

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

_____	)	U.S. EPA Docket No.
IN THE MATTER OF:	)	
	)	RCRA 3008(h)-09-2021-001
Nammo Defense Systems	)	
Mesa, Arizona	)	
	)	
Respondent	)	
	)	
Proceeding under Section 3008(h)	)	<b>ADMINISTRATIVE ORDER</b>
of the Resource Conservation and	)	<b>ON CONSENT</b>
Recovery Act, 42 U.S.C. § 6928(h)	)	
	)	
_____	)	

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## I. JURISDICTION

1. This Administrative Order on Consent (Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Nammo Defense Systems (Respondent) regarding Respondent's facility at 4051 N. Higley Road, Mesa, Arizona (the Facility). This Order provides for the performance of corrective action activities at or in connection with the Facility including all Areas of Concern. A map that generally depicts the Facility is attached hereto as Appendix A.

2. This Order is issued under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h). The Administrator of EPA has delegated the authority to issue orders under Section 3008(h) to the Regional Administrator of Region 9 by EPA Delegation Nos. 8-31, dated Jan. 17, 2017, and 8-32, dated May 11, 1994, and this authority has been further delegated by the Regional Administrator for Region 9 to the Director of the Land, Chemicals, and Redevelopment Division pursuant to EPA Region 9 Delegation R9-8-32, dated October 10, 2014, and the memorandum titled "EPA Region 9 Organizational Realignment General Redelegation of Authority" dated May 5, 2020.<sup>1</sup>

3. On November 20, 1985, EPA granted the State of Arizona (the State) authorization to operate a state Hazardous Waste program in lieu of the federal program, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6928(b). EPA has subsequently authorized additional revisions to the State's authorized program. The Arizona Department of Environmental Quality (ADEQ) is the permitting agency and primary regulator for the Facility while the Facility is operating in interim status. ADEQ has reviewed and concurs on this Order.

4. EPA and Respondent recognize that this Order has been negotiated in good faith. Respondent consents to, and agrees not to contest, EPA's jurisdiction to issue this Order or to enforce its terms. Further, Respondent will not contest EPA's jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondent's full or interim compliance with the terms of this Order; or impose sanctions for violations of this Order. Respondent waives any right to request a hearing on this matter pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA, 42

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<sup>1</sup> On April 28, 2019, Region 9 implemented an organizational realignment which created two new divisions, transferred responsibility and resources for several functions across divisions, and renamed existing divisions, including from the "Land Division" to the "Land, Chemicals, and Redevelopment Division." The Regional Administrator issued a General Temporary Redelegation of Authority Due to Organizational Realignment (Realignment Delegation) on May 15, 2019, re delegating authorities to the successor division director or office director. The Realignment Delegation expired on December 31, 2019. The current Region 9 Regional Administrator reaffirmed and made permanent the redelegations in a memorandum titled "EPA Region 9 Organizational Realignment General Redelegation of Authority" dated May 5, 2020.

U.S.C. § 6928(b), as an Administrative Order on Consent issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

5. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedures Act, 5 U.S.C. §§ 701-706, and 40 C.F.R. Part 24 providing for review of final agency action.

## **II. PARTIES BOUND**

6. This Order is binding upon EPA and upon Respondent and its agents, successors, and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Order. Any conveyance of title, easement, or other interest in the Facility shall not affect Respondent's obligations under this Order.

7. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondent to this Settlement.

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

## **III. STATEMENT OF PURPOSE**

9. In entering into this Order, the mutual objectives of EPA and Respondent are:

- a. to perform Interim Measures (IM) at the Facility to evaluate and mitigate threats to human health or the environment;
- b. develop and maintain a dynamic Conceptual Site Model (CSM) to guide the investigation and development of any necessary corrective action measures;
- c. to perform a RCRA Facility Investigation (RFI) to determine fully the nature and extent of any release of Chemicals of Potential Concern (COPC) at or from the Facility;
- d. work cooperatively with EPA, and EPA-designated stakeholders, including the ADEQ and the Salt River Pima-Maricopa Indian Community (SRPMIC);

e. to perform a Corrective Measures Study (CMS) to identify and evaluate alternatives for any corrective measures necessary to prevent, mitigate, and remediate any releases of COPC at or from the Facility; and

f. to perform any other activities EPA deems necessary to correct or evaluate actual or potential threats to human health or the environment resulting from the release or potential release of COPC at or from the Facility through Corrective Measures Implementation (CMI).

10. EPA and Respondent acknowledge that this Order addresses corrective measures for the Facility as defined below, and that investigation, interim and final measures at or related to Plant No. 3 including the Former Water Bore-out (WBO), are currently being addressed pursuant to the State of Arizona's Voluntary Remediation Program (VRP) (Arizona Revised Statutes (A.R.S.) §§ 49-171 *et seq.*). Plant No. 3 and the WBO are shown in Appendix B. All investigation, interim and final measures set forth in the workplan(s) approved pursuant to the VRP for Plant No. 3 and the WBO will be conducted pursuant to the VRP, A.R.S. § 49-175, *et seq.*, and activities conducted under the VRP at Plant No. 3 shall not be subject to investigation, interim and final measure requirements under this Order so long as NDS continues to participate in VRP. If investigation, interim and final measures for Plant No. 3 including the WBO are not completed under the VRP for any reason, the parties agree to amend this Order to include requirements for NDS to complete corrective measures at Plant No. 3, including the WBO. This Paragraph does not alter EPA's rights as noted in Section XIX.

#### IV. DEFINITIONS

11. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in RCRA, 42 U.S.C. §§ 6901-6992k, shall have the meaning assigned to them in RCRA. Whenever terms listed below are used in this Order or its Appendices, the following definitions shall apply solely for purposes of this Order:

"Administrative Record" shall mean the record compiled and maintained by EPA supporting the decision to issue this Order. For information on the contents of Administrative Records in general see "Guidance on Administrative Records for RCRA 3008(h) Actions," OSWER Directive 9940.4, July 6, 1989.

"Areas of Concern" or "AOC" shall mean an area at a facility or an off-site area, which is not known to be a Solid Waste Management Unit (SWMU, defined below), where COPC are present as a result of a release from the facility.

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

"Chemicals of Potential Concern or COPC" shall mean chemicals that are potentially related to the release of hazardous waste or hazardous constituents from the Facility.

"Corrective measures" shall mean those measures or actions necessary to control, prevent, or mitigate the release or potential release of COPC into the environment.

“Corrective Measures Implementation” or “CMI” shall mean those activities necessary to initiate, complete, monitor, and maintain the remedy(ies) EPA has selected or may select to protect human health and/or the environment from the release or potential release of COPC into the environment from the Facility.

“Corrective Measures Study” or “CMS” shall mean the investigation and evaluation of potential remedies, which will protect human health and/or the environment from the release or potential release of COPC into the environment from the Facility.

“Data Quality Objectives” or “DQOs” shall mean the qualitative or quantitative statements, the application of which is designed to ensure that data of known and appropriate quality are obtained.

“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 date EPA signs this Order.

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

“Facility” shall mean all contiguous property under the control of the owner and/or operator at 4051 N. Higley Road, Mesa, Arizona.

“Hazardous Constituents” shall mean those constituents listed in Appendix VIII to 40 C.F.R. Part 261 or any constituent identified in Appendix IX to 40 C.F.R. Part 264.

“Hazardous Waste(s)” shall mean any Hazardous Waste as defined in Sections 1004(5) and 3001 of RCRA. This term includes Hazardous Constituents as defined above.

“Innovative Treatment Technologies” shall mean those technologies for treatment of soil, sediment, sludge, and debris, other than incineration or solidification/stabilization and those technologies for treatment of groundwater contamination that are alternatives to pump and treat. Pump and treat in this instance refers to pumping with conventional treatments like air stripping and UV oxidation.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state, tribal, or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices of contamination, notices of administrative action, or other notices that: limit land, water, or other resource use to minimize the potential for human exposure to contaminants at or in connection with the Facility; limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the Work; or provide information intended to modify or guide human behavior at or in connection with the Facility.

“Interim measures,” or “IM” shall mean those actions that can be initiated in advance of implementation of the final corrective measures implementation for a facility to achieve the goal of stabilization or mitigate potential exposures to COPC at the Facility and at Off-Site

Properties. Interim Measures initiate cleanup at a facility and control or eliminate the release or potential release of COPC at or from the Facility.

“LCRD” means the Land, Chemicals, and Redevelopment Division of Region 9, or any successor divisions.

“NDS” shall mean Nammo Defense Systems and any predecessor companies.

“Off-site Property” shall mean all real property beyond the Facility boundary.

“Off-site Property Owner” shall mean any person, other than Respondent, who owns or controls any Off-site Property, including the State of Arizona, Salt River Pima-Maricopa Indian Community and private owners.

“On-site” shall mean the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property.

“Order” shall mean this Administrative Order on Consent and any appendices attached hereto (listed in Section XXIV (Integration/Appendices)). In the event of any conflict between this Order and any appendix, this Order shall control. Deliverables approved, conditionally approved, or modified by EPA also will be incorporated into and become enforceable parts of this Order.

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

“Parties” shall mean EPA and Respondent.

“PFAS” shall mean Per- and polyfluoroalkyl substances (PFAS).

“Plant No. 3” shall mean the approximate 100.01 acre parcel leased by NDS from the State (State Lease 03-93792), Latitude 33° 29’ 04” N, Longitude 11° 43’ 43” W Township 2N Range 6E Section 27 of Maricopa County, Arizona, connected to the rest of the NDS Facility by a paved road with a right of way for Respondent traversing State land. Descriptions of Plant No. 3 boundaries are provided in Appendix B.

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

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992, as amended by the Hazardous and Solid Waste Amendments of 1984 (also known as the Resource Conservation and Recovery Act).

“RCRA Facility Investigation or RFI” shall mean the investigation and characterization of any source(s) of contamination and the nature, extent, direction, rate, movement, and concentration of the source(s) of any contamination and releases of COPC that have been or are likely to be released into the environment from the Facility.

“Regional Screening Levels” or RSL shall mean EPA’s risk-based screening levels, calculated using the latest toxicity values, default exposure assumptions and physical and chemical properties.

“Respondent” shall mean Nammo Defense Systems, and its successors and assigns.

“Salt River Pima-Maricopa Indian Community” or “SRPMIC” shall mean the Salt River Pima-Maricopa Indian Community.

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

“Site” shall mean the Nammo Defense Systems facility at 4051 N. Higley Road, Mesa, Arizona including all contiguous property under the control of Respondent.

“Solid Waste Management Unit(s)” or “SWMU(s)” shall mean any discernable unit(s) at which solid wastes have been placed at any time irrespective of whether the unit was intended for the management of solid waste or Hazardous Waste. Such units include any area at a Facility where solid wastes have been routinely or systematically released.

“Stabilization” shall mean the goal or philosophy of controlling or abating immediate threats to human health and/or the environment from releases and/or preventing or minimizing the spread of contaminants while long-term corrective measures alternatives are being evaluated.

“State” shall mean the State of Arizona, including its agencies such Arizona Department of Environmental Quality and the Arizona State Land Department.

“Submittal” shall include any workplan, report, progress report, or any other written document Respondent is required by this Order to send to EPA.

“Thermal Treatment Unit” or “TTU” shall mean the Hazardous Waste management unit at the Facility, also known as the Burn Ground, where treatment of waste munitions was formerly performed.

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

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

“VOCs” shall mean Volatile Organic Compounds.



“Water Bore-Out” or “WBO” shall mean the former Water Bore-Out operation, which consisted of earthen water bore-out pits at the Facility, where propellant was removed from rocket motor casings via a high-pressure water lance at Plant No. 3. This includes the Former WBO building, the Former WBO Pit #1 and 2 (Latitude 33° 29’ 04.88” North, Longitude 111° 43’ 43.42” West), and the Historic WBO Pit Area (Latitude 33° 29’ 06.36” North, Longitude 111° 43’ 43.39” West), located within Plant No. 3.

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

“Workplan” shall mean the detailed plans prepared by Respondent to satisfy the requirements of Section VIII: Work to be Performed.

## V. FINDINGS OF FACT

12. EPA has made the following findings of fact:

a. Respondent is a person doing business in the State of Arizona.

b. Respondent is a generator of Hazardous Waste and an operator of a Hazardous Waste management facility. Respondent engaged in treatment and storage of Hazardous Waste at the Facility, regulated by the ADEQ as an “interim status” facility under 40 C.F.R. Part 265, Subpart P (*see also* Arizona Administrative Code R18-8-265).

c. Respondent operated the Facility as a Hazardous Waste management facility on or after November 19, 1980, the date that renders facilities subject to interim status requirements or the requirement to have a permit under §§ 3004 or 3005 of RCRA, 42 U.S.C. §§ 6924 or 6925.

d. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent notified EPA of its Hazardous Waste activity. Respondent acknowledges that it was an operator of a treatment, storage or disposal facility for Hazardous Waste, and began operation of the Thermal Treatment Unit in approximately 1966.<sup>2</sup>

e. Respondent acknowledges that at the time of its Notification, it generated or managed Hazardous Wastes. At the Facility Respondent has managed Hazardous Wastes including: D001, D002, D003, D005, D006, D007, D008, D011, D018, D035, P105, F001, F002, F003, and F005. The Facility had the following EPA Identification numbers: AZD981425010, AZD980816276, AZD020132502, AZD980885362, AZD982361347, AZD982471096.<sup>3</sup>

f. The Respondent’s approximately 534-acre Facility is located on land owned by the State, near Mesa Arizona (see Appendix A). The Facility, a munitions

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<sup>2</sup> RCRA Facility Assessment Report for Talley Defense Systems, Inc. Mesa, Arizona, April 1994 (1994 RFA), at section 6.2.9.

<sup>3</sup> Over time, these multiple EPA ID numbers were assigned to different areas at the Facility, denoted as Plants 1, 2, 3, 4, 5, 6 and the “Burn Ground.” The Facility addressed in this Order encompasses all of the areas covered by these EPA ID numbers. See 1994 RFA at Section 2.0.

manufacturing operation, previously treated reactive (D003) waste propellant through open burning from 1966 to 2006 in the TTU. The waste propellant burned included lead nitrate, ammonium perchlorate, ammonium nitrate, sodium azide, and magnesium teflon. The RCRA Facility Assessment (RFA) Report dated April 1994 identified 52 Solid Waste Management Units (SWMUs) and 16 Areas of Concern (AOCs) at the Facility. There are two distinct groundwater plumes with known contaminants that include perchlorate, 1,4-dioxane, and VOCs. One plume originates at the Plant No. 3 Former WBO SWMU and one plume originates from the TTU, with a source area distance approximately 1.4 miles apart.

g. The RFA and Respondent's September 6, 2017 Post-Closure Permit Application for the Thermal Treatment Unit documents releases of Hazardous Wastes to the environment, including from the following areas:

(1) **Former Water Bore Out at Plant No. 3:** At the Former WBO, Respondent used a high-pressure water lance to remove propellant from devices such as unusable rocket motors beginning around 1970.<sup>4</sup> The propellant-impacted water was discharged to concrete pits for evaporation. The residue in the pits was then open burned, which resulted in emissions to the air. There is a known groundwater plume from this unit that has not been fully characterized that has been found to extend approximately three miles to the south. The contaminants of concern include perchlorate.

(2) **Thermal Treatment Unit:** Through historical operation of the TTU, releases of lead to air resulted in deposition on the SRPMIC land. There is also a known groundwater plume of perchlorate, 1,4-dioxane, and VOCs from the unit on SRPMIC land.

(3) Several data gaps were reported where units were not investigated, or areas of known contamination were not fully characterized. Examples include aerial deposition, full groundwater characterization, soil characterization at the TTU, and other contaminants of concern including VOCs detected in groundwater downgradient of Plant No. 3.

h. Hazardous Wastes may further migrate into the environment by the following pathways:

- Aerial deposition
- Soil/soil vapor to groundwater,
- Groundwater migration,
- Groundwater to surface water migration,
- Groundwater to soil/soil vapor, and
- Soil/soil vapor to indoor air migration (vapor intrusion).

i. Respondent conducted partial interim measures to address perchlorate, VOCs, dioxins, and lead. Respondent conducted investigations and Interim Measures at the Facility on two distinct groundwater plumes. Investigations determined that perchlorate and

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<sup>4</sup> 1994 RFA, at section 6.2.9. The TTU is the "Burn Ground."

VOCs are present in both plumes, and 1,4-dioxane is present in the plume emanating from the TTU. At some wells, VOC levels in the groundwater exceed the RCRA toxicity threshold for Hazardous Wastes for their respective compounds. Soil removal as a result of contamination from lead has occurred at the TTU with levels exceeding the RCRA toxicity threshold for Hazardous Wastes.

j. The Facility borders land owned by the State, the SRPMIC, and private owners. The TTU is surrounded on three sides by SRPMIC land and one side by State land. Respondent conducted interim measures to address lead contamination in soils on-site and on SRPMIC land and there is known groundwater contamination on SRPMIC land. Additional investigation, interim measures, and corrective measures will be necessary on-site and off-site, including on State land and on SRPMIC land.

k. Known detections within environmental media include 1,4-dioxane, VOCs, dioxins, lead, and perchlorate. Due to the historic open burning of magnesium teflon, there is the potential for the environmental release of PFAS, more specifically polytetrafluoroethylene and its breakdown products.

l. The regulatory Hazardous Wastes, Hazardous Constituents, perchlorate, and/or PFAS identified above may pose a threat to human health or the environment.

m. The Facility is located in an arid mountainous environment in Arizona. Given the large size of the Facility, the terrain varies as does the depth to groundwater. Fractured bedrock is encountered underneath the TTU with a low-yield groundwater aquifer. The TTU is adjacent to the Salt River and surrounded by the SRPMIC land on three sides. Depth to water at the TTU ranges from 32-52 feet below grade. The area around the WBO is relatively flat and the depth to groundwater is approximately 170-300 feet below grade. There are no known drinking water wells used for human consumption within the known contaminated plume area. However, the regional aquifer is used as a drinking water source, and there is no prohibition on the future use of the contaminated plume area by the SRPMIC or any adjacent property owner.

n. Releases from the Facility have migrated off-site. There are two known groundwater plumes, one from the former WBO and one from the TTU. Neither plume has been fully characterized. The WBO plume is approximately three miles long and Off-site Property includes various businesses, residential homes, an orphanage, an airport, several golf courses, and an aggregate pit facility. The plume from the TTU has migrated to SRPMIC land, and Off-site Property includes a Primate Research Center that reportedly uses the well water for washing down cages and other non-potable uses, as well as potable use for non-humans (i.e., primates only).

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

13. Based on the Findings of Fact set forth above, EPA has determined that:

a. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

b. Respondent is the operator of a facility that has operated under interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

c. Certain wastes and constituents found at the Facility are Hazardous Wastes pursuant to Sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903(5) and 6921.

d. There is or has been a release of Hazardous Wastes into the environment from the Facility.

e. The actions required by this Order are necessary to protect human health or the environment.

## **VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND EPA PROJECT COORDINATOR**

14. Within ten (10) days after the Effective Date, Respondent shall designate and notify EPA regarding its Project Coordinator. Respondent's notice to EPA must include the Project Coordinator's name, title, address, telephone number, email address, and qualifications. The Project Coordinator must have sufficient expertise to coordinate the Work and must be present at the Facility or readily available during implementation of the Work. EPA is entitled to disapprove the designated Project Coordinator in its discretion within thirty (30) days of Respondent's notice by providing a written notice to Respondent. If EPA disapproves of the designated Project Coordinator, Respondent shall designate and notify EPA of an alternate within sixty (60) days of receipt of written notice from EPA. EPA has designated Amanda Cruz of the Region 9 Land, Chemicals, and Redevelopment Division as EPA's Project Coordinator. EPA and Respondent shall have the right, subject to this Paragraph, to change their designated Project Coordinators. Respondent shall notify EPA at least fifteen (15) days before such a change is made, or as soon as practicable if unable to meet the fifteen (15) days. The initial notification by Respondent of a change in the Project Coordinator may be made orally but shall be promptly followed by a written notice.

15. Respondent shall retain one or more contractors to perform the Work and shall, within ten (10) days after the Effective Date, notify EPA of the name(s), title(s), and qualifications of such contractor(s). Respondent shall also notify EPA of the name(s), title(s), and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least thirty (30) days prior to commencement of such Work. EPA retains the right to disapprove any or all of the contractors and/or subcontractors retained by Respondent by providing written notice to Respondent. If EPA disapproves a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within sixty (60) days after receipt of EPA's written notice. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Mar. 2001, reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons

undertaking the Work for Respondent shall be subject to EPA review for verification that such persons meet objective assessment criteria (e.g., experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

16. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to EPA's Project Coordinator in accordance with Section XIII (Reporting and Document Certification). EPA's Project Coordinator has the authority to oversee Respondent's implementation of this Order. The absence of EPA's Project Coordinator from the Facility shall not be cause for the stoppage of Work unless specifically directed by EPA's Project Coordinator.

## VIII. WORK TO BE PERFORMED

### 17. General Work Requirements

a. Pursuant to Section 3008(h) of RCRA, Respondent agrees to and is hereby ordered to perform the Work in accordance with any workplans or schedules developed pursuant to this Order. Respondent shall perform all Work undertaken pursuant to this Order in a manner consistent with RCRA and other applicable federal, state, and SRPMIC laws and their implementing regulations and applicable EPA guidance documents. Relevant guidances include, but are not limited to, "RCRA Corrective Action Plan" (OSWER Directive 9902.3-2A, May 1994), "RCRA Groundwater Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1, September 1986), "Test Methods For Evaluating Solid Waste" (SW-846, November 1986), Results-Based Approaches to Corrective Action (updated 7/26/00), and the Documentation of Environmental Indicator Determination Guidance, relevant portions of the Model Scopes of Work for RCRA Corrective Action, and EPA's various risk assessment guidance documents, and the 2016 Public Participation Manual. All Work should take into account the protection of cultural resources when there is a potential impact to SRPMIC land.

b. For any regulation or guidance referenced in the Order, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance only after Respondent receives notification from EPA of the modification, amendment, or replacement.

c. EPA acknowledges that Respondent has performed work on some of the tasks required by this Order. Respondent also has made available some of the information and data required by this Order. This previous work may be used to meet the requirements of this Order upon submission to and formal approval by EPA.

d. An initial schedule for the progress reports and other deliverables pursuant to this Order (including the reports and workplans described in Paragraph 18 below) is included as Appendix C (Schedule). All deliverables and tasks required under this Order must be submitted or completed by the deadlines or within the time durations listed in the Schedule. As set forth in Paragraph 18, Respondent shall submit revised schedules for EPA approval. Upon EPA's approval, the revised Schedule(s) will supersede the attached schedule and any previously approved schedule and will be incorporated into and become an enforceable part of this Order.

e. Respondent shall submit to EPA a Health and Safety Plan (HASP) that describes all activities to be performed to protect onsite personnel, area residents, and other offsite employees that could be impacted by physical, chemical, and all other hazards posed by the Work. Respondent shall develop the HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should cover all Work and should be updated, as appropriate, to cover activities after Work completion. EPA does not approve the HASP.

f. All written documents prepared by Respondent pursuant to this Order shall be submitted according to the procedures set forth in Section XIII (Reporting and Document Certification). With the exception of progress reports and the HASP, all such submittals will be reviewed and approved by EPA in accordance with Section XIV (Agency Approvals/Additional Work/Modifications).

g. Respondent will communicate frequently and in good faith with EPA to assure successful completion of the requirements of this Order. In addition, Respondent shall schedule a meeting with EPA at least once a quarter to discuss the Work proposed and performed under this Order.

h. Respondent shall establish a publicly accessible repository and website for information regarding Facility activities and conduct public outreach and involvement activities as requested by EPA.

i. If, at any time while performing Work, Respondent identifies an immediate or potential threat to human health or the environment, discovers new releases of COPC, or discovers new SWMUs or Areas of Concern not previously identified, Respondent shall notify EPA's Project Coordinator orally within forty-eight (48) hours of such discovery, and in writing within five (5) days after such discovery, summarizing the immediacy and magnitude of the potential threat(s) to human health or the environment. Upon written request of EPA, Respondent shall submit to EPA any relevant document (e.g., a revised workplan) that identifies necessary actions to mitigate the newly identified circumstances. If EPA determines that immediate action is required, EPA's Project Coordinator may orally agree to the proposed necessary actions prior to EPA's receipt of the documentation. In this situation, Respondent may have additional notification or other obligations under RCRA, CERCLA, or another legal authority.

## 18. Phases of Corrective Action

a. **Public Participation:** Within sixty (60) days after the Effective Date, Respondent must establish a website to serve as a public repository for information on the Facility. This website shall be updated with each EPA-approved submittal in the Order. A fact sheet on the Facility shall be prepared by the Respondent within sixty (60) days of the Effective Date and submitted to EPA and published on the website after EPA approval. The time for the release of a website and a fact sheet are to allow for the development of a Draft Communication Plan (see Paragraph 18.e(4)(1)).

b. **Existing Interim Measures.** The issuance of this Order does not alter Respondent's responsibilities to continue any existing IMs at the Facility and at Off-Site properties. Existing IMs will be memorialized in the Current Conditions Report described below. Any request to discontinue an existing IM shall be sent to EPA in writing no less than sixty (60) days prior to the anticipated discontinuance of the IM. The Respondent may not discontinue the IM until EPA has responded in writing either with concurrence or modification.

c. **Current Conditions Report.** Within one hundred eighty (180) days after the Effective Date, Respondent must submit to EPA for approval in accordance with Section XIII (Reporting and Document Certification) of this Order a Current Conditions Report that includes any recent sampling data from the Facility, a summary of the historic operations, a summary of previous investigations and corrective actions, a summary of all IM performed to date, a summary of all previous compliance violations, all known COPC releases to the environment, the physical setting of the Facility and maps of the Facility setting and layout. The report shall include a table that includes all of the hazardous waste management units, SWMUs, and AOCs, a brief description of the unit/concern, their current status, what has been done to date for that unit/AOC, recommendation for future work, and reference document that addresses each unit/AOC.

d. **Conceptual Site Model.** Within sixty (60) days after the Effective Date and in the future upon notice from the EPA Project Coordinator, Respondent must submit to EPA for approval in accordance with Section XIII (Reporting and Document Certification) of this Order a base Conceptual Site Model (CSM) that addresses potential fate and transport of COPC releases to the soil and groundwater and pathways to actual or potential receptors, and any areas where the pathways have not been fully evaluated and determined. This CSM will be updated annually to reflect any new information developed during the investigation and corrective actions stages to better guide decision-making.

e. **RCRA Facility Investigation (RFI)**

(1) Within thirty (30) days after the Respondent's receipt of a written request from the EPA Project Coordinator, Respondent shall meet with the EPA Project Coordinator to discuss specific EPA guidance for the RFI update.

(2) Within one hundred eighty (180) days of written notice by the EPA Project Coordinator, Respondent shall submit to EPA for review and approval a RCRA Facility Investigation Workplan and project schedule for an RFI Workplan to update the RFI. Once approved by EPA, Respondent shall implement the RFI Workplan according to the approved project schedule.

(3) The RFI Workplan shall be prepared to document the procedures and provide a specific schedule that the Respondent shall use to conduct any investigations necessary to:

(a) Determine the presence, magnitude, concentration, extent, direction, and rate of movement of any COPC within and beyond the Facility boundary;

- (b) Provide any further characterization of the environmental setting and/or the sources and nature of COPC;
- (c) Characterize the potential pathways of contaminant migration;
- (d) Identify actual or potential human and ecological receptors;
- (e) Identify any additional SWMUs or AOCs;
- (f) Collect data to develop IMs to stabilize contamination, protect human health and/or stem further contaminant migration; and
- (g) Collect data that will support the development of alternatives from which corrective measures will be selected by EPA.

(4) The RFI Workplan shall include the following sections:

- (a) RFI scope;
- (b) RFI Workplan Objectives;
- (c) Environmental Setting and Characterization Plan;
- (d) Description of Current and Previous Investigation and IM;
- (e) Interim Measures;
- (f) Potential Receptor Identification Plan (ecological and human);
- (g) RFI Project Management Plan;
- (h) RFI Sampling and Analysis Plan;
- (i) RFI Data Quality Objectives;
- (j) RFI Quality Assurance Project Plan;
- (k) Data Management Plan;
- (l) Communications Plan;
- (m) Community Relations Plan; and
- (n) Schedule for Implementation of the Workplan, including preparation and submission of preliminary and final reports to EPA.

(5) The Community Relations Plan shall, at a minimum, include:

- (a) Development of a Stakeholder list;
- (b) An assessment of community concerns;
- (c) Development of a mailing list;
- (d) Conducting an open house or informal meeting in a public location where people can talk to Agency officials and Respondent on a one-to-one basis, or a virtual meeting if Covid-19 mandates restrict in-person meetings;
- (e) Preparing fact sheets summarizing the RFI findings and current and/or proposed corrective action activities. All fact sheets shall be reviewed and approved by EPA prior to public distribution;
- (f) Determining what languages other than English may help the information reach as many people as possible, and providing information to non-English-speaking communities in the appropriate language, as necessary. This includes performing a baseline survey of



nearby residents and interested stakeholders to determine what languages are spoken in the area;

(g) Maintaining an easily accessible repository (such as a town hall or public library) of information on the corrective action program, including the Order, approved Workplan, and reports;

(h) Maintaining electronic copies of information on the corrective action program that can be made available to the public upon request; and

(i) Necessary elements in the 2016 EPA Public Participation Manual.

(6) Within thirty (30) days of EPA approval of the RFI Workplan, Respondent shall begin implementation of the RFI by performing an investigation as called for and in accordance with the schedule in the approved RFI Workplan.

(7) Respondent shall submit a draft RFI Report to EPA for review and comment in accordance with the EPA-approved RFI Workplan schedule.

(8) After receipt of EPA's comments on the draft RFI Report, Respondent shall submit a final RFI Report to EPA for approval in accordance with the EPA-approved RFI Workplan schedule. EPA will review the RFI Report and notify Respondent in writing of EPA's approval/disapproval, or modification in accordance with Section XIII (Reporting and Document Certification) of this Order. Once the report is approved this report shall be posted to the website established in Paragraph 18a.

**f. Environmental Indicator Reports**

(1) Concurrent with the submission of an RFI Workplan, Respondent shall submit to the EPA Project Coordinator for approval in accordance with Section XIII (Reporting and Document Certification) of this Order Environmental Indicator Reports for the Facility and any Off-site Property that has been impacted, that provide the status of the following two interim Environmental Goals. Respondent shall update and submit these Environmental Indicator Reports to EPA for approval in accordance with Section XIII (Reporting and Document Certification) on an annual basis. The Environmental Indicators will only need to be published to the website established in Section 18.a upon EPA's request.

(a) All current human exposures to contamination at or from the Facility are under control. That is, that there are no "unacceptable" human exposures to "contamination" (i.e., contaminants in concentrations in excess of appropriate risk-based levels) that can be reasonably expected under current land- and groundwater-use conditions (for all "contamination" subject to RCRA corrective action at or from the identified Facility (i.e., site-wide)).

(b) Migration of contaminated groundwater at or from the Facility is stabilized. That is, that the migration of "contaminated" groundwater has stabilized, and that monitoring will be conducted to

confirm that contaminated groundwater remains within the original “area of contaminated groundwater” (for all groundwater “contamination” subject to RCRA corrective action at or from the identified Facility (i.e., site-wide)).

**g. Risk Assessment/Clean-up Standards**

(1) Within ninety (90) days of EPA’s approval of the RFI Report, and/or Respondent’s receipt of a written request from EPA, Respondent shall submit a workplan and schedule for performing a risk assessment with the goal of proposing clean-up standards necessary to address COPC as defined in the RFI.

(2) Within thirty (30) days of EPA’s approval of the risk assessment schedule, Respondent shall begin implementation of a site-specific exposure and risk assessment to propose any necessary clean-up standard. Clean-up standards will be the EPA Maximum Contaminant Levels (MCLs), EPA Regional Screening Levels (RSL), or Arizona Health-Based Guidance Levels (HBGLs) where available or will be risk-based where an established clean-up standard is not available.

(3) Respondent shall develop, and submit to EPA for approval, a site-specific exposure and risk assessment/clean-up standards report in accordance with the approved risk assessment workplan and schedule. The Report shall address proposed site-specific interim and final clean-up standards for the COPC as defined in the RFI. The final EPA approved report shall be published on the website established in Paragraph 18.a.

**h. Corrective Measures Study (CMS)**

(1) Within ninety (90) days after Respondent’s receipt of a written request from EPA, Respondent shall submit to EPA for review and approval a CMS Workplan and schedule. Once approved by EPA, Respondent shall implement the CMS Workplan according to the approved schedule.

(2) The CMS Workplan shall provide, at a minimum, the following information:

- (a) a Facility-specific description of the overall purpose of the CMS;
- (b) the general approach to investigating and evaluating potential corrective measures;
- (c) the corrective measure objectives, including proposed target Media Cleanup Standard(s) (MCS) and points of compliance;
- (d) the specific corrective measure technologies and/or corrective measure alternatives to be studied;
- (e) a description of any proposed pilot, laboratory or bench scale studies; and

(f) a description of overall project management, including a proposed schedule for implementing the CMS Workplan and a proposed outline for the CMS Report.

(3) In accordance with the CMS Workplan, Respondent shall submit to EPA for review and approval a CMS Report. When the final report has been approved by EPA, the final report shall be published on the website established in Paragraph 18a.

(4) The CMS Report shall contain an estimate of the cost, including capital and annual operation and maintenance costs, and a recommendation as to which corrective measures, in Respondent's opinion, are the most appropriate, and the rationale for such recommendation. In addition, the CMS Report shall contain, at a minimum, information to show how each of the corrective measure alternatives studied will:

- (a) be protective of human health or the environment;
- (b) attain the media cleanup standards set by the Risk Assessment/Clean-up Standards;
- (c) control the source(s) of release(s) so as to reduce or eliminate, to the extent practicable, further releases of COPC that might pose threats to human health or the environment;
- (d) comply with applicable standards for waste management;
- (e) achieve long-term reliability and effectiveness;
- (f) reduce toxicity, mobility, or volume of waste; and
- (g) achieve short-term effectiveness.

## 19. Public Comment and Participation

a. After approval of the CMS Report, EPA will provide the public with an opportunity to review and comment on the proposed corrective measures, including EPA's justification for proposing such corrective measures (the "Statement of Basis"). The Respondent shall follow the 2016 EPA Public Participation Manual. The public comment documents and EPA's Statement of Basis shall be published on the website established in Paragraph 18a.

b. Following the public comment period, EPA will select the final corrective measures and will notify the public of the decision and rationale in a Final Decision and Response to Comments. If the corrective measures selected by EPA differ significantly from the corrective measures recommended in the Statement of Basis, EPA will explain in the Final Decision and Response to Comments the reason for such difference. The public notifications, Final Decision, and Response to comments shall be published on the website established in Paragraph 18a.

## 20. Corrective Measures Implementation (CMI)

a. After public comment and participation is completed in accordance with Paragraph 19, and EPA has selected the corrective measures, EPA will provide Respondent with written notice of the selected measures. Within one hundred twenty (120) days after EPA's

selection of the corrective measures and written notification by EPA, Respondent shall submit to EPA for review and approval a CMI Workplan and schedule. Once approved by EPA, Respondent shall implement the CMI Workplan according to the approved schedule.

b. The CMI Workplan shall be designed to facilitate the design, construction, operation, maintenance, and monitoring of corrective measures for the Facility. The project schedule shall provide for Respondent to complete as much of the initial construction Work as practicable within one year after EPA selects the final corrective measures and for Respondent to complete all final corrective measures within a reasonable period of time to protect human health or the environment.

c. Consistent with the CMI Workplan and selected corrective measures, the CMI Workplan and project schedule may need to address the following information:

- (1) Conceptual, intermediate, and final designs for construction and implementation of the selected corrective measures;
- (2) Criteria for construction completion;
- (3) Anticipated operation and maintenance; and
- (4) Outlines of anticipated reports, including a Construction Completion Report and a Corrective Measures Completion Report.

d. The draft and final Corrective Measures Completion Report shall be submitted in accordance with the approved schedule. The final EPA approved final Corrective Measures Completion Report shall be published on the website established in Paragraph 18a. The Corrective Measures Completion Report shall include, at a minimum, the following information:

- (1) Purpose of the corrective measures;
- (2) Synopsis of the corrective measures;
- (3) Summary of corrective measures completion criteria (i.e., process and criteria for determining when corrective measures, maintenance and monitoring may cease);
- (4) Demonstration that the completion criteria have been met;
- (5) Summary of work accomplishments;
- (6) Summary of significant activities that occurred during operations;
- (7) Summary of inspection findings; and
- (8) Summary of total estimated operation and maintenance costs.

## IX. QUALITY ASSURANCE

21. As part of each sampling workplan, Respondent shall include a Quality Assurance Project Plan (QAPP) for EPA review and approval. The QAPP addresses sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of Respondent's quality assurance, quality control, and chain of custody procedures for all sampling, monitoring, and analytical activities.

22. Respondent shall develop the QAPP in accordance with "EPA Requirements for Quality Assurance Project Plans," QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans," QA/G-5, EPA/240/R 02/009, (Dec. 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005), or other applicable guidance as identified by EPA. The QAPP also must include procedures:

- a. To ensure that all analytical data used in decision making relevant to this Order are of known and documented quality;
- b. To ensure that EPA and its authorized representatives have reasonable access to laboratories used by Respondent (Respondent's Labs) in implementing the Order;
- c. To ensure that Respondent's Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
- d. To ensure that Respondent's Labs perform all analyses using EPA-accepted methods according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)" or other methods approved by EPA;
- e. To ensure that Respondent's Labs participate in an EPA-accepted quality assurance/quality control (QA/QC) program or other QA/QC program acceptable to EPA;
- f. For Respondent to provide EPA with notice at least thirty (30) days prior to any sample collection activity;
- g. For Respondent to provide split samples or duplicate samples to EPA upon request; any analysis of such samples shall be in accordance with the approved QAPP;
- h. For EPA to take any additional samples that it deems necessary;
- i. For EPA to provide to Respondent, upon request, split samples or duplicate samples in connection with EPA's oversight sampling;
- j. For Respondent to submit to EPA all sampling and test results and other data in connection with the implementation of this Order.

## X. PROPERTY REQUIREMENTS

### 23. Agreements Regarding Access and Non-Interference.

a. Respondent shall, with respect to the Facility, provide EPA and its representatives, contractors, and subcontractors with access at all reasonable times to the Facility to conduct any activity regarding the Order, including those activities listed in Paragraph 23.c (Access Requirements); and refrain from using the Facility in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to COPC, or interfere with or adversely affect the implementation, integrity, or protectiveness of the corrective action.

b. In addition, Respondent shall, with respect to Off-site Property, use best efforts to secure from Off-site Property Owner an agreement, enforceable by Respondent and by EPA, providing that such Off-site Property Owner provide EPA and its representatives, contractors, and subcontractors with access at all reasonable times to such Off-site Property to conduct any activity regarding the Order, including those activities listed in Paragraph 23.c (Access Requirements); and refrain from using such Off-site Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to COPC, or interfere with or adversely affect the implementation, integrity, or protectiveness of the corrective action. Respondent shall provide a copy of such access agreement(s) to EPA and the State.

c. **Access Requirements.** The following is a list of activities for which access is required regarding the Facility and Off-site Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA or ADEQ;
- (3) Conducting investigations regarding contamination at or near the Facility;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional corrective action activities at or near the Facility;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;
- (7) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section XI (Access to Information);
- (8) Assessing Respondent's compliance with the Order;

(9) Determining whether the Facility and/or the Off-site 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

(10) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

24. **Proprietary Controls.** If Respondent acquires ownership of the property on which the Facility is located from the owner, or obtains permission from the owner, and if it is determined to be necessary during the Corrective Measures Implementation, Respondent shall, with respect to the Facility, execute and record, in accordance with the procedures of this Paragraph, Proprietary Controls that grant a right of access to conduct any activity regarding this Order, including those activities listed in Paragraph 23.c; and grant the right to enforce the land, water, or other resource use restrictions if necessary, or obtain the appropriate executed documents from the owner. In addition, Respondent shall, with respect to any Off-site Property, use best efforts to secure the Off-site Property Owner's cooperation in executing and recording Proprietary Controls that grant a right of access to conduct any activity regarding this Order; and grant the right to enforce the land, water, or other resource use restrictions.

a. **Grantees.** The Proprietary Controls, must be granted to one or more of the following persons and their representatives, as determined by EPA: ADEQ, Respondent, and other appropriate grantees. Proprietary Controls in the nature of a Declaration of Environmental Use Restriction (DEUR) document must include a designation that the State is a "third-party beneficiary" expressly granted the rights of access and the right to enforce the covenants allowing ADEQ to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

b. **Initial Title Evidence.** If Respondent acquires ownership of the property on which the Facility is located or permissions from the State, Respondent shall, within forty-five (45) days of acquiring ownership or permissions:

(1) **Record Title Evidence.** Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that:

(a) 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 the United States, the State, the Respondent, or "To Be Determined;"

(b) Covers the Facility or Off-site Property that is to be encumbered;

(c) Demonstrates that the person or entity that will execute and record the Proprietary Controls is the owner of Facility or Off-site Property;

(d) Identifies all record matters that affect title to the Facility or Off-site Property including all prior liens, claims, rights (such as easements) and encumbrances (collectively, "Prior Encumbrances"); and

(e) 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 Facility or Off-site Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

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

(1) Respondent shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Facility or Off-site Property revealed by the title evidence or otherwise known to the Respondent, unless EPA waives this requirement as provided under Paragraph 24.c(2) - 24.c(4).

(2) Respondent may, by the deadline under Paragraph 24.b, submit an initial request for waiver of the requirements of Paragraph 24.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 Work or result in unacceptable exposure to contaminants at or in connection with the Facility or Off-site Property.

(3) Respondent may, within ninety (90) days after the Effective Date, or if an initial waiver request has been filed, within forty-five (45) days after EPA's determination on the initial waiver request, submit a final request for a waiver of the requirements of Paragraph 24.c(1) regarding any particular Prior Encumbrance on the grounds that Respondent could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

(4) The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.

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

(1) Respondent shall submit all draft Proprietary Controls and draft instruments addressing Prior Encumbrances and draft instruments addressing Prior Encumbrances to EPA for review and approval within one hundred eighty (180) days after EPA's approval of the proposed Proprietary Controls; or if an initial waiver request has been filed, within one hundred thirty five (135) days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within ninety (90) days after EPA's determination on the final waiver request.



(2) Upon EPA's approval of the proposed Proprietary Controls and instruments addressing Prior Encumbrances, Respondent shall, within fifteen (15) days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under Paragraph 24.b. If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Respondent shall secure the immediate recordation of the Proprietary Controls and instruments addressing Prior Encumbrances in the appropriate land records. Otherwise, Respondent shall secure the release, subordination, modification, or relocation under Paragraph 24.c(1), or the waiver under Paragraph 24.c(2) – 24.c(4), regarding any newly-discovered liens, claims, rights, or encumbrances, prior to recording the Proprietary Controls and instruments addressing Prior Encumbrances.

(3) If Respondent submitted a title insurance commitment under Paragraph 24.b(1), then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, Respondent shall obtain a title insurance policy that:

- (a) Is consistent with the original title insurance commitment;
- (b) Is for \$100,000 or other amount approved by EPA;
- (c) Is issued to the Respondent or other person approved by EPA; and
- (d) Is issued on a current American Land Title Association form or other form approved by EPA.

(4) Respondent shall, within thirty (30) days after securing the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide to EPA and to all grantees of the Proprietary Controls:

- (a) Certified copies of the recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk's recording stamps; and
- (b) The title insurance policy(ies), if any or other approved form of updated title evidence as of the date of recording of the Proprietary Controls and instruments.

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

25. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restrictions. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, Respondent shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access and/or use restrictions. If Respondent is unable to accomplish what is required through "best

efforts” in a timely manner, Respondent shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access and/or use restrictions.

26. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls, or notices of contamination, notices of administrative action, or other notices are needed, Respondent shall cooperate with EPA’s and the State’s efforts to record, secure, and ensure compliance with such Institutional Controls.

27. In the event of any Transfer of the Facility, unless EPA otherwise consents in writing, Respondent shall continue to comply with its obligations under the Order, including its obligation to secure access and ensure compliance with any use restrictions regarding the Facility and to implement, maintain, monitor, and report on Institutional Controls.

28. Notwithstanding any provision of the Order, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions and institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

## **XI. ACCESS TO INFORMATION**

29. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including in electronic form) (hereinafter referred to as “Records”) within Respondent’s possession or control or that of its contractors or agents relating to activities at the Facility 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 related to the Work. Respondent shall also, upon request, make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

### **30. Privileged and Protected Claims**

a. Respondent may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 30.b and except as provided in Paragraph 30.c.

b. If Respondent asserts such a privilege or protection, Respondent 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, each addressee, and each recipient; a description of the Record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that Respondent claims 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 Respondent’s favor (and subject to Paragraph 33).

c. Respondent may make no claim of privilege or protection regarding:

(1) Any data regarding the Facility, 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 Facility; or

(2) The portion of any Record that Respondent is required to create or generate pursuant to this Order.

31. **Business Confidential Claims.** Respondent may assert that all or part of a Record provided to EPA under this Section or Section XII (Record Retention) is business confidential to the extent permitted by and in accordance with 40 C.F.R. §§ 2.203 and 270.12(a). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondent asserts business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

32. Notwithstanding any provision on this Order, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under RCRA and any other applicable statutes or regulations.

## XII. RECORD RETENTION

### 33. Record Retention

a. Until ten (10) years after EPA issues the Acknowledgement of Termination pursuant to Paragraph 77, 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 this Order or to Hazardous Waste management and/or disposal at the Facility. Respondent must also retain, and instruct its contractors and agents to preserve, for the same time period 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 performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

b. At the conclusion of this record retention period, Respondent shall notify EPA's Project Coordinator or, in his or her absence, the Manager of the LCRD Permits Branch, EPA Region 9 at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA and except as provided in Paragraph 30 (Privileged and Protected Claims), Respondent shall deliver any such records to EPA.

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

### XIII. REPORTING AND DOCUMENT CERTIFICATION

34. Beginning with the first full month following the Effective Date, and throughout the period that this Order is effective, Respondent shall provide EPA with quarterly progress reports. Progress reports are due not more than fifteen (15) days after the end of the reporting period. EPA may adjust the frequency of progress reports to be consistent with site-specific activities.

35. **General Requirements for Deliverables.** Respondent shall submit all deliverables in electronic form to [R9Landsubmit@epa.gov](mailto:R9Landsubmit@epa.gov), and [cruz.amanda@epa.gov](mailto:cruz.amanda@epa.gov). Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 36. All other deliverables shall be submitted to EPA in the electronic form specified by EPA's Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondent shall also provide EPA with paper copies of such exhibits. All documents submitted pursuant to this Order shall be sent to:

Amanda Cruz  
EPA Project Coordinator  
EPA Region 9 (LND 4-2)  
Land, Chemicals, and Redevelopment Division  
75 Hawthorne St.  
San Francisco, CA 94105  
[Cruz.amanda@epa.gov](mailto:Cruz.amanda@epa.gov)

Documents to be submitted to Respondent shall be sent to:  
Project Coordinator  
Angel Soto  
4051 North Higley Road, Mesa, AZ 85215]  
[jsoto@nammo.us](mailto:jsoto@nammo.us)

36. Technical Specifications.

a. Sampling and monitoring data should be shall in standard Electronic Data Deliverable (EDD) format. Microsoft Excel is the preferable format for the delivery of data. Other delivery methods may be allowed upon EPA approval if electronic direct submission presents a significant burden or as technology changes.

b. Spatial data, including spatially-referenced data and geospatial data, shall be submitted as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum.

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

c. Each file must include an attribute name for each unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

d. Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Facility.

37. All deliverables that are submitted pursuant to Section VIII (Work to be Performed) must be signed by Respondent's Project Coordinator, or other responsible official of Respondent, and must contain the following statement:

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

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

#### **XIV. AGENCY APPROVALS/ADDITIONAL WORK/MODIFICATIONS**

##### **38. EPA Approvals**

###### **a. Initial Submissions**

(1) After review of any deliverable that is required to be submitted for EPA approval under this Order, EPA will:

- (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.

(2) EPA also may modify the initial submission to cure deficiencies in the submission if:

- (a) EPA determines that disapproving the submission and awaiting a resubmission would cause disruption to the Work; or
- (b) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. **Resubmission.** Upon receipt of a notice of disapproval under Paragraph 38.a(1)(c) (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 38.a(1)(b), Respondent shall, within ninety (90) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may:

- (1) Approve, in whole or in part, the resubmission;
- (2) Approve the resubmission upon specified conditions;
- (3) Modify the resubmission;
- (4) Disapprove, in whole or in part, the resubmission, requiring Respondent to correct the deficiencies; or
- (5) Any combination of the foregoing.

c. **Implementation.** Upon approval, approval upon conditions, or modification by EPA under Paragraph 38.a or 38.b, of any such deliverable, or portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and become an enforceable part of this Order; and (2) Respondent shall take any action required by the deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under Paragraph 38.a or resubmitted under Paragraph 38.b does not relieve Respondent of any liability for stipulated penalties under Section XVI (Delay in Performance/Stipulated Penalties).

### 39. **Additional Work**

a. EPA may determine that certain tasks, including investigatory work, engineering evaluation, IMs, procedure/methodology modifications, or land, water, or other resource use restrictions, Proprietary Controls, or Institutional Controls, are necessary in addition to or in lieu of the tasks included in any EPA-approved workplan to meet the purposes set forth in Section III (Statement of Purpose). If EPA makes such a determination, EPA will notify Respondent in writing. Unless otherwise stated by EPA, within thirty (30) days after the receipt of such determination, Respondent shall submit for EPA approval a workplan for the Additional Work. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed). Upon approval of the workplan by EPA, Respondent shall implement it in accordance with the schedule and provisions contained therein. This Section does not alter or

diminish EPA's Project Coordinator's authority to make oral modifications to any plan or schedule pursuant to Paragraph 40.a.

#### 40. **Modifications**

a. EPA's Project Coordinator may modify any workplan, schedule, or SOW, in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of EPA's Project Coordinator's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

b. If Respondent seeks permission to deviate from any approved workplan, schedule, or SOW, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from EPA's Project Coordinator pursuant to Paragraph 40.a.

c. This Order may only be amended in writing by mutual agreement of EPA and Respondent. Any such amendment shall be in writing, shall be signed by both parties, shall have as its Effective Date the date on which it is signed by EPA, and shall be incorporated into this Order by reference.

d. No informal advice, guidance, suggestion or comment by EPA's Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is modified in writing pursuant to Paragraph 40.a.

### **XV. FINANCIAL ASSURANCE**

#### 41. **Estimated Cost of the Work**

a. Respondent shall submit to EPA detailed written estimates, in current dollars, of the cost of hiring a third party to perform the Work to be performed under this Order (hereafter "Estimated Cost of the Work"). The Estimated Cost of the Work shall account for the total costs of the Work activities that are covered, as described in Section VIII, and any EPA-approved workplan(s), including any necessary long term costs, such as operation and maintenance costs and monitoring costs, and including the costs of activities pursuant to the VRRP at Plant No. 3. A third party is a party who:

(1) is neither a parent nor a subsidiary of Respondent, and

(2) does not share a common parent or subsidiary with Respondent.

The cost estimates shall not incorporate any salvage value that may be realized from the sale of wastes, Facility structures or equipment, land or other assets associated with the Facility.

b. Within sixty (60) days after EPA has approved each of the workplans described under Section VIII, Respondent shall submit to EPA for review and approval an initial Estimated Cost of the Work described. For example, within sixty (60) days after EPA has approved the RFI Workplan required under Section VIII Paragraph 18.e, Respondent shall submit to EPA for review and approval an initial Estimated Cost of the Work that covers RCRA Facility Investigation under Section VIII.

c. For the VRP work done at Plant No. 3, within thirty (30) days after ADEQ approves Respondent's workplan pursuant to ARS § 49-175, Respondent shall submit to EPA for review and approval an initial Estimated Cost of the Work that covers the activities in the approved workplan.

d. Concurrent with the submission of additional EPA-approved workplan(s) required under Section VIII (Work to Be Performed), Respondent shall submit a revised Estimated Cost of the Work.

e. Respondent shall annually adjust the Estimated Cost of the Work for inflation within sixty (60) days after the close of Respondent's fiscal year until the Work required by this Order and the VRP is completed. In addition, Respondent shall adjust the Estimated Cost of the Work if EPA determines that any Additional Work is required, pursuant to Paragraph 39, or if any other condition increases the cost of the Work to be performed under this Order.

f. Respondent shall submit each Estimated Cost of the Work to EPA for review. EPA will review each cost estimate and notify Respondent in writing of EPA's approval, disapproval, or modification of the cost estimate.

#### **42. Assurances of Financial Responsibility for Completing the Work**

a. In order to secure the full and final completion of the Work in accordance with this Order, Respondent shall establish and maintain financial assurance. EPA acknowledges that Respondent has established a Letter of Credit for \$900,000 with ADEQ as the beneficiary to address the TTU. Respondent shall establish and maintain financial assurance for the benefit of the EPA in the amount of the most recent Estimated Cost of the Work in excess of \$900,000.

b. To address the remaining costs of investigation and interim corrective actions, Respondent may use one or more of the financial assurance forms generally described herein. Any and all financial assurance instruments provided pursuant to this Order shall be satisfactory in form and substance as determined by EPA.

(1) A trust fund established for the benefit of EPA, administered by a trustee who has the authority to act as a trustee under Federal and State law and whose trust operations are regulated and examined by a Federal or State agency and that is acceptable in all respects to the EPA. The trust agreement shall provide that the trustee shall make payments from the fund as an Assistant Director of LCRD directs in writing (a) to reimburse Respondent from the fund for expenditures made by Respondent for Work performed in accordance with this Order, or (b) to pay any other person whom an Associate Director of LCRD



determines has performed or will perform the Work in accordance with this Order. The trust agreement shall further provide that the trustee shall not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the Work under this Order has been successfully completed;

(2) A surety bond unconditionally guaranteeing performance of the Work in accordance with this Order or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in Paragraph 42.b(1) above. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal Bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

(3) An irrevocable letter of credit, payable at the direction of a Region 9 LCRD Associate Director, into a standby trust fund that meets the requirements of the trust fund in Paragraph 42.b(1) above. The letter of credit shall be issued by a financial institution 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; or

(4) A policy of insurance that provides EPA with rights as a beneficiary which are acceptable to EPA and is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy shall be issued for a face amount at least equal to the current Estimated Cost of the Work to be performed under this Order, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted in Paragraph 42.f. The policy shall provide that the insurer shall make payments as the Region 9 LCRD Associate Director directs in writing to reimburse Respondent for expenditures made by Respondent for Work performed in accordance with this Order, or to pay any other person whom the Region 9 LCRD Associate Director determines has performed or will perform the Work in accordance with this Order, up to an amount equal to the face amount of the policy. The policy shall also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (a) the Respondent is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (b) EPA notifies the insurer of Respondent's failure to perform, under Paragraph 43 of this Order.

c. Within sixty (60) days after EPA has approved the RFI Workplan under Paragraph 18.e, Respondent shall submit draft financial assurance instruments and related documents to EPA, concurrently with Respondent's submission of the initial Estimated Cost of the Work, for EPA's review and approval. Within ten (10) days after EPA's approval of both the initial Estimated Cost of the Work, and the draft financial assurance instruments, whichever date is later, Respondent shall execute or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the financial assurance documents reviewed and approved by EPA. Respondent shall submit all executed and/or otherwise finalized instruments or other documents to EPA within

thirty (30) days after EPA's approval of the initial Estimated Cost of the Work and the draft financial assurance instruments, whichever date is later.

d. If Respondent seeks to establish financial assurance by using a letter of credit or a surety bond, Respondent shall at the same time establish, and thereafter maintain, a standby trust fund that meets the requirements of Paragraph 42.b(1) above, into which funds from another financial assurance instrument can be deposited, if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 44.c.

e. Respondent shall submit all financial assurance instruments and related required documents by certified mail and email to the EPA Regional Financial Assurance Coordinator listed below. Copies shall also be sent electronically to the EPA Project Officer and ADEQ. If Respondent considers any of the documents Confidential Business Information (see Paragraph 31), Respondent shall alert the EPA Project Officer and should not transmit same over email.

Jinky Callado  
EPA Regional RCRA Financial Assurance Coordinator  
EPA Region 9 (LND 1-1)  
Land, Chemicals, and Redevelopment Division  
75 Hawthorne St.  
San Francisco, CA 94105  
[Callado.jinky@epa.gov](mailto:Callado.jinky@epa.gov)

f. Respondent may combine more than one mechanism to demonstrate financial assurance for the Work to be performed in accordance with this Order, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments.

g. If at any time EPA determines that a financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, EPA shall so notify Respondent in writing. If at any time Respondent becomes aware of information indicating that any financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work, or for any other reason, then Respondent shall notify EPA in writing of such information within ten (10) days. Within thirty (30) days of receipt of notice of EPA's determination or within thirty (30) days of Respondent's becoming aware of such information, as the case may be, Respondent shall obtain and present to EPA for approval a proposal for a revised or alternative form of financial assurance that satisfies all requirements set forth or incorporated by reference in this Section. In seeking approval for a revised or alternative form of financial assurance, Respondent shall follow the procedures set forth in Paragraph 44.b below.

h. Respondent's inability or failure to establish or maintain financial assurance for completion of the Work shall in no way excuse performance of any other

requirements of this Order, including, without limitation, the obligation of Respondent to complete the Work in strict accordance with the terms of this Order.

i. Any and all financial assurance instruments provided pursuant to Paragraphs 42.b(1), 42.b(2), 42.b(3), or 42.b(4) shall be automatically renewed at the time of their expiration unless the financial assurance provider has notified both the Respondent and the Region 9 Regional RCRA Financial Assurance Coordinator one hundred twenty (120) days prior to expiration, cancellation, or termination of the instrument of a decision to cancel, terminate or not renew a financial assurance instrument. Under the terms of the financial assurance instrument, the one hundred twenty (120) days will begin to run with the date of receipt of the notice by both the Region 9 Regional RCRA Financial Assurance Coordinator and the Respondent. Furthermore, if Respondent has failed to provide alternate financial assurance and obtain written approval for such alternate financial assurance within ninety (90) days following receipt of such notice by both Respondent and the Region 9 Regional RCRA Financial Assurance Coordinator, then the Region 9 Regional RCRA Financial Assurance Coordinator will so notify the financial assurance provider in writing prior to the expiration of the instrument, and the financial assurance provider shall immediately deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument for the performance of the Work in accordance with this Order.

#### **43. Access to Financial Assurance**

a. In the event that EPA determines that Respondent (i) has ceased implementation of any portion of the Work, (ii) is significantly or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (Performance Failure Notice) to both the Respondent and the financial assurance provider of Respondent's failure to perform. The notice issued by EPA will specify the grounds upon which such a notice was issued and will provide the Respondent with a period of ten (10) days within which to remedy the circumstances giving rise to the issuance of such notice.

b. If Respondent is no longer conducting investigation, interim and final measure requirements pursuant to the VRP for any facilities enrolled in the VRP, and the parties have not amended this Order to include requirements for Respondent to complete corrective measures for the Plant No. 3 and WBO, and any of the circumstances described in Paragraph 43.a have occurred at the Plant No. 3 and WBO, EPA may issue a written notice (Performance Failure Notice) to both the Respondent and the financial assurance provider of Respondent's failure to perform at the Plant No. 3 and WBO. The notice issued by EPA will specify the grounds upon which such a notice was issued and will provide the Respondent with a period of ten (10) days within which to remedy the circumstances giving rise to the issuance of such notice.

c. Failure by the Respondent to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the ten (10) day notice period specified in Paragraph 43.a or b, shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 42.b(1) – 42.b(4). EPA may at any time thereafter direct the financial assurance provider to immediately (i) deposit into the standby trust fund, or a

newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument, or (ii) arrange for performance of the Work in accordance with this Order.

d. If EPA has determined that any of the circumstances described in Paragraphs 43.a or b have occurred, and if EPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the Work in accordance with this Order from the financial assurance provider pursuant to this Order, then, upon receiving written notice from EPA, Respondent shall within ten (10) days thereafter deposit into the standby trust fund, or a newly created trust fund approved by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

e. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least thirty (30) days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation into the relevant standby trust fund or a newly created trust fund approved by EPA to facilitate performance of the Work in accordance with this Order.

f. Respondent may invoke the procedures set forth in Section XVII (Dispute Resolution) to dispute EPA's determination that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 43.a. has occurred. Invoking the dispute resolution provisions shall not excuse, toll, or suspend the obligation of the financial assurance provider under Paragraph 44.c of this Section to fund the trust fund or perform the Work. Furthermore, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion direct the trustee of such trust fund to make payments from the trust fund to any person that has performed the Work in accordance with this Order until the earlier of

(1) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice; or

(2) the date that a final decision is rendered in accordance with Section XVII (Dispute Resolution), that Respondent has not failed to perform the Work in accordance with this Order.

#### 44. **Modification of Amount, Form, or Terms of Financial Assurance**

a. **Reduction of Amount of Financial Assurance.** If Respondent believes that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this Order, Respondent may, at the same time that Respondent submits the annual cost adjustment, pursuant to Paragraph 41.e of this Section, or at any other time agreed to by EPA, submit a written proposal to EPA to reduce the amount of the financial assurance provided under this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining Work to be performed and the

basis upon which such cost was calculated. In seeking approval of a revised financial assurance amount, Respondent shall follow the procedures set forth in Paragraph 44.b(2) of this Section. If EPA decides to accept such a proposal, EPA shall notify Respondent of its decision in writing. After receiving EPA's written decision, Respondent may reduce the amount of the financial assurance only in accordance with and to the extent permitted by such written decision. In the event of a dispute, Respondent may reduce the amount of the financial assurance required hereunder only in accordance with the final EPA Dispute Decision resolving such dispute. No change to the form or terms of any financial assurance provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraph 44.b below.

**b. Change of Form of Financial Assurance**

(1) If Respondent desires to change the form or terms of financial assurance, Respondent may, at the same time that Respondent submits the annual cost adjustment, pursuant to Paragraph 41.e of this Section, or at any other time agreed to by EPA, submit a written proposal to EPA to change the form of financial assurance. The submission of such proposed revised or alternative form of financial assurance shall be as provided in Paragraph (2) below. The decision whether to approve a proposal submitted under this Paragraph 44 shall be made in EPA's sole and unreviewable discretion and such decision shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Order or in any other forum.

(2) A written proposal for a revised or alternative form of financial assurance shall specify, at a minimum, the cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of financial assurance, including all proposed instruments or other documents required in order to make the proposed financial assurance legally binding. The proposed revised or alternative form of financial assurance shall satisfy all requirements set forth or incorporated by reference in this Section. EPA shall notify Respondent in writing of its decision to accept or reject a revised or alternative form of financial assurance submitted pursuant to this Paragraph. Within ten (10) days after receiving a written decision approving the proposed revised or alternative financial assurance, Respondent shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal and such financial assurance shall be fully effective. Respondent shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the EPA Regional Financial Management Officer within thirty (30) days of receiving a written decision approving the proposed revised or alternative financial assurance, with a copy to Jinky Callado, the EPA Project Officer and the ADEQ Project Coordinator. EPA shall release, cancel, or terminate the prior existing financial assurance instruments only after Respondent has submitted all executed and/or otherwise finalized new financial assurance instruments or other required documents to EPA.

c. **Release of Financial Assurance.** Respondent may submit a written request to the Region 9 Regional RCRA Financial Assurance Coordinator that EPA release the Respondent from the requirement to maintain financial assurance under this Section at such time as EPA and Respondent have both executed an “Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right” pursuant to Paragraph 77 of this Order. The Region 9 Regional RCRA Financial Assurance Coordinator shall notify both the Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Order. Respondent shall not release, cancel, or terminate any financial assurance provided pursuant to this Section except as provided in this Paragraph or Paragraph 44.b(2). In the event of a dispute, Respondent may release, cancel, or terminate the financial assurance required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

**XVI. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

45. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 46 and 47 for failure to comply with the requirements of this Order specified below, unless excused under Section XVIII (Force Majeure and Excusable Delay). “Comply” as used in the previous sentence, includes compliance by Respondent with all applicable requirements of this Order, within the deadlines established under this Order. If:

a. An initially submitted or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under Section XIV (Agency Approvals/Additional Work/Modifications); or

b. A resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

**46. Stipulated Penalty Amounts – Work to be Performed (Excluding Deliverables)**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 46.b:

Period of Noncompliance	Penalty Per Violation Per Day
1 <sup>st</sup> through 14 <sup>th</sup> day	\$ 250.00
15 <sup>th</sup> through 30 <sup>th</sup> day	\$ 500.00
31 <sup>st</sup> day and beyond	\$ 1,500.00

b. **Obligations**

(1) Failure to commence, perform, and/or complete Work or major deliverables in a manner acceptable to EPA or at the time required pursuant to this Order.

(2) Establishment and maintenance of financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XV (Financial Assurance).

(3) Failure to comply with any other provisions of this Order in a manner acceptable to EPA.

47. **Stipulated Penalty Amounts – Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Order:

<b>Period of Noncompliance</b>	<b>Penalty Per Violation Per Day</b>
1 <sup>st</sup> through 14 <sup>th</sup> day	\$ 250.00
15 <sup>th</sup> through 30 <sup>th</sup> day	\$ 500.00
31 <sup>st</sup> day and beyond	\$ 1,500.00

48. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within fifteen (15) days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue:

a. With respect to a deficient submission under Section XIV (Agency Approvals/Additional Work/Modifications), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency, or

b. With respect to a decision under Section XVII (Dispute Resolution), during the period, if any, beginning the 21st day after the Negotiation Period begins until the date that EPA issues a final decision regarding such dispute. Nothing in this Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

49. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of such noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in Paragraph 48 regardless of whether EPA has notified Respondent of a violation.

50. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVII (Dispute Resolution) within the thirty-day period.

51. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the thirty-first (31<sup>st</sup>) day after Respondent's receipt of

EPA's demand. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. § 3717, and an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for ninety (90) or more days. In addition, a handling fee of \$15 per month shall be assessed beginning on the thirty-first (31<sup>st</sup>) day after Respondent's receipt of EPA's demand.

52. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be paid to "Treasurer, United States" by Automated Clearinghouse (ACH) to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000  
Contact: Craig Steffen

Payments shall include a reference to the name of the Facility, Respondent's name and address, and the EPA docket number of this action. A copy of the transmittal request shall be sent simultaneously to EPA's Project Coordinator and to the EPA Cincinnati Finance Office by email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov), or by mail to:

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

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

54. Nothing in this Order shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including but not limited to 42 U.S.C. § 6928(h)(2); however, EPA shall not seek civil penalties pursuant to 42 U.S.C. § 6928(h)(2) for any violation for which a stipulated penalty is provided in this Order, except in the case of a willful violation of this Order.

55. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

## **XVII. DISPUTE RESOLUTION**

56. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Order. The parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

57. **Informal Dispute Resolution.** If Respondent objects to any EPA action taken pursuant to this Order, it shall notify EPA in writing of its objection(s) within thirty (30) days



after such action. EPA and Respondent shall have ninety (90) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through informal negotiations (the "Negotiation Period"). Upon request of Respondent, the Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Order.

58. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to EPA's Project Coordinator. EPA may, within twenty (20) days thereafter, submit a statement of position. Thereafter, the EPA Division Director of LCRD, or his/her designee, will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Order. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

59. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Respondent under this Order not directly in dispute, unless EPA provides otherwise in writing. Except as provided in Paragraph 48, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first (1) day of noncompliance with any applicable provision of the Order. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Delay in Performance/Stipulated Penalties).

#### **XVIII. FORCE MAJEURE**

60. "Force majeure," for purposes of this Order, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work.

61. If any event occurs or has occurred that may delay the performance of any obligation under this Order for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's Project Coordinator orally or, in his or her absence, an Associate Director of LCRD, EPA Region 9, within fifteen (15) days of when Respondent first knew that the event might cause a delay. Within thirty (30) days thereafter, Respondent shall provide in writing to EPA an explanation of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the

delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice available documentation supporting its claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 60 and whether Respondent has exercised its best efforts under Paragraph 60, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely notices under this Paragraph.

62. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondent in writing of its decision.

63. If Respondent elects to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution) regarding EPA's decision, Respondent shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 61 and 62. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation(s) of this Order identified to EPA.

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

## **XIX. RESERVATION OF RIGHTS**

65. Notwithstanding any other provisions of this Order, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Facility, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.

66. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, that may pertain to Respondent's failure to comply with any

of the requirements of this Order, including without limitation the assessment of penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2).

67. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.

68. This Order is not intended to be nor shall it be construed to be a permit. Respondent acknowledges and agrees that EPA's approval of the Work and/or workplan does not constitute a warranty or representation that the Work and/or workplans will achieve the corrective measures completion criteria. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

69. Respondent agrees not to contest this Order or any action or decision by EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, Region 9 Associate Directors, or any authorized representative of EPA prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Order. In any action brought by EPA for violation of this Order, Respondent shall bear the burden of proving that EPA's actions were arbitrary and capricious and not in accordance with law.

## **XX. OTHER CLAIMS**

70. By issuance of this Order, EPA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. EPA will not be deemed a party to any contract, agreement or other arrangement entered into by Respondent or its officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this Order.

71. Except as provided in this paragraph, Respondent waives all claims against the United States relating to or arising out of this Order, including, but not limited to, contribution and counterclaims. Respondent reserves and this Order is without prejudice to all rights, claims and defenses against departments and components of the United States Department of Defense, including each of its agencies or bureaus, that Respondent may have pursuant to CERCLA, 42 U.S.C. § 9601 et seq., relating to the response costs, or for any other liability relating to releases of hazardous substances at or from the Site.

72. Each Party will bear its own litigation costs.

73. In any subsequent administrative or judicial proceeding initiated by EPA for injunctive or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

## **XXI. INDEMNIFICATION**

74. Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Respondent's behalf or under its control, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

76. Respondent agrees not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays.

## **XXII. TERMINATION**

77. This Order shall be deemed satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights" (Acknowledgment of Termination). EPA will prepare the Acknowledgment of Termination for Respondent's signature. The Acknowledgment of Termination will specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed. Respondent's execution of the Acknowledgment of Termination will affirm Respondent's continuing obligation to preserve all records as required in Section XII (Record Retention), to maintain any necessary Property Requirements as required in Section X, and to recognize EPA's Reservation of Rights as required in Section XIX.

**XXIII. SURVIVABILITY/PERMIT INTEGRATION**

78. Except as otherwise expressly provided in this Section, this Order shall survive the issuance or denial of a RCRA permit for the Facility, and this Order shall continue in full force and effect after either the issuance or denial of such permit. Accordingly, Respondent shall continue to be liable for the performance of obligations under this Order notwithstanding the issuance or denial of such permit. If the Facility is issued a RCRA permit and that permit expressly incorporates all or a part of the requirements of this Order, or expressly states that its requirements are intended to replace some or all of the requirements of this Order, Respondent may request a modification or termination of this Order and shall, with EPA approval, be relieved of liability under this Order for those specific obligations.

**XXIV. INTEGRATION/APPENDICES**

79. This Order and its Appendices constitute(s) the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following Appendices are incorporated into this Order:

Appendix A: Facility Map

Appendix B: Plant No. 3

Appendix C: Schedule

IT IS SO AGREED AND ORDERED:

2/9/2021

Dated

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

**JEFFREY SCOTT** Digitally signed by JEFFREY SCOTT  
Date: 2021.02.09 11:51:58 -08'00'

Jeff Scott, Director  
Land, Chemical and Redevelopment Division, Region 9

29 Jan 2021

Dated

**FOR Nammo Defense Systems**

*Edward J Carr*

Edward Carr  
General Manager NDS Mesa  
Nammo Defense Systems Inc  
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