UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

REGION \_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

)

IN THE MATTER OF: ) U.S. EPA Region \_\_\_\_

) CERCLA Docket No. \_\_\_\_

[Site Name and Location] )

)

[Names of Respondents (if many, reference )

attached list)], )

)

Respondents )

)

Proceeding under Section 106(a) ) **UNILATERAL ADMINISTRATIVE**

of the Comprehensive Environmental ) **ORDER FOR REMEDIAL DESIGN**

Response, Compensation, and Liability ) **AND REMEDIAL ACTION**

Act, 42 U.S.C. § 9606(a). )

)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

**MODEL UNILATERAL ADMINISTRATIVE ORDER FOR**

**REMEDIAL DESIGN AND REMEDIAL ACTION**

**March 2023**

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| **This document contains automatic section and paragraph numbers and automatic section and paragraph cross references, and an automated Table of Contents. If you add or delete sections or paragraphs, please do not attempt to manually renumber any sections or paragraphs or cross references. Please see instructions at the end for more details.** |

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| **This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.** |

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# JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order (“Order”) is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. **[Insert if applicable:** “This authority was further redelegated by the Regional Administrator of EPA Region \_\_\_ to the \_\_\_\_\_\_\_\_\_\_ [**insert title of manager to whom delegation was made**] by [**insert numerical designations and dates of Regional delegation**].”]
2. This Order pertains to property located at [**insert address or descriptive location of the Site**]in[**insert name of City or Town, County, State**] (the “[**insert name**] Site” or the “Site”). This Order directs Respondents to perform the remedial design and remedial action (RD/RA) described in the Record of Decision (ROD) [**reference any Record of Decision Amendments or Explanations of Significant Differences**] for \_\_\_\_\_\_ Site, [Operable Unit \_\_\_\_,] dated \_\_\_\_, 20\_\_.
3. EPA has notified the State [**insert** “Commonwealth” **if appropriate**] of \_\_\_\_\_\_ (the “State”) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

# PARTIES BOUND

1. This Order applies to and is binding upon Respondents and their [heirs,] successors[,] and assigns. Any change in ownership or control of the Site or change in corporate or partnership status of a Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents’ responsibilities under this Order.
2. Respondents are jointly and severally liable for implementing all activities required by this Order. Compliance or noncompliance by any Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondent. No Respondent shall interfere in any way with performance of the Work in accordance with this Order by any other Respondent. In the event of the insolvency or other failure of any Respondent to implement the requirements of this Order, the remaining Respondents shall complete all such requirements.
3. Respondents shall provide a copy of this Order to each contractor hired to perform the Work required by this Order and to each person representing any Respondents with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Respondents or their contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Order.

# DEFINITIONS

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

[**NOTE: In the definition below, it is generally sufficient to describe the property using the street address or the tax parcel ID number, but you also may use the legal property description. Legal property descriptions can be lengthy. It is common in conveyance documents to include the legal property description in an attachment. If using a legal property description, it should be the kind found in a deed.**]

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Action, including, but not limited to, the following properties [**insert property descriptions**].

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

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

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

“EPA” shall mean the United States Environmental Protection Agency.

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

[“\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” shall mean the [**insert name of State pollution control agency or environmental protection agency**] and any successor departments or agencies of the State.]

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

NOTE: A definition for “Interest” should not be included if Section XV (Payment of Response Costs) is not included in the Order.

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

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

**NOTE: Include next definition if any “Affected Property” is owned or controlled by persons other than any Respondent.**

[“Non-Respondent Owner” shall mean any person, other than a Respondent, that owns or controls any Affected Property, including [**insert names**]. The phrase “Non-Respondent Owner’s Affected Property” means Affected Property owned or controlled by Non-Respondent Owner.]

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

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

**NOTE: Include next definition if any “Affected Property” is owned or controlled by any Respondent.**

[“Owner Respondent” shall mean any Respondent that owns or controls any Affected Property, including [**insert names**]. The clause “Owner Respondent’s Affected Property” means Affected Property owned or controlled by Owner Respondent.]

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

“Parties” shall mean EPA and Respondents.

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

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

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

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the [“Site” or “Operable Unit \_\_ at the Site”] signed on \_\_\_\_\_\_\_\_, 20\_\_, by the Regional Administrator, EPA Region \_\_\_, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

**NOTE: Modify “ROD” definition to reference any ROD Amendments or any Explanations of Significant Differences issued prior to the Effective Date.**

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

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

“Respondents” shall mean [**insert name(s) of Respondents**] [**insert if applicable:** those Parties identified in Appendix \_\_].

NOTE: A definition for “Response Costs” should not be included if Section XV (Payment of Response Costs) is not included in the Order.

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

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

“Site” shall mean the \_\_\_\_\_\_\_\_\_\_\_\_\_ Superfund Site, encompassing approximately \_\_ acres, located at [**insert** **address or description of location**] in [**insert** **name of City, County, State**][**insert if applicable:** and depicted generally on the map attached as Appendix \_\_].

“State” [or “Commonwealth”] shall mean the State [or Commonwealth] of \_\_\_\_\_\_\_\_\_\_\_.

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

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

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

**[NOTE: Substitute the following definition of “Tribe” for the definition of “State” if the Site is entirely on tribal land. Add a definition for “Tribe” in addition to the definition of “State” if both have a role at or interest in the Site. Additional changes will be needed throughout the Order to either add and/or substitute the Tribe for the State.]**

[“Tribe” shall mean the \_\_\_\_\_\_\_Tribe.]

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

“Waste Material” shall mean: (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any [“hazardous material”] under [**insert appropriate State statutory citation and “hazardous material” terminology**].

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

# FINDINGS OF FACT

NOTE: Because findings of fact are site-specific, no model language is provided. However, suggested topics are provided below for some findings. Facts should be presented concisely, accurately, and logically. Findings of fact should clearly support each conclusion of law. Regions should include a discussion of the following points: identification of Respondents; Site location and description; Site history and operations; Site ownership; enforcement history; general categories of Respondents’ liability; past EPA and/or State activities and investigations; and conditions and data showing hazardous substances are present and releases or threats of releases exist.

**NOTE: The Order should contain findings of fact sufficient to support the determination by the authorized delegated official of an imminent and substantial endangerment (ISE) to public health or welfare or the environment and reference the actual ISE determination. This Section should include data clearly documenting the releases or threats of releases that may present an ISE, e.g., exposure routes, risk assessment, affected populations, environmental harm, potential for fire or explosion, or other dangers, and should be fully supported by an administrative record.**

1. [Identification of the Site by name, location, and description (including characteristics of the Site and a description of the surrounding areas, i.e., commercial/industrial/residential area, nearest public supply wells, nearby water bodies, potentially sensitive ecological areas).]
2. [A brief history of the Site including Site ownership and operations (process or other activity producing waste, nature of wastes produced).]
3. [Information that there are hazardous substances at the Site by listing specific chemicals found at the Site, and their locations, concentrations, and quantities where known.]
4. [Description of actual and/or potential release (i.e. leaking drums, contaminated soils, etc.) and contaminant migration pathways, and possible or known routes of exposure, making clear that these are not exclusive.]
5. [Identification of the populations at risk, both human and non-human.]
6. [Health/environmental effects of some major contaminants.]
7. [Identification of Respondents, i.e., name/business; legal status (i.e., corporation, partnership, sole proprietor, trust, individual, federal, state, or local government, etc.), general categories of Respondents’ liability under CERCLA § 107(a) and connection with the Site, e.g., owner or operator of hazardous waste site including years of ownership or operation, or person who arranged for disposal or treatment of, or transporter of hazardous substances found at the Site.]
8. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (NPL), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on \_\_\_\_\_\_\_\_, 20\_\_, \_\_ Fed. Reg. \_\_\_\_\_\_\_\_.
9. In response to a release or a substantial threat of a release of [a] hazardous substance[s] at or from the Site, EPA [or Respondents, other potentially responsible parties (PRPs) at the Site, or the State] commenced on \_\_\_\_\_\_\_\_, 20\_\_, a Remedial Investigation and Feasibility Study (RI/FS) for the Site pursuant to 40 C.F.R. § 300.430.
10. EPA [or Respondents, other PRPs at the Site, or the State] completed a Remedial Investigation (RI) Report on \_\_\_\_\_\_\_\_, 20\_\_, and EPA [or Respondents, other PRPs at the Site, or the State] completed a Feasibility Study (FS) Report on \_\_\_\_\_\_\_\_, 20\_\_.
11. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for RA on \_\_\_\_\_\_\_\_, 20\_\_, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for RA. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator [or Regional delegatee, if any], EPA Region \_\_, based the selection of the response action.
12. The decision by EPA on the RA to be implemented at the Site is embodied in a final ROD, executed on \_\_\_\_\_\_\_\_, 20\_\_ [, on which the State had a reasonable opportunity to review and comment/on which the State has given its concurrence.] The ROD includes [EPA’s explanation for any significant differences between the final plan and the proposed plan as well as] a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

# CONCLUSIONS OF LAW AND DETERMINATIONS

1. Based on the Findings of Fact set forth above and the administrative record, EPA has determined that:
   1. The [**insert name**] Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
   2. Each Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
   3. Each Respondent is a liable party under one or more provisions of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). [**NOTE: Regions should specify each category of liability under Section 107. For example:**
      1. Respondents [**insert names**] are the “owner(s)” and/or “operator(s)” of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
      2. Respondents [**insert names**] were the “owners” and/or “operators” of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
      3. Respondents [**insert names**] arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
      4. Respondents [**insert names**] accept or accepted hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).]
   4. The contamination [**insert the names of the particular hazardous substances**] found at the Site, as identified in the Findings of Fact above, includes [a] “hazardous substance[s]” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) [, and also includes [a] pollutant[s] or contaminant[s] that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1)].
   5. The conditions described in [¶¶ \_\_ of] the Findings of Fact above constitute an actual and/or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C.§ 9601(22).
   6. The conditions at the Site may constitute a threat to public health or welfare or the environment, based on the factors set forth in the ROD. These factors include, but are not limited to, the following [**include relevant factors from the ROD**]: \_\_\_\_\_\_\_.
   7. Solely for purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the Work to be performed by Respondents shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.
   8. The conditions described in [Paragraphs \_\_ of] the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
   9. The actions required by this Order are necessary to protect the public health, welfare, or the environment.

# ORDER

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

# OPPORTUNITY TO CONFER

1. No later than [10] days after the Order is signed by the Regional Administrator or his/her delegatee, Respondents may, in writing, a) request a conference with EPA to discuss this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondents are ordered to take, or any other relevant and material issues or contentions that Respondents may have regarding this Order, or b) notify EPA that they intend to submit written comments or a statement of position in lieu of requesting a conference.
2. If a conference is requested, Respondents may appear in person or by an attorney or other representative. Any such conference shall be held no later than [5] days after the conference is requested. Any written comments or statements of position on any matter pertinent to this Order must be submitted no later than [5] days after the conference or [15] days after this Order is signed if Respondents do not request a conference. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted to [**insert name and email address of Regional Attorney**].

# EFFECTIVE DATE

NOTE: Regions may modify ¶ 24 (Effective Date) in accordance with Regional practice. The provision for scheduling a conference date in ¶ 22 should be drafted so that holding the conference will not unduly delay the Effective Date. Regions may issue UAOs that include a delayed effective date in order to encourage negotiation.

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

# NOTICE OF INTENT TO COMPLY

1. On or before the Effective Date, each Respondent shall notify EPA in writing of Respondent’s irrevocable intent to comply with this Order. Such written notice shall be sent to EPA as provided in ¶ 23.
2. Each Respondent’s written notice shall describe, using facts that exist on or prior to the Effective Date, any “sufficient cause” defense[s] asserted by such Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(c)(3). The absence of a response by EPA to the notice required by this Section shall not be deemed to be acceptance of any Respondent’s assertions. Failure of any Respondent to provide such notice of intent to comply within this time period shall, as of the Effective Date, be treated as a violation of this Order by such Respondent.

# PERFORMANCE OF THE WORK

1. **Compliance with Applicable Law**. Nothing in this Order limits Respondents’ obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW.
2. **Permits**
   1. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.
   2. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation
3. **Coordination and Supervision**
   1. **Project Coordinators**
      1. Respondents’ Project Coordinator must have sufficient technical expertise to coordinate the Work. Respondents’ Project Coordinator may not be an attorney representing any Respondent in this matter and may not act as the Supervising Contractor. Respondents’ Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.
      2. EPA shall designate and notify the Respondents of EPA’s Project Coordinator[s] and Alternate Project Coordinator[s] [**replace with “Remedial Project Manager (RPM)” as appropriate, here and throughout Order**]. 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 NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.
      3. Respondents’ Project Coordinators shall meet with EPA’s Project Coordinator[s] at least [monthly].
   2. **Supervising Contractor**. Respondents’ proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ASQ/ANSI E4:2014, “Quality management systems for environmental information and technology programs - Requirements with guidance for use” (American Society for Quality, February 2014).
   3. **Procedures for Disapproval/Notice to Proceed**
      1. Respondents shall designate, and notify EPA, within [10] days after the Effective Date, of the name[s], title[s], contact information, and qualifications of the Respondents’ proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA’s review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.
      2. EPA shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Respondents shall, within [30] days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Respondents may select any coordinator/contractor covered by an authorization to proceed and shall, within [21] days, notify EPA of Respondents’ selection.
      3. Respondents may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 29.c(1) and 29.c(2).
4. **Performance of Work in Accordance with SOW**. Respondents shall: (a) develop the RD; (b) perform the RA; (c) operate, maintain, and monitor the effectiveness of the RA; and (d) support EPA’s periodic review efforts; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the Order or SOW shall be subject to approval by EPA in accordance with ¶ [**7.6**] (Approval of Deliverables) of the SOW.
5. **Emergencies and Releases**. Respondents shall comply with the emergency and release response and reporting requirements under ¶ [**4.4**] (Emergency Response and Reporting) of the SOW.
6. **Community Involvement**. If requested by EPA, Respondents shall conduct community involvement activities under EPA’s oversight as provided for in, and in accordance with, Section [**2**] (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator.
7. **Modification**
   1. EPA may, by written notice from the EPA Project Coordinator to Respondents, modify, or direct Respondents to modify, the SOW and/or any deliverable developed under the SOW, if such modification is necessary to achieve or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy set forth in ¶ [**1.3**] of the SOW. Any other requirements of this Order may be modified in writing by signature of the [**insert the title of the designated signatory or designee of EPA Region \_\_**].
   2. Respondents may submit written requests to modify the SOW and/or any deliverable developed under the SOW. If EPA approves the request in writing, the modification shall be effective upon the date of such approval or as otherwise specified in the approval. Respondents shall modify the SOW and/or related deliverables in accordance with EPA’s approval.
   3. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.
   4. Nothing in this Order, the attached SOW, any deliverable required under the SOW, or any approval by EPA constitutes a warranty or representation of any kind by EPA that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards**.**

# PROPERTY REQUIREMENTS

NOTE: Here and in other places in this Section, optional text to be used if there is an Owner Respondent is set off in brackets.

1. **Agreements Regarding Access and Non-Interference**. Respondents shall, with respect to any Non-Respondent Owner’s Affected Property, use best efforts to secure from such Non-Respondent Owner an agreement, enforceable by Respondents and by EPA, providing that such Non-Respondent Owner [, and Owner Respondent shall, with respect to Owner Respondent’s Affected Property]: (i) provide EPA and the other Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Order, including those listed in ¶ 34.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action [**use if applicable:** , including the restrictions listed in ¶ 34.b (Land, Water, or Other Resource Use Restrictions)]. Respondents shall provide a copy of such access [and use restriction] agreement(s) to EPA [and the State].
   1. **Access Requirements**. The following is a list of activities for which access is required regarding the Affected Property:

NOTE: Augment this list as appropriate.

* + 1. Monitoring the Work;
    2. Verifying any data or information submitted to EPA;
    3. Conducting investigations regarding contamination at or near the Site;
    4. Obtaining samples;
    5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
    6. Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
    7. Implementing the Work pursuant to the conditions set forth in ¶ 59 (Work Takeover);
    8. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section XVI (Access to Information);
    9. Assessing Respondents’ compliance with the Order;
    10. Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order; and
    11. Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any Institutional Controls regarding the Affected Property.
  1. **Land, Water, or Other Resource Use Restrictions**. The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

NOTE: Customize and augment this list as appropriate. Be as specific as possible.

* + 1. Prohibiting the following activities that could interfere with the RA: \_\_\_\_\_\_;
    2. Prohibiting use of contaminated groundwater;
    3. Prohibiting the following activities that could result in exposure to contaminants in subsurface soils and groundwater: \_\_\_\_\_\_;
    4. Ensuring that any new structures on the Site will not be constructed in the following manner that could interfere with the RA: \_\_\_\_\_\_; and
    5. Ensuring that any new structures on the Site will be constructed in the following manner that will minimize potential risk of inhalation of contaminants: \_\_\_\_\_\_.

NOTE: Include ¶ 35 if Proprietary Controls (PCs) are required under the RA. If implementation, maintenance, and enforcement of PCs is likely to be complicated or time-consuming, it is recommended that they be implemented pursuant to an “Institutional Controls Implementation and Assurance Plan” (ICIAP) as part of the SOW, rather than under this Section, and that ¶ 35 be omitted. The Project Coordinator may consider including ¶ 35’s provisions in the ICIAP, including the requirement to use best efforts (as defined in ¶ 36) to secure Non-Settling Owner’s cooperation in executing and recording PCs.

1. **Proprietary Controls**. Respondents shall, with respect to any Non-Respondent Owner’s Affected Property, use best efforts to secure Non-Respondent Owner’s cooperation in executing and recording [; and Owner Respondent shall, with respect to Owner Respondent’s Affected Property, execute and record], in accordance with the procedures of this ¶ 35, Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Order, including those activities listed in ¶ 34.a (Access Requirements); and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in ¶ 34.b (Land, Water, or Other Resource Use Restrictions).
   1. **Grantees**. The Proprietary Controls must be granted to one or more of the following persons and their representatives, as determined by EPA: the United States, the State, Respondents, and other appropriate grantees. Proprietary Controls in the nature of a Uniform Environmental Covenants Act (UECA) document granted to persons other than the United States must include a designation that [**for UECA states:** EPA (and/or the State as appropriate) is either an “agency” or a party] [**for non-UECA states:** EPA (and/or the State as appropriate) is a “third-party beneficiary”] expressly granted the right of access and the right to enforce the covenants allowing EPA [and/or the State] to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

NOTE: “Agency” is a defined term in the statutes of states that have adopted UECA. For UECA states that have defined “agency” to exclude EPA (such as Delaware) and non-UECA states, the case team can usually substitute the term “third-party beneficiary.” However, the case team should review state law to make sure that the term used will ensure that EPA will acquire the rights it needs, i.e., access and rights to enforce land use restrictions that are not real property interests, but that, similar to real property interests, run with the land and are enforceable against both present and future owners. If the interest EPA needs cannot be acquired through being designated as a third-party beneficiary, then it may be necessary for EPA to acquire an interest in real property. See the following note. For more specific information, see “Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls” (Apr. 19, 2004), available at <https://www.epa.gov/enforcement/guidance-third-party-beneficiary-rights-proprietary-institutional-controls>.

NOTE: EPA prefers that PCs be prepared so that the United States does not acquire an interest in real property. If the PCs grant an interest in real property to the United States, such as a right of access or the right to enforce land use restrictions, 40 U.S.C. § 3111 mandates that the conveyance documents and the title evidence be reviewed and approved, prior to recording, by the Attorney General (or his/her delegatee). Guidance on this title review process may be obtained from the Title Unit, Land Acquisition Section, Environment and Natural Resources Division (ENRD), DOJ, at 202-305-0316. When the PCs grant an interest in real property to any person other than the United States, but also give the United States, and perhaps others, rights, such as the right to enforce PCs that are defined as not being an interest in real property (as is often the structure found in state versions of UECA, and as may be the effect in non-UECA instruments designating the United States, and perhaps others, as “third-party beneficiaries”), the mandate of 40 U.S.C. § 3111 for the review of the title by the Attorney General does not apply. However, EPA should conduct its own title review. The interest EPA acquires is not an interest in real property by definition in UECA, but it functions like an interest in real property, so it is essential that a title review be conducted to determine that the rights have been properly created so as to be enforceable under the applicable state UECA law, and so that liens and encumbrances that could defeat or interfere with the EPA interest are identified and released, subordinated, or otherwise addressed prior to EPA acquiring its interest. Furthermore, CERCLA § 104(j), 42 U.S.C. § 9604(j), requires that the State accept transfer of the property interest following completion of the RA. If the State will not provide the essential cooperation required under Section 104(j), then the PCs must be prepared so that the United States will not acquire an interest in real property.

* 1. **Initial Title Evidence**. Respondents shall, within [45] days after the Effective Date:
     1. **Record Title Evidence**. Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names EPA, the State, the Respondents, or “To Be Determined;” (ii) covers the Affected Property that is to be encumbered; (iii) demonstrates that the person or entity that will execute and record the Proprietary Controls is the owner of such Affected Property; (iv) identifies all record matters that affect title to the Affected Property, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, “Prior Encumbrances”); and (v) includes complete, legible copies of such Prior Encumbrances; and
     2. **Non-Record Title Evidence**. Submit to EPA a report of the results of an investigation, including a physical inspection of the Affected Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

NOTE: For general guidance on both record and non-record forms of title evidence acceptable to the United States, see the U.S. Department of Justice Title Standards 2016, available at https://www.justice.gov/enrd/page/file/922431/download..

* 1. **Release or Subordination of Prior Liens, Claims, and Encumbrances**
     1. Respondents shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Affected Property revealed by the title evidence or otherwise known to any Respondent, unless EPA waives this requirement as provided under ¶¶ 35.c(2)-(4).
     2. Respondents may, by the deadline under ¶ 35.b (Initial Title Evidence), submit an initial request for waiver of the requirements of ¶ 35.c(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights to be granted by the Proprietary Controls and cannot interfere with the remedy or result in unacceptable exposure to Waste Material.
     3. Respondents may, within [90] days after the Effective Date, or if an initial waiver request has been filed, within [45] days after EPA’s determination on the initial waiver request, submit a final request for a waiver of the requirements of ¶ 35.c(1) regarding any particular Prior Encumbrance on the grounds that Respondents could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

NOTE: ¶ 35.c provides for an “initial” waiver request that addresses the issue of whether the Prior Encumbrance can adversely affect the PC, and then a “final” waiver request that addresses the issue of whether Respondents used best efforts. This is intentional and is for the purpose of streamlining and expediting the process. If the Respondents demonstrate to EPA that a particular Prior Encumbrance will not adversely affect the PC, then Respondents do not need to expend further time and effort to secure the release of such Prior Encumbrance.

* + 1. The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.
  1. **Update to Title Evidence and Recording of Proprietary Controls**
     1. Respondents shall submit all draft Proprietary Controls and draft instruments addressing Prior Encumbrances to EPA for review and approval within [180] days after the Effective Date; or if an initial waiver request has been filed, within [135] days after EPA’s determination on the initial waiver request; or if a final waiver request has been filed, within [90] days after EPA’s determination on the final waiver request. [The Proprietary Controls must be in substantially the form attached hereto as Appendix E.]
     2. Upon EPA’s approval of the proposed Proprietary Controls and instruments addressing Prior Encumbrances, Respondents shall, within [15] days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under ¶ 35.b (Initial Title Evidence). If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Respondents shall secure the immediate recordation of the Proprietary Controls and instruments addressing Prior Encumbrances in the appropriate land records. Otherwise, Respondents shall secure the release, subordination, modification, or relocation under ¶ 35.c(1), or the waiver under ¶¶ 35.c(2)-c(4), regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Proprietary Controls and instruments addressing Prior Encumbrances.

NOTE: The appropriate land records are most commonly in the county(ies) where the Affected Property is located.

* + 1. If Respondents submitted a title insurance commitment under ¶ 35.b(1) (Record Title Evidence), then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, Respondents shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for $100,000 or other amount approved by EPA; (iii) is issued to EPA, Respondents, or other person approved by EPA; and (iv) is issued on a current American Land Title Association (ALTA) form [**in Texas:** “Texas Land Title Association (TLTA) form”] or other form approved by EPA.

NOTE: The $100,000 amount of the title insurance coverage in the policy was selected by EPA as appropriate and adequate. If there are questions or concerns the case team may consult with the Civil Rights and Finance Law Office of EPA’s Office of General Counsel, 202-564-5461, concerning this issue.

* + 1. Respondents shall, within [30] days after recording the Proprietary Controls and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide EPA and to all grantees of the Proprietary Controls: (i) certified copies of the recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk’s recording stamps; and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording of the Proprietary Controls and instruments.
  1. Respondents shall monitor, maintain, enforce, and [annually] report on all Proprietary Controls required under this Order.
  2. [**Include if there is an Owner Respondent:** Owner Respondent shall not Transfer its Affected Property unless it has executed and recorded all Proprietary Controls and instruments addressing Prior Encumbrances regarding such Affected Property in accordance with this Paragraph.]

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

NOTE: Include ¶ 37 if there is an Owner Respondent, no PCs have been recorded on the Affected Property, and the case team believes no PCs will be recorded on the Affected Property within a year after the Effective Date. In the absence of PCs, these requirements will put potential buyers on notice that the property is part of, or related to, the Site.

1. [**Notice to Successors-in-Title**
   1. Owner Respondentshall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding Owner Respondent’s Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the Site; (ii) that EPA has selected a remedy for the Site; and (iii) that EPA has issued an order to potentially responsible parties requiring implementation of such remedy; and (3) identify the EPA docket number and Effective Date of this Order. Owner Respondent shall record the notice within 10 days after EPA’s approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.
   2. Owner Respondent shall, prior to entering into a contract to Transfer Owner Respondent’s Affected Property, or 60 days prior to Transferring Owner Respondent’s Affected Property, whichever is earlier:
      1. Notify the proposed transferee that EPA has selected a remedy regarding the Site, and that EPA has issued an order to potentially responsible parties requiring implementation of such remedy, and identifying this Order and the date it was issued by EPA; and
      2. Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the notice that it provided to the proposed transferee.]
2. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Order, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property [**include if ICs**: , and to implement, maintain, monitor, and report on Institutional Controls].

# FINANCIAL ASSURANCE

[NOTE: When determining whether to include this Section in the Order or whether to modify it to limit the form of the financial assurance to certain mechanisms, case teams should consider the facts and circumstances of each case, including: the estimated cost of Work to be performed; the estimated time to complete the Work; the nature and extent of contamination at the Site; whether the financial assurance can be secured before commencement of the Work (or soon thereafter); the industry sectors in which Respondents operate; and the financial health of Respondents. Regions are strongly encouraged to include this Section for the more costly and time-consuming response actions. Case teams can find the most current sample financial assurance documents in the “Financial Assurance - Orders” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. When this Section is included in an Order, Regions should examine the form and substance of all financial assurance mechanisms submitted by Respondents, both initially and over time, to ensure consistency and compliance with this Section (e.g., case teams should ensure that entities providing a demonstration or guarantee pursuant to ¶ 39.d or 39.e have: (a) submitted all required documentation so that EPA can determine whether such financial assurance is adequate; and (b) fully and accurately reflected in their submission all of their financial assurance obligations (under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) to the United States or other governmental entities so all such obligations have been properly accounted for in determining whether such entity meets the financial test criteria). For more specific information and considerations, see “Guidance on Financial Assurance in Superfund Settlement Agreements and Unilateral Administrative Orders” (April 6, 2015), available at <https://www.epa.gov/enforcement/guidance-financial-assurance-superfund-settlements-and-orders>. Financial assurance team members within the Office of Site Remediation Enforcement are available to assist with any financial assurance matters, including the evaluation of submissions.]

1. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of $[**insert initial FA estimate**] (“Estimated Cost of the Work”). The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the “Financial Assurance - Orders” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to trust funds, surety bonds guaranteeing payment, and/or letters of credit.
   1. A trust fund: (1) established to ensure that funds will be available as and when needed for performance of the Work; (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the [**insert appropriate Regional official (e.g., Superfund Division Director)**] advises the trustee in writing that: (i) payments are necessary to fulfill the affected Respondents’ obligations under the Order; or (ii) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Order;
   2. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury, guaranteeing payment or performance in accordance with ¶ 45 (Access to Financial Assurance);
   3. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with ¶ 45 (Access to Financial Assurance);
   4. A demonstration by a Respondent that it meets the relevant financial test criteria of ¶ 42; or
   5. A guarantee to fund or perform the Work executed by a company (1) that is a direct or indirect parent company of a Respondent or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of ¶ 42.
2. **Standby Trust**. If Respondents seek to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondents shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in ¶ 39.a, and into which payments from the other financial assurance mechanism can be deposited if EPA so requires in accordance with the terms and conditions of the financial assurance mechanism and ¶ 45 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with ¶ 41. Until the standby trust fund is funded pursuant to ¶ 45 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.
3. Within [**insert appropriate time period (e.g., 30)**] days after the Effective Date, Respondents shall submit to EPA proposed financial assurance mechanisms in draft form in accordance with ¶ 39 for EPA’s review. Within **[insert appropriate time period (e.g., 60-90)**] days after the Effective Date, or 30 days after EPA’s approval of the form and substance of Respondents’ financial assurance, whichever is later, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the [**insert desired recipient(s) (e.g., Regional Financial Management Officer, Regional financial assurance specialist, Regional attorney, and/or Project Coordinator) and relevant contact information if not provided elsewhere in the Order**].
4. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 39.d or 39.e must, within [**insert appropriate time period**]:
   1. Demonstrate that:
      1. the affected Respondent or guarantor has:
         1. 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
         2. 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
         3. Tangible net worth of at least $10 million; and
         4. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or
      2. The affected Respondent or guarantor has:
         1. 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
         2. 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
         3. Tangible net worth of at least $10 million; and
         4. 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
   2. Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant’s report of the entity’s financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the “Financial Assurance – Orders” subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.
5. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents 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. Respondents shall follow the procedures of ¶ 46 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents’ inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Order.
6. Respondents providing financial assurance by means of a demonstration or guarantee under ¶ 39.d or 39.e must also:
   1. Annually resubmit the documents described in ¶ 42.b within 90 days after the close of the affected Respondent’s or guarantor’s fiscal year;
   2. Notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and
   3. Provide to EPA, within 30 days of EPA’s request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 42.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

NOTE: Case teams should make sure that the “trigger” regarding EPA’s ability to direct the deposit of funds into a standby trust and/or demand work under the financial assurance mechanism is consistent with the trigger in the following paragraph, e.g., if the Order allows EPA to direct a financial assurance provider to deposit funds into a standby trust in the event of either a Performance Failure Notice that is not remedied by a Respondent within the allotted cure period or a Respondent’s failure to provide alternative financial assurance 30 days prior to an impending mechanism cancellation, the mechanism should contain equivalent language.

1. **Access to Financial Assurance**
   1. If EPA determines that Respondents (1) have ceased implementation of any portion of the Work, (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Performance Failure Notice”) to both Respondents and the financial assurance provider regarding the affected Respondents’ failure to perform. Any Performance Failure Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice. If, after expiration of the 10-day period specified in this Paragraph, Respondents have not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any funds assured pursuant to this Section into the standby trust fund; or (ii) arrange for performance of the Work in accordance with this Order.
   2. If EPA is notified by the provider of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.
2. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondents may submit, on any anniversary of the Effective Date or following Respondents’ request for, and EPA’s approval of, another date, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the EPA individual(s) referenced in ¶ 41, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of ¶¶ 39 and 40 (Standby Trust). EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change. Respondents may reduce the amount or change the form or terms of the financial assurance only in accordance with EPA’s approval. Within 30 days after receipt of EPA’s approval of the requested modifications pursuant to this Paragraph, Respondents shall submit to the EPA individual(s) referenced in ¶ 41 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon EPA’s approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Work in the approved proposal.
3. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) after receipt of documentation issued by EPA certifying completion of the Work; or (b) in accordance with EPA’s written approval of such release, cancellation, or discontinuation.

# INSURANCE

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

# DELAY IN PERFORMANCE

1. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to the EPA Project Coordinator within 48 hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within seven days after notifying EPA by telephone and email, Respondents shall provide to EPA written notification fully describing the nature of the delay, the anticipated duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or minimize the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.
2. Any delay in performance of this Order that, in EPA’s judgment, is not properly justified by Respondents under the terms of ¶ 49 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents’ obligations to fully perform all obligations under the terms and conditions of this Order.

# PAYMENT OF RESPONSE COSTS

NOTE: Regions have discretion to include this section consistent with Regional practice and in light of site-specific circumstances.

1. **Response Cost Payments.**

On a periodic basis, EPA will send Respondents a bill requiring payment of all Response Costs incurred by the United States regarding this Order that includes a [**insert name of standard Regionally-prepared cost summary**].

* 1. Within 30 days after receipt of each written demand, Respondents shall make the payment at https://www.pay.gov in accordance with the following instructions: enter “sfo 1.1” in the search field to access EPA’s Miscellaneous Payment Form – Cincinnati Finance Center. Complete the form including the Site Name, docket number, and Site/Spill ID Number \_\_\_\_. At the time of payment, Respondents shall send notice that payment has been made to the EPA representative identified in ¶ 23 [**or identify another receiving EPA official**], including these references.

1. **Interest**. In the event that the payments for Response Costs are not made within 30 days after Respondents’ receipt of a written demand requiring payment, Respondents shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the written demand and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to EPA by virtue of Respondents’ failure to make timely payments under this Section. Respondents shall make all payments under this Paragraph in accordance with ¶ 51.

# ACCESS TO INFORMATION

1. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within Respondents’ possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.
2. **Privileged and Protected Claims**
   1. Respondents may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with ¶ 54.b, and except as provided in ¶ 54.c.
   2. If Respondents assert a claim of privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Respondents’ favor.
   3. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Order.
3. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA under this Section or Section XVII (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondents assert business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentially accompanies Records when they are submitted to EPA, or if EPA has notified Respondents that the Records are not confidential under the standards of CERCLA § 104(e)(7) or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

# RECORD RETENTION

1. During the pendency of this Order and for a minimum of 10 years after EPA provides Notice of Work Completion under ¶ [**4.9**] of the SOW, each Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractor and agents) must retain, in addition, copies of all data generated during performance of the Work and not contained in the aforementioned Records to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.
2. At the conclusion of this document retention period, Respondents shall notify EPA [and the State] at least 90 days prior to the destruction of any such Records, and, upon request by EPA [or the State], and except as provided in ¶ 54, Respondents shall deliver any such Records to EPA [or the State].
3. Within \_\_ days after the Effective Date, each Respondent shall submit a written certification to EPA’s Project Coordinator that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law. Any Respondent unable to so certify shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

# ENFORCEMENT/WORK TAKEOVER

1. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondents to civil penalties up to the maximum amount authorized by law. CERCLA § 106(b)(1), 42 U.S.C. § 9606(b)(1). As of the date of issuance of this Order, the statutory maximum amount is [**insert dollar-figure set forth in 40 CFR 19.4**] per violation per day. This maximum amount may increase in the future, as EPA amends its civil penalty amounts through rulemaking pursuant to the 1990 Federal Civil Penalties Inflation Adjustment Act (Public Law 101-410, codified at 28 U.S.C. § 2461), as amended by the 2015 Federal Civil Penalties Inflation Adjustment Act Improvement Act (Section 701 of Public Law 114-74)). The maximum amount to be applied to this violation will be set as the most recent maximum amount set forth in 40 CFR section 19.4 as of the date that the U.S. District Court assesses any such penalty. In the event of such willful violation, or failure or refusal to comply, EPA may unilaterally carry out the actions required by this Order, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. [**Include the following sentence if Section XII (Financial Assurance) is included in the Order:** In addition, nothing in this Order shall limit EPA’s authority under Section XII (Financial Assurance).] Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

# RESERVATIONS OF RIGHTS

1. Nothing in this Order limits the rights and authorities of EPA and the United States:
   1. To take, direct, or order all actions necessary, including to seek a court order, to protect public health, welfare, or the environment or to respond to an actual or threatened release of Waste Material on, at, or from the Site;
   2. To select further response actions for the Site in accordance with CERCLA and the NCP;
   3. To seek legal or equitable relief to enforce the terms of this Order;
   4. To take other legal or equitable action as they deem appropriate and necessary, or to require Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law;
   5. To bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C.§ 9607, for recovery of any costs incurred by EPA or the United States regarding this Order or the Site [**if Section XV (Payment of Response Costs) included:** and not paid by Respondents];
   6. Regarding access to, and to require land, water, or other resource use restrictions and/or Institutional Controls regarding the Site under CERCLA, RCRA, or other applicable statutes and regulations; or
   7. To obtain information and perform inspections in accordance with CERCLA, RCRA, and any other applicable statutes or regulations.

# OTHER CLAIMS

1. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.
2. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.
3. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or C.F.R. § 300.700(d).
4. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

# ADMINISTRATIVE RECORD

1. EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order, including, but not limited to, the documents upon which EPA based the selection of the Remedial Action selected in the ROD. EPA will make the administrative record available for review by appointment on weekdays between the hours of \_\_\_ and \_\_\_ at the EPA offices in [**insert Region-specific logistical information for review of the record**]. Persons may request an appointment to review the administrative record by contacting [**insert name of Regional contact person**] at [**insert contact phone number and email address**]. [**Optional:** A copy of the administrative record is also available for viewing at [**insert address where copy of the record is located**]]. [**Optional:** An index of the administrative record is attached.]

# APPENDICES

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

“Appendix A” is the ROD.

“Appendix B” is the SOW.

“Appendix C” is the description and/or map of the Site.

**NOTE: Insert any if needed:**

“Appendix D” is the complete list of Respondents.

“Appendix E” is the draft form of Proprietary Controls.

“Appendix F” is the Index of the Administrative Record.

# SEVERABILITY

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

It is so ORDERED.

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name

Regional Administrator (or designee/delegatee)

Region \_\_

U.S. Environmental Protection Agency

**Instructions Regarding Automated Features**

|  |  |
| --- | --- |
| **Feature** | **Instructions** |
| **Inserting text copied from a different document** | Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. **Therefore, ALWAYS use the “Paste Special” function to insert text copied from another document**. Press Ctrl-Alt-V; in the pop-up menu, click “Unformatted Text” and OK. (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.) |
| **Inserting a new paragraph** | Click at the end of the ¶ immediately preceding the place where you wish to add the new **paragraph**, and press Enter. To change the new ¶'s outline level use (under the Home tab) the styles menu. For example, to change ¶12.b into ¶12.a(1), click in that ¶ and then (using the Home tab) click the "LVL 3" style. To change ¶13.a into ¶14, click in that ¶ and then (using the Home tab) click the “LVL 1” Style. Note that in consent decree models, the letters denoting each background paragraph must be manually updated. |
| **Adding an updateable section or paragraph cross-reference** | (a) Click where you wish to insert a cross-reference; (b) Click the “References” tab, and, in the “Captions” box, click “Cross-reference;” (c) In the pop-up menu that appears, make sure the “Reference type” field contains “Numbered item” and the “Insert reference to” field contains “Paragraph Number (full context); (d) In the “For which numbered item” field” select the numbered item (section, paragraph. or subparagraph) you wish to cross-reference, and click Insert. |
| **Updating the cross-references** | Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Update Field;” click OK. Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: “Error! Reference source not found.” |
| **Updating the table of contents** | Right-click in the TOC, and in the pop-up menu, left-click “Update Field.” Or click in the TOC, press F9, click Update Entire Table and OK. If you have just added a new section heading, click Update entire table before pressing Enter. |
| **Inserting a new section heading** | Click in the text of the new heading and assign the “SECTION” paragraph style to the text by clicking the “Home” tab, and in Styles box, clicking the “SECTION” style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents. |
| **Changing the font** | Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Font;” in the “font” field, select a new font; click OK. |