

COMMONWEALTH OF VIRGINIA
WASTE MANAGEMENT BOARD AND
THE DEPARTMENT OF ENVIRONMENTAL QUALITY

In re:)	
Virginia Department of Transportation)	
)	
)	
Elko Facility)	REMEDY CONSENT ORDER
)	
EPA ID No. VAD980918189)	DATE: <u>April 2, 2021</u>

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I. INTRODUCTION

The Virginia Department of Transportation's ("VDOT") Elko Materials Laboratory ("Elko Facility") is situated on +/-16 acres of a 41.6-acre tract near Sandston in Henrico County, Virginia. Records support that the parcel was undeveloped when acquired in 1969. The Elko Facility has been operating since 1979 to conduct tests on materials for the construction and maintenance of the Commonwealth's roads. Adjacent properties are zoned M-2 (general industrial use) and include private owners fronting Technology Boulevard and a Henrico County right-of-way/public utility easement associated with Technology Boulevard. Groundwater at the site flows predominantly to the west-southwest and approximately 10 to 12 feet below grade. Groundwater is not used onsite for drinking water as Henrico County extends its municipal water system to the area. Moreover, the facility is now connected to the Henrico County sanitary sewer system, with non-hazardous waste water being discharged in compliance with County discharge requirements.

During the initial three years of operation, waste water generated in several labs was conveyed to an engineered holding unit, south of the building in the direction of Technology Boulevard. The floor of the circular concrete unit was lined with a heavy plastic membrane installed approximately 7.5 feet below grade.

The principle solvent used during these initial years of operation included 1,1,1-trichloroethane (TCA), as well as tetrachloroethene (PCE), trichloroethene (TCE), and daughter chemicals resulting from natural reductive dechlorination such as 1,1-dichloroethane (1,1-DCA) and 1,1-dichloroethene (1,1-DCE).

In July 1983, at the direction of the former Virginia Department of Health-Bureau of Hazardous Waste Management ("BHWB"), VDOT closed the unit by removal of the waste determined to be hazardous waste from the unit. VDOT subsequently managed its hazardous waste in containers pursuant to the satellite accumulation and quantity-appropriate waste generator status rules. VDOT, however, never received final closure documentation from BHWB or its successor agency, the Virginia Department of Environmental Quality ("DEQ"). Subsequently, pursuant to the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.), and through agreement with the U.S. Environmental Protection Agency ("EPA"), DEQ addressed any remaining concerns at the Elko Facility by Corrective Action in accordance with the Resource Conservation and Recovery Act ("RCRA") and in coordination with EPA's RCRA Facility Lead Program. In October 2008, VDOT signed a Facility Lead Agreement ("FLA") with EPA Region 3 to conduct corrective actions at the former waste management unit (surface impoundment) identified as "SWMU #1," the circular structure depicted in Figure 2, Appendix A (Figures).

Site Characterization activities began in July 2009 and included the characterization of soil and groundwater through soil borings, temporary monitoring wells, and membrane interface probe ("MIP") readings.

Soil

The 2009 Site Characterization did not detect any Constituents of Concern (“COC”) in soil that exceeded EPA-published screening levels for residential groundwater use. Concentrations of four volatile organic compounds (“VOCs”) were, however, detected at concentrations above the “protection of groundwater” screening levels: 1,1,1-trichloroethane (1,1,1-TCA); 1,1-dichloroethane (1,1-DCA); 1,1-dichloroethene (1,1-DCE); and benzene.

A total of 85 soil samples collected between 2014 and 2017 in and around SWMU #1 showed no results for the COCs that exceeded any EPA regional screening levels for residential soil.

Nonetheless, concentrations in groundwater and subsequent MIP evaluations suggest that there are isolated pockets of high VOC concentrations in subsurface clays beneath the water table in and around SWMU#1, and that such concentrations are serving as a continuous source of contaminant migration to groundwater.

Groundwater

Installation of temporary and permanent groundwater monitoring wells in initial investigations revealed a groundwater plume originating from the unit had migrated offsite. In addition to the four compounds mentioned above, the following COCs were also detected in groundwater above the EPA Maximum Contaminant Level (“MCL”) promulgated for drinking water or risk-based screening level for tapwater where no MCL is available: carbon tetrachloride; 1,2-dichloroethane; 1,4-dioxane; 1,1,2-trichloroethane; tetrachloroethene; trichloroethene; and vinyl chloride.

Between June and December 2011, additional assessment activities were conducted to evaluate the presence of free phase product immediately beneath the SWMU#1. The detected constituents appeared to be related to industrial solvents released from the onsite former waste management unit. Additional monitoring and extraction wells were installed to facilitate the recovery and post-recovery results monitoring.

The primary migration pathway for dissolved VOCs is via groundwater flow. Groundwater at the site flows predominantly to the west-southwest. The mapped direction of groundwater flow conforms well to the distribution of VOCs in groundwater. VOCs have been detected in groundwater nearly 400 feet downgradient of SWMU #1 in the map shown on Appendix A (Figures). Based on groundwater contours, the plume appears to be relatively narrowly confined beneath and along the perimeter of Technology Boulevard. The groundwater impacts appear to be limited to shallow groundwater.

Since 2009, VDOT has met with EPA and DEQ on numerous occasions to provide milestone updates related to the investigation and interim measures implemented. EPA and DEQ confirmed at an October 2019 meeting that the tasks identified in the FLA, including characterization and interim measures, have been completed. Since additional actions are still needed to effectively remediate the

VOCs beyond those covered in the FLA (including corrective measures), this Consent Order was developed to address those outstanding actions.

II. DEFINITIONS

Unless otherwise expressly provided in this Consent Order or the context clearly indicates otherwise, terms used in this Consent Order that are defined by the Virginia Waste Management Act (“VWMA”), Va. Code §§ 10.1-1400 – 10.1-1458, and RCRA, 42 U.S.C. §§ 6901-6992 shall have the meaning assigned to them in VWMA, and RCRA. When terms listed below are used in this Consent Order, the following definitions shall apply solely for this Consent Order.

“**Administrative Process Act**” or “**APA**” means Va. Code § 2.2-4000 *et seq.*

“**Board**” means the Virginia Waste Management Board, a permanent citizen board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 1401. The term “Board” is inclusive of the Virginia Department of Environmental Quality and its delegated authority to act on behalf of, and in the best interest of, the Board to oversee and administer the Work described in this Consent Order.

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

“**Certification of Completion**” means a letter or writing by the DEQ indicating that No Further Action is required under this Order or that the Remedial Action has been completed and Performance Standards have been achieved.

“**Commonwealth**” means the Commonwealth of Virginia.

“**Consent Order**” means this Consent Order, also known as a “**Remedy Consent Order**,” including all appendices attached hereto and documents incorporated by reference. In the event of a conflict between this Consent Order and any appendix or other documents, the terms and requirements of this Consent Order shall control.

“**Corrective Measure Implementation plan**” or “**CMI**” means the plan to implement the final remedy as described in the Statement of Basis and issued in the Final Decision and Response to Comments.

“**Corrective Measures Study**” or “**CMS**” means a study undertaken to develop and evaluate corrective action alternative(s) and to recommend the corrective measure(s) to be taken at the Facility pursuant to **Section VIII (Performance of the Work)**. The development and evaluation of alternatives shall reflect the scope and complexity of the remedial action under consideration and the site problems being addressed.

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

“Department” or **“DEQ”** means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183, and any successor departments or agencies of the Commonwealth of Virginia.

“Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

“Effective Date” means the date upon which this Consent Order is executed by all Parties.

“EPA” means the United States Environmental Protection Agency, and any successor departments or agencies of the United States.

“Facility” or **“Site”** means the geographic area or Elko Facility located at 6200 Elko Tract Road in Henrico County, Virginia or as specifically described in the RFI and/or the FDRTC.

“Final Decision and Response to Comments” or **“FDRTC”** shall be the public document(s) that selects the final remedy and explains which corrective measure(s) will be implemented at the Site, and includes the basis for the selection of such remedy. These include, but are not limited to, information and technical analyses generated by the RCRA Facility Investigation and Corrective Measures Study, and consideration of public comments. This document is enforceable by the DEQ pursuant to Va. Code §§ 10.1-1402(19) - (21), 10.1-1404(B)(3), 10.1-1186(2), and 10.1-1455(F).

“Hazardous Substance” is defined under of section 101(14) of CERCLA, 42 U.S.C. § 9601(14), Va. Code § 10.1-1400, and 9 VAC 20-81-10.

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

“Institutional Control Implementation Plan” or **“ICIP”** means the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls prepared in accordance with a required Statement of Work (“SOW”).

“Interest” means interest at the rate specified for interest on investments of the Commonwealth of Virginia as determined by the DEQ Office of Financial Assurance, compounded annually on

October 1 of each year. 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.

“National Contingency Plan” means the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.

“Operation and Maintenance” or **“O&M”** mean all activities, including Institutional Controls, required to maintain the effectiveness of a Remedial Action as required under an approved Operation and Maintenance Plan.

“Parties” means the Board, DEQ and VDOT.

“Performance Standards” mean the Remedial Action standards and other measures of successful completion of Remedial Action as set forth in this Consent Order, SOW, and any modified standards established pursuant to this Consent Order.

“Proprietary Controls” mean easements or covenants running with the land that: (a) limit land, water, or resource use and/or provide access rights; and (b) are created pursuant to common or statutory law by an instrument that is recorded by the landowner in the appropriate land records office. Any and all Proprietary Controls concerning the Site shall conform to the Virginia Uniform Environmental Covenants Act, Va. Code §§ 10.1-1238 *et seq.*, 9 VAC 15-19-10 *et seq.*

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

“RCRA Facility Investigation” or **“RFI”** means an investigation developed pursuant to **Section VIII (Performance of the Work)** that adequately characterizes site conditions, and determines the nature and extent of contamination, assesses risk to human health and the environment, and to support the development, evaluation, and selection of appropriate corrective measure(s) alternatives.

“Release” means any spill, leak, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Waste Material), or any mismanagement of any Waste Material. A Release also means any substantial threat of release as described in 9 VAC 20-81-10.

“Remedial Action” or **“Corrective Measures”** means all Work and activities required by this Consent Order to implement the remedy, including, but not limited to any Statement of Work, RCRA Facility Investigation, Interim Measures Work Plan, Corrective Measures Study, Corrective Measures Implementation Plan, Waste Minimization Plan, Remedial Design Work Plan, Remedial Action Work Plan, Schedule of Compliance, Operations and Maintenance Plan, Institutional Control Implementation Plan, and other plans approved by DEQ until Performance Standards are successfully met.

“VDOT” means the Virginia Department of Transportation or any person responsible for the Remedial Action.

“Schedule of Compliance” or **“SOC”** shall mean a planning document prepared in accordance with the requirements identified in **Section VIII (Performance of the Work)**, and as set forth in **Appendix B (Schedule of Compliance)** which contains timetables, plans, or schedules that indicate the time and sequence of Work.

“Statement of Basis” or **“SB”** shall be the public document that identifies the preferred alternative for corrective measures and proposes the final remedy for the Site. The SB summarizes the information, data and rationale considered in making this recommendation and is made publicly available for review and comment for at least thirty (30) days.

“Statement of Work” or **“SOW”** means the statement of work for implementation of the Remedial Action, and O&M at the Site, as set forth in **Appendix C (Statement of Work)** to this Consent Order, inclusive of any modifications thereto in accordance with this Consent Order.

“Supervising Contractor” means the principal contractor retained to supervise and direct the implementation of the Work under this Consent Order.

“Transfer” means to sell, assign, convey, lease, mortgage, or grant a security interest by operation of law.

“Virginia Waste Management Act” means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

“Waste Material” means: (a) any “hazardous substance” under Va. Code § 10.1-1400, 9 VAC 20-81-10, or section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any “pollutant or contaminant” under 9 VAC 20-81-10 or section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Va. Code § 10.1-1400, 9 VAC 20-81-10 or section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) other “waste” as that term is defined under Va. Code § 10.1-1400.

“Work” means all activities and obligations required under this Consent Order.

III. BACKGROUND

1. **Purpose of Consent Order.** This is a Remedy Consent Order (“RCO” or “Consent Order”) issued under the authority of Va. Code §§ 10.1-1402(19) - (21), 10.1-1404(B)(3), 10.1-1186(2), and 10.1-1455(F), between the Virginia Department of Environmental Quality (“DEQ”), pursuant to authority delegated by the Virginia Waste Management Board (“Board”), and VDOT, regarding the Elko Facility, for the purpose of requiring the design and implementation of response actions in

accordance with a Corrective Measure Implementation plan ("CMI") at the Site due to a Release of Waste Material within the jurisdiction of the Board at the Site.

This Consent Order establishes a framework for implementing the remedial action to address the historical releases at the facility. To accomplish Work required under this Consent Order, the Parties will establish schedules and deadlines as necessary and as information becomes available and, if required, amend this Consent Order as needed.

2. Agency Oversight. The Work conducted by VDOT pursuant to this Consent Order is subject to concurrence, oversight and enforcement by the Board and DEQ, an agency of the Commonwealth of Virginia authorized to act on behalf of, and in the best interest of, the Board to oversee the remediation of a Release of any Waste Material at or from the Site. The Work conducted by VDOT shall be consistent with this Consent Order, all applicable laws and regulations, and any appropriate guidance documents.

3. No Admission of Liability. DEQ and VDOT recognize that this Consent Order has been negotiated in good faith and that the actions undertaken by VDOT in accordance with this Consent Order do not constitute an admission of any liability. VDOT agrees to comply with and be bound by the terms of this Consent Order and further agrees that it will not contest the basis or validity of this Consent Order or its terms.

4. Recorded Release of Waste Material. The Facility is subject to the Corrective Action program under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, and the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. §§ 6901 *et seq.* ("Corrective Action Program"). The Corrective Action Program is designed to ensure that certain facilities subject to RCRA have investigated and cleaned up any releases of hazardous waste and hazardous constituents that have occurred at their respective facilities. A documented Release of Waste Material, and associated degradation byproducts, including carbon tetrachloride; 1,2-dichloroethane; 1,4-dioxane; 1,1,2-trichloroethane; tetrachloroethene; trichloroethene; and vinyl chloride, has occurred at the Facility. The Waste Material is a substance within the jurisdiction of the Board and is to be addressed by a Remedial Action described in this Consent Order. A final remedy to address the identified release will be proposed by DEQ and public comments on DEQ's Statement of Basis describing the facility background, investigations, summary of releases, remedial measures evaluated and the proposed remedy will be solicited for (30) thirty days. The Statement of Basis and the Final Decision and Response to Comment documents will be incorporated into this Consent Order by reference.

5. Use of Facility. The Facility was historically used to test materials used in the maintenance and construction of Commonwealth of Virginia roadways, bridges and tunnels. In particular, historic asphalt testing methods required the use of chlorinated solvents in the testing process. Those waste solvents were managed in an engineered holding tank that failed and released the solvents into media beneath the tank. The Facility is currently used to test materials used in the maintenance and construction of Commonwealth of Virginia roadways, bridges, and tunnels. The intended use of the Facility is to remain a material testing laboratory for the Commonwealth of Virginia roadways, bridges and tunnels.

6. Permits. The Facility currently holds no environmental or public health permits.
7. Intent of the Parties. VDOT has expressed their intent to pursue a Consent Order to conduct remedy implementation at the site. On October 10, 2019, the Parties and their representatives met to discuss the Remedy Consent Order.
8. Owner/Operator Relationship. VDOT owns and/or operates the Facility in Henrico County, Virginia. Operations at the Facility are subject to the Virginia Waste Management Act, Va. Code §§ 10.1-1400 et seq., RCRA, 42 U.S.C. §§ 6901-6992, and associated regulations.
9. DEQ Determination. Based on available information, DEQ determines that the Work will be properly and promptly completed, and meet any further RCRA Closure or Corrective Action requirements exclusive of post-construction monitoring and reporting, by VDOT if conducted in accordance with the requirements of this Consent Order and its allied appendices and documents incorporated by reference. VDOT acknowledges, and DEQ by entering this Consent Order finds, that this Consent Order has been negotiated in good faith and it is fair, reasonable, and in the public interest.

IV. JURISDICTION

DEQ has jurisdiction over the RFI/CMS, SB, the Site, and remedy implementation pursuant to authority delegated by the Board pursuant to Va. Code §§ 10.1-1402(19) - (21), 10.1-1404(B)(3), 10.1-1186(2), and 10.1-1455(F). VDOT waives all objections and defenses that they may have to jurisdiction of DEQ, and shall not challenge the terms of the Consent Order or DEQ's jurisdiction to enter and enforce this Consent Order. Va. Code § 10.1-1455 of the Waste Management Act provides for an injunction for any violation of the Waste Management Act, associated regulations, an order, or permit condition, and provides for a civil penalty up to \$32,500 per day for each violation of the Waste Management Act, regulation, order, or permit condition.

V. PARTIES BOUND

1. Parties. This Consent Order applies to and is binding upon DEQ and VDOT, their heirs, successors, and assigns. No change in organization or legal status of VDOT including, but not limited to, any transfer of assets or property, real or personal, shall in any way alter any requirements or responsibilities under this Consent Order unless DEQ agrees in writing to such change. The signatories to this Consent Order certify that they are fully authorized to execute and legally bind the Parties they represent.
2. Contractors and Agents. VDOT shall within fourteen (14) days after the Effective Date of this Consent Order or the date of retaining their services, whichever is later, provide a copy of this Consent Order to each contractor hired to perform the Work and to each person representing VDOT with respect to the Site or the Work. VDOT shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Order. VDOT contractors

shall within fourteen (14) days after the Effective Date of this Consent Order or the date of retaining their services, whichever is later, provide written notice of the Consent Order to all subcontractors hired to perform any portion of the required Work. VDOT contractors shall be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Consent Order.

VI. GENERAL PROVISIONS

1. Objectives. The objectives of the Parties in entering into this Consent Order are to protect human health and the environment by completing the action and steps necessary to investigate the nature and extent of releases at the Facility, assess risk to human health and the environment, implement interim actions, address substantial threats, collect sufficient data to support decisions regarding remedial action, design and implementation of the remedy.
2. Commitments. VDOT shall finance and perform the Work in accordance with this Consent Order, the Schedule of Compliance, Statement of Work, RFI/CMS, SB, the design and implementation of response actions in accordance with a CMI plan, and any other plans and modifications required and approved by DEQ until the Work is complete.
3. Compliance with Applicable Law. All activities undertaken pursuant to this Consent Order shall be performed in accordance with the requirements of all applicable local, state and federal laws and regulations. The Work conducted pursuant to this Consent Order, if approved, shall be deemed to be consistent with the Virginia Waste Management Act and its associated Regulations.
4. Severability. If any provision of this Consent Order is found to be unenforceable for any reason, the remainder of the Consent Order shall remain in full force and effect.
5. Permitting. This Consent Order shall not be construed to be a permit issued pursuant to any local, state, or federal statute or regulation. Where any portion of the Work requires a permit or approval, VDOT shall submit timely and complete applications, and take all actions necessary to obtain all such permits or approvals. VDOT may seek relief under the provisions of **Section XVI (Force Majeure)** for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval, provided that they have submitted timely and complete applications, and taken all actions necessary to obtain all such permits or approvals.
6. APA Due Process. VDOT declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act, and that it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by DEQ to modify, rewrite, amend, revoke, terminate, or enforce this Consent Order.

VII. RECORDING, TRANSFER AND SUCCESSORS

1. Notice. In the event of any change in ownership, operation, or control of the Facility, VDOT shall notify DEQ in writing at least thirty (30) calendar days in advance of such change. VDOT shall, at least sixty (60) days prior to change in ownership, operation, or control of the Facility or any Transfer of real property located at the Site, give written notice: (a) to the transferee regarding the Consent Order and any Institutional Controls regarding the real property; and (b) to DEQ regarding the proposed Transfer, including the name and address of the transferee and the date the transferee was notified of the Consent Order and any Institutional Controls.
2. Recording. For any real property owned or controlled by VDOT located at the Facility, VDOT shall, within ninety (90) days after receipt of the Certification of Completion, cause it to be recorded with the appropriate land records office (typically the office of the Clerk of Circuit Court) to provide notice to all successors-in-title as to what real property is part of the Facility. VDOT shall provide DEQ with a certified copy of the recorded Certification within ten (10) days after recording such notice.
3. Compliance. In the event of any Transfer of real property located at the Site, unless DEQ otherwise consents in writing, VDOT shall continue to comply with the requirements in this Consent Order.

VIII. PERFORMANCE OF THE WORK

1. Schedule of Compliance. The Schedule of Compliance (**Appendix B**) is hereby incorporated by reference and is an enforceable part of this Consent Order. VDOT shall conduct all phases of the remedial action in accordance with the provisions of this Consent Order, the Statement of Work (**Appendix C**), RCRA Corrective Action, and relevant guidance. VDOT shall furnish the personnel, materials, and services necessary to perform the remedy action.
2. Corrective Measures Implementation. The Dispute Resolution provisions of this Remedy Consent Order shall govern selection of the proposed remedial action as identified in the SB and selection of the remedial action as identified in the FDRTC. Selection of the proposed remedial action in the SB and selection of the remedy in the FDRTC will be in accordance with the requirements of RCRA Corrective Action and relevant guidance. To the extent required under the FDRTC and the CMI Plan, VDOT shall implement the selected remedial action and complete any Operations and Maintenance as required for the selected remedy. VDOT shall furnish the personnel, materials, and services necessary to implement the selected remedy as described in the FDRTC and complete Operations and Maintenance of the selected remedy.
3. Additional Work. DEQ may determine that in addition to tasks defined in the initially approved Schedule of Compliance, other additional Work may be necessary to accomplish the objectives of this Consent Order, remedial investigation, and remedial action. VDOT agrees to

reasonably consider performing the Work in addition to Work required by the initially approved Schedule of Compliance, including any approved modifications, if DEQ determines that such actions are necessary for a complete remedial investigation and remedial action. VDOT shall confirm whether it will perform the additional Work in writing to DEQ within ten (10) days of receipt of the DEQ request. If DEQ objects to VDOT determination pursuant to this Paragraph, DEQ may seek dispute resolution pursuant to **Section XVII (Dispute Resolution)**. The Schedule of Compliance shall be modified in accordance with the final resolution of the dispute. If additional Work is determined necessary following dispute resolution, VDOT shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by DEQ in a written modification to the Schedule of Compliance.

5. Modification and Further Response. Nothing in this Consent Order shall be construed to limit the Parties from seeking modification of the Schedule of Compliance for good cause. Nothing in this section shall be construed to limit DEQ's authority to require performance of further response actions as otherwise provided in this Consent Order.

6. No Warranty of Performance. Nothing in this Consent Order constitutes a warranty or representation of any kind that compliance with the work requirements set forth therein will achieve the Performance Standards.

IX. QUALITY ASSURANCE, SAMPLING, AND DATA

1. Quality Assurance Guidance. VDOT shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with *EPA Requirements for Quality Assurance Project Plans (QA/R-5)* (EPA/240/B-01/003, March 2001, reissued May 2006), *Guidance for Quality Assurance Project Plans (QA/G-5)* (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines within a reasonable time after adoption of such amended guidelines.

2. Quality Assurance Project Plan. Prior to the commencement of any monitoring under this Consent Order, VDOT shall submit to DEQ for approval, a Quality Assurance Project Plan ("QAPP") that is consistent with the Statement of Work (Appendix C). The QAPP shall include, but not be limited to, data quality objectives, laboratory analytical procedures, identification and use of Virginia Environmental Laboratory Accreditation Program laboratories, field equipment maintenance and calibration, sampling procedures, record keeping, and data assessment procedures. Unless otherwise agreed to by DEQ, VDOT shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent Order perform such analyses in accordance with accepted methods provided in EPA publication, Test Methods for Evaluating Solid Waste: Physical/Chemical Methods, also known as SW-846, and any amendments made thereto.

3. Split and Duplicate Samples. Upon request, VDOT shall allow split or duplicate samples to be taken by DEQ. VDOT shall notify DEQ not less than thirty (30) days in advance of any sample collection unless shorter notice is agreed to by DEQ. In addition, DEQ may take any additional samples necessary to assure the performance of this Consent Order. Upon request, VDOT may take

split or duplicate samples of any samples DEQ requires for oversight or implementation of the Work.

4. Sample Results. Unless otherwise agreed to by DEQ, VDOT shall submit to DEQ copies of the results of all sampling and/or tests, or other data obtained with respect to the Site or the implementation of this Consent Order along with the annual report as set forth in **Section XI, (Reporting Requirements)**.

X. ACCESS AND INSTITUTIONAL CONTROLS

1. Access to the Site. VDOT on the Effective Date of this Consent Order grants the DEQ with a right of access to the Site at all reasonable times to conduct any activity regarding the oversight, administration, and assessment of compliance with this Consent Order.
2. Site Restrictions. Commencing on the Effective Date of this Consent Order, VDOT shall not use the Site, or such other real property, in any manner that may pose an unacceptable risk to human health or to the environment due to exposure to Waste Material.
3. Cooperation from Respondent. If DEQ determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed at or in connection with the Site, VDOT shall cooperate with DEQ efforts to secure and ensure compliance with such controls.
4. Retention of Rights. Notwithstanding any provision of the Consent Order, DEQ retains all of its access authorities and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto, under VWMA, CERCLA, RCRA, and any other applicable statute or regulation.
5. Uniform Environmental Covenants Act. Any and all Proprietary Controls proposed for the Site shall conform to the Virginia Uniform Environmental Covenants Act, Va. Code §§ 10.1238 *et seq.*, 9 VAC 15- 90.

XI. REPORTING REQUIREMENTS

Report Format. VDOT shall submit one (1) copy in electronic format of all plans, reports, data, and other deliverables required by this Consent Order. VDOT shall submit a paper copy of such plans, reports, data, and other deliverables upon request by DEQ.

XII. APPROVAL OF PLANS, REPORTS, AND OTHER DELIVERABLES

1. Initial Submissions. After review of any plan, report, or other deliverable required for approval pursuant to this Consent Order, DEQ shall, within forty-five (45) days: a) approve, in

whole or in part, the submission; b) approve the submission upon specified conditions; c) disapprove, in whole or in part, the submission; or d) any combination of the foregoing. DEQ may modify the initial submission to cure deficiencies if it determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work or cure of deficiencies is otherwise not substantial.

2. Resubmissions. Upon DEQ's disapproval or approval with conditions of a submission, VDOT shall, within forty-five (45) days, or such longer time as specified by DEQ, to correct the deficiencies and resubmit the plan, report, or other deliverable for review.

3. Incorporation of Approved Submittal. Any plan, report, or other deliverable, or any portion thereof, approved by DEQ, shall be incorporated by reference into and enforceable under this Consent Order.

XIII. PROJECT COORDINATORS

Identification of Project Coordinators. Within thirty (30) days after the Effective Date of this Consent Order, VDOT and DEQ will notify each other, in writing, of the name, address, telephone number, and email address of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator is changed, the identity of the successor will be given to the other Party at least ten (10) working days before the change occurs, if practical. VDOT Project Coordinator shall have the technical expertise sufficient to adequately oversee all aspects of the Work.

XIV. EMERGENCY RESPONSE

1. Releases of Waste Material. In the event of any action or occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that may present an immediate threat to human health or the environment, VDOT shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the DEQ Project Coordinator or Alternate Project Coordinator, and any other local, state, or federal official or entity required to be notified. If either of these persons is unavailable, VDOT shall notify the DEQ Pollution Response Program ("PRoP") Unit at 800.592.5482. VDOT shall take all such necessary response actions in consultation with DEQ's Project Coordinator or alternate representative.

2. State Response. Nothing in the preceding paragraph or in this Consent Order shall be deemed to limit any authority of DEQ to take 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. Further, nothing in the preceding paragraph or this Consent Order shall be deemed to limit any cost recovery or reimbursement associated with such action.

XV. LIMITATION OF LIABILITY

1. *Limitation of Liability.* The Board and DEQ do not assume any liability by entering into this Consent Order.
2. *No Agency or Contractual Party Status.* The Board and DEQ shall not be held out as a party to any contract entered into by or on behalf of VDOT in carrying out the activities described in this Consent Order. Neither VDOT nor any such contractor shall be considered an agent of the Board or DEQ.

XVI. FORCE MAJEURE

1. *Force Majeure Defined.* For purposes of this Consent Order, a force majeure event is defined as any event arising from causes beyond the control of VDOT, of any entity controlled by VDOT, or of VDOT contractors, that delays or prevents the performance of any obligation under this Consent Order, despite best efforts to fulfill the obligation. The requirement that VDOT exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure, best efforts to address the effects of any potential force majeure as it is occurring, and best efforts to minimize any adverse effects following the potential force majeure event. Force majeure does not include financial inability to complete the Work or a failure to achieve the Performance Standards.
2. *Notice of Force Majeure Event.* If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order for which VDOT intends or may intend to assert a claim of force majeure, VDOT shall notify DEQ’s Project Coordinator or Alternate Project Coordinator within ten (10) days of the force majeure event. Within ten (10) days thereafter, VDOT shall provide in writing to DEQ an explanation and description of the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, a schedule for implementation of any measures to prevent or mitigate the delay, a rationale for attributing such delay to a force majeure, and a statement as to whether such event may cause or contribute to an endangerment to human health or the environment.
3. *Effect of Force Majeure Event.* If DEQ agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Order that are affected by the force majeure shall be extended for such time as is reasonably necessary to complete the delayed obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not extend the time for performance of any other obligation. If DEQ does not agree that the delay or anticipated delay has been or will be caused by a force majeure, DEQ shall provide such notification in writing.

XVII. DISPUTE RESOLUTION

1. Limits of Dispute Resolution. Unless otherwise expressly provided for in this Consent Order, the dispute resolution procedures of this section shall be the exclusive mechanism to resolve disputes regarding this Consent Order. However, the procedures set forth in this section shall not apply to actions by the Commonwealth of Virginia, Board, or DEQ to enforce the substantive obligations of VDOT to perform in accordance with the requirements of this Consent Order.
2. Informal. Any dispute regarding this Consent Order shall first be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute.
3. Division Director Review. In the event informal negotiations are not successful in resolving a dispute, VDOT may present written notice of such dispute to the DEQ Director of the Division of Land Protection and Revitalization ("Division Director"), setting forth specific points of dispute and the position of VDOT. This written notice shall be submitted no later than ten (10) days after expiration of the thirty (30) day informal negotiation period. Within ten (10) days of receipt of such a written notice, the Division Director shall provide a written response to VDOT setting forth DEQ's position and the basis thereof. If the Division Director concurs with the position of VDOT, notification shall be provided in writing and this Agreement shall be modified to include any necessary extensions of time or variances of work.
4. DEQ Director Review. If DEQ and VDOT are still in disagreement after a decision is issued from the Division Director, the DEQ Director shall make a determination regarding the dispute based upon the requirements of this Consent Order and all information previously made available to the DEQ Director.
5. Performance of Requirements not in Dispute. Use of formal dispute resolution procedures under this section shall not extend, postpone, or affect in any way any obligation under this Consent Order not directly in dispute.

XVIII. COVENANTS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY

1. Covenants by the Board. In consideration of the actions to be performed and the payments to be made by VDOT under this Consent Order, and except as otherwise specifically provided herein, the Board covenants not to sue or to take administrative action against VDOT pursuant to the Virginia Waste Management Act, Va. Code §§ 10.1-1400 – 10.1-1457, CERCLA, 42 U.S.C. §§ 9601-9675, and/or RCRA, 42 U.S.C. §§ 6901-6992, relating to the Release of Waste Material at the Site as identified in this Consent Order. This covenant shall take effect upon issuance of a Certification of Completion of Remedial Action by DEQ.

These covenants are conditioned upon the satisfactory performance by VDOT of all required obligations under this Consent Order. These covenants shall extend to VDOT, their successors, and assigns.

2. General Reservations of Rights. DEQ reserves, and this Consent Order is without prejudice to, all rights against VDOT with respect to all matters not expressly included within DEQ's covenant. Notwithstanding any other provision of this Consent Order, the DEQ reserves all rights against VDOT with respect to: a) liability for failure to meet a requirement of this Consent Order; 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 the ownership of the Site by VDOT when such ownership commences after signature of this Consent Order; d) liability based on the operation of the Site by VDOT when such operation commences after signature of this Consent Order and does not arise solely from performance of the Work; e) liability based on VDOT transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site; f) liability for damages for injury to, destruction of, or loss of natural resources caused by the operation of the Site by VDOT that are not addressed by the Work, and for the costs of any resulting natural resource damage assessments that may be required; g) criminal liability; and h) liability for violations of federal or state law that occur during or after implementation of the Work.

XIX. COVENANTS BY THE DEPARTMENT OF TRANSPORTATION

Covenants by VDOT. Subject to and except as otherwise specifically provided in this Consent Order, VDOT covenants not to sue and agrees not to assert any claims or causes of action against the DEQ with respect to the Site and this Consent Order, including, but not limited to: a) any direct or indirect claim for reimbursement of any Costs; b) any claims under VWMA, CERCLA, or RCRA regarding the Site and this Consent Order; and c) any other claims arising out of response actions at or in connection with the Site and this Consent Order.

XX. EFFECT OF SETTLEMENT

Reservation. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. Each of the Parties expressly reserves any and all rights, including, but not limited to, defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

XXI. ACCESS TO INFORMATION

Availability of Records. VDOT shall provide to DEQ, upon request, copies of all records, reports, documents, and other information (including materials in electronic form) (hereinafter referred to as

“Records”) within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent 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. VDOT shall also make available to DEQ, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

XXII. RETENTION OF RECORDS

1. *Retention Term.* For a term of (10) ten years from the receipt of a Certification of Completion, VDOT 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 the Site. Contractors and agents of VDOT shall also preserve for the same period of time 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 relates in any manner to the performance of the Work.

2. *Destruction of Records.* At the conclusion of the record retention period, VDOT shall notify DEQ of its intent to discard any or all records previously subject to preservation under this Consent Order. If at the conclusion of (90) ninety days from the date VDOT provide such notice to DEQ of its intent to discard such records, VDOT can, without further notice, discard such records, unless VDOT has received a written request from DEQ with specific instructions to deliver such records to DEQ, including the delivery address and contact person to whom the records should be delivered.

XXIII. NOTICES AND SUBMISSIONS

Identification of Individuals Receiving Notice. Whenever a written notice, report, or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Order.

DEQ: Virginia Department of Environmental Quality
Director, Division of Land Protection and Revitalization
1111 East Main Street, Suite 1400 Richmond VA 23219

and;

Virginia Department of Environmental Quality Director, Office of Remediation Programs
1111 East Main Street, Suite 1400 Richmond VA 23219

VDOT: Virginia Department of Transportation
Director, Environmental Division
1401 East Broad Street
Richmond VA 23219

and;

Virginia Department of Transportation
Environmental Compliance Program Manager
1401 East Broad Street
Richmond, Virginia 23219

XXIV. RETENTION OF JURISDICTION

1. DEQ Retention of Jurisdiction. DEQ retains jurisdiction over the subject matter of this Consent Order for the duration of performance and for purposes of enabling any of the Parties to request such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Order, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with **Section XVIII (Dispute Resolution)**.
2. Judicial Jurisdiction and Venue. VDOT consents to jurisdiction and venue in the Circuit Court of the Commonwealth of Virginia, City of Richmond for any civil action taken to enforce the terms of this Consent Order.

XXV. APPENDICES

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

Appendix A: Figures
Appendix B: Schedule of Compliance
Appendix C: Statement of Work

XXVI. COMMUNITY INVOLVEMENT

Participation. If requested by DEQ, VDOT shall participate in community involvement activities. DEQ will determine the appropriate role for VDOT, and VDOT shall also cooperate with DEQ in providing information regarding the Work to the public. As requested by DEQ, VDOT shall participate in the preparation of such information for dissemination to the public and in public meetings that may be held or sponsored by DEQ to explain activities at or relating to the Site.

XXVII. MODIFICATION

1. *Mutuality.* The Parties may modify, rewrite, or amend this Consent Order by mutual consent.
2. *Material and Non-Material Modification.* Material modifications to this Consent Order and any appendix shall be in writing, signed by the Parties, and shall be effective upon approval. Non-material modifications to this Consent Order and any appendix shall be in writing and shall be effective when signed by duly authorized representatives of DEQ and VDOT. A modification shall be considered material if it fundamentally alters the basic features of the selected remedy. Nothing in this Consent Order shall be deemed to alter DEQ's authority to enforce, supervise, or approve modifications to this Consent Order.

XXVIII. TERMINATION OF CONSENT ORDER

Once a Certification of Completion has been provided to VDOT, this Consent Order shall terminate upon the date that the notice set forth under **Section VII (Recording, Transfer and Successors)** has been filed with the appropriate land records office.

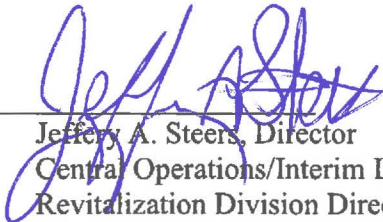
XXIX. CONCLUSION AND ORDER

1. *Conclusions.* Pursuant to Va. Code § 10.1-1402(19)-(21), and in consideration of 10.1-1404(B)(3), 10.1-1186(2), and 10.1-1455(F): a) an improper Release of Waste Material has occurred at the Facility, and such Waste Material is subject to the jurisdiction of DEQ; b) Remedial Action addressing the Release is required to abate threats to human health and the environment, and to address any potential nuisance, hazard or trespass resulting from the Release; and c) execution of this Consent Order is in the best interests of the Commonwealth of Virginia.
2. *Finality.* This Consent Order and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the embodied settlement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained herein. Upon entry by DEQ, this Consent Order shall constitute a final Consent Order between and among the Parties.


SIGNATURES

Each undersigned representative of the Parties certifies that he or she is fully authorized to execute this Consent Order on behalf of such Party and to legally bind such Party.

Executed this 2nd day of April, 20 21.

By 
Jeffery A. Steers, Director
Central Operations/Interim Land and
Revitalization Division Director
Department of Environmental Quality

Seen and Concurred with this 31st day of March, 20 21.

By 
Chris Evans, Director
Office of Remediation Programs
Department of Environmental Quality

Executed this 17 day of Feb, 20 21.

For the Commonwealth of Virginia

Department of Transportation

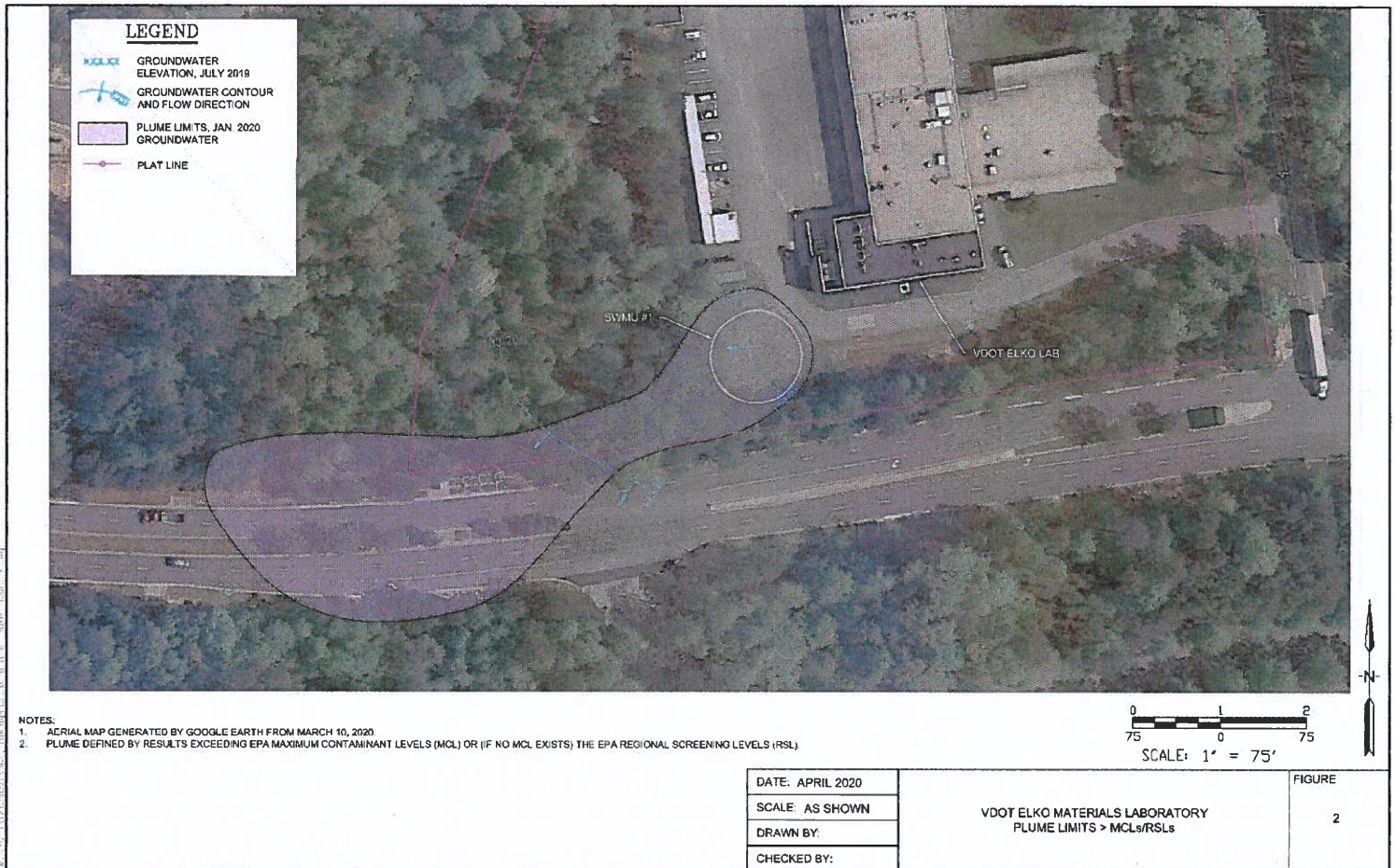
By 

Stephen C. Brich, P.E.
Commissioner

APPENDIX A

FIGURES





APPENDIX B
SCHEDULE OF COMPLIANCE

SCHEDULE OF COMPLIANCE

Item	Targeted Milestone
Remedy Consent Order Execution	Day 0
Corrective Measures Implementation Work Plan/ CMI Design	Within Day 180 After RCO Execution
CMI Construction/Implementation	Within Day 820 After RCO Execution
Quarterly Progress Reports	Within Day 950 After RCO Execution
Corrective Measures Implementation Report	Within Day 1460 After RCO Execution
Annual CMI Report	Within Day 2000 After RCO Execution

APPENDIX C
STATEMENT OF WORK

STATEMENT OF WORK

I. Objectives

The purpose of this Statement of Work (SOW) is to set forth the requirements for implementing a remedy that will eliminate, reduce, or control risks to human health and the environment related to the Site. This SOW is designed to provide the framework for conducting the Work in accordance with the Remedy Consent Order (RCO). The Introduction section of the RCO describes the completed activities for the site including investigation/characterization, Interim Measures (IM) and Corrective Measures Study (CMS). This SOW outlines the remaining activities related to Corrective Measures Implementation.

II. Public Comment and Participation

The DEQ prepared a Statement of Basis (SB), which documents the process DEQ used under RCRA to select measures for remediating a hazardous waste management facility. This includes the characterization, IM, and CMS. Specific information in the documents include: description and environmental setting of the facility names and concentrations of the contaminants detected at the facility and associated exposure pathways, proposed remedy, innovative technologies considered in determining the remedy, and public involvement requirements under corrective action. The SB and Administrative Record for the facility was made available for public comment on December 17, 2020.

Following the public review and comment period, DEQ issued a Final Decision and Response to Comments (FDRTC) document in which it described the corrective measure(s) selected for the Facility or any portions or units thereof.

III. Corrective Measures Implementation

The Corrective Measures Implementation (CMI) phase is the implementation of the design, construction, operation, maintenance, and monitoring of the corrective measure(s) selected in the FDRTC. The Respondent(s) will furnish all personnel, materials, and services necessary for the implementation of the corrective measure(s). The following may be components of the CMI:

- Corrective Measures Workplan/CMI Design
 - Outline the design, construction, operation, maintenance and monitoring of all actions taken to implement the Corrective Measures as defined in the FDRTC
 - Construction plans and specifications to implement the corrective measures
 - Operation and Maintenance Plan for the active remediation phase
 - Cost Estimate
 - Construction Quality Assurance Plan
 - Health and Safety Plan
 - Operation and Maintenance Plan for post remedy activities such as long term plume monitoring, materials management plan and UECA covenants

- CMI Construction/Implementation
 - Implement construction in accordance with procedures specifications and schedules in the approved Corrective Measures Workplan/CMI Design.
 - Provide a CMI Report upon completion of construction and initial period of performance monitoring. The CMI Report shall include:
 - Description of activities performed during construction
 - Actual specifications of the implemented remedy
 - Explanation of significant modifications to the approved construction or design plans
- CMI Reporting including groundwater monitoring
 - Quarterly Progress Reports that may contain:
 - Description of Work performed during the preceding monitoring interval and estimate of CMI completed;
 - Summary of findings;
 - Summary of changes made in the CMI during the reporting period;
 - Summaries of contacts, representatives of the local community, public interest groups, or other State government interactions during the reporting period;
 - Summaries of system performance during the reporting period including a summary of significant problems/potential problems encountered/anticipated during the reporting period;
 - Actions taken to rectify significant problems;
 - Changes in personnel during the reporting period;
 - Projected work for the next reporting period; and
 - Copies of daily reports, inspection reports, laboratory/monitoring data, etc.
 - Annual Corrective Measures Progress Report (including a 5 year Assessment Report) containing:
 - A narrative summary of principal activities conducted during the reporting period;
 - Graphical or tabular presentations of monitoring data, groundwater levels and flow direction, and groundwater quality;
 - A schedule of sampling and field activities to be performed and reported in the following year;
 - Assessment of the performance of the corrective measure over time;
 - Any proposed changes to the corrective measure and summary of previous changes; and
 - Iso-concentration maps for the contaminants of concern listed in the FDRTC.