement activities including the cost of any technical assistance grant provided under section 117(c) of CERCLA; (ix) in enforcing this Decree, including all costs paid under Section XI (Dispute Resolution) and all litigation costs; and (x) in conducting periodic reviews in accordance with section 121(c) of CERCLA. Future Response Costs also includes all Interest accrued after December 31, 2022 on EPA’s unreimbursed costs (including Past Response Costs) under section 107(a) of CERCLA.

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

“Includes” or “including” means “including but not limited to.”

“Institutional Controls” means Proprietary Controls (*i.e.*, easements or covenants running with the land that (i) limit land, water, or other resource use, provide access rights, or both and (ii) are created under common law or statutory law by an instrument that is recorded, or for which notice is recorded, in the appropriate land records office) and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure noninterference with, or ensure the protectiveness of the Remedial Action; (c) provide information intended to modify or guide human behavior at or in connection with the Site; or (d) any combination thereof.

“Interest” means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest will be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As of the date of lodging of this Decree, rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“Operable Units” or “OUs” means OU1, OU2, OU3, OU4, and OU5, as designated in the records of decision, collectively.

“OU1 Record of Decision” or “OU1 ROD” means the EPA decision document that memorializes the selection of the remedial action relating to Operable Unit 1 at the Site signed on June 30, 1992, and all attachments thereto, as modified by the OU1 August 19, 2021, Record of Decision Amendment. The OU1 Record of Decision is available at: <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.ars&id=0501215&doc=Y&colid=1121&region=05&type=AR>

“OU1 Record of Decision Amendment” means the August 19, 2021, amendment to the OU1 Record of Decision that memorializes the selection of a different remedial action relating to Operable Unit 1 at the Site. The OU1 Record of Decision Amendment is available at: <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.ars&id=0501215&doc=Y&colid=1121&region=05&type=AR>

“OU2 Record of Decision” or “OU2 ROD” means the EPA decision document that memorializes the selection of the remedial action relating to Operable Unit 2 at the Site signed on September 30, 1993, and all attachments thereto, as modified by the Explanation of Significant Differences signed on October 6, 1997, that memorializes a change from on-Site to off-Site thermal treatment relating to the Operable Unit 2 remedy at the Site. The OU2 Record of Decision and Explanation of Significant Differences is available at: <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.ars&id=0501215&doc=Y&colid=1121&region=05&type=AR>

“OU3 and OU4 Record of Decision” or “OU3 and OU4 ROD” means the EPA decision document that memorializes the selection of the remedial action relating to Operable Units 3 and 4 at the Site signed on September 27, 1996, and all attachments thereto. The OU3 and OU4 Record of Decision is available at: <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.ars&id=0501215&doc=Y&colid=1121&region=05&type=AR>

“OU5 Record of Decision” or “OU5 ROD” means the EPA decision document that memorializes the selection of the remedial action relating to Operable Unit 5 at the Site signed on June 30, 1997, and all attachments thereto. The OU5 Record of Decision is available at: <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.ars&id=0501215&doc=Y&colid=1121&region=05&type=AR>



“Paragraph” or “¶” means a portion of this Decree identified by an Arabic numeral or an upper- or lower-case letter.

“Past Consent Decrees” means all consent decrees regarding the Site entered into prior to this Consent Decree, including those entered into with other settling defendants, with which 1500 South Tibbs as the successor to Aurorium Indianapolis LLC and Vertellus Integrated Pyridines, LLC, became obligated to comply as a result of the settlement agreement that the United States Bankruptcy Court for the District of Delaware approved on September 27, 2016 as the designee of Valencia Bidco. These include: *United States of America v. Reilly Industries, Inc.*, Consent Decree, Civil Action No. IP-93-1045-C (S.D. Ind. Aug.19, 1993); *United States of America v. Reilly Industries, Inc.*, Consent Decree for the Second Operable Unit, Civil Action No. IP-93-1045-C (S.D. Ind. 1994); *United States of America, et. al v. Reilly Industries, Inc.*, Consent Decree for the Third, Fourth, and Fifth Operable Units, Civil Action IP93-1045-C (S.D. Ind. Nov. 12, 1998).

“Parties” means the United States, the State, and Settling Defendant.

“Past Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States paid in connection with the Site from October 31, 2016 through May 31, 2023, plus all interest on such costs accrued under section 107(a) of CERCLA through such date, except that Settling Defendant shall not be responsible for costs incurred prior to October 31, 2016 due to discharge of debts prior to Settling Defendant’s purchase of the Site out of bankruptcy.

“Performance Standards” means the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the Records of Decision.

“Plaintiffs” means the United States and the State.

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

“Records of Decision” means the OU1 Record of Decision; the OU1 Record of Decision Amendment; the OU2 Record of Decision, as modified by the Explanation of Significant Differences; the OU3 and OU4 Record of Decision; and the OU5 Record of Decision, collectively.

“Remedial Action” means the remedial actions selected in the OU1 Record of Decision and the OU1 Record of Decision Amendment; the OU2 Record of Decision, as modified by the Explanation of Significant Differences; the OU3 and OU4 Record of Decision; and the OU5 Record of Decision.

“Remedial Design” means those activities to be undertaken by Settling Defendant to develop plans and specifications for implementing the Remedial Action as set forth in the SOW.

“Scope of the Remedy” means the scope of the remedy set forth in ¶ 1.3 of the SOW.

“Section” means a portion of this Decree identified by a Roman numeral.

“Settling Defendant” means 1500 South Tibbs LLC.

“Site” means the Reilly Tar & Chemical Superfund Site, comprising approximately 120 acres, located at 1500 South Tibbs Avenue in Indianapolis, Marion County, Indiana, and where contamination from this area has come to be located, and depicted generally on the map attached as Appendix B.

“Special Account” means the special account, within the Fund, established for the Site by EPA under section 122(b)(3) of CERCLA.

“State” means the State of Indiana.

“State Future Response Costs” shall mean all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the State: (a) incurs between December 31, 2022 and the Effective Date; and (b) incurs after the Effective Date in implementing, overseeing, or enforcing this Decree, including: (i) in developing, reviewing and approving deliverables generated under this Decree; (ii) in overseeing Settling Defendant’s performance of the Work; (iii) in assisting or taking action to obtain access or use restrictions under ¶ 11.e; (iv) in securing, implementing, monitoring, maintaining, or enforcing Institutional Controls, including any compensation paid; (v) in implementing community involvement activities; and (vi) in conducting periodic reviews in accordance with section 121(c) of CERCLA. State Future Response Costs also include any interest due and owing pursuant to IC 24-4.6-1.

“State Past Response Costs” shall mean all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the State paid in connection with the Site from October 31, 2016 through December 31, 2022, except that Settling Defendant shall not be responsible for costs incurred prior to October 31, 2016 due to discharge of debts prior to Settling Defendant’s purchase of the Site out of bankruptcy.

“Statement of Work” or “SOW” means the document attached as Appendix A, which describes the activities Settling Defendant must perform to implement and maintain the effectiveness of the Remedial Action.

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

“Waste Material” means: (a) any “hazardous substance” under Section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; (c) any “solid waste” under section 1004(27) of RCRA; and (d) any “hazardous substance” under IC 13-11-2-98 or “hazardous waste” under IC 13-11-2-99.

“Work” means all obligations of Settling Defendant under Sections V (Performance of the Work) through VIII (Indemnification and Insurance).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 10.

#### IV. OBJECTIVES

5. The objectives of the Parties in entering into this Decree are to protect public health, welfare, and the environment through the design, implementation, and maintenance of a response action at the Site by Settling Defendant, to pay response costs of Plaintiffs, and to resolve and settle the claims of Plaintiffs against Settling Defendant as provided in this Decree.

#### V. PERFORMANCE OF THE WORK

6. Settling Defendant shall finance, develop, implement, operate, maintain, and monitor the effectiveness of the Remedial Action all in accordance with the SOW, any modified SOW, and all EPA-approved, conditionally approved, or modified deliverables as required by the SOW or modified SOW.

7. Nothing in this Decree and no EPA approval of any deliverable required under this Decree constitutes a warranty or representation by EPA or the State that completion of the Work will achieve the Performance Standards.

#### 8. **Modifications to the Remedial Action and Further Response Actions**

a. Nothing in this Decree limits EPA’s authority to modify the Remedial Action or to select further response actions for the Site in accordance with the requirements of CERCLA and the NCP. Nothing in this Decree limits Settling Defendant’s rights, under sections 113(k)(2) or 117 of CERCLA, to comment on any modified or further response actions proposed by EPA.

b. If EPA modifies the Remedial Action in order to achieve or maintain the Performance Standards, or both, or to carry out and maintain the effectiveness of the Remedial Action, and such modification is consistent with the Scope of the Remedy, then Settling Defendant shall implement the modification as provided in ¶ 8.d.

c. If EPA selects a further response action for the Site because a reopener condition in ¶ 46 is satisfied, then, subject to ¶ 64, Settling Defendant shall implement the further response action as provided in ¶ 8.d.

d. Upon receipt of notice from EPA that it has modified the Remedial Action as provided in ¶ 8.b or selected a further response action as provided in ¶ 8.c and requesting that Settling Defendant implement the modified Remedial Action or further response action, Settling Defendant shall implement the modification or further response action, subject to its right to initiate dispute resolution under Section XI within 30 days after receipt of EPA’s notice. Settling Defendant shall modify the SOW, or related work plans, or both in accordance with the Remedial Action modification or further response action or, if Settling Defendant invokes dispute resolution, in accordance with the final resolution of the dispute. The Remedial Action modification or further response action, the approved modified SOW, and any related work plans will be deemed to be incorporated into and enforceable under this Decree.

9. **Compliance with Applicable Law.** Nothing in this Decree affects Settling Defendant's obligations to comply with all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the Records of Decision and the SOW. The activities conducted in accordance with this Decree, if approved by EPA, will be deemed to be consistent with the NCP as provided under section 300.700(c)(3)(ii).

10. **Work Takeover**

a. If EPA determines that Settling Defendant: (i) has ceased to perform any of the Work required under this Section; (ii) is seriously or repeatedly deficient or late in performing the Work required under this Section; or (iii) is performing the Work required under this Section in a manner that may cause an endangerment to human health or the environment, EPA may issue a notice of Work Takeover to Settling Defendant. Any notice of Work Takeover will be provided in advance of Work Takeover and include a description of the grounds for the notice and a period of time ("Remedy Period") within which Settling Defendant must remedy the circumstances giving rise to the notice. The Remedy Period will be 20 days, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be 10 days. In its sole discretion, EPA may agree to extend the Remedy Period.

b. If, by the end of the Remedy Period, Settling Defendant does not remedy to EPA's satisfaction the circumstances giving rise to the notice of Work Takeover, EPA may notify Settling Defendant and, as it deems necessary, commence a Work Takeover.

c. EPA may conduct the Work Takeover during the pendency of any dispute under Section XI but shall terminate the Work Takeover if and when: (i) Settling Defendant remedy, to EPA's satisfaction, the circumstances giving rise to the notice of Work Takeover; or (ii) upon the issuance of a final determination under Section XI (Dispute Resolution) that EPA is required to terminate the Work Takeover.

**VI. PROPERTY REQUIREMENTS**

11. **Agreements Regarding Access and Noninterference**

a. As used in this Section, "Affected Property" means any real property, including the Site, where EPA determines, at any time, that access; land, water, or other resource use restrictions; Institutional Controls; or any combination thereof, are needed to implement the Remedial Action.

b. Settling Defendant shall use best efforts to secure from the owner(s) of all Affected Property, an agreement, enforceable by Settling Defendant and by Plaintiffs, requiring such owner to provide Plaintiffs and Settling Defendant, and their respective representatives, contractors, and subcontractors with access at all reasonable times to such owner's property to conduct any activity regarding the Decree, including the following:

- (1) implementing the Work and overseeing compliance with the Decree;

- (2) conducting investigations of contamination at or near the Site;
- (3) assessing the need for, planning, or implementing additional response actions at or near the Site;
- (4) determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Decree; and
- (5) implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

c. Further, each agreement required under ¶ 11.b must commit the owner to refrain from using its property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment as a result of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the following:

- (1) using contaminated groundwater, except for industrial purposes (e.g., non-contact cooling water) only after obtaining express written approval of U.S. EPA;
- (2) residential use of the property; and
- (3) excavation, installation, construction, removal or use of any buildings, wells, pipes, roads, ditches, or any other structures at the CERCLA Areas (as defined in Exhibit 1-A to the ERC that is attached to this Consent Decree as Appendix C) except with express written approval of U.S. EPA.

d. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Settling Defendant would use to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements.

e. The existing ERC that is attached to this Consent Decree as Appendix D satisfies the preceding requirements in this Paragraph as of the Effective Date. If revisions to the existing ERC or new agreements are required, Settling Defendant shall provide to EPA and the State a copy of each agreement required under ¶ 11.b. If Settling Defendant cannot accomplish what is required through best efforts in a timely manner, it shall notify EPA, and include a description of the steps taken to achieve the requirements. If the United States deems it appropriate, it may assist Settling Defendant, or take independent action, to obtain such access or use restrictions.

12. If EPA determines in a decision document prepared in accordance with the NCP that additional Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are appropriate, Settling Defendant shall cooperate with EPA’s and the State’s efforts to secure and ensure compliance with such Institutional Controls.

13. Notwithstanding any provision of the Decree, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions and Institutional Controls, including related enforcement authorities, under CERCLA, RCRA, and any other applicable statute or regulations.

## VII. FINANCIAL ASSURANCE

14. To ensure completion of the Work required under Section V, Settling Defendant shall secure financial assurance (“FA”), initially in the amount of \$4,690,000 (“Estimated Cost of the Work”), for the benefit of EPA.

15. The financial assurance must: (i) be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA; and (ii) be satisfactory to EPA. As of the date of lodging of this Decree, the sample documents can be found under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Settling Defendant may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, insurance policies, or some combination thereof. The following are acceptable mechanisms:

- a. a surety bond guaranteeing payment, performance of the Work, or both, that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. an irrevocable letter of credit, payable to EPA or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;
- c. a trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;
- d. a policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;
- e. a demonstration by Settling Defendant that it meets the relevant test criteria of ¶ 16, accompanied by a standby funding commitment that requires Settling Defendant to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or
- f. a guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of Settling Defendant or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with Settling Defendant; and (2) demonstrates to EPA’s satisfaction that it meets the financial test criteria of ¶ 16.

16. If Settling Defendant is seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 15.e or 15.f it must, within 30 days after the Effective Date:

a. demonstrate that:

(1) Settling Defendant or its guarantor has:

- i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) Settling Defendant or its guarantor has:

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

b. submit to EPA for Settling Defendant or its guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest

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

17. If Settling Defendant is providing financial assurance by means of a demonstration or guarantee under ¶ 15.e or 15.f, it must also:

a. annually resubmit the documents described in ¶ 16.b within 90 days after the close of Settling Defendant’s or its guarantor’s fiscal year;

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

c. provide to EPA, within 30 days of EPA’s request, reports of the financial condition of Settling Defendant or its guarantor in addition to those specified in ¶ 16.b; EPA may make such a request at any time based on a belief that Settling Defendant or its guarantor may no longer meet the financial test requirements of this Section.

18. Settling Defendant shall, within 30 days after the Effective Date, seek EPA’s approval of the form of Settling Defendant’s financial assurance. Within 30 days after such approval, Settling Defendant shall secure all executed or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Comptroller, to DOJ, and to EPA and the State in accordance with ¶ 62.

19. Settling Defendant shall diligently monitor the adequacy of the financial assurance. If Settling Defendant becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Settling Defendant shall notify EPA of such information within seven days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Settling Defendant of such determination. Settling Defendant shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Settling Defendant, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Settling Defendant shall follow the procedures of ¶ 21 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Settling Defendant’s inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Decree.



**20. Access to Financial Assurance**

a. If EPA commences a Work Takeover under ¶ 10.b, then, in accordance with any applicable financial assurance mechanism, EPA may require that any funds guaranteed be paid in accordance with ¶ 20.d.

b. If EPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and Settling Defendant fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 20.d.

c. If, upon issuance of a notice of a Work Takeover under ¶ 10.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism [including the related standby funding commitment], whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 15.e or 15.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Settling Defendant shall, within 30 days after such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 20 must be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the Fund or into the Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Fund.

**21. Modification of Amount, Form, or Terms of Financial Assurance.** After the first anniversary of the Effective Date, and no more than once per calendar year, Settling Defendant may submit a request to change the form, terms, or amount of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 18, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Settling Defendant of its decision regarding the request. Settling Defendant may initiate dispute resolution under Section XI regarding EPA's decision within 30 days after receipt of the decision. Settling Defendant may modify the form, terms, or amount of the financial assurance mechanism only: (a) in accordance with EPA's approval; or (b) in accordance with any resolution of a dispute under Section XI. Settling Defendant shall submit to EPA, within 30 days after receipt of EPA's approval or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

**22. Release, Cancellation, or Discontinuation of Financial Assurance.** Settling Defendant may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ 5.9 of the SOW;

(b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XI.

## VIII. INDEMNIFICATION AND INSURANCE

### 23. Indemnification

a. Plaintiffs do not assume any liability by entering into this Decree or by virtue of any designation of Settling Defendant as EPA's and the State's authorized representatives under section 104(e)(1) of CERCLA. Settling Defendant shall indemnify and save and hold harmless Plaintiffs and their officials, agents, employees, contractors, subcontractors, and representatives for or from any claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Settling Defendant's behalf or under its control, in carrying out activities under this Decree, including any claims arising from any designation of Settling Defendant as EPA's and the State's authorized representatives under section 104(e)(1) of CERCLA. Further, Settling Defendant agrees to pay Plaintiffs all costs they incur including attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against Plaintiffs based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control in carrying out activities under with this Decree. Plaintiffs may not be held out as parties to any contract entered into by or on behalf of Settling Defendant in carrying out activities under this Decree. The Settling Defendant and any such contractor may not be considered an agent of Plaintiffs.

b. Either Plaintiff shall give Settling Defendant notice of any claim for which such Plaintiff plans to seek indemnification in accordance with this ¶ 23, and shall consult with Settling Defendant prior to settling such claim.

24. Settling Defendant covenants not to sue and shall not assert any claim or cause of action against Plaintiffs for damages or reimbursement or for set-off of any payments made or to be made to Plaintiffs, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, Settling Defendant shall indemnify and save and hold Plaintiffs harmless with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of work at or relating to the Site, including claims on account of construction delays.

25. **Insurance.** Settling Defendant shall secure, by no later than 15 days before commencing any on-Site Work, the following insurance: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile

liability limits. The insurance policy must name Plaintiffs as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Settling Defendant under this Decree. Settling Defendant shall maintain this insurance until the first anniversary after issuance of EPA's Certification of Remedial Action Completion under ¶ 5.7 of the SOW. In addition, for the duration of this Decree, Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Decree. Prior to commencement of the Work, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant needs provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Settling Defendant shall ensure that all submittals to EPA under this Paragraph identify the Reilly Tar & Chemical Corp. (Indianapolis Plant) Superfund Site, Indianapolis, Indiana, and the civil action number of this case.

## IX. PAYMENTS FOR RESPONSE COSTS

26. **Payment for EPA Past Response Costs.** Within 30 days after the Effective Date, Settling Defendant shall pay EPA, in reimbursement of Past Response Costs in connection with the Site, \$112,805.24. The Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Southern District of Indiana shall provide to Settling Defendant, in accordance with ¶ 62, instructions for making this payment, including a Consolidated Debt Collection System ("CDCS") reference number. Settling Defendant shall make such payment at <https://www.pay.gov> in accordance with the FLU's instructions, including references to the CDCS Number. Settling Defendant shall send notices of this payment to DOJ and EPA in accordance with ¶ 62. If the payment required under this Paragraph is late, Settling Defendant shall pay, in addition to any stipulated penalties owed under Section XII, an additional amount for Interest accrued from the Effective Date until the date of payment.

27. **Payment for State Past Response Costs.** Within 30 days after the Effective Date, Settling Defendant shall pay to the State \$21,061.53 in payment for Past Response Costs in accordance with the instructions in ¶ 27 below.

28. **Payments by Settling Defendant for Future Response Costs.** Settling Defendant shall pay to EPA and to IDEM and/or the Indiana Office of the Attorney General all Future Response Costs not inconsistent with the NCP.

a. **EPA Periodic Bills.** On a periodic basis, EPA will send Settling Defendant a bill for Future Response Costs, including a cost summary listing direct and indirect costs paid by EPA, its contractors, subcontractors, and DOJ. Settling Defendant may initiate a dispute under Section XI regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (i) whether EPA has made an arithmetical error; (ii) whether EPA has included a cost item that is not within the definition of Future Response Costs; or

(iii) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Settling Defendant must specify in the Notice of Dispute the contested costs and the basis for the objection.

b. **Payment of EPA Bill.** Settling Defendant shall pay the EPA bill, or if it initiates dispute resolution, the uncontested portion of the bill, if any, within 30 days after receipt of the bill. Settling Defendant shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late, and; (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Settling Defendant shall make payment at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link, and including references to the Site/Spill ID and DJ numbers listed in ¶ 62 and the purpose of the payment. Settling Defendant shall send notices of this payment to DOJ and EPA in accordance with ¶ 62.

c. **Deposit of Payments.** EPA will deposit the amounts paid under ¶¶ 26 and 28.a, in the Fund, in the Special Account, or both. EPA may, in its unreviewable discretion, retain and use any amounts deposited in the Special Account to conduct or finance response actions at or in connection with the Site, or transfer those amounts to the Fund.

d. **Payments by Settling Defendant to State.** Settling Defendant shall pay to the State all State Future Response Costs not inconsistent with the NCP. On a periodic basis, and at least quarterly, IDEM and/or the Indiana Office of the Attorney General will send Settling Defendant an invoice requiring payment that includes a cost summary. Settling Defendant shall make payment of undisputed costs within 60 days after its receipt of each bill requiring payment, except as otherwise provided in ¶ 33 (Dispute Resolution). Settling Defendant shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Settling Defendant shall make all payments to IDEM required by this Paragraph.

If payment is made by check, make checks payable to the “Indiana Hazardous Substances Response Trust Fund” along with a transmittal letter accompanying the check that references the name and address of the party making payment; the Site name [Reilly Tar and Chemical Superfund Site] and the IDEM Site identification number [SZ00S] and mail to:

Indiana Department of Environmental Management  
Attention: Cashier’s Office – Mail Code 50-10C  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

Payment may also be made electronically via ACH in accordance with instructions provided by IDEM upon request by Settling Defendant.

Settling Defendant shall make all payments to the Indiana Office of the Attorney General required by this Paragraph by check made payable to the “State of Indiana” with a transmittal letter accompanying the check that references the name and address of the party making payment, the Site name [Reilly Tar and Chemical Superfund Site], and the Office of the Attorney General File number [2022-0499631] to:

Office of the Attorney General  
Attn: Asset Recovery & Bankruptcy  
302 W. Washington St.  
IGCS 5th Floor  
Indianapolis, IN 46204

## **X. FORCE MAJEURE**

29. “Force majeure,” for purposes of this Decree, means any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant’s contractors that delays or prevents the performance of any obligation under this Decree despite Settling Defendant’s best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Settling Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

30. If any event occurs for which Settling Defendant will or may claim a force majeure, Settling Defendant shall notify EPA’s Project Coordinator by email. The deadline for the initial notice is 5 days after the date Settling Defendant first knew or should have known that the event would likely delay performance. Settling Defendant shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Settling Defendant knew or should have known. Within 14 days thereafter, Settling Defendant shall send a further notice to EPA and the State that includes: (i) a description of the event and its effect on Settling Defendant’s completion of the requirements of the Decree; (ii) a description of all actions taken or to be taken to prevent or minimize the adverse effects or delay; (iii) the proposed extension of time for Settling Defendant to complete the requirements of the Decree; (iv) a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health or welfare, or the environment; and (v) all available proof supporting its claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Settling Defendant from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 29 and whether Settling Defendant has exercised its best efforts under ¶ 29, EPA may, in its unreviewable discretion, excuse in writing Settling Defendant’s failure to submit timely or complete notices under this Paragraph.

31. EPA, after a reasonable opportunity for review and comment by the State, will notify Settling Defendant of its determination whether Settling Defendant is entitled to relief under ¶ 29, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. 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. Settling Defendant may initiate dispute resolution under Section XI regarding EPA's determination within 15 days after receipt of the determination. In any such proceeding, Settling Defendant has the burden of proving that it is entitled to relief under ¶ 29 and that its proposed extension was or will be warranted under the circumstances.

32. The failure by EPA to timely complete any activity under the Decree or the SOW is not a violation of the Decree, provided, however, that if such failure prevents Settling Defendant from timely completing a requirement of the Decree, Settling Defendant may seek relief under this Section.

## XI. DISPUTE RESOLUTION

33. Unless otherwise provided in this Decree, Settling Defendant must use the dispute resolution procedures of this Section to resolve any dispute arising under this Decree. Settling Defendant shall not initiate a dispute challenging the Records of Decision. The United States may enforce any requirement of the Decree that is not the subject of a pending dispute under this Section.

34. A dispute will be considered to have arisen when one or more parties sends a written notice of dispute ("Notice of Dispute") in accordance with ¶ 62. Disputes arising under this Decree must in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations may not exceed 20 days after the dispute arises, unless the parties to the dispute otherwise agree. If the parties cannot resolve the dispute by informal negotiations, the position advanced by EPA is binding unless Settling Defendant initiates formal dispute resolution under ¶ 35.

### 35. Formal Dispute Resolution

a. **Statements of Position.** Settling Defendant may initiate formal dispute resolution by serving on the Plaintiffs, within 30 days after the conclusion of informal dispute resolution under ¶ 34, an initial Statement of Position regarding the matter in dispute. The Plaintiff's responsive Statements of Position is due within 30 days after receipt of the initial Statement of Position. All Statements of Position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within 15 days after receipt of the response. If appropriate, EPA may extend the deadlines for filing statements of position, and any reply, for up to 45 days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** The Director of the Superfund & Emergency Management Division, EPA Region 5, will issue a formal decision resolving the dispute ("Formal Decision") based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Settling Defendant unless it timely seeks judicial review under ¶ 36.

c. **Compilation of Administrative Record.** EPA shall compile an administrative record regarding the dispute, which must include all statements of position, replies, supplemental statements of position, and the Formal Decision.

36. **Judicial Review**

a. Settling Defendant may obtain judicial review of the Formal Decision by filing, within 30 days after receiving it, a motion with the Court and serving the motion on all Parties. The motion must describe the matter in dispute and the relief requested. The parties to the dispute shall brief the matter in accordance with local court rules.

b. **Review on the Administrative Record.** Judicial review of disputes regarding the following issues must be on the administrative record: (i) the adequacy or appropriateness of deliverables required under the Decree; (ii) the adequacy of the performance of the Remedial Action; (iii) whether a Work Takeover is warranted under ¶ 10; (iv) determinations about financial assurance under Section VII; (v) whether a reopener condition under ¶ 46 is satisfied, including whether the Remedial Action is not protective of human health and the environment; (vi) EPA's selection of modified or further response actions; (vii) any other items requiring EPA approval under the Decree; and (viii) any other disputes that the Court determines should be reviewed on the administrative record. For all of these disputes, Settling Defendant bears the burden of demonstrating that the Formal Decision was arbitrary and capricious or otherwise not in accordance with law.

c. Judicial review of any dispute not governed by ¶ 36.b shall be governed by applicable principles of law.

37. **Escrow Account.** For disputes regarding a Future Response Cost billing or combined billings exceeding \$50,000, Settling Defendant shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"); (b) remit to that escrow account funds equal to the amount of the contested Future Response Costs; and (c) send to EPA, in accordance with ¶ 62, copies of the correspondence and of the payment documentation (e.g., the check) that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. EPA may, in its unreviewable discretion, waive the requirement to establish the escrow account. Settling Defendant shall cause the escrow agent to pay the amounts due to EPA and the State under ¶ 28, if any, by the deadline for such payment in ¶ 28. Settling Defendant is responsible for any balance due under ¶ 28 after the payment by the escrow agent.

38. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Decree, except as EPA agrees, or as determined by the Court. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 41.

## XII. STIPULATED PENALTIES

39. Unless the noncompliance is excused under Section X (Force Majeure), Settling Defendant is liable to the United States for the following stipulated penalties:

a. for any failure: (i) to pay any amount due under Section IX; (ii) to establish and maintain financial assurance in accordance with Section VII; (iii) to submit timely or adequate deliverables under Section 7 of the SOW; (iv) to establish an escrow account to hold any disputed Future Response Costs under ¶ 37 (Escrow Account):

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$1,000
15th through 30th day	\$2,000
31st day and beyond	\$4,000

b. for any failure to submit timely or adequate deliverables required by this Decree other than those specified in ¶ 39.a:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$1000
15th through 30th day	\$2,000
31st day and beyond	\$4,000

40. **Work Takeover Penalty.** If EPA commences a Work Takeover, Settling Defendant is liable for a stipulated penalty in the amount of \$1,000,000. This stipulated penalty is in addition to the remedy available to EPA under ¶ 20 (Access to Financial Assurance) to fund the performance of the Work by EPA.

41. **Accrual of Penalties.** Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Decree prevents the simultaneous accrual of separate penalties for separate noncompliances with this Decree. Stipulated penalties accrue regardless of whether Settling Defendant has been notified of its noncompliance, and regardless of whether Settling Defendant has initiated dispute resolution under Section XI, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that EPA subsequently determines is deficient under ¶ 7.6 of the SOW, during the period, if any, beginning on the 31<sup>st</sup> day after EPA's receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency;

b. with respect to a matter that is the subject of dispute resolution under Section XI, during the period, if any, beginning on the 21st day after the later of the date that EPA's Statement of Position is received or the date that Settling Defendant's reply thereto (if any) is received until the date of the Formal Decision under ¶ 35.b; or

c. with respect to a matter that is the subject of judicial review by the Court under ¶ 36, during the period, if any, beginning on the 31st day after the Court's receipt of the



final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

42. **Demand and Payment of Stipulated Penalties.** EPA may send Settling Defendant a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Settling Defendant may initiate dispute resolution under Section XI within 30 days after receipt of the demand. Settling Defendant shall pay the amount demanded or, if it initiates dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. Settling Defendant shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late; and (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. Settling Defendant shall make payment at <https://www.pay.gov> using the link for “EPA Miscellaneous Payments Cincinnati Finance Center,” including references to the Site/Spill ID and DJ numbers listed in ¶ 62, and the purpose of the payment. Settling Defendant shall send a notice of this payment to DOJ and EPA, in accordance with ¶ 62. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Settling Defendant under the Decree.

43. Nothing in this Decree limits the authority of the United States or the State: (a) to seek any remedy otherwise provided by law for Settling Defendant’s failure to pay stipulated penalties or interest; or (b) to seek any other remedies or sanctions available by virtue of Settling Defendant’s noncompliances with this Decree or of the statutes and regulations upon which it is based, including penalties under section 122(l) of CERCLA, provided, however, that the United States may not seek civil penalties under section 122(l) of CERCLA for any noncompliance for which a stipulated penalty is provided for in this Decree, except in the case of a willful noncompliance with this Decree.

44. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Decree.

### XIII. COVENANTS BY PLAINTIFFS

#### 45. Covenants for Settling Defendant.

a. **By the United States.** Subject to ¶¶ 46 and 48, the United States covenants not to sue or to take administrative action against Settling Defendant under sections 106 and 107(a) of CERCLA regarding the Site.

b. The covenants under ¶ 45: (a) take effect upon the Effective Date, except with respect to future liability, for which these covenants take effect upon Certification of Remedial Action Completion by EPA under ¶ 5.7 of the SOW; (b) are conditioned on the satisfactory performance by Settling Defendant of the requirements of this Decree; (c) extend to the successors of Settling Defendant but only to the extent that the alleged liability of the

successor of Settling Defendant is based solely on its status as a successor of Settling Defendant; and (d) do not extend to any other person.

c. **By the State.** Except as provided in ¶¶ 46 and 47, the State of Indiana covenants not to sue or to take administrative action against Settling Defendant pursuant to Indiana Code §13-25-4 et seq. regarding the Site. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this CD. These covenants extend only to Settling Defendant and do not extend to any other person.

**46. United States' Pre- and Post-Certification Reservations**

a. Notwithstanding any other provision of this Decree, the United States reserves, and this Decree is without prejudice to, the right to issue an administrative order or to institute proceedings in this action or in a new action seeking to compel Settling Defendant to perform further response actions relating to the Site, to pay the United States for additional costs of response, or any combination thereof. The United States may exercise this reservation only if, at any time, conditions at the Site previously unknown to EPA are discovered, or information previously unknown to EPA is received, and EPA determines, based in whole or in part on these previously unknown conditions or information, that the Remedial Action is not protective of human health or the environment.

b. Before Certification of Remedial Action Completion, the information and the conditions known to EPA include only that information and those conditions known to EPA as of the date the Records of Decision was signed and set forth in the Records of Decision for the Site and the administrative record supporting the Records of Decision.

c. After Certification of Remedial Action Completion, the information and the conditions known to EPA include only that information and those conditions known to EPA as of the date of Certification of Remedial Action Completion and set forth in the Records of Decision, the administrative record supporting the Records of Decision, the post-Records of Decision administrative record, or in any information received by EPA in accordance with the requirements of this Decree prior to Certification of Remedial Action Completion.

**47. State's Pre- and Post-Certification Reservations.**

a. **State's Pre-Certification Reservations.** Notwithstanding any other provision of this CD, the State reserves, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel SD to perform further response actions relating to the Site and/or to pay the State for additional costs of response if, (a) prior to Certification of RA Completion, (1) conditions at the Site, previously unknown to the State, are discovered, or (2) information, previously unknown to the State, is received, in whole or in part, and (b) the State determines that these previously unknown conditions or information together with any other relevant information indicates that the RA is not protective of human health or the environment.

b. **State's Post-Certification Reservations.** Notwithstanding any other provision of this CD, the State of Indiana reserves, and this CD is without prejudice to, the right

to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel SD to perform further response actions relating to the Site and/or to pay the State for additional costs of response if, (a) subsequent to Certification of RA Completion, (1) conditions at the Site, previously unknown to the State, are discovered, or (2) information, previously unknown to the State, is received, in whole or in part, and (b) the State determines that these previously unknown conditions or this information together with other relevant information indicate that the RA is not protective of human health or the environment.

48. **General Reservations.** Notwithstanding any other provision of this Decree, the United States and the State reserve, and this Decree is without prejudice to, all rights against Settling Defendant regarding the following:

- a. liability for failure by Settling Defendant to meet a requirement of this Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based on Settling Defendant's ownership of the Site when such ownership commences after Settling Defendant's signature of this Decree;
- d. liability based on Settling Defendant's operation of the Site when such operation commences after Settling Defendant's signature of this Decree and does not arise solely from Settling Defendant's performance of the Work;
- e. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, after signature of this Decree by Settling Defendant, other than as provided in the Records of Decision, under this Decree, or ordered by EPA;
- f. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the Remedial Action, but that are not covered by ¶ 8.b;
- g. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- h. criminal liability.

49. Subject to ¶ 45, nothing in this Decree limits any authority of Plaintiffs to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or to request a Court to order such action.

#### XIV. COVENANTS BY SETTLING DEFENDANT

##### 50. Covenants by Settling Defendant

a. Subject to ¶ 51, Settling Defendant covenants not to sue and shall not assert any claim or cause of action against the United States or the State under CERCLA, section 7002(a) of RCRA, the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, IC 13-30-1 et seq. or at common law regarding the Site.

b. Subject to ¶ 51, Settling Defendants covenant not to seek reimbursement from the Fund through CERCLA or any other law for costs regarding the Site.

51. **Settling Defendant's Reservation.** The covenants in ¶ 50 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States or the State to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 46, and 48.a through 48.g.

#### XV. EFFECT OF SETTLEMENT; CONTRIBUTION

51. The Parties agree and the Court finds that: (a) the Complaint filed by the United States in this action is a civil action within the meaning of section 113(f)(1) of CERCLA; (b) this Decree constitutes a judicially approved settlement under which Settling Defendant has, as of the Effective Date, resolved its liability to the United States within the meaning of sections 113(f)(2) and 113(f)(3)(B) of CERCLA; and (c) Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Decree. The "matters addressed" in this Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, provided, however, that if the United States or the State exercises rights under the reservations in ¶ 46 and ¶¶ 48.a through 48.f, the "matters addressed" in this Decree will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

52. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Decree, notify DOJ and EPA and the State no later than 60 days prior to the initiation of such suit or claim. Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Decree, notify DOJ and EPA and the State within 10 days after service of the complaint on such Settling Defendant. In addition, Settling Defendant shall notify DOJ and EPA and the State within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

53. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated against Settling Defendant by either Plaintiff for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim

preclusion (res judicata), issue preclusion (collateral estoppel), claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case.

54. Nothing in this Decree diminishes the right of the United States under section 113(f)(2) and (3) of CERCLA or the right of the State under IC 13-25-4 et seq. to pursue any person not a party to this Decree 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) and IC 13-25-4-27.

## XVI. RECORDS

55. **Settling Defendant Certification.** Settling Defendant certifies that: (a) it has implemented a litigation hold on documents and electronically stored information relating to the Site, including information relating to its potential liability under CERCLA regarding the Site, since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site; and (b) it has fully complied with any and all EPA and State requests for information under sections 104(e) and 122(e) of CERCLA, and section 3007 of RCRA, and State law.

### 56. **Retention of Records and Information**

a. Settling Defendant shall retain, and instruct its contractors and agents to retain, the following documents and electronically stored data (“Records”) until 10 years after the Certification Completion of the Work under SOW ¶ 5.9 (the “Record Retention Period”):

- (1) All records regarding Settling Defendant’s liability under CERCLA regarding the Site;
- (2) All reports, plans, permits, and documents submitted to EPA in accordance with this Decree, including all underlying research and data; and
- (3) All data developed by, or on behalf of, Settling Defendant in the course of performing the Remedial Action.

b. At the end of the Record Retention Period, Settling Defendant shall notify EPA that it has 90 days to request the Settling Defendant’s Records subject to this Section. Settling Defendant shall retain and preserve its Records subject to this Section until 90 days after EPA’s receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

57. Settling Defendant shall provide to EPA and the State, upon request, copies of all Records and information required to be retained under this Section. Settling Defendant shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

**58. Privileged and Protected Claims**

a. Settling Defendant may assert that all or part of a record requested by Plaintiffs is privileged or protected as provided under federal law, in lieu of providing the record, provided that Settling Defendant comply with ¶ 58.b, and except as provided in ¶ 58.c.

b. If Settling Defendant asserts a claim of privilege or protection, it shall provide Plaintiffs 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, Settling Defendant shall provide the record to Plaintiffs in redacted form to mask the privileged or protected portion only. Settling Defendant shall retain all records that they claim to be privileged or protected until Plaintiffs have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Defendant's favor.

c. Settling Defendant shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any record that Settling Defendant is required to create or generate in accordance with this Decree.

**59. Confidential Business Information (CBI) Claims.** Settling Defendant may claim that all or part of a record provided to Plaintiffs under this Section is CBI to the extent permitted by and in accordance with section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Settling Defendant shall segregate and shall clearly identify all records or parts thereof submitted under this Decree for which they claim is CBI by labeling each page or each electronic file "claimed as confidential business information" or "claimed as CBI." Records that Settling Defendant claim to be CBI will be afforded the protection specified in 40 C.F.R. part 2, subpart B. If no CBI claim accompanies records when they are submitted to EPA and the State, or if EPA notifies Settling Defendant that the records are not entitled to confidential treatment 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 Settling Defendant.

60. In any proceeding under this Decree, validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA, if relevant to the proceeding, is admissible as evidence, without objection.

61. Notwithstanding any provision of this Decree, Plaintiffs retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

**XVII. NOTICES AND SUBMISSIONS**

62. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Decree must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or

other document is required to be sent by one Party to another under this Decree, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to DOJ: *via email to:*  
eesdcopy.enrd@usdoj.gov  
Re: DJ # 90-11-3-1028/2

As to EPA: *via email to:*  
ballotti.douglas@epa.gov  
and  
novak.dion@epa.gov  
Re: Site/Spill ID # 05D4

As to IDEM: *via email to:*  
Jessica Fliss  
Federal Programs Section Chief  
JFLISS@idem.IN.gov

As to the Regional  
Comptroller: *via email to:*  
meyer.dale@epa.gov  
Re: Site/Spill ID # 05D4

As to Settling  
Defendant: *via email to:*  
Andrea Marrs  
amarrs@aurorium.com  
  
Freedom Smith  
Ice Miller LLP  
Freedom.smith@icemiller.com

## **XVIII. APPENDICES**

63. The following appendices are attached to and incorporated into this Decree:

“Appendix A” is the SOW.

“Appendix B” is the map of the Site.

“Appendix C” is the Environmental Restrictive Covenant (ERC) for the Site.

## **XIX. MODIFICATIONS TO DECREE**

64. Except as provided in ¶ 8 of the Decree and ¶ 7.6 of the SOW (Approval of Deliverables), nonmaterial modifications to Sections I through XXIII and the Appendices must be in writing and are effective when signed (including electronically signed) by the Parties. Material modifications to Sections I through XXIII and the Appendices must be in writing, signed (which may include electronically signed) by the Parties, and are effective upon approval by the Court. As to changes to the remedy, a modification to the Decree, including the SOW, to implement an amendment to the Records of Decision that “fundamentally alters the basic features” of the Remedial Action within the meaning of 40 C.F.R. § 300.435(c)(2)(ii) will be considered a material modification.

## **XX. SIGNATORIES**

65. The undersigned representative of the United States, the undersigned representative of the State, and the undersigned representative of Settling Defendant each certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such Party to this document.

## **XXI. PRE-ENTRY PROVISIONS**

66. If for any reason the Court should decline to approve this Decree in the form presented, this agreement, except for ¶ 67 and ¶ 68, is voidable at the sole discretion of any Party and its terms may not be used as evidence in any litigation between the Parties.

67. This Decree will be lodged with the Court for at least 30 days for public notice and comment in accordance with section 122(d)(2) of CERCLA and 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations that indicate that the Decree is inappropriate, improper, or inadequate.

68. Settling Defendant agrees not to oppose or appeal the entry of this Decree.

## **XXII. INTEGRATION**

69. This Decree constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Decree.

## **XXIII. FINAL JUDGMENT**

70. Upon entry of this Decree by the Court, this Decree constitutes a final judgment under Fed. R. Civ. P. 54 and 58 among the Parties.

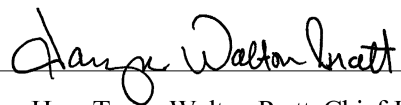


**SO ORDERED.**

Date: 5/13/2024

Roger A.G. Sharpe, Clerk

BY:   
Deputy Clerk, U.S. District Court

  
Hon. Tanya Walton Pratt, Chief Judge  
United States District Court  
Southern District of Indiana

Distribution to all electronically  
registered counsel of record via  
CM/ECF

Signature Page for Consent Decree in *U.S. v. 1500 South Tibbs* (S.D. Ind.)

**FOR THE UNITED STATES:**

02/05/2024

Dated

Todd Kim  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division



---

Traci N. Cunningham  
Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044

J. Taylor Kirklin  
Assistant United States Attorney  
Southern District of Indiana

Signature Page for Consent Decree in *U.S. v. 1500 South Tibbs* (S.D. Ind.)

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

1/29/24

**DOUGLAS  
BALLOTTI** Digitally signed by  
DOUGLAS BALLOTTI  
Date: 2024.01.29  
11:33:20 -06'00'

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Douglas Ballotti  
Director, Superfund & Emergency  
Management Division  
U.S. Environmental Protection Agency  
Region 5

1/22/24



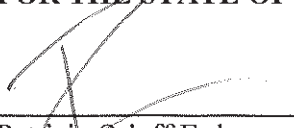
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Amanda Urban  
Josh Zaharoff  
Associate Regional Counsels  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Signature Page for Consent Decree in *U.S. v. 1500 South Tibbs LLC* (S.D. Ind.)

**FOR THE STATE OF INDIANA:**

January 17, 2024  
Dated

  
\_\_\_\_\_  
Patricia Orloff Erdmann  
Chief Counsel for Litigation  
Office of Indiana Attorney General Todd  
Rokita  
402 West Washington Street  
IGCS, 5th Floor  
Indianapolis, IN 46204

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Peggy Dorsey  
Assistant Commissioner  
Office of Land Quality  
Indiana Department of Environmental  
Management  
100 N. Senate Ave. (IGCN-1101, MC 66-30)  
Indianapolis, IN 46204-2251

Signature Page for Consent Decree in *U.S. v. 1500 South Tibbs LLC* (S.D. Ind.)

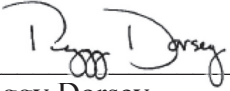
**FOR THE STATE OF INDIANA:**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Patricia Orloff Erdmann  
Chief Counsel for Litigation  
Office of Indiana Attorney General Todd  
Rokita  
402 West Washington Street  
IGCS, 5th Floor  
Indianapolis, IN 46204

12/14/2023

\_\_\_\_\_  
Dated

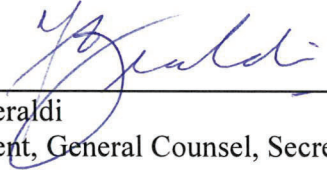
  
\_\_\_\_\_  
Peggy Dorsey  
Assistant Commissioner  
Office of Land Quality  
Indiana Department of Environmental  
Management  
100 N. Senate Ave. (IGCN-1101, MC 66-30)  
Indianapolis, IN 46204-2251

Signature Page for Consent Decree in *U.S. v. 1500 South Tibbs LLC* (S.D. Ind.)

**FOR 1500 SOUTH TIBBS LLC:**

DEC 13, 2023

\_\_\_\_\_  
Dated

  
\_\_\_\_\_  
Fernanda Beraldi  
Vice President, General Counsel, Secretary  
& Compliance Officer  
1500 South Tibbs, LLC  
201 North Illinois Street, Suite 1800  
Indianapolis, IN 46204

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Freedom Smith  
Ice Miller LLP  
One American Square, Suite 2900  
Indianapolis, IN 46282-0200  
317-236-5893  
Freedom.Smith@icemiller.com

# Attachment A

**REMEDIAL DESIGN/REMEDIAL ACTION 1500 SOUTH TIBBS LLC**

**STATEMENT OF WORK**



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## 1. INTRODUCTION

**1.1 Purpose of SOW.** This SOW sets forth the procedures and requirements for implementing the Work.

### **1.2 Structure of the SOW**

- Section 2 (Community Involvement) sets forth EPA's and Settling Defendant's responsibilities for community involvement.
- Section 3 (Coordination and Supervision) contains the provisions for selecting the Supervising Contractor and Project Coordinators regarding the Work.
- Section 4 (Remedial Design) sets forth the process for developing the Remedial Design, which includes the submission of specified primary deliverables.
- Section 5 (Remedial Action) sets forth requirements regarding the completion of the Remedial Action, including primary deliverables related to completion of the Remedial Action.
- Section 6 (Reporting) sets forth Settling Defendant's reporting obligations.
- Section 7 (Deliverables) describes the contents of the supporting deliverables and the general requirements regarding Settling Defendant's submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- Section 8 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the Remedial Action.
- Section 9 (State Participation) addresses State participation.
- Section 10 (References) provides a list of references, including URLs.

**1.3 The Scope of the Remedy includes the actions described in the following decision documents:**

**(a) OU1**

- (1) Section 9.0 Description of Remedial Alternatives, "Alternative 3: Barrier Biosparging," of the Record of Decision (ROD) Amendment for Operable Unit (OU) 1 of the Site, dated August 19, 2021, including installation of biosparging wells along the entire eastern perimeter of the property, injection of air throughout the aquifers, shutdown of the extraction wells once biosparging is shown to be effective, ongoing monitoring of groundwater, and institutional controls.
- (2) These actions also include the continuation of actions described in Sections entitled "Alternative 3: Ground-Water Extraction, Treatment and Discharge" and "Selected Remedy" in the First Remedial Action – Interim ROD for Operable Unit 1, dated June 30, 1992, including groundwater extraction at the property boundary, treatment, and discharge, until certain conditions described in the ROD Amendment for OU1 are met. Presently, extracted groundwater is discharged directly to the POTW per Section 1.2

of the 1994 Final Operation and Maintenance Manual for the IRM Ground Water Extraction / Gradient Control System.

- (b) OU2. The work described in “Selected Remedy for Soil Cleanup” and “Selected Remedy for South Landfill/Fire Pond Sludge Cleanup” of the Record of Decision for Operable Unit 2, dated September 30, 1993, as modified by the Explanation of Significant Differences signed on October 6, 1997, including thermal desorption, in-situ solidification, south landfill soil cover, and operations and maintenance for OU2. While most of this work has been completed under the terms of prior CDs, the Settling Defendant will continue to perform operations and maintenance for OU2 as required under the Record of Decision and the terms of the Consent Decree.
- (c) OU3. The work described in “Selected Remedy for Operable Unit 3” of the Record of Decision for Operable Units 3 and 4, dated September 27, 1996, including placement of a soil cover over portions of the kickback area and gravel covers over other portions, groundwater and source area monitoring, and deed restrictions for OU3. While most of this work has been completed under the terms of prior CDs, the Settling Defendant will continue to perform operations and maintenance for OU3 as required under the Record of Decision and the terms of the Consent Decree.
- (d) OU4. The work described in “Selected Remedy for Operable Unit 4” of the Record of Decision for Operable Units 3 and 4, dated September 27, 1996, including construction of an asphalt or concrete cover over hot spot area C, soil vapor extraction at hot spot areas A and B, treatment of condensate generated from soil vapor extraction, groundwater and source area monitoring, deed restrictions, and institutional controls for OU4. While most of this work has been completed under the terms of prior CDs, the Settling Defendant will continue to perform operations and maintenance for OU4 as required under the Record of Decision and the terms of the Consent Decree.
- (e) The Section entitled “Selected Remedy” of the Record of Decision for Operable Unit 5, dated June 30, 1997, including long-term groundwater monitoring of the natural attenuation of off-site groundwater. The Settling Defendant will continue to perform groundwater monitoring for OU5 as required under the Record of Decision and the terms of the Consent Decree.

#### 1.4 Applicability.

- (a) All of the provisions of this SOW apply to the remedy for OU1, as described in Section 1.3(a) above.
- (b) All of the provisions of this SOW apply to OU2, OU3, OU4, and OU5, as described in Section 1.3(b)-(d) above, except for the following: Sections 5.1, 5.2, and 5.6, which only apply to OU1; and Section 5.7, which only applies to OU1 and OU5.

- 1.5 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Consent Decree (“Decree”), have the meanings assigned to them in CERCLA, in such regulations, or in the Decree, except that the term “Paragraph” or “¶” means a paragraph of the SOW, and the term “Section” means a section of the SOW, unless otherwise stated.

## 2. COMMUNITY INVOLVEMENT

- 2.1 As requested by EPA, Settling Defendant shall conduct community involvement activities under EPA’s oversight as provided for in, and in accordance with this Section.

### 2.2 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. Previously during the Remedial Investigation and Feasibility Study (“RI/FS”) phase, EPA developed a Community Involvement Plan (“CIP”) for the Site. In accordance with 40 C.F.R 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP. **Settling Defendant’s CI Responsibilities** Settling Defendant shall coordinate activities with EPA’s CI Coordinator, provide support regarding EPA’s community involvement activities, and, as requested by EPA’s CI Coordinator, provide draft responses to the public’s inquiries including requests for information or data about the Site. The Settling Defendant has the responsibility to ensure that when it communicates with the public, the Settling Defendant protects any “Personally Identifiable Information” (“PII”) (e.g. sample results from residential properties) in accordance with “EPA Policy 2151.0: Privacy Policy.”
- (b) As requested by EPA, Settling Defendant shall participate in community involvement activities, including participation in: (1) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site (with interpreters present for community members with limited English proficiency); and (2) any other activities EPA decides are necessary to protect and address the concerns of EJ and disadvantaged communities. As requested by EPA, Settling Defendant’s support of EPA’s community involvement activities may include providing online access to initial submissions and updates of deliverables to: (1) any Community Advisory Groups, (2) any Technical Assistance Grant (“TAG”) recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP Settling Defendant’s responsibilities for community involvement activities. All community involvement activities conducted by Settling Defendant at EPA’s request are subject to EPA’s oversight. There is a community information repository near the Site at:

Indianapolis Public Library  
40 E St. Clair St

Indianapolis, IN 46204

- (c) **Information for the Community.** As requested by EPA, Settling Defendant shall develop and provide to EPA information about the design and implementation of the remedy including: (1) any validated data from monitoring of impacts to communities as provided in the Community Impacts Mitigation Plan under ¶ 7.7(f); (2) results from unvalidated sampling as provided under ¶ 7.7(e)(7); (3) a copy of the Community Impacts Mitigation Plan required under ¶ 7.7(f); (4) schedules prepared under Section 8; (5) dates that Settling Defendant completed each task listed in the schedules; and (6) digital photographs of the Work being performed, together with descriptions of the Work depicted in each photograph, the purpose of the Work, the equipment being used, and the location of the Work. The EPA Project Coordinator may use this information for communication to the public via EPA’s website, social media, or local and mass media, except that these materials may exclude information claimed by Settling Defendants and verified by EPA to pose a potential security threat or confidential business information (“CBI”), including trade secrets. The information provided to EPA should be suitable for sharing with the public and the education levels of the community as indicated in EJ Screen. Translations should be in the dominant language(s) of community members with limited English proficiency.

### 3. COORDINATION AND SUPERVISION

#### 3.1 Project Coordinators

- (a) Settling Defendant’s Project Coordinator must have sufficient technical expertise to coordinate the Work. Settling Defendant’s Project Coordinator may not be an attorney representing Settling Defendant in this matter and may not act as the Supervising Contractor. Settling Defendant’s Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.
- (b) EPA shall designate and notify the Settling Defendant of EPA’s Project Coordinator[s] and Alternate Project Coordinator[s]. EPA may designate other representatives, which may include its employees, contractors, and/or consultants, to oversee the Work. EPA’s Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”). This includes the authority to halt the Work and/or to conduct or direct any necessary response action when it is determined that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.
- (c) The State shall designate and notify EPA and the Settling Defendant of its Project Coordinator[s] and Alternate Project Coordinator[s]. The State may designate other representatives, including its employees, contractors and/or consultants to

oversee the Work. For any meetings and inspections in which EPA's Project Coordinator participates, the State's Project Coordinator also may participate. Settling Defendant shall notify the State reasonably in advance of any such meetings or inspections.

- (d) Settling Defendant's Project Coordinators shall communicate with EPA's and the State's Project Coordinators at least monthly.

**3.2 Supervising Contractor.** Settling Defendant's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with the most recent version of *Quality Systems for Environmental Data and Technology Programs -- Requirements with Guidance for Use* (American National Standard), ANSI/ASQC E4 (Feb. 2014).

### **3.3 Procedures for Disapproval/Notice to Proceed**

- (a) Settling Defendant shall designate, and notify EPA, within 10 days after the Effective Date, of the name[s], title[s], contact information, and qualifications of the Settling Defendant's proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.
- (b) EPA shall issue notices of disapproval and/or authorizations to proceed regarding any proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Settling Defendant shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. Settling Defendant may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of Settling Defendant's selection.
- (c) EPA may disapprove the proposed Project Coordinator, the Supervising Contractor, or both, based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise), if they have a conflict of interest regarding the project, or any combination of these factors.
- (d) Settling Defendant may change their Project Coordinator and/or Supervising Contractor, or both, by following the procedures of ¶¶ 3.3(a) and 3.3(b).

## **4. REMEDIAL DESIGN**

**4.1 Remedial Design Work Plan ("RDWP") for OU1.** Settling Defendant has completed a RDWP as part of the Focused Feasibility Study that was approved by EPA with corrections on October 29, 2020, and resubmitted by Settling Defendant on November 3, 2020, for OU1.

**4.2 Institutional Controls Implementation and Assurance Plan (“ICIAP”).** Settling Defendant shall submit a proposed ICIAP for EPA approval. The ICIAP should describe plans to implement, maintain, monitor, and enforce the Institutional Controls (“ICs”) at the Site. The ICIAP shall include plans to commence implementing ICs as early as is feasible, including before EPA approval of the 100% design under ¶ 4.6. The ICIAP also should include procedures for effective and comprehensive review of implemented ICs, procedures for the solicitation of input from affected communities regarding the implementation of ICs, procedures to periodically review and determine if the ICs are having their intended effect, and if not, procedures for the development, approval, and implementation of alternative, more effective ICs. Settling Defendant shall develop the ICIAP in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). Settling Defendants also shall consider including in the ICIAP the establishment of effective Long-Term Stewardship procedures including those described in EPA Memorandum: *Advanced Monitoring Technologies and Approaches to Support Long-Term Stewardship* (July 20, 2018). The ICIAP must include the following additional requirements:

- (a) Locations of recorded real property interests (*e.g.*, easements, liens) and resource interests in the property that may affect ICs (*e.g.*, surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and
- (b) Legal descriptions and survey maps that are prepared according to current American Land Title Association (“ALTA”) Survey guidelines and certified by a licensed surveyor.

**4.3** Settling Defendant shall communicate regularly with EPA to discuss design issues as necessary, as directed or determined by EPA.

**4.4 Preliminary (30%) Remedial Design for OU1.** Settling Defendant has already submitted a Preliminary (30%) Remedial Design as part of the Focused Feasibility Study that EPA approved with corrections on October 29, 2020, and that Settling Defendant resubmitted on November 3, 2020, for OU1. The Preliminary Remedial Design included:

- (a) A design criteria report, as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995);
- (b) Preliminary drawings and specifications;
- (c) Descriptions of permit requirements, if applicable;
- (d) A description of how the Remedial Action will be implemented in a manner that minimizes environmental impacts in accordance with EPA’s *Principles for Greener Cleanups* (Aug. 2009);

- (e) A description of monitoring and control measures to protect human health and the environment, such as air monitoring, and measures to reduce and manage traffic, noise, odors, and dust, during the Remedial Action in accordance with the Community Involvement Handbook pp. 53-66 (text box on p. 55) to minimize community impacts;
- (f) Any proposed revisions to the Remedial Action Schedule that is set forth in ¶ 8.3 (Remedial Action Schedule); and
- (g) Updates of all supporting deliverables required to accompany the RDWP and the following additional supporting deliverables described in ¶ 7.7 (Supporting Deliverables): Field Sampling Plan; Quality Assurance Project Plan; Site Wide Monitoring Plan; Community Impacts Mitigation Plan, Construction Quality Assurance/Quality Control Plan; Transportation and Off-Site Disposal Plan; Sitewide O&M Plan; and O&M Manual.

**4.5 Pre-final (95%) Remedial Design for OU1 and Updated Sitewide Supporting Deliverables.** Settling Defendant shall submit the Pre-final (95%) Remedial Design for OU1 and updated sitewide Supporting Deliverables for EPA's comment. The Pre-final Remedial Design must be a continuation and expansion of the preliminary design presented in the Focused Feasibility Study. The Pre-final Remedial Design will serve as the approved Final (100%) Remedial Design if EPA approves the Pre-final Remedial Design without comments. The Pre-final Remedial Design must include:

- (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's MasterFormat 2020;
- (b) A survey and engineering drawings showing existing Site features, such as elements, property borders, easements, and Site conditions;
- (c) Pre-final versions of the same elements and deliverables as are required for the Preliminary Remedial Design;
- (d) A specification for photographic documentation of the Remedial Action; and
- (e) Updates of all supporting deliverables required to accompany the Preliminary (30%) Remedial Design, including an update to the Sitewide O&M Plan that incorporates all OUs.

**4.6 Final (100%) Remedial Design for OU1 and Updated Sitewide Supporting Deliverables.** Settling Defendant shall submit the Final (100%) Remedial Design for OU1 and updated sitewide Supporting Deliverables for EPA approval. The Final Remedial Design must address EPA's comments on the Pre-final Remedial Design and must include final versions of all Pre-final Remedial Design deliverables.



## 5. REMEDIAL ACTION

### 5.1 Remedial Action Work Plan (“RAWP”) for OU1. Settling Defendant shall submit a RAWP for EPA approval that includes:

- (a) A proposed Remedial Action Construction Schedule;
- (b) An updated health and safety plan that covers activities during the Remedial Action; and
- (c) Plans for satisfying permitting requirements, including obtaining permits for off-site activity and for satisfying substantive requirements of permits for on-site activity.

### 5.2 Meetings and Inspections (OU1 Only)

- (a) **Preconstruction Conference.** Settling Defendant shall hold a preconstruction conference with EPA and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). Settling Defendant shall prepare minutes of the conference and shall distribute the minutes to all Parties.
- (b) **Periodic Communications.** During the construction portion of the Remedial Action (Remedial Action Construction), Settling Defendant shall communicate regularly with EPA, and others as directed or determined by EPA, to discuss construction issues. Settling Defendant shall distribute an agenda and list of attendees to all Parties prior to each meeting or telephone call. Settling Defendant shall prepare minutes of the meetings or calls and shall distribute the minutes to all Parties.
- (c) **Inspections**
  - (1) EPA or its representative shall conduct periodic inspections of or have an on-site presence during the Work. At EPA’s request, the Supervising Contractor or other designee shall accompany EPA or its representative during inspections.
  - (2) Settling Defendant shall provide on-site office space for EPA personnel to perform their oversight duties.
  - (3) Settling Defendant will make available certain personal protective equipment, including hard hats and safety goggles, for EPA personnel and any oversight officials to perform their oversight duties.
  - (4) Upon notification by EPA of any deficiencies in the Remedial Action Construction, Settling Defendant shall take all necessary steps to correct the deficiencies and/or bring the Remedial Action Construction into compliance with the approved Final Remedial Design, any approved

design changes, and/or the approved RAWP. If applicable, Settling Defendant shall comply with any schedule provided by EPA in its notice of deficiency.

### 5.3 Permits

- (a) As provided in CERCLA § 121(e), and Section 300.400(e) of the NCP, no permit is required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.
- (b) Settling Defendant may seek relief under the provisions of Section X (Force Majeure) of the Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 5.3(a) and required for the Work, provided that it submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.
- (c) Nothing in the Decree or this SOW constitutes a permit issued under any federal or state statute or regulation.

### 5.4 Emergency Response and Reporting

- (a) **Emergency Action.** 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 and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Settling Defendant shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 5.4(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.
- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report under CERCLA § 103 or Section 304 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), Settling Defendant shall immediately notify the authorized EPA officer orally.
- (c) The “authorized EPA officer” for purposes of immediate oral notifications and consultations under ¶ 5.4(a) and ¶ 5.4(b) is the EPA Project Coordinator, the EPA Alternate Project Coordinator (if the EPA Project Coordinator is unavailable), or an employee from EPA Emergency Response Branch I or II, Region 5 (if neither EPA Project Coordinator is available).

- (d) For any event covered by ¶ 5.4(a) and ¶ 5.4(b), Settling Defendant shall:
  - (1) within 14 days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under ¶ 5.4 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

## 5.5 Off-Site Shipments

- (a) Settling Defendant may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if it complies with CERCLA § 121(d)(3), and 40 C.F.R. § 300.440. Settling Defendant will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Settling Defendant 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) Settling Defendant may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Settling Defendant also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Settling Defendant shall provide the notice after the award of the contract for Remedial Action construction and before the Waste Material is shipped.
- (c) Settling Defendant may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if compliant with CERCLA § 121(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 Record of Decision. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

## 5.6 Remedial Action Construction Completion (OU1 Only)

- (a) For purposes of this ¶ 5.6, "Remedial Action Construction" comprises, for any Remedial Action that involves the construction and operation of a system to

achieve Performance Standards (for example, groundwater or surface water restoration remedies), the construction of such system and the performance of all activities necessary for the system to function properly and as designed.

- (b) **Inspection of Constructed Remedy.** Settling Defendant shall schedule an inspection to review the construction and operation of the system and to review whether the system is functioning properly and as designed. The inspection must be attended by Settling Defendant and EPA and/or their representatives. A reinspection must be conducted if requested by EPA.
- (c) **Shakedown Period.** There shall be a shakedown period of up to one year for EPA to review whether the remedy is functioning properly and performing as designed. Settling Defendant shall provide such information as EPA requests for such review.
- (d) **Remedial Action Report.** Following the shakedown period, Settling Defendant shall submit a “Remedial Action Report” requesting EPA’s determination that Remedial Action Construction has been completed. The Remedial Action Report must: (1) include statements by a registered professional engineer and by Settling Defendant’s Project Coordinator that the construction of the system is complete and that the system is functioning properly and as designed; (2) include a demonstration, and supporting documentation, that construction of the system is complete and that the system is functioning properly and as designed; (3) include as-built drawings signed and stamped by a registered professional engineer; (4) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA’s *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); and (5) be certified in accordance with ¶ 7.5 (Certification).
- (e) If EPA determines that Remedial Action Construction is not complete, EPA shall so notify Settling Defendant. EPA’s notice must include a description of, and schedule for, the activities that Settling Defendant must perform to complete Remedial Action Construction. EPA’s notice may include a schedule for completion of such activities or may require Settling Defendant to submit a proposed schedule for EPA approval. Settling Defendant shall perform all activities described in the EPA notice in accordance with the schedule.
- (f) If EPA determines, based on the initial or any subsequent Remedial Action Report, that Remedial Action Construction is complete, EPA shall so notify Settling Defendant.

## 5.7 Certification of Remedial Action Completion (OU1 and OU5 Only)

- (a) **Remedial Action Completion Inspection.** The Remedial Action is “Complete” for purposes of this ¶ 5.7 when it has been fully performed and the Performance Standards have been achieved. Settling Defendant shall schedule an inspection for

the purpose of obtaining EPA's Certification of Remedial Action Completion. The inspection must be attended by Settling Defendant and EPA and/or their representatives.

- (b) **Remedial Action Report.** Following the inspection, Settling Defendant shall submit a Remedial Action Report to EPA requesting EPA's Certification of Remedial Action Completion. The report must: (1) include certifications by a registered professional engineer and by Settling Defendant's Project Coordinator that the Remedial Action is complete; (2) include as-built drawings signed and stamped by a registered professional engineer; (3) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); (4) contain monitoring data to demonstrate that Performance Standards have been achieved; and (5) be certified in accordance with ¶ 7.5 (Certification).
- (c) If EPA concludes that the Remedial Action is not Complete, EPA shall so notify Settling Defendant. EPA's notice must include a description of any deficiencies. EPA's notice may include a schedule for addressing such deficiencies or may require Settling Defendant to submit a schedule for EPA approval. Settling Defendant shall perform all activities described in the notice in accordance with the schedule.
- (d) If EPA concludes, based on the initial or any subsequent Remedial Action Report requesting Certification of Remedial Action Completion, that the Remedial Action is Complete, EPA shall so certify to Settling Defendant. This certification will constitute the Certification of Remedial Action Completion for purposes of the Decree, including Section [XIII] of the Decree (Covenants by Plaintiffs). Certification of Remedial Action Completion will not affect Settling Defendant's remaining obligations under the Decree.

**5.8 Periodic Review Support Plan ("PRSP").** Settling Defendant shall submit the PRSP for EPA approval. The PRSP addresses the studies and investigations that Settling Defendant shall conduct to support EPA's reviews of whether the Remedial Action is protective of human health and the environment in accordance with CERCLA § 121(c) (also known as "Five-Year Reviews"). Settling Defendant shall develop the plan in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidances.

## **5.9 Certification of Work Completion**

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

- (b) **Work Completion Report.** Following the inspection, Settling Defendant shall submit a report to EPA requesting EPA's Certification of Work Completion. The report must: (1) include certifications by a registered professional engineer and by Settling Defendant's Project Coordinator that the Work, including all O&M activities, is complete; and (2) be certified in accordance with ¶ 7.5 (Certification). If the Remedial Action Report submitted under ¶ 5.7(b) includes all elements required under this ¶ 5.9(b), then the Remedial Action Report suffices to satisfy all requirements under this ¶ 5.9(b).
- (c) If EPA concludes that the Work is not complete, EPA shall so notify Settling Defendant. EPA's notice must include a description of the activities that Settling Defendant must perform to complete the Work. EPA's notice must include specifications and a schedule for such activities or must require Settling Defendant to submit specifications and a schedule for EPA approval. Settling Defendant shall perform all activities described in the notice or in the EPA-approved specifications and schedule.
- (d) If EPA concludes, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, EPA shall so certify in writing to Settling Defendant. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) activities under the Periodic Review Support Plan; (2) obligations under Sections VI (Property Requirements), and XVI (Records) of the Decree; (3) Institutional Controls obligations as provided in the ICIAP; and (4) reimbursement of EPA's Future Response Costs under Section IX (Payments for Response Costs) of the Decree.

## 6. REPORTING

**6.1 Progress Reports.** Commencing with the month following lodging of the Decree and until EPA approves the Work Completion Report, Settling Defendant shall submit progress reports to EPA on a monthly basis, or as otherwise requested by EPA. The reports must cover all activities that took place during the prior reporting period, including:

- (a) The actions that have been taken toward achieving compliance with the Decree;
- (b) A summary of all results of sampling, tests, and all other data received or generated by Settling Defendant;
- (c) A description of all deliverables that Settling Defendant submitted to EPA;
- (d) A description of all activities relating to Remedial Action Construction that are scheduled for the next six weeks;
- (e) An updated Remedial Action Construction Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may

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

- (f) A description of any modifications to the work plans or other schedules that Settling Defendant has proposed or that have been approved by EPA; and
- (g) As requested by EPA, a description of all activities undertaken in support of the Community Involvement Plan (“CIP”) during the reporting period and those to be undertaken in the next six weeks.

**6.2 Notice of Progress Report Schedule Changes.** If the schedule for any activity described in the Progress Reports, including activities required to be described under ¶ 6.1(d), changes, Settling Defendant shall notify EPA of such change at least seven days before performance of the activity.

## **7. DELIVERABLES**

**7.1 Applicability.** Settling Defendant shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA’s approval or comment. Paragraphs 7.2 (In Writing) through 7.4 (Technical Specifications) apply to all deliverables. Paragraph 7.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 7.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.

**7.2 In Writing.** As provided in ¶ 62 of the Decree, all deliverables under this SOW must be submitted in electronic form (via email) in writing unless otherwise specified by EPA. EPA may so specify another form of submission for oversized documents such as design drawings.

**7.3 General Requirements for Deliverables.** All deliverables must be submitted by the deadlines in the Remedial Design Schedule or Remedial Action Schedule, as applicable. Settling Defendant shall submit all deliverables to EPA in electronic form (via email). Technical specifications for sampling and monitoring data and spatial data are addressed in ¶ 7.4. All other deliverables shall be submitted to EPA in the electronic form specified by the EPA Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5” by 11”, Settling Defendant shall also provide EPA with paper copies of such exhibits upon request.

### **7.4 Technical Specifications**

- (a) 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.
- (b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum

1983 (“NAD83”) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (“FGDC”) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (“EME”), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.

- (c) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (d) Spatial data submitted by Settling Defendant does not, and is not intended to, define the boundaries of the Site.

**7.5 Certification.** All deliverables that require compliance with this paragraph must be signed by the Settling Defendant’s Project Coordinator, or other responsible official of Settling Defendant, and must contain the following statement:

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

**7.6 Approval of Deliverables**

**(a) Initial Submissions**

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



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

- (b) **Resubmissions.** Upon receipt of a notice of disapproval under ¶ 7.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 7.6(a), Settling Defendant shall, within 20 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Settling Defendant to correct the deficiencies; or (5) any combination of the foregoing.
- (c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under ¶ 7.6(a) (Initial Submissions) or ¶ 7.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Decree; and (2) Settling Defendant shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 7.6(a) or ¶ 7.6(b) does not relieve Settling Defendant of any liability for stipulated penalties under Section XII (Stipulated Penalties) of the Decree.
- (d) If: (1) an initially submitted deliverable contains a material defect and the conditions are met for modifying the deliverable under ¶ 7.6(a)(2); or (2) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

**7.7 Supporting Deliverables.** Settling Defendant shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. Settling Defendant shall develop the deliverables in accordance with all applicable regulations, guidances, and policies (see Section 10 (References)). Settling Defendant shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.

- (a) **Health and Safety Plan (“HASP”).** The HASP describes all activities to be performed to protect on site personnel and area residents from physical, chemical, and all other hazards posed by the Work. Settling Defendant shall develop the HASP in accordance with EPA’s *Emergency Responder Health and Safety Manual* and Occupational Safety and Health Administration (“OSHA”) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should cover Remedial Design activities and should be, as appropriate, updated to cover activities during the Remedial Action and updated to cover activities after Remedial Action completion. EPA does not approve the HASP but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.

- (b) **Emergency Response Plan (“ERP”).** The ERP must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:
- (1) Name of the person or entity responsible for responding in the event of an emergency incident;
  - (2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
  - (3) Spill Prevention, Control, and Countermeasures (“SPCC”) Plan (if applicable), consistent with the regulations under 40 C.F.R. part 112, describing measures to prevent, and contingency plans for, spills and discharges;
  - (4) Notification activities in accordance with ¶ 5.4(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under CERCLA § 103 or EPCRA § 304; and
  - (5) A description of all necessary actions to ensure compliance with ¶ 5.4 of the SOW in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (c) **Field Sampling Plan (“FSP”).** The FSP addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. Settling Defendant shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).
- (d) **Quality Assurance Project Plan (“QAPP”).** The QAPP must include a detailed explanation of Settling Defendant’s quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. Settling Defendant shall develop the QAPP in accordance with EPA Directive CIO 2105.1 (Environmental Information Quality Policy, 2021), the most recent version of *Quality Management Systems for Environmental Information and Technology Programs – Requirements with Guidance for Use*, ASQ/ANSI E-4 (Feb. 2014, and *Guidance for Quality Assurance Project Plans*, EPA QA/G-5, EPA Office of Environmental Information (Dec. 2002). Settling Defendant shall collect, produce, and evaluate all environmental information at the Site in accordance with the approved QAPP.
- (e) **Site Wide Monitoring Plan (“SWMP”).** The purpose of the SWMP is to obtain baseline information regarding the extent of contamination in affected media at

the Site; to obtain information, through short- and long- term monitoring, about the movement of and changes in contamination throughout the Site, before and during implementation of the Remedial Action; to obtain information regarding contamination levels to determine whether Performance Standards are achieved; and to obtain information to determine whether to perform additional actions, including further Site monitoring. The SWMP must include:

- (1) Description of the environmental media to be monitored;
  - (2) Description of the data collection parameters, including existing and proposed monitoring devices and locations, schedule and frequency of monitoring, analytical parameters to be monitored, and analytical methods employed;
  - (3) Description of how performance data will be analyzed, interpreted, and reported, and/or other Site-related requirements;
  - (4) Description of verification sampling procedures;
  - (5) Description of deliverables that will be generated in connection with monitoring, including sampling schedules, laboratory records, monitoring reports, and reports to EPA and State agencies;
  - (6) Description of proposed additional monitoring and data collection actions (such as increases in frequency of monitoring, and/or installation of additional monitoring devices in the affected areas) in the event that results from monitoring devices indicate changed conditions (such as higher than expected concentrations of the contaminants of concern or groundwater contaminant plume movement);
  - (7) A plan to provide to EPA, within two business days, any unvalidated sampling data from OU5 (Community Areas) affected by the remedy that exceed the prior groundwater concentration by a factor of three; and
  - (8) A plan to expedite sampling and analysis in Community Areas as defined in ¶ 7.7(f) affected by the remedy when sampling results exceed the prior groundwater concentration by a factor of three, including procedures for expedited analysis, validation, and communication of sampling results to affected communities.
- (f) **Community Impacts Mitigation Plan (“CIMP”)**. The CIMP describes all activities, including any to address concerns of EJ and disadvantaged communities, to be performed: (1) to reduce and manage the impacts from remedy implementation (*e.g.*, air emissions, traffic, noise, odor, temporary or permanent relocation) to residential areas, schools, playgrounds, healthcare facilities, or recreational or impacted public areas (“Community Areas” *i.e.*, any area potentially impacted by contamination from the Site outside of the Site boundaries) from and during remedy implementation, (2) to conduct monitoring

in Community Areas of impacts from remedy implementation, (3) to expeditiously communicate validated remedy implementation monitoring data, (4) to make adjustments during remedy implementation in order to further reduce and manage impacts from remedy implementation to affected Community Areas, (5) to expeditiously restore community resources damaged during remediation such as roads and culverts, and (6) to mitigate the economic effects that the Remedial Action will have on the community by structuring remediation contracts to allow more local business participation. The CIMP should contain information about impacts to Community Areas that is sufficient to assist EPA's Project Coordinator in performing the evaluations recommended under the *Superfund Community Involvement Handbook*, OLEM 9230.0-51 (March 2020), pp. 53-56. To the extent that Settling Defendant believes that public dissemination of information must be limited to account for security concerns or because it is CBI, Settling Defendant may designate portions of the CIMP as CBI or security sensitive and request that EPA redact or withhold information from public release as necessary to protect against disclosure in accordance with established procedures.

- (g) **Construction Quality Assurance Plan ("CQAP") and Construction Quality Control Plan ("CQCP").** The purpose of the CQAP is to describe planned and systemic activities that provide confidence that the Remedial Action construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the CQCP is to describe the activities to verify that Remedial Action construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQAP/CQCP ("CQA/CP") must:
- (1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/CP;
  - (2) Describe the Performance Standards required to be met to achieve Completion of the Remedial Action;
  - (3) Describe the activities to be performed: (i) to provide confidence that Performance Standards will be met; and (ii) to determine whether Performance Standards have been met;
  - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/CP;
  - (5) Describe industry standards and technical specifications used in implementing the CQA/CP;
  - (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
  - (7) Describe procedures for documenting all CQA/CP activities; and

- (8) Describe procedures for retention of documents and for final storage of documents.
- (h) **Transportation and Off-Site Disposal Plan (“TODP”).** The TODP describes plans to ensure compliance with ¶ 5.5 (Off-Site Shipments). The TODP must include:
  - (1) Proposed times and routes for off-site shipment of Waste Material;
  - (2) Identification of communities, including underserved communities referred to in Executive Order 14008, § 222(b) (Feb. 1, 2021), affected by shipment of Waste Material; and
  - (3) Description of plans to minimize impacts (*e.g.*, noise, traffic, dust, odors) on affected communities.
- (i) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the Remedial Action. Settling Defendant shall develop an updated O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017), to include all of the OUs at the Site, including the amended remedy for OU1. The O&M Plan must include the following additional requirements:
  - (1) Description of Performance Standards required to be met to implement the Record of Decision;
  - (2) Description of activities to be performed: (i) to provide confidence that Performance Standards will be met; and (ii) to determine whether Performance Standards have been met;
  - (3) **O&M Reporting.** Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, reports regarding emergencies, personnel and maintenance records, monitoring reports, and reports to EPA and State agencies;
  - (4) Description of corrective action in case of systems failure, including:
    - (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve Performance Standards;
    - (ii) analysis of vulnerability and additional resource requirements should a failure occur;
    - (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and
    - (iv) community notification requirements; and
  - (5) Description of corrective action to be implemented in the event that Performance Standards are not achieved; and a schedule for implementing these corrective actions.

- (j) **O&M Manual.** The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy. Settling Defendant shall develop the O&M Manual in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017).

**8. SCHEDULES**

**8.1 Applicability and Revisions.** All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the Remedial Design and Remedial Action Schedules set forth below. Settling Defendant may submit proposed revised Remedial Design Schedules or Remedial Action Schedules for EPA approval. Upon EPA’s approval, the revised Remedial Design and/or Remedial Action Schedules supersede the Remedial Design and Remedial Action Schedules set forth below, and any previously-approved Remedial Design and/or Remedial Action Schedules.

**8.2 Remedial Design Schedule**

	<b>Description of Deliverable, Task</b>	<b>¶ Ref.</b>	<b>Deadline</b>
1	ICIAP	4.2	60 days after EPA Authorization to Proceed regarding Supervising Contractor (¶ 3.3).
2	Pre-final (90/95%) Remedial Design	4.5	150 days after Lodging of Consent Decree
3	Final (100%) Remedial Design	4.6	30 days after EPA comments on Pre-final Remedial Design

### 8.3 Remedial Action Schedule

	<b>Description of Deliverable / Task</b>	<b>¶ Ref.</b>	<b>Deadline</b>
1	Commence to Implement ICIAP	4.2	30 days after EPA Notice of Authorization to Proceed with ICIAP
2	Award Remedial Action contract		60 days after approval of Remedial Design
3	Draft RAWP		Concurrent with submission of Pre-final Remedial Design
4	Final RAWP	5.1	30 days after EPA provides comments on Draft RAWP
5	Pre-Construction Conference	5.2(a)	30 days after award of Remedial Action contract
6	Start of Construction		14 days after Pre-Construction Conference
7	Pre-final Inspection	5.6(b)	14 days after completion of construction
8	Pre-final Inspection Report		30 days after pre-final inspection
9	Final Inspection		14 days after completion of work identified in the pre-final inspection report
10	Remedial Action Report	5.6(d)	30 days after Completion of the Shakedown Period under 5.6(c)
11	Work Completion Report	5.9(b)	
12	Periodic Review Support Plan	5.8	As requested by EPA to support the site Five Year Review process

## 9. STATE PARTICIPATION

**9.1 Copies.** Settling Defendant shall, at any time they send a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to Settling Defendant, send a copy of such document to the State.

**9.2 Review and Comment.** The State will have a reasonable opportunity for review and comment prior to:

- (a) Any EPA notice to proceed under ¶ 3.3 (Procedures for Disapproval/Notice to Proceed);
- (b) Any EPA approval or disapproval under ¶ 7.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
- (c) Any approval or disapproval of the Construction Phase under ¶ 5.6 (Remedial Action Construction Completion), any disapproval of, or Certification of Remedial Action Completion under ¶ 5.7 (Certification of Remedial Action Completion), and any disapproval of, or Certification of Work Completion under ¶ 5.9 (Certification of Work Completion).

## 10. REFERENCES

**10.1** The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the three EPA web pages listed in ¶ 10.2:

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (c) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).
- (d) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (e) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G90/001 (Apr. 1990).
- (f) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
- (g) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
- (h) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (i) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).
- (j) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. part 300 (Oct. 1994).
- (k) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
- (l) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (m) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (n) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, EPA/540-R-01-007 (June 2001).



- (o) Guidance for Quality Assurance Project Plans, EPA QA/G-5, EPA Office of Environmental Information (Dec. 2002) <https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5>.
- (p) Institutional Controls: Third-Party Beneficiary Rights in Proprietary Controls, OECA (Apr. 2004).
- (q) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (r) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (s) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2005), <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (t) Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, OSWER 9283.1-33 (June 2009).
- (u) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (v) Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements, Interim (Sep. 2009).
- (w) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (x) Groundwater Road Map: Recommended Process for Restoring Contaminated Groundwater at Superfund Sites, OSWER 9283.1-34 (July 2011).
- (y) Recommended Evaluation of Institutional Controls: Supplement to the “Comprehensive Five-Year Review Guidance,” OSWER 9355.7-18 (Sep. 2011).
- (z) Plan EJ 2014: Legal Tools, EPA Office of General Counsel (Dec. 2011), <https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>.
- (aa) Construction Specifications Institute’s MasterFormat, available from the Construction Specifications Institute, <https://www.csiresources.org/standards/masterformat>.
- (bb) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach, OSWER 9200.2-125 (Sep. 2012)
- (cc) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), <https://semspub.epa.gov/work/HQ/175446.pdf>.

- (dd) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012), <https://semspub.epa.gov/work/HQ/175449.pdf>.
- (ee) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), [https://www.epaosc.org/\\_HealthSafetyManual/manual-index.htm](https://www.epaosc.org/_HealthSafetyManual/manual-index.htm).
- (ff) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (gg) Guidance for Evaluating Completion of Groundwater Restoration Remedial Actions, OSWER 9355.0-129 (Nov. 2013).
- (hh) Groundwater Remedy Completion Strategy: Moving Forward with the End in Mind, OSWER 9200.2-144 (May 2014).
- (ii) Quality Management Systems for Environmental Information and Technology Programs -- Requirements with Guidance for Use, ASQ/ANSI E-4 (February 2014), available at <https://webstore.ansi.org/>.
- (jj) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.
- (kk) Advanced Monitoring Technologies and Approaches to Support Long-Term Stewardship (July 20, 2018), <https://www.epa.gov/enforcement/use-advanced-monitoring-technologies-and-approaches-support-long-term-stewardship>.
- (ll) Superfund Community Involvement Handbook, OLEM 9230.0-51 (March 2020). More information on Superfund community involvement is available on the Agency's Superfund Community Involvement Tools and Resources web page at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources>.
- (mm) EPA directive CIO 2105.1 (Environmental Information Quality Policy, 2021), [https://www.ecos.org/wp-content/uploads/2020/09/DIRECTIVE\\_QualityPolicy\\_08182020.pdf](https://www.ecos.org/wp-content/uploads/2020/09/DIRECTIVE_QualityPolicy_08182020.pdf).

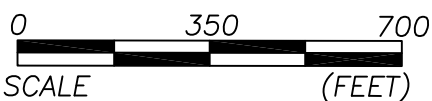
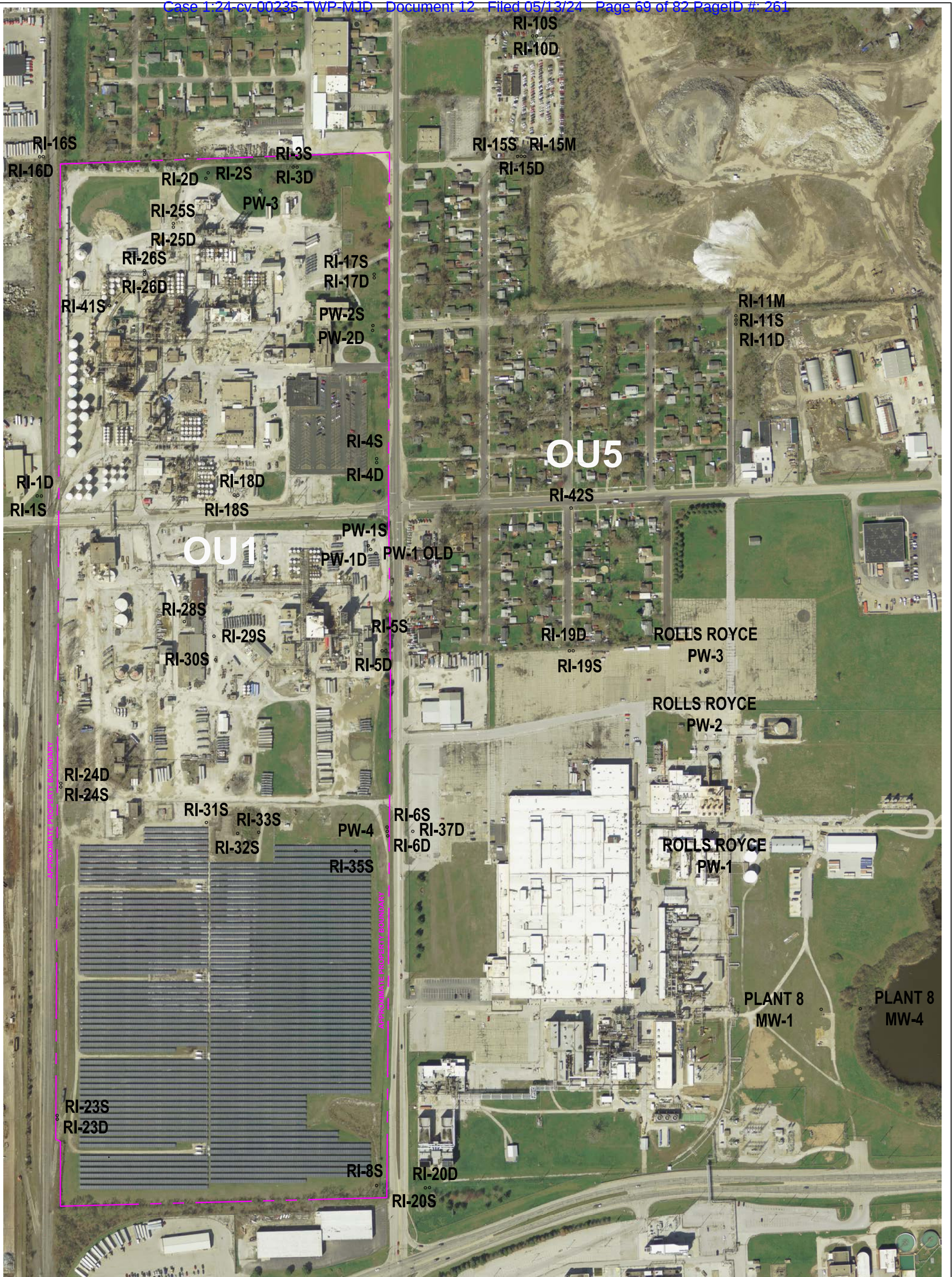
**10.2** A more complete list may be found on the following EPA web pages:

- (a) Laws, Policy, and Guidance at <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>;
- (b) Search Superfund Documents at <https://www.epa.gov/superfund/search-superfund-documents>; and

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

**10.3** For any regulation or guidance referenced in the Decree or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Settling Defendant receive notification from EPA of the modification, amendment, or replacement.

# Attachment B



1Q2023 REPORT		
REV. DATE:	DRAWING DATE: APR. 2023	ACAD FILE: INDY PLANT.DWG
SITE MAP		
CLIENT:	VERTELLUS INTEGRATED PYRIDINES LLC	PM: DMP
LOCATION:	1500 S. TIBBS AVE. INDIANAPOLIS, INDIANA	DRAWING: 1
DESIGNED: DMP	DETAILED: DMP	PROJECT NO.:

# Attachment C

A201200014186



13  
KE

February 13, 2012 12:56 PM  
Julie L. Voorhies,  
Marion County Recorder

Pages: 13  
Fee: \$49.50  
By: KDB

**DECLARATION OF ENVIRONMENTAL RESTRICTIVE COVENANT**

The record owner, Vertellus Specialties Inc. (f/k/a Reilly Industries, Inc.) ("Vertellus" or "Owner"), hereby declares and imposes the following restrictions on the approximately 121 acres encompassing three parcels of real property owned by Vertellus, also known as the Reilly Tar & Chemical Site, in the City of Indianapolis, the County of Marion, State of Indiana, located at 1500 South Tibbs Avenue in the southwest quadrant of Indianapolis, more particularly described as follows (collectively, the "Property"):

**Parcel I:**

The East half of the Southeast Quarter of Section 17 Township 15 Range 3 (also identified by Marion County as Parcel Identification Number (PIN) 49-11-17-108-002.000-970 and PIN 49-11-17-108-001.000-970) and comprising approximately 80 acres;

**Parcel II:**

Part of the East half of the Northeast Quarter commencing at the Southeast corner of said Half Quarter Section; thence running West 19 chains 72 links to the Southwest corner of said Half Quarter Section; thence North 10 chains 18 and 1/4 links; thence East parallel to the North line of said Half Quarter Section 19 chains 64 and 1/2 links; thence South 10 chains 14 and 1/4 links to the place of beginning, containing 20 acres, 1/4 acre of which, in the Southeast corner thereof, is subject to school purposes, said 1/4 acre being described as follows: Beginning at the Southeast corner of said Quarter Section; thence North 6 rods; thence West 13-1/3 rods; thence South 6 rods; thence East 13-1/3 rods to the place of beginning (also identified by Marion County as PIN 49-11-17-100-004.000-900) and comprising approximately 20 acres; and

**Parcel III:**

Part of the East Half of the Northeast Quarter beginning on the East line of said Quarter Section at a point 10 chains 14 and 1/4 links North of the Southeast corner of said Half Quarter Section and running West parallel to the North line of said Half Quarter Section; thence North 10 chains 71 and 1/4 links; thence East parallel to the North line of said Half Quarter Section 19 chains 57 links; thence South 10 chains 71 and 1/4 links to the place of beginning (also identified by Marion County as PIN 49-11-17-100-001.000-900 and PIN 49-11-17-100-003.000-900) and comprising approximately 21 acres.

RECITALS

WHEREAS, the United States Environmental Protection Agency (U.S. EPA) has issued a Record of Decision adopting a remedial action plan which requires remedial action to be undertaken on the Property and further institutional controls to assure that the remedy is protective of human health and the environment.

WHEREAS, the United States District Court for the Southern District of Indiana has approved a Consent Decree for the Second Operable Unit ("OU2 Consent Decree") and a subsequent Consent Decree for the Third, Fourth, and Fifth Operable Units ("OU3-5 Consent Decree") entered into between the United States of America and Settling Defendant, the State of Indiana, and Reilly Industries, Inc. (in a case styled United States of America vs. Reilly Industries, Inc., Civil Action No. IP 93-1045 C), which Consent Decrees concern the remedial actions to be undertaken at the Property. Paragraph 6 of the OU2 Consent Decree, Paragraph 5 of the OU3-5 Consent Decree, and the attached Statements of Work ("SOW"), identify institutional controls which are necessary to effectuate and protect the remedial action at the Property and to protect the public health or welfare of the environment at the Property. Vertellus is the successor to the interests and obligations of Settling Defendant (Reilly) under the Consent Decree.

WHEREAS, the Property has been used for coal tar refining and creosote wood treatment operations, among other chemical manufacturing operations, which resulted in impairment by volatile and semi-volatile organics, as identified and set forth more fully in the Consent Decree and other related site documents. These may be examined at the Indiana Department of Environmental Management (IDEM), which is located in the Indiana Government Center North, 100 N. Senate Ave., Room 1201, Indianapolis, Indiana or viewed electronically in the Department's Virtual File Cabinet by accessing the Department's Web Site (currently [www.in.gov/idem/](http://www.in.gov/idem/)). The administrative record is also available at the Indianapolis Public Library (48 East St. Claire) and the U.S. EPA Regional Office in Chicago, Illinois (77 W. Jackson Blvd, 7<sup>th</sup> Floor).

WHEREAS, since the initial recordation of the Declarations of Restrictions on Use of Real Property (Instrument Nos. 95-24619 and 99-35250), recorded in the Marion County Recorders Office on March 3, 1995 and February 16, 1999, respectively, Vertellus, U.S. EPA, and IDEM have agreed that it is appropriate to update and clarify the Declaration of Restrictions by executing and recording this Declaration of Environmental Restrictive Covenant. This Declaration of Environmental Restrictive Covenant shall supersede the prior Declarations of Restrictions on Use of Real Property (Instrument Nos. 95-24619 and 99-35250).

WHEREAS, more than an insignificant amount of hazardous substances remains at the property, thus necessitating this Environmental Restrictive Covenant pursuant to Indiana Code 13-25-4-24 to ensure protection of human health. Further information may be found in the administrative record located at IDEM and USEPA Region 7, and in particular, the following reports within the administrative record: Completion of Remedial Action Report Phase 1 Thermal Desorption Program Operable Unit #2



Tibbs Plant (February 13, 1998); Completion of Remedial Action Report Phase I Thermal Desorption Program Operable Unit #2 (April 15, 1997); Final Report Completion of Remedial Action Report Phase II Thermal Desorption Program Operable Unit#2 (April 27, 1998); Completion of Remedial Action Report South Landfill Cover operable Unit #2 (July 24,1996); and Completion of Remedial Action Report Fire Pond Sludge Neutralization and Solidification Program Operable Unit #2 (May 21, 1996).

NOW, THEREFORE, by this instrument there are created, declared and established at the Property the following restrictive covenants and requirements, which shall, unless amended, run with the land and remain in full force and effect in perpetuity from the date hereof, irrespective of any sale, conveyance, alienation, or other transfer of any interest or estate in such Property.

**RESTRICTIONS APPLICABLE TO THE PROPERTY**

1.0 The following restrictions shall apply to the Property described above:

1.1 There shall be no use of the groundwater underlying the Property which might endanger human health through ingestion or dermal contact or endanger the environment. Groundwater may be pumped and used for industrial purposes (e.g., non-contact cooling water) only after obtaining the express written approval of U.S. EPA, or any successor federal government department or agency.

1.2 There shall be no use of, or activity at, the Property that may interfere with the work performed or to be performed under the Consent Decree and the SOW at the Property, or any activity which may damage any remedial action component constructed for or installed (including required fencing or signage) pursuant to the Consent Decree and the SOW or otherwise impair the effectiveness of any Work to be performed pursuant to the Consent Decree and the SOW unless prior written approval is obtained from U.S. EPA.

1.3 There shall be no residential use of the Property.

2.0 The following restriction shall apply to those specific portions of the Property known as the CERCLA Areas, as that term is defined by the Consent Decree, as shown on the attached diagram labeled Exhibit A and as more precisely determined by the table of GPS coordinates set forth in Exhibit A-1.

2.1 There shall be no excavation, installation, construction, removal or use of any buildings, wells, pipes, roads, ditches or any other structures at the CERCLA Areas except with the express prior written approval of U.S. EPA as consistent with the Consent Decree and SOW

3.0 All the restrictions specified above shall continue in full force and effect until the Property is deleted from the National Priorities List, all remedial action clean-up and performance standards have been met, and until such time as the U.S. EPA issues a determination in writing or the court rules to

either modify or terminate the restrictions in response to a petition from the current or any future owner of the Property, as provided below.

**COPY OF RESTRICTIONS; NOTICE OF CONVEYANCE**

Notice of the existence of these restrictions shall be provided to future grantees of the property or to a transferee of any interest in the land, and a copy of these restrictions shall be provided by the owner(s) of the Property to all respective successors, assigns, lessees, and transferees of the Property. In the event of any conveyance (voluntary or involuntary) of any ownership interest in the Property (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances) notice shall be provided to U.S. EPA and the IDEM within thirty (30) days following such conveyance and: (a) include a certified copy of the instrument conveying the interest; (b) if it is recorded, its recording reference, and (c) the name and business address of the transferee.

**ACCESS; ENFORCEMENT**

The U.S. EPA, IDEM, and their designated representatives are authorized or hereby granted the right to enforce the restrictions applicable to the property against the owner and future grantees of the Property by means of specific performance or via injunctive relief or other remedies, and to enter upon the Property at reasonable times for the purpose of monitoring compliance with the restrictions and to ensure their protectiveness.

**NOTICE**

Any notice, request, consent, approval or communication that may be called for under this instrument shall be made in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:  
Vertellus Specialties Inc.  
201 North Illinois Street 1800  
Indianapolis, IN 46204  
Attn: General Counsel

To U.S. EPA  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd  
Chicago, Illinois 60604  
Attn: Director, Superfund Division

To IDEM  
IDEM, Office of Land Quality

100 N. Senate Avenue  
GCN 1101  
Indianapolis, IN 46204-2251  
Attn: Section Chief, Federal Programs

**PETITION TO MODIFY OR TERMINATE DEED RESTRICTIONS**

After all work, as defined in the Consent Decree and SOW, has been completed and upon achievement of Cleanup Standards, consistent with the Consent Decree and SOW, the owner(s) of the Property may petition the Regional Administrator of the U.S. EPA, Region V, or his delegate, to modify or terminate the deed restrictions. Any petition for modification or termination shall state the specific provision sought to be modified or terminated and any proposed additional uses of the Property. Any proposed modifications or terminations must not be inconsistent with the requirements set forth in the Consent Decree and SOW. Any party may object to the proposed use of the Property on the grounds that such use is not consistent with the Consent Decree or the SOW, or may result in exceedances of the Clean-Up Standards required by the Consent Decree. Any party so objecting shall notify the owner(s) of the Property, the U.S. EPA, and the State of Indiana in writing, within thirty (30) days of receipt of the petition. The Regional Administrator and the Commissioner may allow or deny the owner's petition for modification or termination in whole or in part. Any dispute as to the Regional Administrator's determination is subject to Section XX (Dispute Resolution) of the Consent Decree.

**SEVERABILITY**

If any provision of this Declaration of Environmental Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provision hereof. All such other provisions shall continue unimpaired in full force and effect.

**CONFLICT OF LAWS**

If any provision of this Declaration of Environmental Restrictive Covenant is also the subject of any law or regulation established by any federal, state or local government, the stricter of the two standards shall prevail.

**HARMONIOUS CONSTRUCTION**

No provision of this Declaration of Environmental Restrictive Covenant shall be construed so as to violate any applicable zoning laws, regulations or ordinances. If any such conflict does arise, the applicable zoning laws, regulations or ordinances shall prevail, unless they are inconsistent with CERCLA.

The undersigned person executing this Declaration of Environmental Restrictive Covenant on behalf of the owner of the Property represents and certifies that he is duly authorized and has been fully empowered to execute this Declaration.

IN WITNESS WHEREOF, the owner of the Property has caused this Declaration of Environmental Restrictive Covenant to be executed on this 9th day of February, 2012,

VERTELLUS SPECIALTIES INC.

BY: Thomas E. Mesevage  
Thomas E. Mesevage

STATE OF NEW JERSEY )  
  ) SS:  
COUNTY OF MORRIS )

Before me, a Notary Public in and for said County and State, personally appeared Thomas E. Mesevage, Corporate Counsel, Environmental, Vertellus Specialties Inc., and acknowledged the execution of the foregoing Declaration of Environmental Restrictive Covenant as such officer acting by and on behalf of said corporation.

WITNESS my hand and Notarial Seal with 9 day of Feb., 2012:

DAWN HRYCAK  
NOTARY PUBLIC  
NEW JERSEY  
MY COMMISSION EXPIRES: 12/22/18  
NO. 2403378

Signature Dawn Hrycak  
Printed Dawn Hrycak  
NOTARY PUBLIC

My Commission Expires:  
12/22/18

County of Residence:  
Passaic

This instrument was prepared by Thomas E. Mesevage, Esq, Vertellus Specialties Inc., 900 Lanidex Plaza, Parsippany, NJ 07954, (973) 515-8611. I affirm under the penalties for perjury that I have taken reasonable care to redact each social security number in this document, unless required by law.

**EXHIBIT A – CERCLA AREAS**

**Declaration of Restriction on Use of Real Property Parcels & CERCLA Operable Unit 2 Areas for Reilly Tar & Chemical Corporation / Vertellus Specialties, Inc.**



**Mapped By:** Mike Hill, IDEM, Office of Land Quality, Science Services Branch, Engineering & GIS Services, November 30, 2011

**Sources:**  
 -Parcels for Declaration of Restriction on use of Real Property (DRRP) based on DRRP Instrument # 1206-00335280 recorded 02/15/05  
 - CERCLA Operable Unit 2 areas based on Environmental and Geological Consulting Inc.'s GPS points submitted to IDEM on November 16, 2011.  
 -2009 Marion County Orthophotography (8 inch resolution)

**PLSS info:** Section 17, T15N, R3E  
 Wayne Township  
 Marion County, IN

**Property:** 1500 South Tibbs Avenue  
 Indianapolis, IN

**Disclaimer:** This map is intended to serve as an aid in graphic representation only. This information is not warranted for accuracy or other purposes.

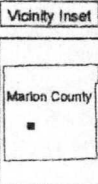
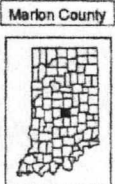
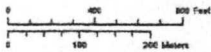
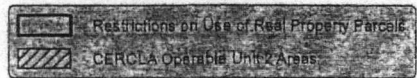


EXHIBIT A-1 - GPS Coordinates CERCLA AREAS

Vortellus Specialties Inc  
 1500 South Tibbs Ave  
 Indianapolis, Indiana

**Coordinates for the Superfund Operable Unit #2 (OU2) Cercia Areas**

<b>Collector:</b>	Keith Micht
<b>Projection:</b>	UTM Zone 18 N
<b>Datum:</b>	NAD 83
<b>GPS Receiver Brand/Model:</b>	Trimble Geo 6000
<b>Units:</b>	Meters
<b>Receiver Type:</b>	Mapping Grade

UTM X Coordinate	UTM Y Coordinate	OU2 Cercia Label
566794.46	4399905.12	Former Lime Pond Area
566794.83	4399899.18	Former Lime Pond Area
566814.19	4399899.17	Former Lime Pond Area
566831.29	4399899.15	Former Lime Pond Area
566845.63	4399899.18	Former Lime Pond Area
566857.95	4399899.20	Former Lime Pond Area
566887.89	4399899.16	Former Lime Pond Area
566881.72	4399899.08	Former Lime Pond Area
566886.97	4399899.44	Former Lime Pond Area
566888.23	4399874.04	Former Lime Pond Area
566876.78	4399872.28	Former Lime Pond Area
566877.68	4399838.46	Former Lime Pond Area
566887.72	4399838.33	Former Lime Pond Area
566887.80	4399856.31	Former Lime Pond Area
566905.58	4399856.58	Former Lime Pond Area
566905.83	4399879.19	Former Lime Pond Area
566910.48	4399885.81	Former Lime Pond Area
566910.81	4399889.76	Former Lime Pond Area
566908.33	4399890.28	Former Lime Pond Area
566906.46	4399904.72	Former Lime Pond Area
566888.35	4399904.07	Former Lime Pond Area
566869.24	4399905.35	Former Lime Pond Area
566842.96	4399905.22	Former Lime Pond Area
566825.23	4399905.35	Former Lime Pond Area
566810.02	4399905.10	Former Lime Pond Area
566801.34	4399905.22	Former Lime Pond Area
566887.47	4399887.12	Former Lime Pond Area
566877.16	4399855.05	Former Lime Pond Area
566948.51	4399426.04	Former Railroad Trench Area
566957.15	4399426.88	Former Railroad Trench Area
566957.84	4399407.90	Former Railroad Trench Area
566957.84	4399390.11	Former Railroad Trench Area
566958.01	4399375.42	Former Railroad Trench Area
566958.36	4399359.19	Former Railroad Trench Area
566958.36	4399344.88	Former Railroad Trench Area
566957.84	4399332.07	Former Railroad Trench Area



Vertellus Specialties Inc  
 1500 South Tibbs Ave  
 Indianapolis, Indiana

Coordinates for the Superfund Operable Unit #2 (OU2) Cercla Areas

Collector: Keith Micht  
 Projection: UTM Zone 18 N  
 Datum: NAD 83  
 GPS Receiver Brand/Model: Trimble Geo 6000  
 Units: Meters  
 Receiver Type: Mapping Grade

UTM X Coordinate	UTM Y Coordinate	OU2 Cercla Label
566958.53	4399317.73	Former Railroad Trench Area
566960.06	4399308.67	Former Railroad Trench Area
566948.72	4399308.50	Former Railroad Trench Area
566949.03	4399324.47	Former Railroad Trench Area
566948.51	4399342.95	Former Railroad Trench Area
566948.34	4399368.00	Former Railroad Trench Area
566948.34	4399367.88	Former Railroad Trench Area
566948.51	4399408.34	Former Railroad Trench Area
566948.68	4399418.88	Former Railroad Trench Area
566948.51	4399353.83	Former Railroad Trench Area
566964.86	4399128.74	Former Treatment Pit
566965.00	4399117.73	Former Treatment Pit
566966.36	4399105.08	Former Treatment Pit
566977.65	4399104.72	Former Treatment Pit
566987.30	4399104.94	Former Treatment Pit
566994.80	4399106.30	Former Treatment Pit
566994.80	4399115.18	Former Treatment Pit
566994.66	4399123.81	Former Treatment Pit
566987.51	4399124.02	Former Treatment Pit
566994.22	4399124.16	Former Treatment Pit
566983.87	4399136.96	Former Treatment Pit
566983.79	4399148.68	Former Treatment Pit
566971.36	4399148.60	Former Treatment Pit
566971.85	4399138.53	Former Treatment Pit
566971.29	4399128.02	Former Treatment Pit
567063.30	4399107.76	Former Drainage Ditch Area
567075.66	4399109.60	Former Drainage Ditch Area
567089.74	4399110.80	Former Drainage Ditch Area
567091.27	4399090.32	Former Drainage Ditch Area
567092.72	4399067.20	Former Drainage Ditch Area
567094.19	4399048.38	Former Drainage Ditch Area
567096.65	4399018.67	Former Drainage Ditch Area
567096.90	4398997.48	Former Drainage Ditch Area
567098.35	4398971.54	Former Drainage Ditch Area
567099.84	4398945.07	Former Drainage Ditch Area

Vertellus Specialties Inc  
 1500 South Tibbs Ave  
 Indianapolis, Indiana

Coordinates for the Superfund Operable Unit #2 (OU2) Cercia Areas

Collector: Keith Mlight  
 Projection: UTM Zone 16 N  
 Datum: NAD 83  
 GPS Receiver Brand/Model: Trimble Geo 6000  
 Units: Meters  
 Receiver Type: Mapping Grade

UTM X Coordinate	UTM Y Coordinate	OU2 Cercia Label
567101.35	4398824.54	Former Drainage Ditch Area
567103.25	4398803.13	Former Drainage Ditch Area
567105.35	4398878.25	Former Drainage Ditch Area
567107.20	4398868.38	Former Drainage Ditch Area
567108.68	4398840.81	Former Drainage Ditch Area
567102.86	4398841.01	Former Drainage Ditch Area
567088.50	4398841.21	Former Drainage Ditch Area
567081.72	4398865.40	Former Drainage Ditch Area
567085.97	4398888.87	Former Drainage Ditch Area
567080.58	43988907.04	Former Drainage Ditch Area
567076.25	43988942.84	Former Drainage Ditch Area
567072.74	4398877.98	Former Drainage Ditch Area
567070.15	43989013.81	Former Drainage Ditch Area
567067.79	43989042.19	Former Drainage Ditch Area
567065.68	43989088.10	Former Drainage Ditch Area
567064.48	43989087.88	Former Drainage Ditch Area
567137.85	4398721.58	Former South Landfill
567121.09	4398718.03	Former South Landfill
567100.47	4398717.75	Former South Landfill
567080.14	4398716.50	Former South Landfill
567062.44	4398714.28	Former South Landfill
567038.39	4398711.40	Former South Landfill
567018.95	4398708.42	Former South Landfill
567002.08	4398707.78	Former South Landfill
566975.88	4398705.47	Former South Landfill
566952.21	4398703.78	Former South Landfill
566928.11	4398702.08	Former South Landfill
566908.80	4398700.61	Former South Landfill
566888.53	4398699.02	Former South Landfill
566862.23	4398697.44	Former South Landfill
566841.77	4398697.48	Former South Landfill
566820.35	4398698.72	Former South Landfill
566809.85	4398703.41	Former South Landfill
566802.03	4398713.84	Former South Landfill
566796.64	4398733.10	Former South Landfill
566798.24	4398743.14	Former South Landfill