

**SECOND FIVE-YEAR REVIEW REPORT FOR
ANNISTON PCB SITE (MONSANTO CO) SUPERFUND ALTERNATIVE APPROACH SITE
CALHOUN AND TALLADEGA COUNTIES, ALABAMA**



AUGUST 2025

Prepared by

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Table of Contents

LIST OF ABBREVIATIONS AND ACRONYMS	iv
I. INTRODUCTION	1
Site Background	2
FIVE-YEAR REVIEW SUMMARY FORM	3
II. RESPONSE ACTION SUMMARY	6
Basis for Taking Action and Response Actions	6
Status of Implementation	20
Systems Operations/Operation and Maintenance	26
III. PROGRESS SINCE THE PREVIOUS REVIEW	27
IV. FIVE-YEAR REVIEW PROCESS	28
Community Notification, Community Involvement and Site Interviews	28
Data Review	29
Site Inspection	33
V. TECHNICAL ASSESSMENT	34
QUESTION A: Is the remedy functioning as intended by the decision documents?	34
QUESTION B: Are the exposure assumptions, toxicity data, cleanup levels and RAOs used at the time of the remedy selection still valid?	35
QUESTION C: Has any other information come to light that could call into question the protectiveness of the remedy?	36
VI. ISSUES/RECOMMENDATIONS	37
OTHER FINDINGS	37
VII. PROTECTIVENESS STATEMENT	38
VIII. NEXT REVIEW	38
APPENDIX A – REFERENCE LIST	A-1
APPENDIX B – CURRENT SITE STATUS	B-1
APPENDIX C – SITE CHRONOLOGY	C-1
APPENDIX D – EARLY ACTIONS TABLES AND FIGURES	D-1
APPENDIX E – PRESS NOTICE	E-1
APPENDIX F – INTERVIEW FORMS	F-1
APPENDIX G – SITE INSPECTION CHECKLIST	G-1
APPENDIX H – SITE INSPECTION PHOTOS	H-1
APPENDIX I – DATA REVIEW FIGURES	I-1
APPENDIX J – DATA REVIEW TABLES	J-1
APPENDIX K – DETAILED ARARS REVIEW	K-1
APPENDIX L – SCREENING-LEVEL RISK REVIEW	L-1
APPENDIX M – Solutia-OWNED PROPERTY NEAR OU-3	M-1
APPENDIX N – UNAUTHORIZED WASTE DISPOSAL AREAS AT THE ANNISTON PCB SITE	N-1

Tables

Table 1: Site COCs, by OU and Environmental Media	10
Table 2: OU-1/OU-2 RAOs, by Media	11

Table 3: OU-1/OU-2 Remedial Goals.....	13
Table 4: OU-3 RAOs, by Media	14
Table 5: OU-3 Soil Remedial Goals	16
Table 6: OU-3 Groundwater Preliminary Remedial Goals ^a	16
Table 7: OU-4 RAOs and Remedy Components, by Media	18
Table 8: OU-4 Remedial Goals.....	19
Table 9: Summary of Planned and/or Implemented OU-3 Institutional Controls	24
Table 10: O&M Inspection Locations and Frequency.....	26
Table 11: O&M Costs Over the FYR Period.....	27
Table 12: Protectiveness Determination/Statement from the 2020 FYR Report	27
Table 13: Status of Recommendation from the 2020 FYR Report.....	28
Table 14: Summary of CERCLA Groundwater Preliminary Remedial Goal Exceedances at Other Areas in OU-3	33
Table C-1: Site Chronology.....	C-1
Table D-1: OU-1/OU-2 RCRA Interim Corrective Measures and CERCLA Removal Actions	D-1
Table D-2: OU-3 Interim Corrective Measures Prior to the 2011 IROD	D-2
Table D-3: OU-4 RCRA Final and Interim Corrective Measures and CERCLA Removal Actions.....	D-5
Table J-1: Results of Groundwater Testing, 2023	J-1
Table J-2: Summary of Mann-Kendall Analysis.....	J-11
Table K-1: OU-3 Groundwater COC ARARs Review	K-1
Table L-1: Screening-Level Risk Evaluation of the 2011 IROD Soil Remedial Goals	L-1
Table L-2: Screening-Level Risk Evaluation of the 2011 IROD Groundwater Remedial Goals.....	L-2

Figures

Figure 1: OU Locations	4
Figure 2: OU-3 Vicinity Map	5
Figure 3: OU-3 Features	15
Figure 4: OU-3 Institutional Controls Map	25
Figure D-1: Previous Response Actions – OU-1/OU-2	D-6
Figure D-2: Previous Response Actions – OU-3	D-7
Figure D-3: Previous Response Actions – OU-4	D-8
Figure I-1: Groundwater Detection Monitoring Well Locations (OU-3)	I-1
Figure I-2: SVOC RCRA Corrective Action Monitoring Results for WMA II and South Landfill, 2023	I-2
Figure I-3: PCB RCRA Corrective Action Monitoring Results for WMA II and South Landfill, 2023	I-3
Figure I-4: PCB CERCLA Monitoring Results for OW-21A and OW-10 Area, 2023	I-4

LIST OF ABBREVIATIONS AND ACRONYMS

ADEM	Alabama Department of Environmental Management
ARAR	Applicable or Relevant and Appropriate Requirement
AWQC	Ambient Water Quality Criteria
BERA	Baseline Ecological Risk Assessment
bgs	Below Ground Surface
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
COC	Contaminant of Concern
CTS	Carbon Treatment System
dw	Dry Weight
EPA	U.S. Environmental Protection Agency
FS	Feasibility Study
FYR	Five-Year Review
HHRA	Human Health Risk Assessment
HQ	Hazard Quotient
IC	Institutional Control
ICIAP	Institutional Control Implementation and Assurance Plan
IROD	Interim Record of Decision
MCC	Monsanto Chemical Corporation
MCL	Maximum Contaminant Level
µg/kg	Micrograms per Kilogram
µg/L	Micrograms per Liter
mg/kg	Milligrams per Kilogram
MNA	Monitored Natural Attenuation
NPL	National Priorities List
NTCRA	Non-Time Critical Removal Action
NTE	Not-to-Exceed
O&M	Operations and Maintenance
OLBSI	Old Limestone Bed Surface Impoundment
OU	Operable Unit
PAH	Polycyclic Aromatic Hydrocarbon
PCB	Polychlorinated Biphenyl
PRG	Preliminary Remediation Goal
PRP	Potentially Responsible Party
P/S	Pharmacia, LLC and Solutia Inc.
RAO	Remedial Action Objective
RCRA	Resource Conservation and Recovery Act
RfD	Reference Dose
RI	Remedial Investigation
ROD	Record of Decision
RPM	Remedial Project Manager
RSL	Regional Screening Level
SERA	Streamlined Ecological Risk Assessment
SLERA	Screening Level Ecological Risk Assessment
SVOC	Semi-Volatile Organic Compound

SWAC	Surface Weighted Average Concentration
SWMU	Solid Waste Management Unit
TCRA	Time-Critical Removal Action
TEQ	Toxic Equivalency
UCL	Upper 95th Confidence Limit
UU/UE	Unlimited Use and Unrestricted Exposure
VOC	Volatile Organic Compound
WMA	Waste Management Area
ww	Wet Weight

I. INTRODUCTION

The purpose of a five-year review (FYR) is to evaluate the implementation and performance of a remedy to determine if the remedy is and will continue to be protective of human health and the environment. The methods, findings and conclusions of reviews are documented in FYR reports such as this one. In addition, FYR reports identify issues found during the review, if any, and document recommendations to address them.

The U.S. Environmental Protection Agency is preparing this FYR pursuant to Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), consistent with the National Contingency Plan (40 Code of Federal Regulations Section 300.430(f)(4)(ii)), and considering EPA policy.

This is the second FYR for the Anniston PCB Site (Monsanto Co) Superfund Alternative Approach site (the Site).¹ The triggering action for this statutory review is the completion date of the previous FYR. The FYR has been prepared because hazardous substances, pollutants or contaminants remain at the Site above levels that allow for unlimited use and unrestricted exposure (UU/UE).

The Site consists of three operable units (OUs) (Figure 1):

- OU-1/OU-2 is a combination of what was originally two OUs that address contaminated soil and sediment at residential properties (OU-1) and nonresidential properties (OU-2) located around the facility currently owned by Solutia Inc. and downstream along Snow Creek to Highway 78.
- OU-3 addresses contaminated soil and groundwater at Solutia's facility; it includes two adjacent closed landfills (the South Landfill and the West End Landfill; see Figure 2).
- OU-4 addresses contaminated sediment and surface water in Snow Creek and its floodplain downstream of Highway 78 to the confluence of Snow and Choccolocco creeks, and Choccolocco Creek from the backwater area upstream of Snow Creek to the embayment of Logan Martin Lake on the Coosa River.²

OU-3 is the focus of this FYR because the OU-3 interim remedy has been implemented. This FYR also describes the statuses of OU-1/OU-2 and OU-4. However, they are not included in the protectiveness evaluation because remedies for these OUs have not yet been implemented. The OU-1/OU-2 remedial design is ongoing except for two unapproved waste disposal areas unrelated to the Pharmacia, LLC and Solutia Inc. (P/S) operations that have been designed and remediated by a different potentially responsible party (PRP) as described in Appendix N. The OU-4 remedial design has not yet begun.

The EPA's remedial project managers (RPMs) Pam Scully and George Skala led the FYR. Other participants included the EPA's community involvement coordinator Angela Miller, Ricky Minor with the Alabama Department of Environmental Management (ADEM), and Jill Billus and Claire Marcussen

¹ A Superfund Alternative Approach site is a site that needs a remedial action, and where site contaminants are significant enough that the site is eligible for, but not listed on, the National Priorities List (NPL). Superfund Alternative Approach sites must also have cooperative financially viable and technically capable potentially responsible parties that are willing to perform the cleanup work under a settlement agreement with the EPA.

² The EPA is considering whether an additional downstream investigation of the Coosa River System is warranted and if needed, this area would become a new OU, OU-5.

from Skeo (the EPA's FYR support contractor). The PRPs, P/S, were notified of the initiation of the FYR. The review began on October 16, 2024.

Appendix A lists the documents used to prepare this FYR Report. Appendix B provides site status information. Appendix C provides a detailed site chronology.

Site Background

The Site consists of residential, commercial, industrial and public properties in and around the cities of Anniston, Oxford and Hobson City and parts of Calhoun and Talladega counties in Alabama, which contain hazardous substances, including, but not limited to, polychlorinated biphenyls (PCBs) (Figure 1). The primary source of contamination was a former PCB production process located at a chemical manufacturing facility (the Facility) in Anniston, Alabama (Figure 2). The Site includes the Facility and areas where PCBs and other contaminants have migrated off the facility property at levels that pose unacceptable risk to human health and the environment.

The former Monsanto PCB manufacturing Facility operated from 1929 to 1971. Monsanto (now known as Pharmacia, LLC) produced PCB mixtures (trade named Aroclors) by reacting chlorine and biphenyl. Chlorine was produced at the Facility between 1952 and 1969 solely for this purpose, using a chlor-alkali mercury cell process. The manufacture of PCBs generated production-related wastes that were disposed of in on-site waste management areas, including the 17-acre West End Landfill and the 53-acre South Landfill (Figure 2).

The Georgia Pacific Railway borders the Facility to the north. Clydesdale Avenue borders the Facility to the east and First Avenue borders the Facility to the west. State Highway 202 is to the south. The Facility, now owned by Solutia Inc., is currently active and operates in accordance with a variety of environmental permits.

Site topography is characterized by northeast-trending valleys that are paralleled by ridges and mountains. The ground surface declines rapidly across the closed South Landfill (moving south to north) and then slopes downward gently to the north across the rest of the Facility. The Facility itself is largely occupied by buildings, parking lots and other areas in use for industrial purposes.

Site groundwater occurs in one aquifer, which consists of a saturated zone within the residuum (soil), weathered bedrock (soil bedrock mixture) and bedrock. Groundwater in the residuum at OU-3 ranges from about 15 feet below ground surface (bgs) to 109 feet bgs. The shallow residuum is about 45 feet thick. The soil/rock zone from about 45 feet bgs to the top of weathered bedrock is referred to as the deep residuum and is up to 60 feet thick. The predominant lateral groundwater flow direction within the residuum and bedrock is to the north/northeast. There is a northeast component of flow in the shallow residuum in the east portion of the Facility and a northwest component of flow in the shallow residuum along the western facility boundary. Groundwater in the bedrock water-bearing zone ranges from about 85 feet bgs to 100 feet bgs. Current monitoring data show that site groundwater contamination is limited to the shallow residuum.

Groundwater, while not in use as a drinking water source, is considered by the state of Alabama to be a potential drinking water source. The Facility and nearby residents obtain water from the local water utility. The water utility obtains its water from Coldwater Spring, which is about 5 miles southwest and upgradient of the Facility.

FIVE-YEAR REVIEW SUMMARY FORM

SITE IDENTIFICATION		
Site Name: Anniston PCB Site (Monsanto Co)		
EPA ID: ALD000400123		
Region: 4	State: Alabama	City/County: Anniston/Calhoun and Talladega Counties
SITE STATUS		
NPL Status: Non-NPL		
Multiple OUs? Yes	Has the Site achieved construction completion? No	
REVIEW STATUS		
Lead agency: The EPA		
Author name: Pam Scully and George Skala		
Author affiliation: The EPA with support provided by Skeo		
Review period: 10/16/2024 – 6/2/2025		
Date of site inspection: 11/20/2024		
Type of review: Statutory		
Review number: 2		
Triggering action date: 9/30/2020		
Due date (five years after triggering action date): 9/30/2025		

Figure 1: OU Locations

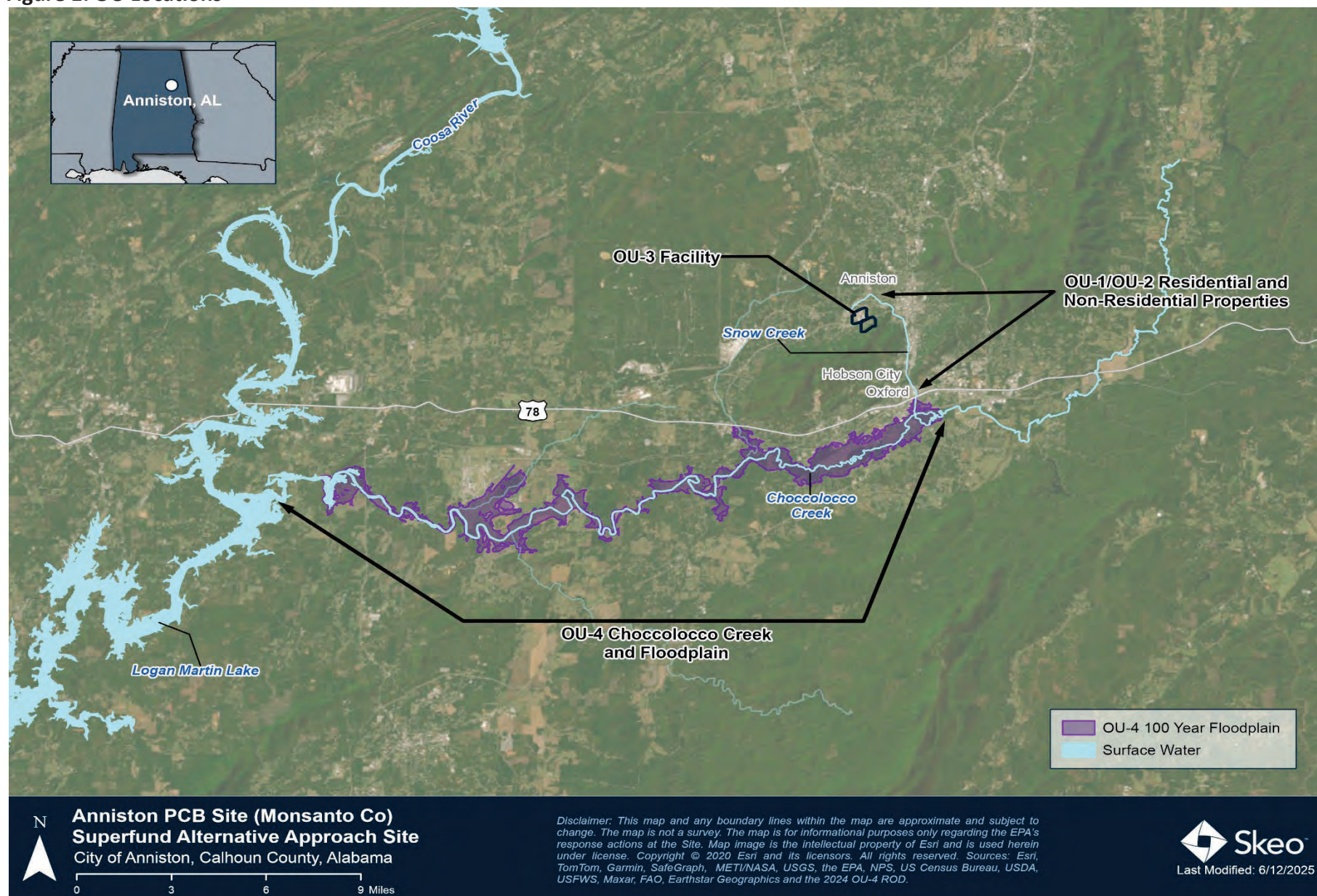
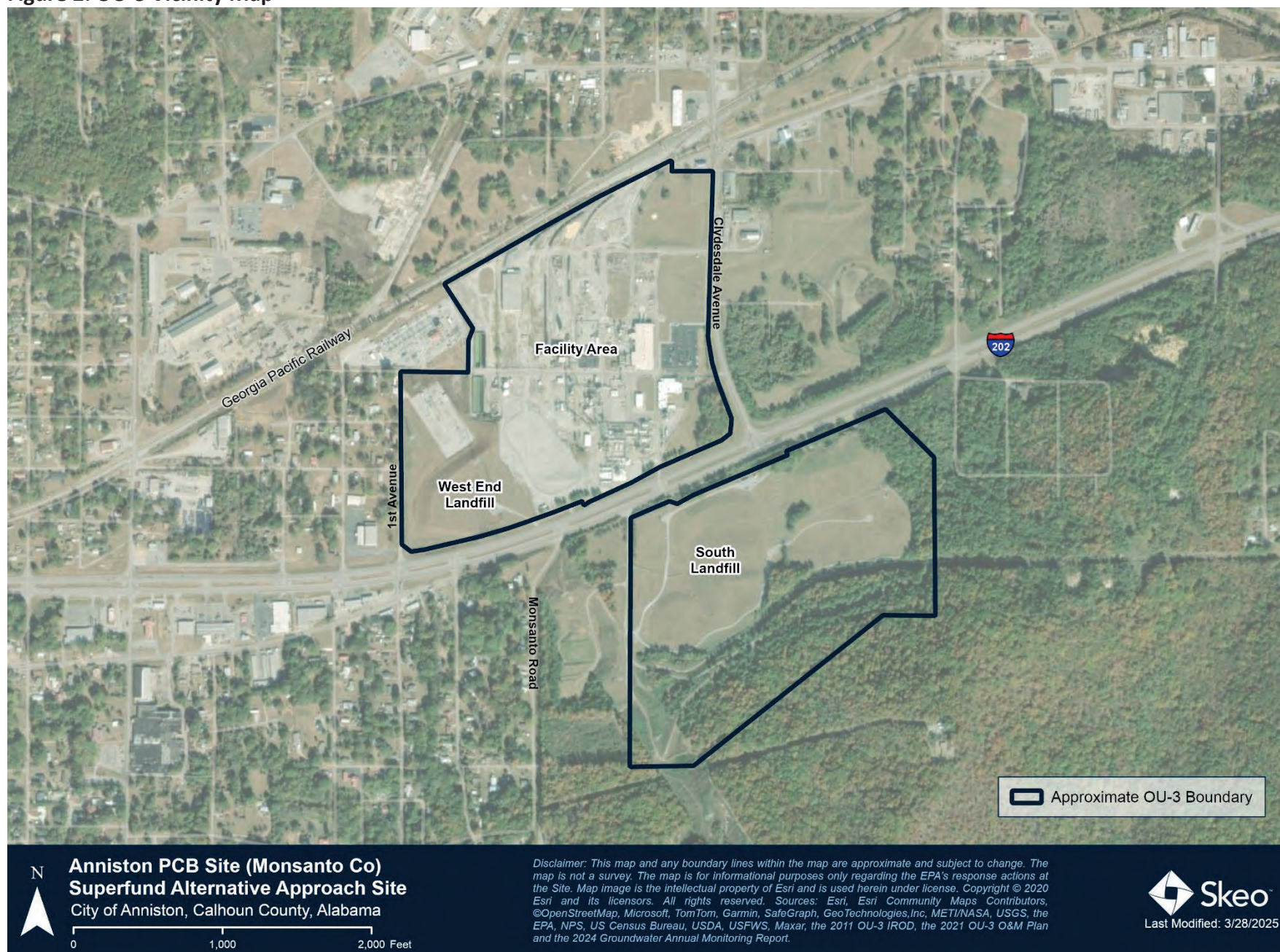


Figure 2: OU-3 Vicinity Map



II. RESPONSE ACTION SUMMARY

Basis for Taking Action and Response Actions

The EPA and the ADEM have evaluated the Site since the early 1990s under both the Resource Conservation and Recovery Act (RCRA) and CERCLA regulatory frameworks. Historical disposal of hazardous and non-hazardous substances, pollutants and contaminants occurred in two primary areas at the Facility (the approximately 17-acre closed West End Landfill and the approximately 53-acre closed South Landfill), both located next to the Facility (Figure 2). Surface water containing PCBs from the Facility and the closed landfills discharged to drainage ditches, which flowed into local and downstream waterways. Sampling by the EPA, the ADEM, P/S and other parties has demonstrated that sediments in waterways leading away from the Facility, as well as soils in the floodplains of these waterways, contain varying levels of PCBs and other contaminants. In addition, the distribution of contaminants, including PCBs, may have occurred through air pathways and through the movement of fill materials.

The sections below describe early response actions taken at the Site under RCRA and CERCLA's removal program prior to the EPA's issuance of Record of Decisions (RODs). It then describes the EPA's basis for taking action at each OU as presented in the RODs, and the interim or final remedies selected in the RODs.

Pre-ROD Actions

OU-1/OU-2

A number of early actions have occurred over the past 28 years where PCBs directly impacted residential and nonresidential properties next to the Facility and in downstream drainageways. Table D-1 in Appendix D presents a summary of the early response actions for non-residential properties in OU-1/OU-2. Figure D-1 shows the locations of the non-residential early response actions. Additionally, P/S conducted 652 non-time critical removal actions (NTCRA) at residential properties under CERCLA. Additional removals are needed at 48 residential properties (12 where access has not been granted and 36 that are heavily overgrown/wooded). P/S continues to conduct more removals as needed on properties where owners have granted access. P/S is implementing an Interim Institutional Control (IC) Program to ensure residual contamination beneath structures (on 325 properties), at depth (on 104 properties) and in surface soil (on 48 properties without access or overgrown/wooded) do not create future risk when structures are demolished, or intrusive work takes place. Utilities and public works departments are also contacted regularly about the need for P/S assistance with intrusive work.

OU-3

The Facility currently operates in accordance with a variety of permits issued under provisions of the Clean Air Act, the Clean Water Act, RCRA and state laws. There have been a number of investigations and RCRA interim and final corrective measures taken over the years to reduce environmental impacts from the Facility. RCRA retains regulatory authority over the post-closure care for Waste Management Area (WMA)-I (South Landfill Cells 4E and 5E) and WMA-II (Old Limestone Bed Surface Impoundment (OLBSI)); the groundwater monitoring and detection monitoring program for WMA-I; and the corrective action monitoring programs for Solid Waste Management Unit (SWMU) 1 (the South Landfill) and WMA-II.

In addition, P/S conducted extensive interim corrective measures such as capping existing landfills, managing surface water throughout the Facility, and remediating potential contaminant exposure areas. A complete list of interim corrective measures completed at the Facility is in Table D-2 in Appendix D and shown in Figure D-2.³

OU-4

Similar to other OUs, P/S completed final and interim corrective measures under the Site's RCRA permit and removal actions under the EPA's CERCLA oversight (Table D-3 and Figure D-3 in Appendix D). The RCRA early final and interim actions took place from 2000 to 2012. Residential properties in OU-4 were sampled and cleaned up using the same CERCLA NTCRA used in OU1/OU2. The EPA oversaw the PRP's excavation of soil from 19 residential properties. At one property, the owner denied access, so there is one remaining residential property in OU-4 that will be addressed by the long-term selected remedy for OU-4. P/S completed more response actions to reduce exposure to PCBs in surface soil and potential migration of PCBs at nonresidential areas of OU-4. The actions included infrastructure improvement support activities.

Basis for Action

OU-1/OU-2

The basis for action in OU-1/OU-2 is the risk assessment, which consists of a Human Health Risk Assessment (HHRA) and a Streamlined Ecological Risk Assessment (SERA). Prior to the release of the OU-1/OU-2 ROD, residential soil and high-activity areas such as playgrounds and special-use properties (e.g., schools, day-care centers, churches, playgrounds and parks) had already been mostly cleaned up through a NTCRA, which was based on a Streamlined Risk Assessment for Human Health. To address the long-term cleanup, the EPA conducted a HHRA focusing on exposure to soil, groundwater, surface water and sediment in 2010 with updates based on updated toxicity and exposure assumptions in 2012 and 2014. Exposure scenarios evaluated included a current and future resident, industrial/commercial workers, construction and utility workers, commercial visitors, school daycare occupants, recreational users and trespassers. The HHRA determined that there is potential risk exceeding the EPA's target risk range to commercial/industrial workers, commercial visitors, school/daycare workers/young children, trespassers, recreational users, construction workers and utility workers from exposure to site soil contaminated with PCBs and several metals and organic compounds.

The SERA was based on the results of a screening-level ecological risk assessment (SLERA) for OU-1/OU-2 in 2005 and a draft of the baseline ecological risk assessment (BERA) for OU-4. The SERA found that there are some risks to sediment-dwelling aquatic life as well as birds and mammals that may be exposed to PCBs and other less prominent contaminants of concern (COCs) in sediment in localized areas. Due to the habitat constraints, the EPA determined that soil cleanup to protect human health would provide acceptable protection of terrestrial ecological receptors exposed to contaminated soil.

Table 1 summarizes all site COCs by OU based on the results of the OU-specific risk assessments.

³ In the RCRA Permit, the ADEM deferred 19 SWMUs and two areas of contamination for investigation and assessment of long-term protection of human health and the environment to the EPA under CERCLA.

OU-3

The basis for action in OU-3 is a HHRA. The EPA completed the HHRA as part of the remedial investigation (RI) using soil, groundwater and air sampling results. The HHRA evaluated human receptors based on current and likely future land uses of OU-3 that included operations area workers, operation and maintenance workers, trespassers and construction workers. In addition, off-site residential exposures to air and groundwater from the Facility and landfills were considered to address community concerns. The HHRA's findings are summarized below:

- Cancer risks for current and future operations area workers exceeded the EPA's risk management range of 10^{-4} to 10^{-6} and noncancer hazard indices (HIs) were above 1 primarily due to PCBs in soil and to future exposure to contaminated groundwater.⁴ The future soil risks were associated with existing contamination in the facility area, assuming P/S no longer controls access or maintains existing covers.
- Future trespassers' cancer risks and noncancer hazards associated with exposure to facility soils exceeded the EPA's risk range and noncancer HIs were above 1 due primarily to PCBs in soil (see footnote 4).
- Cancer risks and noncancer hazards were within or below the EPA's limits for current and future O&M workers exposed to the West End Landfill and the South Landfill.
- Cancer risks associated with current off-site residents' exposure to PCB vapors in ambient air were low and indicated no unacceptable health threat currently existed.
- Cancer risks and noncancer hazards for all future workers and off-site residents were much higher than the EPA's thresholds if groundwater was considered accessible, due primarily to PCBs and the pesticide parathion.

The PRP completed a SLERA for OU-3 in 2005 consisting of a habitat and biological survey, screening of chemicals of potential concern in soil, and analysis of exposure pathways. Reconnaissance by trained biologists revealed that the primary habitat at the landfills was vegetated caps. Likewise, the main facility's primary habitat was clover field surrounded by buildings and pavement. Multiple songbird species were observed at the landfills perched on poles or wires or flying through. No signs of ground-dwelling wildlife were observed. The comparison of the maximum chemical concentrations in soils with ecological screening values revealed several metals above conservative ecological screening values, but none were remarkable. PCBs were detected at an estimated concentration as high as 13,400 milligrams per kilogram (mg/kg) in one surface soil sample in the former PCB production area and at 282 mg/kg in another soil sample. However, both soils were covered with pavement or with at least 3 inches of gravel as a barrier to exposure. Because the Facility is expected to remain active for the foreseeable future, a risk-management decision was made that no further assessment of ecological risk at OU-3 was necessary.

Table 1 summarizes all site COCs by OU based on the results of the OU-specific risk assessments.

⁴ Before the RI/FS, P/S conducted a removal of principal threat waste at the soil location driving current and future operations area worker risk; the risks were not recalculated to reflect this removal and may have been lower than presented.

OU-4

The basis for action in OU-4 is the risk assessment, which consists of a HHRA and a BERA. The EPA completed the OU-4 HHRA in 2013. It identified the following completed exposure pathways:

- Ingesting fish caught in Choccolocco Creek in the absence of a fish consumption advisory.
- Directly contacting floodplain soils (ingestion, dermal contact and absorption, and inhalation of particulates).
- Ingesting agricultural products (vegetables, meat, eggs and dairy products) grown in the floodplain.

The HHRA concluded that human health risk is primarily due to PCB concentrations in fish tissue for Snow Creek and the entire length of Choccolocco Creek. There were no unacceptable direct contact risks associated with exposure to surface soil or by ingesting agricultural products.

The PRPs completed a BERA in 2016 and the EPA completed an addendum to the BERA in 2018. The BERA evaluated potential ecological risks associated with the following exposure pathways:

- Ecological communities of plants and invertebrates exposed to soil/sediment.
- Aquatic life (aquatic plants, aquatic invertebrates, fish and amphibians) exposed to surface water.
- Bird and mammals ingesting contaminated prey exposed to contaminated soil, sediment or surface water by direct contact.

The BERA concluded that ecological risk is predominantly due to PCB concentrations in soil and sediment.

Table 1 summarizes all site COCs by OU based on the results of the OU-specific risk assessments.

Remedial Actions

The EPA has issued three decision documents for the Site:

- OU-1/OU-2: November 2017 ROD.
- OU-3: September 2011 Interim ROD (IROD).
- OU-4: December 2024 ROD.

This section provides brief summaries of the decision documents. However, since the long-term remedies for OU-1/OU-2 and OU-4 have not yet been initiated, these OUs are not discussed further in the Status of Implementation section of this FYR Report.⁵

OU-1/OU-2

The EPA issued a ROD in November 2017 to address contaminated soil at residential properties (OU-1) and nonresidential properties (OU-2) located around the Facility and downstream along Snow Creek to Highway 78. Table 2 lists the OU-1/OU-2 remedial action objectives (RAOs).

⁵ Two unapproved waste disposal areas unrelated to the P/S operations that have been designed and remediated by a different PRP are described in Appendix N.

Table 1: Site COCs, by OU and Environmental Media

COC	OU-1/OU-2 Residential/Nonresidential Properties Near Facility ^a				OU-3 Facility Area		OU-4 Snow Creek and its Floodplain ^b	
	Soil	Groundwater	Surface Water	Sediment	Soil	Groundwater	Soil, Sediment and Surface Water	Fish
PCBs	X	X	X	X	X	-	X	X
Polycyclic Aromatic Hydrocarbons (PAHs)	X	-	-	-	-	X	-	-
Dioxins	X	-	-	-	-	-	-	-
Inorganic Contaminants								
Arsenic	-	-	-	-	X	-	-	-
Barium	-	-	-	X	-	-	-	-
Beryllium	-	-	-	-	-	X	-	-
Chromium	X	-	X	X	-	-	-	-
Cobalt	-	-	-	X	-	X	-	-
Lead	-	-	X	X	-	X	-	-
Manganese	-	-	-	X	-	X	-	-
Mercury	-	-	-	X	-	X	-	-
Nickel	-	-	-	X	-	-	-	-
Vanadium	-	-	-	X	-	-	-	-
Other Organic Compounds								
gamma-BHC	-	-	-	-	-	X	-	-
Methylene chloride	-	-	-	-	-	X	-	-
Methyl parathion	-	-	-	-	-	X	-	-
4-Nitrophenol	-	-	-	-	-	X	-	-
Parathion	-	-	-	-	-	X	-	-
Pentachlorophenol	-	-	-	-	-	X	-	-
Sulfotepp	-	-	-	-	-	X	-	-
1,1,2,2-Tetrachloroethane	-	-	-	-	-	X	-	-
1,2,4-Trichlorobenzene	-	-	-	-	-	X	-	-
Trichloroethylene	-	-	-	-	-	X	-	-
2,4,6-Trichlorophenol	-	-	-	-	-	X	-	-
o,o,o- Triethylphosphorothioate	-	-	-	-	-	X	-	-
Notes: a. Includes soils and sediment downstream along Snow Creek to Highway 78. b. Includes downstream of Highway 78 to the confluence of Snow and Choccolocco creeks, and Choccolocco Creek from the backwater area upstream of Snow Creek to the embayment of Logan Martin Lake on the Coosa River. X = is a COC in the medium. - = is not a COC in the medium. Sources: The Site's 2017 OU-1 ROD, 2011 OU-3 IROD (Table 8-1 for soil and Table 8-2 for groundwater) and 2024 OU-4 ROD.								

Table 2: OU-1/OU-2 RAOs, by Media

Medium	RAO
Soil	<ul style="list-style-type: none"> • Reduce risks to residents from direct contact with, inhalation of, or incidental ingestion of COCs in surface soil above levels that are protective. • Reduce risks to industrial and commercial workers, commercial visitors, trespassers, school children and recreational users associated with direct contact with, inhalation of, or incidental ingestion of COCs in surface soil above levels that are protective. • Reduce risks to construction and utility workers from direct contact with, inhalation of, or incidental ingestion of COCs in surface and subsurface soil above levels that are protective. • Reduce migration of COCs from surface soil to surface water. • Prevent migration and leaching of PCBs from surface and subsurface soil to groundwater above levels that are protective of beneficial use (i.e., attain drinking water standards).
Sediment	<ul style="list-style-type: none"> • Reduce risks to ecological receptors from exposures to sediment in Snow Creek to levels that are protective of receptors. • Prevent migration of PCBs from creekbank soil to levels that are protective of Snow Creek and OU-4.
Surface Water	<ul style="list-style-type: none"> • Reduce COC concentrations in surface water to meet ambient water quality criteria for aquatic life protection.
Groundwater	<ul style="list-style-type: none"> • Prevent exposure to groundwater from direct contact with, inhalation of, or ingestion of PCBs in groundwater above acceptable levels that are protective of beneficial use (i.e., attain drinking water standards). • Restore contaminated groundwater to levels that are protective of beneficial use (i.e., attain drinking water standards).
<i>Source: The Site's 2017 ROD, Section 8.1.</i>	

The EPA selected the following remedial components for OU-1/OU-2:

- Incorporation as CERCLA remedies of all interim corrective measures implemented at OU-1/OU-2 under the ADEM's RCRA oversight as well as the NTCRA (Table D-1, Appendix D).
- Excavation with on-site and off-site disposal of contaminated soil from residential (to include interior surfaces and crawl spaces) and special-use properties (i.e., schools, churches, day-care centers, community centers, playgrounds and parks). According to the ROD, residential soil and high-activity areas such as playgrounds on special-use properties have been mostly cleaned up.
 - A requirement to target residential properties identified for cleanup that have access issues or exposure issues (wooded with excessive vegetation) and that low-activity areas associated with special-use properties be cleaned up to the most stringent nonresidential standard of 1 mg/kg.
 - On-site disposal of soil with PCB concentrations less than 10 mg/kg was approved for previous NTCRA's and will continue to be a disposal option for the few remaining residential cleanups, the special-use property cleanups, and for management of residential and special-use property soil with residual PCB concentrations in the subsurface or under structures.
 - All other soil from residential and special use properties with PCB concentrations greater than or equal to 10 mg/kg will be disposed of at approved off-site disposal facilities.
- The removal and off-site disposal of soil in four dredge spoil piles next to Snow Creek.
- On other nonresidential properties, such as commercial industrial properties, excavation to meet nonresidential surface soil remedial goals. Off-site disposal of contaminated soil at approved facilities.

- Excavation of principal threat waste, installation of a low-permeability cap, and groundwater extraction and treatment at well T-11. Treated groundwater will be discharged to Snow Creek and contaminated soil will be disposed of at approved off-site facilities.
- Excavation of contaminated sediment in Snow Creek with off-site disposal to meet sediment remedial goals for site COCs. Stabilization of about 1,400 linear feet of bank area.
- Installation of barriers (e.g., in crawl spaces) where needed to prevent exposure.
- Backfilling and restoration of remediated areas.
- Monitoring of bank areas' stability.
- Long-term monitoring of surface water and sediment in remediated waterways.
- Deed notices to inform purchasers of residual or potential PCB impacts.

The EPA developed cleanup goals for the OU-1/OU-2 remedy (Table 3).

P/S will implement the long-term OU-1/OU-2 remedial action after the completion of the remedial design, which is ongoing. In addition, in December 2019, the EPA identified a new PRP to remediate two unapproved PCB and lead waste disposal areas unrelated to the P/S operations and entered into a Consent Decree with the new PRP to implement a portion of the OU-1/OU-2 remedy as described in Appendix N.

OU-3

The EPA selected an interim remedy for OU-3 soil and groundwater in the September 2011 IROD to reduce current and future risks from contaminants released from the Facility and adjacent closed landfills. Table 4 summarizes the OU-3 RAOs for soil and groundwater.

As part of the interim remedy, the EPA incorporated all of the interim and final corrective measures implemented by P/S and its predecessors under the ADEM's RCRA oversight (Table D-2, Appendix D).⁶ According to the 2011 IROD, all interim and final corrective measures implemented at OU-3 prior to the IROD are incorporated as remedy components under CERCLA, unless modified by the 2011 IROD remedy components. The OU-3 interim remedy includes the following components. Figure 3 shows the specific OU-3 areas addressed.

- Install a new, RCRA Subtitle C-compliant cap over the Cells 1E, 2E and 3E of the South Landfill.
- Install either a 6-inch-thick asphalt or concrete cap, or a geomembrane cap based on the intended end use determined during remedial design a cap over impacted soils in Area A and Area E to eliminate dermal contact, minimize potential soil leaching to groundwater, prevent erosion and direct stormwater away from the impacted area.
- Install a minimum 1-foot-thick vegetated soil cover (soil and grass cover) over impacted soils in Area C and Area D to eliminate dermal contact exposure, prevent erosion and direct stormwater away from the impacted area.
- Enhance institutional controls with a "no dig policy" restricting excavations within the Facility (particularly in Area F, the former Monsanto Chemical Corporation [MCC] Warehouse).

⁶ In the RCRA permit, the ADEM deferred 19 SWMUs and two areas of contamination for investigation and assessment of long-term protection of human health and the environment to the EPA under CERCLA.

Table 3: OU-1/OU-2 Remedial Goals

Medium	COC	Remedial Goal	Basis
Residential Use			
Surface Subsurface	PCBs	1 mg/kg 10 mg/kg	NTCRA Streamlined Risk Assessment and RI/FS HHRA
Special-Use Property ^a			
High-activity areas Surface soil Subsurface soil	PCBs	1 mg/kg 10 mg/kg	NTCRA Streamlined Risk Assessment and RI/FS HHRA
Low-activity areas Surface soil Subsurface soil		1 mg/kg 10 mg/kg or 97 mg/kg ^b	
Nonresidential Use			
Surface Soil ^c	PCBs PAHs Chromium Dioxins	21 mg/kg 153 mg/kg 382 mg/kg 0.73 µg/kg	RI/FS HHRA
Subsurface Soil ^c	PCBs Dioxins	97 mg/kg 0.73 µg/kg	
Other Uses			
Groundwater	PCBs	0.5 µg/L	ARAR ^d
Snow Creekbanks and Sediment	PCBs Barium Chromium Cobalt Lead Manganese Mercury Nickel Vanadium	3 mg/kg 322 mg/kg 111 mg/kg 59 mg/kg 128 mg/kg 1,100 mg/kg 1 mg/kg 46 mg/kg 41 mg/kg	Streamlined ERA
Snow Creek Surface Water	PCBs Lead Chromium VI Chromium III	0.014 µg/L 2.5 µg/L 11 µg/L 74 µg/L	ARAR ^e

Notes:

- Special-use properties are a subset of nonresidential properties where children may congregate such as high-activity areas of schools, churches, day-care centers, community centers, playgrounds and parks. Low-activity areas include areas near high-activity areas such as athletic fields and large open fields, paved areas, and other parts of these properties where people, primarily children, are likely to spend less time.
- The higher number applies to construction/utility workers; in other cases, the industrial-based 10 mg/kg remedial goal is used.
- Applies to disposal spoil piles, nonresidential soils and areas where interim measures have occurred.
- Corresponds to the maximum contaminant levels (MCLs) established under the Safe Drinking Water Act
- Corresponds to the chronic national ambient water quality criteria protective of aquatic life.

mg/kg = milligrams per kilogram

µg/kg = micrograms per kilogram

µg/L = micrograms per liter

ARAR = applicable or relevant and appropriate requirement

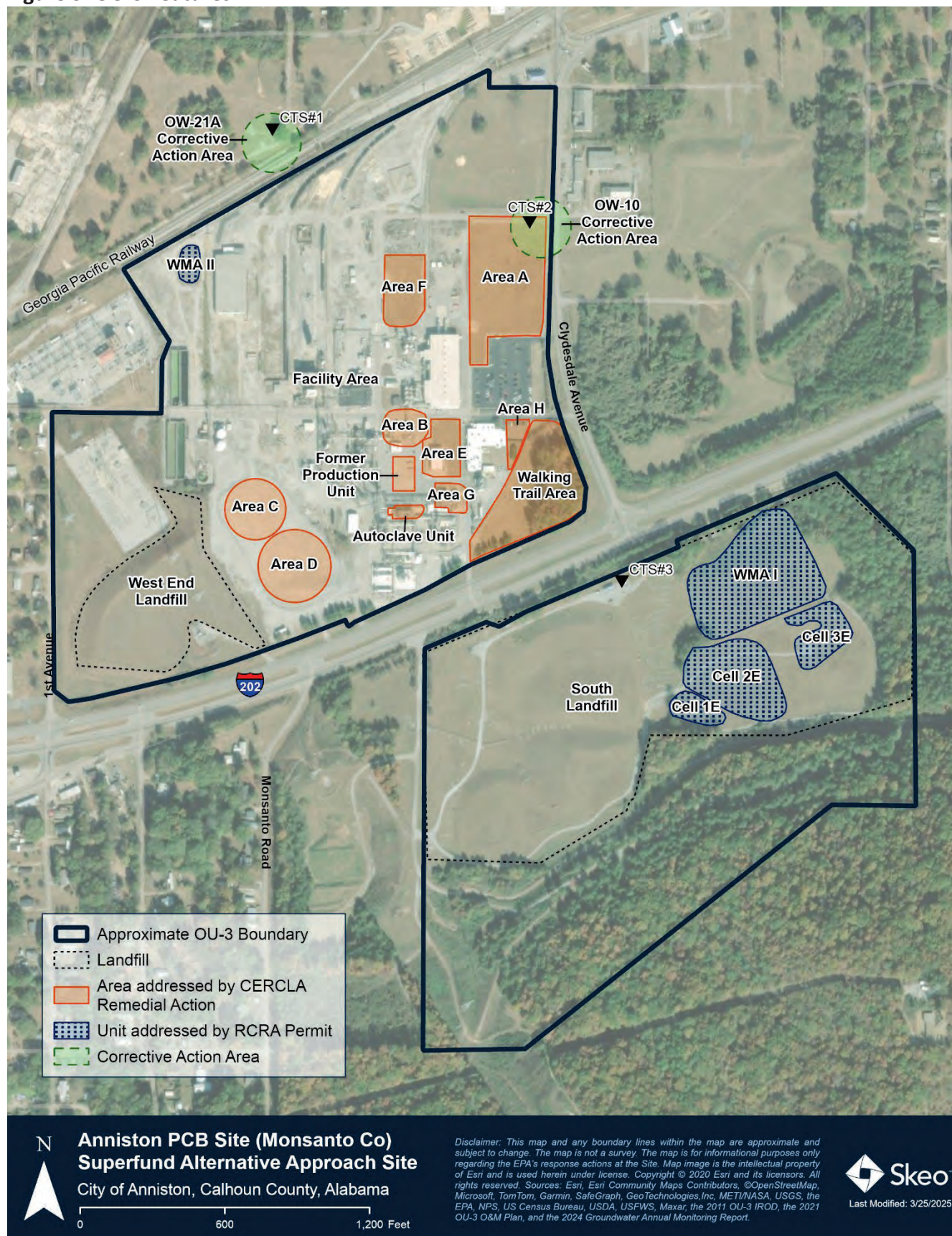
Source: The Site's 2017 ROD, Table 12-1.

Table 4: OU-3 RAOs, by Media

Medium	RAO
Soil	<ul style="list-style-type: none"> • Reduce risks to operations area workers, O&M workers and trespassers from direct contact with, inhalation of, or incidental ingestion of COCs in surface soil above levels that are protective. • Reduce risks to the construction worker from direct contact with, inhalation of, or incidental ingestion of COCs in subsurface soil above levels that are protective. • Prevent migration and leaching of COCs in surface and subsurface soils to groundwater above levels that are protective of beneficial use (i.e., attain drinking water standards). • Minimize migration of COCs in surface soil to surface water. • Control future releases of COCs to ensure protection of human health and the environment.
Groundwater	<ul style="list-style-type: none"> • Prevent exposure to groundwater from direct contact with, inhalation of, or ingestion of COCs in groundwater above acceptable levels that are protective of beneficial use (i.e., attain drinking water standards). • Prevent further migration of contaminated groundwater beyond the existing known limits of the contaminant plume. • Control future releases of COCs in groundwater to ensure protection of human health and the environment. • Restore contaminated groundwater throughout each plume, or at and beyond the edge of designated waste management area(s) to levels that are protective of beneficial use (i.e., attain drinking water standards).^a
<p><i>Note:</i></p> <p>a. This RAO was no longer valid when the decision was made that the groundwater remedy should be interim rather than a final remedy. A final ROD will select the final groundwater remedial goals.</p> <p><i>Source:</i> The Site's 2011 IROD, Section 8.2.</p>	

- Install perimeter fencing in the northeast part of the Facility and along the southern part of the employee parking lot.
- Verify with confirmation samples that the principal threat waste under cover in Area B (Waste Drum Satellite Accumulation area) has been removed.
- Verify with subsurface soil and/or groundwater confirmation samples that there are no groundwater impacts in Area B, Area F (former MCC Warehouse) and Area G.
- Verify with confirmation samples that the PCB remedial goal is protective for dioxin toxic equivalency (TEQ) where dioxin TEQ includes dioxin-like PCBs, polychlorinated-p-dioxins and furans.
- Execute and record an environmental covenant with the ADEM to restrict land and groundwater use in the OU-3 area and on properties in the vicinity of monitoring wells OW-21A and OW-10.
- Monitor select wells for natural attenuation parameters to demonstrate continued natural attenuation of 4-nitrophenol and parathion.
- Optimize and expand the existing groundwater corrective action system to provide further containment of groundwater near OW-21A and Area A (OW-10/OW-11).
- Pre-treat extracted groundwater using a carbon treatment system.
- After filtration, allow the water to flow to the on-site equalization basin for discharge to the Anniston publicly owned treatment works for further treatment.
- Provide operation, monitoring and maintenance of soil interim corrective measure caps, groundwater corrective action system, carbon treatment system and institutional controls to ensure continued long-term effectiveness of the remedy.

Figure 3: OU-3 Features



The EPA developed soil and groundwater cleanup levels for the OU-3 interim remedy (Tables 5 and 6).

Table 5: OU-3 Soil Remedial Goals

Soil COC	Remedial Goal (mg/kg)	Basis
Surface Soil – Current/Future Operations Worker		
Arsenic	66	Remedial goal is at 1×10^{-5} risk for a current worker and within the risk range for a future worker.
Total PCBs	25	Remedial goal is $< 1 \times 10^{-5}$ risk for a current worker and within the risk range for a future worker.
Subsurface Soil – Protection of a Construction Worker		
Arsenic	217	Remedial goal is a hazard quotient (HQ) of 1 and within the risk range.
Total PCBs	40	Remedial goal is at an HQ of 1 under subchronic exposure conditions and within the risk range.
<i>Source:</i> The Site's 2011 IROD, Table 8-1. mg/kg = milligram per kilogram		

Table 6: OU-3 Groundwater Preliminary Remedial Goals^a

Groundwater COC	Preliminary Remedial Goal (µg/L)	Basis
Benzo(a)pyrene	0.2	MCL
gamma-BHC	0.2	MCL
Indeno(1,2,3-cd)pyrene	0.2	HHRA
Methylene chloride	5	MCL
Methyl parathion	4	HHRA
4-Nitrophenol	125	ADEM Permit
Parathion	85	HHRA
Pentachlorophenol	1	MCL
Sulfotepp	7	HHRA
1,1,2,2-Tetrachloroethane	0.067	R9PRG
Total PCBs	0.5	MCL
1,2,4-Trichlorobenzene	70	MCL
Trichloroethylene	5	MCL
2,4,6-Trichlorophenol	13	HHRA
o,o,o-Triethylphosphorothioate	310	ADEM Permit
Beryllium	4	MCL
Cobalt	73	R9PRG
Manganese	880	R9PRG
Mercury	2	MCL
Lead	15	MCL
<i>Note:</i> a. A final ROD will select final groundwater remedial goals. <i>Source:</i> The Site's 2011 IROD, Table 8-2. MCL = maximum contaminant level HHRA = value based on the human health risk assessment; lower of the 10^{-5} risk-based level or HQ of 1 as shown in Table 8-2 of the 2011 IROD. R9PRG = EPA Region 9 preliminary remediation goal µg/L = microgram per liter		

The 2011 interim remedy is intended to protect human health and the environment in the short term, while moving towards restoration of groundwater to beneficial use (i.e., attainment of drinking water standards), without interfering with operations at the Facility. The EPA will select a final remedy for OU-3 once sufficient groundwater monitoring data and modeling demonstrate that restoration is achievable or that additional actions are needed.

OU-4

The EPA issued the OU-4 ROD in December 2024 to address PCB-contaminated soil, sediment, surface water and biota in Snow Creek and its floodplain downstream of Highway 78 to the confluence of Snow and Choccolocco creeks, and Choccolocco Creek from the backwater area upstream of Snow Creek to the embayment of Logan Martin Lake on the Coosa River. As part of the selected remedy, the EPA incorporated all interim corrective measures implemented by P/S previously at Oxford Lake Park involving soil removals and installation of covers at area softball fields, tennis courts, parking areas and areas of infrastructure.

Table 7 lists the OU-4 RAOs and summarizes the selected remedy components. The EPA also established PCB cleanup goals for soils, creekbanks, sediment, surface water, and fish whole body and fish fillet (Table 8).

Table 7: OU-4 RAOs and Remedy Components, by Media

Medium	RAO	Remedy Component
Soil	<ul style="list-style-type: none"> Reduce PCB concentrations in residential soil to levels that are protective to residents, including young children and adolescents, and other users from direct contact or incidental ingestion exposure (applicable to one property). Ensure the long-term effectiveness of the previously implemented RCRA interim measures in Oxford Lake Park. Reduce PCB concentrations in soil (0 inches to 6 inches deep) to levels that are protective of terrestrial ecological receptors. 	<ul style="list-style-type: none"> Excavate PCB concentrations greater than 1 mg/kg in surface soil (0 to 12 inches deep) on one residential property, including off-site disposal of contaminated soil, and backfilling with clean soil. Adopt RCRA corrective action interim measures previously implemented at Oxford Lake Park softball fields and parking lot, the tennis court complex, and the southwest portion of the park (with the infrastructure improvement of adding the Miracle Field). Excavate floodplain soil in the 0-to-6-inch soil horizon, backfill excavated areas and dispose of contaminated soil off-site.
Sediment and Creekbank Soils	<ul style="list-style-type: none"> Reduce PCB concentrations in sediment to levels that reduce PCB concentrations to acceptable levels in fish tissue. Reduce PCB concentrations in sediment to levels that are protective to benthic macroinvertebrate communities. Reduce PCB concentrations in sediment to levels that are protective to fish communities and aquatic feeding birds and mammals. Reduce the transport of PCBs in soil and sediment to downstream areas. 	<ul style="list-style-type: none"> Implement creekbank soil stabilization in contaminated areas with minor, moderate and severe erosion, dredge sediment in high- and low-energy areas, backfill dredged areas, and dispose of excavated soil and dredged sediment off-site. Monitor natural recovery of sediment. Conduct long-term monitoring.^a Implement institutional controls.^b
Surface water	<ul style="list-style-type: none"> Restore surface water to achieve ambient water quality criteria for PCBs for the protection of aquatic life and human consumers of fish. 	<ul style="list-style-type: none"> Conduct long-term monitoring.^a Implement institutional controls.^b
Biota	<ul style="list-style-type: none"> Reduce PCB concentrations in fish tissue to levels that are protective to human fish consumers, including pregnant women, young children and adolescents. Reduce PCB concentrations to levels that are protective of ecological receptors that consume whole fish. 	<ul style="list-style-type: none"> Conduct long-term monitoring.^a Implement institutional controls.^b

Notes:

- May include sampling of pore water, surface water, sediment, bank soils and biota; the long-term monitoring program will be refined and finalized as part of the remedial design process.
- May include, but not be limited to, maintaining fish consumption advisory signage for as long as they are needed and educating the community about the importance of adhering to the advisories. Institutional controls will also include a Soil Management Plan to protect human health and the environment by limiting exposure to PCB-impacted soil left in place and to protect the long-term integrity of the engineered components. In addition, conservation corridors may be established to control adjacent land use and restrict access, if needed, to banks, which will help maintain the creekbank and sediment alternatives.

Source: The Site's 2024 ROD, Section 8.1.

Table 8: OU-4 Remedial Goals

Medium	PCB Remedial Goal	Basis
Residential Soil Surface Subsurface	1 mg/kg 10 mg/kg	NTCRA Streamlined Risk Assessment PCB Guidance
Nonresidential Soil Surface (0 inches to 6 inches)	95% UCL SWAC 6 mg/kg over each 5-acre decision unit in reaches C1 through C4	BERA
Creekbank Soil	NTE 2.6 mg/kg	BERA
Sediment	NTE/RAL 2.6 mg/kg 95% UCL SWAC 0.1 mg/kg in each reach ^a	BERA/HHRA
Surface Water Aquatic Life Human Health	0.014 µg/L 0.000064 µg/L	AWQC aquatic life AWQC human consumption of fish
Fish Fillet tissue (upstream of Jackson Shoals) Fillet tissue (downstream of Jackson Shoals) Whole body	0.08 mg/kg ww 0.04 mg/kg ww 1.3 mg/kg dw	HHRA HHRA BERA
<p><i>Notes:</i></p> <p>a. The sediment remedy has two cleanup levels applied at different spatial scales:</p> <ol style="list-style-type: none"> 1) An NTE cleanup level of 2.6 mg/kg total PCBs where individual sediment samples are not to exceed 2.6 mg/kg total PCB. This NTE cleanup level is also being used as a remedial action level to delineate areas for active remediation. 2) A SWAC cleanup level of 0.1 mg/kg total PCBs where the 95% UCL of the measured SWAC will not exceed the 0.1 mg/kg total PCB cleanup level in each of the 10 creek reaches. Although the mean SWAC was used over the risk assessment exposure areas in the FS, a 95% UCL of the SWAC over the relevant creek reach will be required. <p>NTE = not to exceed UCL = upper confidence limit SWAC = surface weighted average concentration HHRA = human health risk assessment BERA = baseline ecological risk assessment AWQC = ambient water quality criteria mg/kg = milligrams per kilogram µg/L = micrograms per liter ww = wet weight dw = dry weight</p> <p><i>Source:</i> The Site's OU-4 2024 ROD, Table 15.</p>		

Status of Implementation

OU-3 is the only OU with an implemented long-term remedial action. OU-1/OU-2 and OU-4 will be addressed in future FYRs, once implemented. The EPA is considering whether an additional downstream investigation of the Coosa River System is warranted and if needed, this area would become a new OU, OU-5.

OU-3

P/S performed the remedial design for the soil and groundwater remedies between 2012 and 2015 to fill the identified data gaps listed in the IROD. The data gaps included collecting data in 2013 to verify that potential threat waste under Area B has been removed and that there were no groundwater impacts in Area B, Area F and Area G. In addition, the PCB soil remedial goals were evaluated based on dioxin-like PCBs; P/S determined that the PCB remedial goals of 25 mg/kg for surface soil (based on a current operations worker) and 40 mg/kg for subsurface soil (based on a construction worker) are protective when evaluated as dioxin equivalencies based on the most current toxicity information for dioxins, which was updated in 2012. The additional PCB versus dioxin-like PCB data collected during the remedial design indicated that the corresponding total dioxin toxicity equivalent concentrations (0.09 micrograms per kilogram [$\mu\text{g/kg}$] to 0.18 $\mu\text{g/kg}$) are well below the risk-based dioxin remedial goals that range from 0.50 $\mu\text{g/kg}$ to 3.9 $\mu\text{g/kg}$. These results supported the finding that the PCB remedial goals are protective when evaluated as dioxin equivalencies.⁷

P/S began the OU-3 remedial action in June 2015. Between June 2015 and February 2017, P/S completed the following remedial components:

- Installed a new RCRA Subtitle C-compliant cap over the PCB Cells 1E, 2E and 3E of the South Landfill.
- Installed caps over impacted soils in facility areas.
 - Area A – concrete cover west of the employee parking lot and concrete curbs as well as a large area of a multilayer cap.
 - Areas C and D – DGA cover (well-graded mix of sand and gravel) with geocells, which limit lateral movement of cover material, to make the cover more resistant to erosion. Riprap check dams and a perimeter riprap edge provide additional protection for the cover system from erosion due to surface water flows.
 - Area E – concrete cover in the former Production unit building and a multilayer cap north and east of the building.
- Expanded the existing groundwater corrective action system to provide further containment of groundwater near OW-21A and Area A (OW-10/OW-11) in the vicinity of SMWU-12 by installing extraction wells IW-26 and IW-27 (adjacent to OW-21A) and IW-28 and IW-29 (adjacent to OW-10).
- Installed two carbon treatment systems, CTS #1 and CTS #2, near wells OW-21A and OW-10, respectively. The extracted groundwater from the interceptor wells is routed to pretreatment systems that use activated carbon.

⁷ The EPA approved the conclusions presented in Section 3.1.2.3 Analysis of Dioxin TEQ of the January 2015 final Remedial Design Report where samples were collected during the remedial design and evaluated for total PCBs and dioxin TEQs. The Remedial Design Report concluded that PCB remedial goals for OU-3 are protective of dioxin TEQ based on the EPA's most current carcinogenic and noncarcinogenic toxicity values.

- Installed perimeter fencing in the northeast part of the Facility and along the southern part of the employee parking lot (Area H).

During cap construction at the South Landfill PCB cells in February 2016, P/S noted a seep area near the upgradient boundary of Cell 3E in the South Landfill. The impermeable cover system at the PCB cells was designed to eliminate infiltration into the waste material and to contain material under the cap, thus preventing seeps from occurring. However, as water was observed emanating from below the cover system after the cover was installed, P/S re-evaluated the proposed remedial measures to address the seep. P/S determined that recharge to the seep area was not occurring from infiltration through the new cover system. Rather, the seep is a product of both regional groundwater flow and shallow rainfall run-off.

P/S evaluated several alternatives to address the seep that occurs during periods of high rainfall or high groundwater levels. The selected alternative consisted of a collection system (shallow collection trenches and drains, a seep collection sump, conveyance piping and CTS #3 to capture seep water) beneath the impermeable cover to capture and treat water that periodically flows from the seep area. The EPA approved P/S's design documents for supplemental remedial action components in September 2017.

Between September and October 2017, P/S installed the seep collection system. The operation of the 3E Seep conveyance and treatment system started in late 2018. Between December 2018 and March 2019, several high seep flow events occurred, which presented various operational challenges related to flow rates exceeding the maximum design treatment capacity of about 12 gallons per minute. In addition, iron fouling of system components was identified as a major factor that further reduced the overall treatment capacity of the system. In response, P/S implemented system modifications and upgrades to improve the effectiveness and reliability (i.e., reduce iron fouling) of the treatment system. To increase the treatment capacity of the system, the following actions took place between July 2019 and November 2020:

- Installation of upgrades in CTS #3 building.
- Installation of upgrades for the 3E Seep conveyance lines.
- Installation of an iron treatment system.

In April 2024, P/S prepared a Design Basis Report for a Cell 3E Seep CTS to expand the CTS system because the high seep flow presents operational challenges for managing flows from both the CTS #3 and the interceptor well system at the South Landfill. Solutia is proposing a dedicated carbon treatment system, CTS #4, located near CTS #3, to reliably treat a large range (75 to 150 gallons per minute) of reasonably forecasted seep flow rates as a final remedy for the Cell 3E seep, while CTS #3 will remain dedicated to the treatment of recovered groundwater from the South Landfill interceptor well system.

In September 2024, P/S prepared a draft Optimization Work Plan for Groundwater Corrective Action Systems and Monitoring Programs to identify where monitoring could be optimized (e.g., eliminating wells from monitoring that are below compliance standards and reducing sampling frequency for wells with stable or decreasing concentration trends). In addition, the work plan includes methods for assessing the efficacy of monitored natural attenuation (MNA) as a final groundwater remedy for OU-3. This work plan is under regulatory review.

Based on some of the previous OU-3 RCRA corrective measures and remedial actions implemented following the issuance of the OU-3 IROD, P/S had completed more response actions not previously considered as part of the interim remedy. The EPA approved the changes during the remedial design and will document them in a future final ROD. They include:

- The cap required on impacted soils in Area C and Area D was conceptually described in the IROD as a protective soil and a vegetated layer, but this cover was modified to a dense graded aggregate cover during the remedial design.
- The cap on Area E was modified to allow for the construction of a new facility operations building over part of the area.
- P/S identified elevated levels of PCBs next to the recently constructed Autoclave Unit that exceeded the PCB remedial goal and the proposed cover system for the area was included with the OU-3 remedial design/remedial action activities.
- The South Landfill seep identified by P/S in 2017 required P/S to design and construct a collection and treatment system to prevent surface water releases with potential PCB contamination.

Institutional Control Review

Prior to issuance of the OU-3 IROD, deed notices were recorded with Calhoun County, as required by the Facility's RCRA permit. The notices were recorded in 1988, 1989 and 2002. The notices restricted use of the Facility property to industrial use only, prohibited use of groundwater for any supply purpose, and prohibited disturbance of final cover or monitoring systems.

The EPA updated the institutional control requirements for OU-3 in the 2011 IROD, which included:

- Execute and record an environmental covenant with the ADEM to restrict land use and groundwater use at OU-3 and extension of the covenant prohibiting groundwater use to include the North Side and East Side Properties (in the vicinity of monitoring wells OW-21A and OW-10/OW-11).
- Require the Facility's existing "no dig policy" restricting excavation remain in place.

The 2013 Consent Decree further required an updated deed notice and survey plat with the OU-3 boundaries. P/S recorded the updated survey with Calhoun County in November 2013.

In January 2021, P/S and the ADEM executed an Environmental Covenant for the Facility property, including all of OU-3; the Environmental Covenant was recorded with Calhoun County in February 2021. It is not clear if the North Side and East Side Properties (in the vicinity of monitoring wells OW-21A and OW-10/OW-11) were addressed by the Environmental Covenant. Exhibit A of the Environmental Covenant shows the property subject to the Environmental Covenant and it does not appear to include property north of the Georgia Pacific Railway (which is the location of OW-21A) or property east of Clydesdale Avenue. Although there is uncertainty whether the Environmental Covenant for OU-3 addresses the North Side and East Side Properties (in the vicinity of monitoring wells OW-21A and OW-10/OW-11), both properties are owned by Solutia, Inc. (see Figure M-1). The properties are regularly inspected to ensure there are no unacceptable exposures occurring. Further legal review of the Environmental Covenant should be conducted to determine if changes are needed to ensure long-term protectiveness. Figure 4 shows the approximate area subject to the 2021 Environmental Covenant.

The Facility also continues to maintain its Excavation Permit Policy, which is in place to manage (not prohibit) soil excavation, specifies minimum rules and requirements for excavations at the Facility to minimize exposure to potentially contaminated materials, to protect workers from physical hazards, and to protect the integrity of existing engineering controls. The Facility's Health, Safety, Environmental and Security Department enforces the Excavation Permit Policy for any soil excavation at the Facility. The excavation permit files are maintained at the Facility. Table 9 summarizes the institutional controls in place. The OU-3 property has not been transferred to any new owners and continues to be restricted for industrial purposes only.

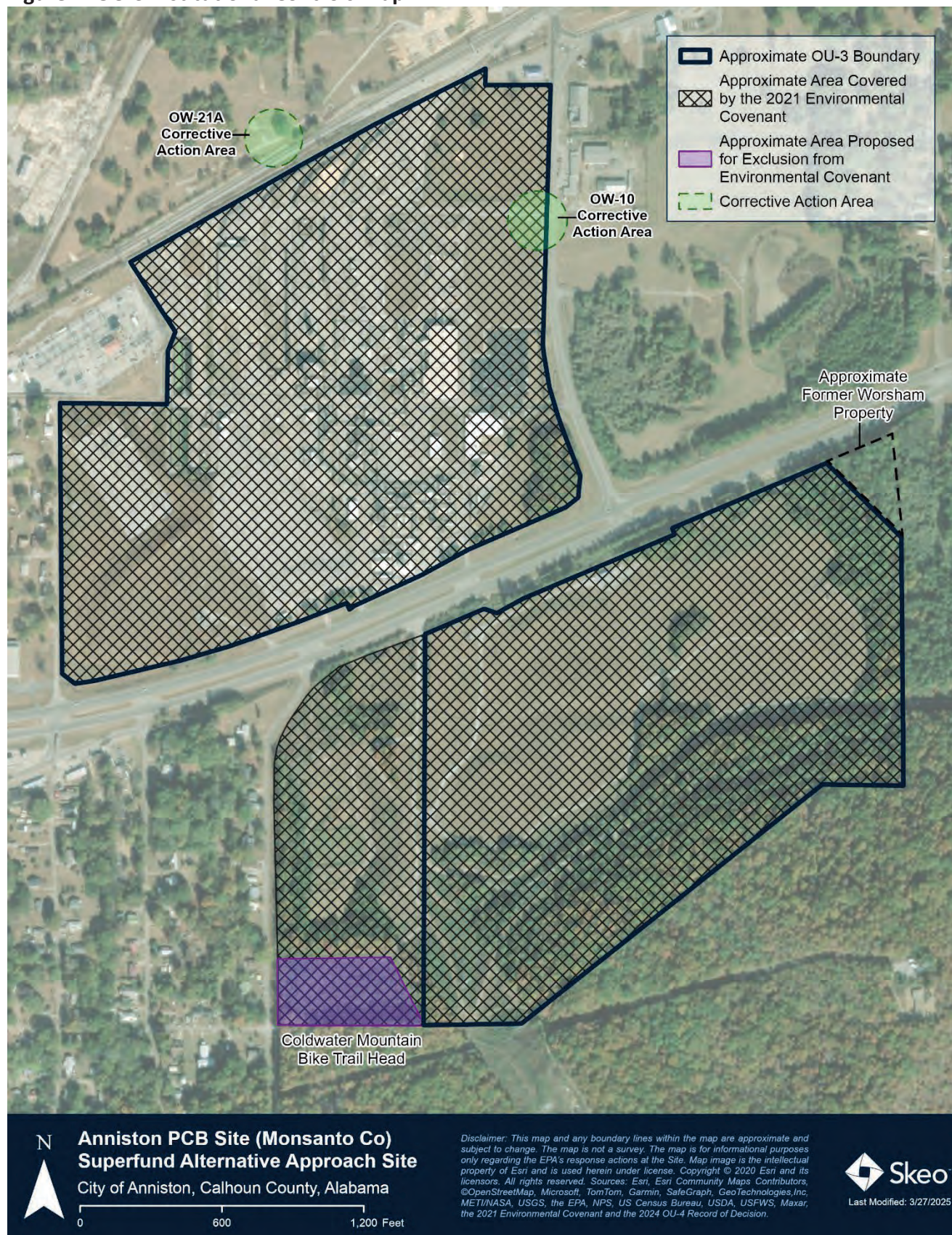
In 2024, P/S proposed to transfer a portion of the Facility property along Monsanto Road at the Coldwater Mountain Bike Trail Head immediately southwest of the South Landfill to the city of Anniston. The EPA, ADEM and Solutia are in discussions to remove this parcel from the Environmental Covenant through a modification as soil samples collected from this area in 2011 had PCB concentrations below 1 mg/kg for unrestricted use. P/S also proposed to expand the footprint under the Environmental Covenant to include the former Worsham property located next to the northeast corner of the South Landfill (which P/S purchased after the Environmental Covenant was executed) and is contiguous with other OU-3 properties.

In September 2021, P/S submitted a final Institutional Control Implementation and Assurance Plan (ICIAP) for OU-3 to the EPA. The ICIAP incorporated the 2021 Environmental Covenant, summarizes the institutional controls that have been established, and describes the institutional control maintenance and reporting requirements such as reporting excavation permits that were conducted each year in accordance with the Facility's Excavation Permit Policy. The excavation permit files are maintained at the Facility.

Table 9: Summary of Planned and/or Implemented OU-3 Institutional Controls

Media, Engineered Controls and Areas That Do Not Support UU/UE Based on Current Conditions	ICs Needed	ICs Called for in the Decision Documents	Impacted Parcel(s)	IC Objective	Title of IC Instrument Implemented and Date
OU-3 soil, groundwater and/or engineered remedial components ^a	Yes	Yes	Parcels within the OU-3 boundary (see Figure 4)	<ul style="list-style-type: none">• Maintain a “No Dig Policy” to restrict excavation over the limits of the property.• Prohibit use of groundwater for potable, industrial, agricultural or any other supply purpose.• Limit property use to industrial purposes.• Maintain on-site engineering controls.	Environmental Covenant, recorded February 2021 ^b Deed Notice and survey, recorded November 2013 Excavation Permit Policy Standard Procedures ESHS-044, revised 2018 Deed Notices, recorded October 2002, July 1989 and June 1988 ^c
			North Side and East Side Properties near OW-21A and OW-10/OW-11	<ul style="list-style-type: none">• Prohibit use of groundwater for potable, industrial, agricultural or any other supply purpose.• Limit property use to industrial purposes.• Protect remedial components.	To be determined
Notes: a. Exhibit B of the Environmental Covenant includes a list of the on-site engineering controls that must be maintained. b. Environmental Covenant accessed 11/14/2024 at https://lf.adem.alabama.gov /weblink/environmental covenant . c. The deed notices, required by the Facility’s RCRA permit, addressed WMA I (South Landfill), WMA II (New Limestone Bed) and the Old Limestone Bed Surface Impoundment (SWMU 8).					

Figure 4: OU-3 Institutional Controls Map



System Operations/Operations and Maintenance (O&M)

P/S conducts OU-3 O&M activities in accordance with the Site's August 2021 O&M Plan (Table 10). Regular O&M activities at OU-3 include sampling of groundwater, collection and treatment of seep liquids from the South Landfill, routine inspections and engineering support, maintenance of caps and landfill covers, mowing, fence repair, and other property maintenance.

Table 10: O&M Inspection Locations and Frequency

Area/Item	Frequency
South Landfill and PCB Cells	Quarterly
South Surface Water Diversion Berm	Quarterly
WMA I Cover	Monthly and after storm events ^a
WMA II Cover	Monthly and after storm events ^a
West End Landfill/APCO Switchyard	Quarterly
Old Limestone Bed	Quarterly
Former PCB Production Area	Quarterly
MCC Warehouse	Quarterly
Walking Trail	Quarterly
Area A	Quarterly
Areas C and D	Quarterly and after storm events ^a
Area E	Quarterly
Area H	Quarterly
Autoclave Area	Annually
WMA I/SWMU I Corrective Action Interceptor Well System	Weekly
WMA II Corrective Action Interceptor Well System	Weekly
Carbon Treatment Systems (CTS #1, CTS#2, CTS #3, Cell 3E Seep, iron treatment system, and frac tanks)	Weekly inspections Quarterly monitoring
Groundwater Monitoring	Semi-annually
Lined Storm Sewer	Every five years
<i>Notes:</i> a. A storm event is defined as a one-year, 24-hour storm event or rainfall that measures 1 inch or greater in one hour or less. A one-year, 24-hour storm is approximately equivalent to 6 inches of rainfall in a 24-hour period. <i>Source:</i> 2021 OU-3 O&M Plan, Table 8-1.	

The most significant O&M issue that arose during the past five years occurred at the South Landfill. During the 2022 O&M inspection, P/S identified seven small holes (about a quarter-inch to a half-inch in diameter) through the high-density polyethylene liner installed over Cell 3E at the South Landfill (also known as SWMU-1 or WMA I under RCRA) in the vicinity of the iron treatment system. P/S repaired the holes within three days of this discovery using a specialized geosynthetic materials installer. No other breaches of the OU-3 engineering controls were identified during the FYR period. Other O&M activities occurred during this FYR that included unclogging several South Landfill toe drains.

The O&M manual is currently being revised to include annual video inspections of this system. P/S is currently designing a new collection and treatment system to address the expected increased flows from the groundwater seep flow from Cell 3E of the South Landfill. P/S also made upgrades to the groundwater treatment systems to allow 24/7 monitoring, which has improved the efficiencies of those systems resulting in less frequent system interruptions. P/S is developing a groundwater optimization plan to potentially modify the current extraction systems and potentially modify the sampling frequencies and well locations with the ultimate goal of achieving a final ROD for the Facility.

Annual O&M costs and non-routine O&M costs during the review period are summarized in Table 11.

Table 11: O&M Costs Over the FYR Period

Year	Routine O&M Costs ^a	Non-Routine Upgrade, Maintenance and Repair Costs
2019	\$565,400	\$319,400 ^b
2020	\$676,800	\$7,500
2021	\$622,000	\$95,500
2022	\$680,400	\$16,900
2023	\$651,100	\$234,100 ^c
2024	Not available	Not available ^d
<p><i>Notes:</i></p> <p>a. Includes engineering, management and routine inspections, property maintenance, analytical laboratory, CTS maintenance, state indirect discharge permitting and electrical service.</p> <p>b. Includes CTS #3 repairs and upgrades and installation of iron treatment system and bag filters.</p> <p>c. Includes CTS/WMA II upgrades and installation of control panels for remote monitoring.</p> <p>d. Costs not yet available for the South Landfill toe drain repairs, installation of cleanouts, relocation of discharge piping, repair of damaged pipe sections and removal of pipe blockages.</p> <p><i>Source:</i> Information provided by Solutia during the site inspection on November 20, 2024.</p>		

III. PROGRESS SINCE THE PREVIOUS REVIEW

This section includes the protectiveness determination and statement from the previous FYR Report (Table 12) as well as the recommendation from the previous FYR Report and the status of that recommendation (Table 13).

Table 12: Protectiveness Determination/Statement from the 2020 FYR Report

OU #	Protectiveness Determination	Protectiveness Statement
3	Short-term Protective	The remedy at OU-3 currently protects human health and the environment because the soil remedies are in place and groundwater capture and treatment facilities are operating as intended. For the remedy to be protective in the long-term, institutional controls should be implemented.

Table 13: Status of Recommendation from the 2020 FYR Report

OU #	Issue	Recommendations	Current Status	Current Implementation Status Description	Completion Date (if applicable)
3	Institutional controls are not implemented for OU-3.	Implement appropriate institutional controls.	Completed	The ADEM executed an Environmental Covenant for the OU-3 property. It was recorded with the land records of the Probate Office of Calhoun County pursuant to Section 12 of the Alabama Uniform Environmental Covenants Act.	2/28/2021

IV. FIVE-YEAR REVIEW PROCESS

Community Notification, Community Involvement and Site Interviews

The EPA issued an online news release on October 30, 2024, to announce that the FYR was underway. A copy of the news release is available online at www.epa.gov/newsreleases/epa-review-cleanups-47-southeast-superfund-sites-year and is included in Appendix E. The results of the review and the completed FYR Report will be made available on the EPA's site profile page: www.epa.gov/superfund/anniston-pcb-site, which can also be accessed online from the Site's information repository, Public Library of Anniston-Calhoun County, main branch located at 108 East 10th Street Anniston, AL.

During the FYR process, interviews were conducted to document any perceived problems or successes with the remedy that has been implemented to date. The interviews are summarized below and the completed forms are included in Appendix F.

Ricky Minor: Mr. Minor is the ADEM's project manager. He believes the PRP is making adequate progress in the cleanup and that they continue to evaluate ways to optimize groundwater removal and treatment systems and maintain the capped areas. He is not aware of any complaints regarding site-related environmental issues. His office has been consistently involved at the Site, finalizing the sitewide Environmental Covenant for the Facility in 2021, modifying the facility's permit to revise the identification of a point-of-compliance well, and being involved in many community engagement activities in association with OU-4. He indicated that the Site would remain in industrial use, with one exception. The Coldwater Mountain Bike Trail Head property (contiguous to the Solutia property, included in the Environmental Covenant for the Site) has been discussed as a parcel to be removed from the Environmental Covenant through a modification.

E. Gayle Pittman Macolly: Ms. Macolly is Solutia's (a subsidiary of Eastman) Principal Remediation Project Manager. She believes that ongoing cleanup activities continue to make progress and perform as the data dictates. Overall, the remedial activities are effective in meeting the remedial objectives for the Site. Initially she thought there may have been fear and a feeling of uncertainty in the community due to the environmental impacts and CERCLA activities at the Site. However, as different remedial

activities are completed, the fear and uncertainty are lessening. Consistent communications with the community on the remedial activities at the Site has helped to build trust and relations with many community members. The Community Advisory Group meets regularly with the EPA and Solutia to discuss project updates, activities and concerns, which are primarily focused on remedial activity schedules and results. Ms. Macolly is also available to talk directly to community members if they have questions. She believes that the EPA does a good job communicating information regarding the remedial activity requirements and progress.

Michael Price: Mr. Price is with the O&M contractor Genesis Project, Inc. Mr. Price stated that the remedies are performing as designed and have been successful in meeting the remedial objectives of risk reduction, exposure prevention and the prevention of contaminant migration in groundwater. He indicated that based on the most current data, the contaminant concentrations in groundwater are generally stable or decreasing. The O&M activities continue to be effective as there are O&M personnel on-site every weekday to maintain the site remedy components. In addition, the groundwater treatment systems are monitored remotely 24/7 and have an alarm call-out feature to alert the O&M staff of any issues. Mr. Price stated that there have been no significant changes in O&M requirements in the last five years. The only issue that has occurred was insufficient flow in several toe drains at the South Landfill, which were addressed by clean-outs and making some repairs. The O&M manual is currently being revised to include annual video inspections of this system and his team is in the process of designing a new collection and treatment system to address the expected increased flows from the groundwater seep flow from Cell 3E of the South Landfill.

Resident #1: The resident is a local community member who is aware of the environmental issues and cleanup activities that have taken place. The resident's impression of the project is that the PRP has followed the required work as outlined in the Site's Consent Decree and that the community has been made aware of the contamination and cleanup processes needed. The resident has not been aware of any trespassing or vandalism at the Site and believes the EPA has kept the community informed and requests that information be provided at future community meetings.

Data Review

There are two groundwater monitoring programs at the Site, semi-annual groundwater monitoring required by the RCRA permit and annual monitoring to evaluate the remedial actions under CERCLA.

RCRA sampling includes detection monitoring at WMA I to determine if a release has occurred at closed landfill Cells 4E and 5E in the northeast part of the South Landfill. The RCRA sampling also includes corrective action effectiveness monitoring at WMA II, which includes the New Limestone Bed and the South Landfill to determine if the operation of groundwater recovery systems is effective in intercepting affected groundwater. The performance standards for the RCRA monitoring are established in the RCRA permit and incorporated as part of the CERCLA remedy.

The CERCLA monitoring is conducted near monitoring wells OW-21A and OW-10 and at other select locations throughout OU-3 to evaluate if the groundwater pump-and-treat systems are effective in recovering and treating affected groundwater at these areas. The groundwater samples are analyzed for site COCs that include a subset of volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), PCBs, pesticides and inorganic compounds. The groundwater data collected under CERCLA are compared to the 2011 IROD preliminary remedial goals. The groundwater data

evaluated as part of this FYR include long-term trends through spring 2023, as presented in the 2023 Annual Groundwater Monitoring Report issued May 2024. Table J-1 in Appendix J presents the most current results. P/S also presents groundwater concentration data trends, as determined by Mann-Kendall statistics (Table J-2).

A summary of the review of the groundwater monitoring data is below.

- RCRA Groundwater Detection Monitoring: At WMA I (South Landfill Cells 4E and 5E), semi-annual groundwater sampling and testing from 2019 to 2023 demonstrate that no release has occurred from the unit.
- RCRA Groundwater Corrective Action: At WMA II (New Limestone Bed) and South Landfill Cells 1W, 2W, 2WA, 3W, 4W, 1E, 2E and 3E, the data demonstrate that operation of groundwater recovery systems is successfully intercepting affected groundwater. Statistical trend analysis of groundwater monitoring data shows that concentrations of COCs are generally stable or decreasing, indicating the effectiveness of the groundwater recovery efforts.
- CERCLA Remedial Action: Groundwater pump-and-treat systems are recovering and treating affected groundwater at Corrective Action Areas near monitoring wells OW-21A and OW-10 (see Figure 3). Groundwater monitoring, which is conducted annually in the vicinity of these wells and at other select locations throughout OU-3, demonstrates that COC concentrations are generally consistent with the prior six years of CERCLA remedial action monitoring. Concentration trends indicate primarily stable to decreasing conditions for COCs at the CERCLA remedial action monitoring wells.

RCRA Groundwater Detection Monitoring

Closed Cells 4E and 5E of the South Landfill have been designated as WMA I. P/S closed Cells 4E and 5E in compliance with provisions contained in the RCRA operating permit. A series of groundwater monitoring wells is hydraulically downgradient of the unit (MW-11A, MW-12A, MW-13A-R⁸) to detect any potential release from the unit to groundwater based on a comparison to the background well (MW-01B) (Figure I-1). Between 2019 and 2023, no COCs were detected in the background well or any point-of-compliance well above the RCRA concentration limits, indicating that no release has occurred from the closed Cells 4E and 5E in the South Landfill.

RCRA Groundwater Corrective Action Monitoring

WMA II, also known as the New Limestone Bed, was used as a surface impoundment for the treatment of characteristically hazardous waste. P/S closed WMA II in compliance with provisions contained in an RCRA operating permit. The WMA II corrective action system includes a series of interceptor wells that extract groundwater that is pumped to a temporary storage tank and then to on-site equalization basins. In 2017, the system was upgraded to include additional interceptor wells and CTS #1 to treat extracted groundwater in the vicinity of OW-21A, with treated water discharged via the sewer system to the publicly owned treatment works. Most wells were below detection for sample analytes. The most prevalent exceedances occurred for SVOCs and PCBs (see Figure I-2 and Figure I-3, respectively), with limited exceedances for pesticides and metals, as summarized below.

⁸ This well replaced MW-13A in October 2022 because of integrity issues whereby sediment was entering the well.

WMA II

P/S samples eight downgradient wells, including three point-of-compliance wells (MW-15, MW-16, MW-20A) and five boundary and effectiveness wells (MW-8, MW-9A and MW-14 and OW-21A and OW-22) and one background well (MW-01B) at WMA II. The most current results indicate:

- MW-20A
 - Pentachlorophenol exceeds the RCRA limit.
- OW-21A
 - Total PCBs (unfiltered), 4-nitrophenol, o,o,o-triethylphosphorothioate and parathion exceed the RCRA limit.
 - Total PCBs (unfiltered), 4-nitrophenol, parathion and manganese exceed the CERCLA remedial goals; there is no RCRA limit for manganese.
 - Total PCBs in filtered samples are below the RCRA limit, demonstrating PCBs are primarily associated with entrained suspended solids.
- OW-22
 - Total PCBs were less than the reporting limit for the first time since April 2017.

Concentration trends of all COCs exceeding the respective RCRA performance standards show decreasing, probably decreasing or stable conditions (Table J-2).

South Landfill/SWMU-1

P/S samples four downgradient wells (OW-6A, OW-8A, OW-15 and OW-16A) and one background well (MW-01B) at SWMU-1. The most current results show the following as part of the RCRA detection monitoring program:

- OW-8A and -16A
 - Total PCBs (unfiltered) exceeds the RCRA limit but filtered samples are below the RCRA limit, demonstrating PCBs are primarily associated with entrained suspended solids.
- OW-16A
 - 1,2,4-Trichlorobenzene (410 micrograms per liter [$\mu\text{g/L}$]) exceeds the CERCLA remedial goal (70 $\mu\text{g/L}$) but there is no RCRA limit established. The Mann-Kendall analysis shows that concentrations are stable.

Concentration trends of all COCs exceeding the respective RCRA limits show decreasing, probably decreasing or stable conditions (Table J-2).

CERCLA Remedial Action Monitoring

The groundwater remedy for OU-3 includes interceptor wells in the vicinity of the two groundwater impact areas identified near wells OW-21A and OW-10 and select wells within OU-3. An additional component of the CERCLA groundwater remedy includes MNA to address parathion and 4-nitrophenol. Historical data indicate that parathion and 4-nitrophenol concentrations were less than CERCLA preliminary remedial goals in all parts of the Site outside of the OW-21A area. Groundwater monitoring results are presented below.

Well OW-21A Area

Four wells are monitored in this area, including wells OW-21A, T-09R, T-10 and T-04, to evaluate the effectiveness of the extraction system.

- VOCs: All VOC concentrations were less than the CERCLA preliminary remedial goals.
- Pesticides and SVOCs: At well OW-21A, concentrations of one pesticide (parathion) and one SVOC (4-nitrophenol) exceeded CERCLA preliminary remedial goals. Mann-Kendall analysis shows that the concentration of parathion is decreasing and concentrations of 4-nitrophenol are stable or decreasing.
- Total PCBs: Total PCBs were detected in groundwater samples from well OW-21A (59 µg/L) and upgradient well T-04 (26 µg/L) (Figure I-4). Based on the Mann-Kendall analysis, no trend for PCB concentrations at well T-04 has been established and a decreasing trend was observed for total PCBs at OW-21A. PCBs were not detected in monitoring well T-09-R. T-09-R was installed in July 2023 to replace monitoring well T-09, which was found to have compromised well integrity.
- Metals: Manganese concentrations at well OW-21A exceeded the CERCLA preliminary remedial goal. The Mann-Kendall analysis indicates that there is no trend for this COC.

Concentration trends of all COCs exceeding the respective performance standards show decreasing, probably decreasing or stable conditions (Table J-2). These results demonstrate that the extraction system is functioning as intended since overall, COC concentrations are stable or decreasing.

Well OW-10 Area

Two wells are monitored in this area, OW-10 and T-20, to evaluate the extraction system's effectiveness.

- VOCs: All concentrations of VOCs were less than the CERCLA preliminary remedial goals for all wells.
- Total PCBs: All concentrations of total PCBs were less than the CERCLA preliminary remedial goal.
- Metals: Beryllium, manganese and mercury concentrations exceeded their respective CERCLA preliminary remedial goals in well OW-10. Downgradient well T-20 exceeded the CERCLA remedial goal for manganese. Mann-Kendall trend analysis indicates that concentrations of manganese are decreasing at T-20 and probably decreasing at OW-10, that concentrations of beryllium are stable at OW-10 and that no trend has been established for concentrations of mercury at OW-10.

Concentration trends of all COCs exceeding the respective performance standards show decreasing, probably decreasing or stable conditions (Table J-2). These results demonstrate that the extraction system is functioning as intended since overall, COC concentrations are stable or decreasing.

Other Areas in OU-3

A subset of wells are sampled under the CERCLA remedial action program for total PCBs and inorganic compounds. The RCRA corrective action monitoring wells OW-16A and OW-08A are also sampled for one VOC and one SVOC, respectively, under CERCLA. Table 14 summarizes the 2023 wells with COC concentrations exceeding the CERCLA preliminary remedial goals. PCBs are the predominant COC exceeding the CERCLA preliminary remedial goals (Figure I-4).

Table 14: Summary of CERCLA Groundwater Preliminary Remedial Goal Exceedances at Other Areas in OU-3

Well	Location	2011 IROD Preliminary Remedial Goal (µg/L)	CERCLA Exceedances in 2023 (µg/L) ^a
T-04	OW-21A Area/WMA II	0.5	Total PCBs = 26
OWR-11	Area A	0.5 73 880	Total PCBs = 280 Cobalt = 140 Manganese = 2,800
OWR-13	Area B and E/MCC Warehouse	0.5	Total PCBs = 5.6
OWR-14D	MCC Warehouse	0.5	Total PCBs = 0.62 J
OWR-15D	Southeast of former PCB Production Area	0.5	Total PCBs = 43 J
OW-16A	North of South Landfill (north side of highway 202)	0.5 70	Total PCBs = 27 1,2,4-Trichlorobenzene = 410
T-18	Area G (south of former PCB Production Area)	0.5	Total PCBs = 48
<p><i>Notes:</i></p> <p>a. All samples were unfiltered except for the cobalt and manganese results where the filtered sample had the higher concentration. Total PCBs is the higher of the total homologs or total Aroclors.</p> <p>J = estimated value</p> <p><i>Source:</i> The Site's 2023 Annual Groundwater Detection Monitoring and Corrective Action Effectiveness Report. Exhibit 2. Anniston PCB Site. Anniston, Calhoun County, Alabama. Solutia. May 2024.</p>			

Concentration trends of all COCs exceeding the respective CERCLA remedial goals show decreasing, probably decreasing or stable conditions (Table J-2).

Site Inspection

The site inspection took place on 11/20/2024. Participants included the EPA's RPMs Pam Scully and George Skala, PRP contractors Michael Price and Michal Rysz, the ADEM's project manager Ricky Minor, and Jill Billus and Claire Marcussen from EPA support contractor Skeo. The purpose of the inspection was to assess the protectiveness of the OU-3 remedy. Appendix G includes the completed site inspection checklist. Appendix H includes photographs from the site inspection.

Site inspection participants entered the Facility through a security office to attend a health and safety training followed by a site overview presentation by the PRP and the PRP's contractors. Participants observed the West End Landfill and the South Landfill. They observed the surface of the landfills and condition of the caps, benches, drainage channels and discharge features. The landfills were in good condition with well-established grass covers. The PRP contractor noted the erosional feature on the southwest side of the South Landfill that has been repaired as part of routine O&M activities. There was no evidence of erosion or settling at the landfill. Riprap drainage channels and benches were clear. Site access roads were accessible with no damage observed.

Site inspection participants observed all three CTS systems, which include a small building that houses the electronic control panels, bag filters and carbon filters. The buildings were in good condition and secured with locks. The control panels were installed in 2024 to allow for remote monitoring of each system and to adjust flow rates into the CTS. The control panels were clearly labeled to observe flow rates and the functioning of the system. Participants also observed interceptor wells next to the three

CTS systems (CTS #1 at the OW-21A corrective action area, CTS #2 at the OW-10 corrective action area and CTS #3 at the seep area of the South Landfill). All interceptor wells were secured with locks and clearly labeled. Discharge systems regulated under a state indirect discharge permit were secured with a flush-mount cover and were functioning. Site inspection participants observed the trench system at Cell 3E of the South Landfill PCB cells, which was installed to capture groundwater seeps from this area. Seep water is treated in an iron treatment system in a small building downgradient of the trench. Participants also observed the secondary trench downgradient of the iron treatment system that was installed to capture any additional seep water for treatment in the iron treatment system. The PRP contractor described recent upgrades to the system and repairs to address a drainpipe damaged recently by O&M vehicles.

Site inspection participants observed the capped areas across OU-3 that included concrete covers over the remediated Autoclave Unit, the MCC Warehouse and the former PCB production area, concrete and grassed portions of Areas A and E, the grassed cover of WMA II, and the dense gravel aggregate over Areas C and D. There were no erosional features or cracks noted in the gravel. Grassed areas and all concrete covers were in good condition, with no repairs warranted.

All treatment buildings, interceptor wells and monitoring wells were locked. The entire OU-3 Facility is surrounded by a security-monitored fence topped with barbed wire. "No trespassing" and warning signs are present at routine locations on the fence. No issues of concern related to the protectiveness of the remedy were identified during the site inspection.

V. TECHNICAL ASSESSMENT

QUESTION A: Is the remedy functioning as intended by the decision documents?

OU-3 is the only OU with an implemented long-term remedial action. OU-1/OU-2 and OU-4 will be addressed in future FYRs, once the remedies are implemented.

Question A Summary:

The OU-3 interim remedy is functioning as intended by the Site's 2011 IROD. The OU-3 interim remedy addresses contaminated soil and groundwater at P/S's Facility and two adjacent closed landfills (the South Landfill and the West End Landfill). P/S completed the interim remedy by filling data gaps, installing RCRA Subtitle C-compliant caps on the South Landfill, expanding the existing groundwater corrective active system to address contaminated groundwater in the vicinity of wells OW-21A and OW-10, and by installing extraction wells and several CTSs. The OU-3 remedy also included the installation of perimeter fencing around the Facility. During the installation of the cap on the South Landfill PCB cells, P/S identified a seep emanating from below the cover during heavy precipitation events. While not included in the IROD, following the EPA's and the ADEM's approval, P/S installed a seep collection system along with a CTS and an iron treatment system to capture and treat seep water. Following the EPA's and the ADEM's approval, P/S also included more remedy components to change the type of cap for Area C, Area D and Area E, and included additional concrete cover in the Autoclave Unit area where contaminated soils were identified during construction. All these changes are planned to be included in a final ROD for OU-3.

P/S conducts OU-3 O&M activities according to the Site's August 2021 O&M Plan. They include sampling of groundwater, collection and treatment of seep liquids from the landfill, routine inspections and engineering support, maintenance of caps and landfill covers, mowing, fence repair, and other property maintenance. Occasional repairs and maintenance of collection and treatment systems are addressed as part of the O&M activities.

As required by the 2011 IROD, P/S and the ADEM executed and recorded an Environmental Covenant for the OU-3 property in 2021 pursuant to Section 12 of the Alabama Uniform Environmental Covenants Act to restrict land and groundwater use. However, it is unclear if the Environmental Covenant adequately addresses the OW-21A and OW-10/OW-11 corrective action areas. P/S also has an Excavation Permit Policy in place as an institutional control to manage soil excavation, specifying minimum rules and requirements for excavations at the Facility to minimize exposure to potentially contaminated materials, to protect workers from physical hazards, and to protect the integrity of existing engineering controls. The Facility's Health, Safety, Environmental, and Security Department enforces the Excavation Permit Policy for any soil excavation at the Facility. Additional deed notices are in place as required by the Facility's RCRA permit.

Solutia is pursuing transferring a portion of the facility property along Monsanto Road at the Coldwater Mountain Bike Trail Head immediately southwest of the South Landfill to the city of Anniston and removing this area from the 2021 Environmental Covenant; soil data show PCB concentrations support unrestricted use in this area. P/S has also proposed to expand the footprint of the Environmental Covenant to include the former Worsham property, which is next to the northeast corner of the South Landfill and contiguous with other OU-3 properties. P/S purchased the Worsham property after the Environmental Covenant was executed.

QUESTION B: Are the exposure assumptions, toxicity data, cleanup levels and RAOs used at the time of the remedy selection still valid?

Question B Summary:

The exposure assumptions, toxicity data, cleanup levels and RAOs remain valid. Since the 2020 FYR there have been no further updates to the EPA's CERCLA default exposure assumptions. Since the 2011 IROD, toxicity assessments were updated for some site contaminants. However, the remedy remains valid, as explained further below.

The 2011 IROD groundwater preliminary remedial goals are based on maximum contaminant levels (MCLs) and, except for lead, the MCLs have not changed (Table K-1 in Appendix K). The federal lead MCL (actually an action level) has become more stringent. Some groundwater COCs did not have established MCLs and were evaluated further in a screening-level risk evaluation (Table K-2). The only risk-based groundwater remedial goals that may be health protective based on the EPA's current CERCLA exposure and toxicity inputs are the cobalt remedial goal of 73 µg/L and the manganese value of 880 µg/L, which were based on the EPA's Region 9 preliminary remediation goals (PRGs). However, the EPA's Region 9 PRGs are no longer in place; they were replaced by the EPA's regional screening levels (RSLs). The current tap water RSLs for cobalt and manganese are 6 µg/L and 430 µg/L, respectively. The RSLs for cobalt and manganese in groundwater are based on provisional or modified reference doses (RfDs) that have considerable uncertainty. It should be noted that tap water RSLs that are based on noncancer effects (as is the case for both cobalt and manganese) are conservatively

based on a child-only exposure scenario. Unless the toxicity value (RfD) is based on some type of developmental effect, the RSL would be overly conservative for a final site decision. Since the IROD cleanup levels exceed the generic RSL values for cobalt and manganese, a more detailed assessment would determine if a lower cleanup level may be needed. The preliminary remedial goals for o,o,o-triethylphosphorothioate (cited as “professional judgement” for its basis) and 4-nitrophenol cannot be judged for protectiveness as there are currently no recommended toxicity values for these contaminants. The actions taken in OU-3 were interim actions. No one is currently exposed to groundwater contamination. Therefore, the more stringent lead MCL (action level) and RSLs for cobalt and manganese and the absence of toxicity values for o,o,o-triethylphosphorothioate and 4-nitrophenol do not affect the current protectiveness of the OU-3 remedy.

The 2011 IROD surface soil remedial goals were based on a current or future operations worker and a target cancer risk of 1×10^{-5} . The subsurface soil remedial goals were based on the protection of a construction worker who may come in contact with subsurface soil during excavation activities or utility repairs. To evaluate if the remedial goals remain valid based on current toxicity information, a screening-level risk evaluation was conducted using information from the 2011 IROD (Appendix L). The screening-level risk evaluation shows that the soil remedial goals remain valid.

The previous FYR evaluated whether dioxin-like PCBs should be considered a new COC due to the availability of an EPA-approved oral RfD in 2012. The previous FYR demonstrated that the surface soil and subsurface soil exposure point concentrations do not pose carcinogenic risks above the EPA’s risk management range or above the noncancer hazard quotient (HQ) threshold of 1. These conclusions are still valid because toxicity values have not changed for dioxin since the previous FYR.

There have been no changes that would affect the RAOs established in the 2011 IROD. The groundwater RAO to restore contaminated groundwater to levels that are protective of beneficial use has not yet been attained in the short term but ongoing remediation is expected to address this RAO in the long term.

QUESTION C: Has any other information come to light that could call into question the protectiveness of the remedy?

No additional information has come to light that affects protectiveness of the OU-3 remedy.

VI. ISSUES/RECOMMENDATIONS

Issues/Recommendations	
OU(s) without Issues/Recommendations Identified by the FYR:	
None	

Issues and Recommendations Identified by the FYR:

OU(s): 3	Issue Category: Institutional Controls			
	Issue: It is unclear if the 2021 Environmental Covenant that restricts land and groundwater use at OU-3 extends to the OW-21A and OW-10 corrective action areas (although these areas are currently owned by Solutia). Exhibit A of the Environmental Covenant, which shows the property subject to the Environmental Covenant, does not identify the OW-21A and OW-10 corrective action areas.			
	Recommendation: As part of forthcoming updates to the Environmental Covenant to incorporate the former Worsham property and to potentially remove the Coldwater Mountain Bike Trail Head, the Environmental Covenant should also be reviewed to ensure it addresses all areas of OU-3 that do not meet UU/UE, which include the OW-21A and OW-10 corrective action areas.			
Affect Current Protectiveness	Affect Future Protectiveness	Party Responsible	Oversight Party	Milestone Date
No	Yes	PRP	EPA/State	8/1/2030

OTHER FINDINGS

Additional recommendations were identified during the FYR.

- Based on some of the previous OU-3 RCRA corrective measures and remedial actions implemented following the issuance of the OU-3 IROD, P/S had completed more response actions not previously considered as part of the interim remedy, which need to be documented in a future decision document, including:
 - The cap required on impacted soils in Area C and Area D was conceptually described in the IROD as a protective soil and a vegetated layer, but this cover was modified to a dense graded aggregate cover during the remedial design.
 - The cap on Area E was modified to allow for the construction of a new facility operations building over part of the area.
 - P/S identified elevated levels of PCBs next to the recently constructed Autoclave Unit that exceeded the PCB remedial goal and the proposed cover system for the area was included with the OU-3 remedial design/remedial action activities.
 - The South Landfill seep identified by P/S in 2017 required P/S to design and construct a collection and treatment system to prevent surface water releases with potential PCB contamination.

- The MCL (action level) has become more stringent for lead and toxicity values have become more stringent for the groundwater COCs cobalt and manganese. In addition, the validity of the preliminary remedial goals for o,o,o-triethylphosphorothioate and 4-nitrophenol cannot be judged as there are currently no recommended toxicity values for these COCs. It is anticipated that this evaluation could be conducted during selection of a final remedy for OU-3.

VII. PROTECTIVENESS STATEMENT

Protectiveness Statement(s)	
<i>Operable Unit:</i> 3	<i>Protectiveness Determination:</i> Short-term Protective
<p><i>Protectiveness Statement:</i> The interim remedy at OU-3 is currently protective of human health and the environment because the soil remedies are in place, groundwater capture and treatment facilities are operating as intended, and institutional controls have been implemented to restrict exposure to soil and groundwater. However, for the remedy to be protective over the long term, the following action should be implemented: As part of forthcoming updates to the Environmental Covenant to incorporate the former Worsham property and to potentially remove the Coldwater Mountain Bike Trail Head, the Environmental Covenant should also be reviewed to ensure it addresses all areas of OU-3 that do not meet UU/UE, which include the OW-21A and OW-10 corrective action areas.</p>	

VIII. NEXT REVIEW

The next FYR Report for the Anniston PCB Site (Monsanto Co) Superfund Alternative Approach site is required five years from the completion date of this review.

APPENDIX A – REFERENCE LIST

Addendum No. 5 to the NTC Removal Action Completion Report (Work Completed for 2019). 2020. Anniston PCB Site. Prepared by Solutia. April.

Addendum No. 8 to the NTC Removal Action Completion Report (Work Completed for 2022). 2023. Anniston PCB Site. Prepared by Solutia. June.

Addendum No. 9 to the NTC Removal Action Completion Report (Work Completed for 2023). 2024. Anniston PCB Site. Prepared by Solutia. July.

Anniston PCB Site: Five-year Review Meeting Presentation. 2024. Prepared by Solution. November.

Annual Groundwater Detection Monitoring and Corrective Action Effectiveness Report 2023. 2024. Anniston PCB Site. Anniston, Calhoun County, Alabama. Solutia. May.

Annual Groundwater Detection Monitoring and Corrective Action Effectiveness Report 2022. 2023. Anniston PCB Site. Anniston, Calhoun County, Alabama. Solutia. April.

Annual Groundwater Detection Monitoring and Corrective Action Effectiveness Report 2021. 2022. Anniston PCB Site. Anniston, Calhoun County, Alabama. Solutia. April.

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First Five-year Review Report. 2020. Anniston PCB Site. Anniston, Calhoun County, Alabama. EPA Region 4. September.

Operable Unit 1/Operable Unit 2 Proposed Plan Fact Sheet. 2017. Anniston PCB Superfund Site. March.

Operable Unit 1/Operable Unit 2 Record of Decision. 2017. Anniston PCB Site. Anniston, Calhoun County, Alabama. EPA Region 4. November.

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Operable Unit 3 Annual Institutional Control Monitoring Report for 2022. 2023. Anniston PCB Site. Prepared by Solutia. January.

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Operable Unit 3 Construction Completion Report. 2018. Anniston PCB Site. Anniston, Calhoun County, Alabama. Solutia. January.

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Operable Unit 3 Construction Completion Report Second Addendum. 2021. Anniston PCB Site. Anniston, Calhoun County, Alabama. Solutia. June.

Operable Unit 3 Institutional Control Implementation and Assurance Plan, Revision 2.0. 2021. Anniston PCB Site, Anniston, Alabama. Solutia. September.

Operable Unit 3 Interim Record of Decision. 2011. Summary of Remedial Alternative Selection, Operable Unit 3 Anniston PCB Site. Anniston, Calhoun County, Alabama. EPA Region 4. September.

Operable Unit 3 Operations and Maintenance Plan for Remedial/Corrective Action Projects: Revision 2. 2021. Anniston PCB Site. Anniston, Calhoun County, Alabama. Solutia. August.

Operable Unit 4 Feasibility Study. 2023. Anniston PCB Site. Anniston, Calhoun County, Alabama. Prepared by Geosyntec. May.

Operable Unit 4 Remedial Investigation. 2019. Anniston PCB Site. Anniston, Calhoun County, Alabama. Prepared by Geosyntec. May.

Operable Unit 4 Record of Decision. 2024. Anniston PCB Site. Anniston, Calhoun County, Alabama. EPA Region 4. December.

Optimization Work Plan for Groundwater Corrective Action Systems and Monitoring Programs. 2024. Anniston PCB Site. Anniston, Calhoun County, Alabama. Prepared by GSI Environmental, Inc. September.

Screening Level Ecological Risk Assessment (SLERA) for Operable Units 1, 2, and 3 of the Anniston PCB Site, Anniston, Alabama. Rev. 1. Prepared by Blasland, Bouck & Lee, Inc. December 2005.

Updated Lead and Copper Rule Improvements – Fact Sheet. 2024.
https://www.epa.gov/system/files/documents/2024-10/final_lcrl_fact-sheet_general_public.pdf.

Updated Residential Soil Lead Guidance for CERCLA Sites and RCRA Corrective Action Facilities. 2024. EPA Office of Land and Emergency Management. January.
<https://semspub.epa.gov/src/document/HQ/100003435>.

APPENDIX B – CURRENT SITE STATUS

Environmental Indicators

- As of August 2024, the EPA considers that current human exposure to the Site is not under control due to direct exposure by residential occupants and commercial/industrial workers in the Snow and Choccolocco creek floodplains to PCB-contaminated soil and ingestion of fish.
- Insufficient data are available to determine if current groundwater migration is under control.

Are Necessary Institutional Controls in Place?

☐ All ☒ Some ☐ None

In January 2021, P/S and the ADEM executed an Environmental Covenant for the OU-3 property. However, additional institutional controls will be implemented once the remedies are implemented at other OUs.

Has the EPA Designated the Site as Sitewide Ready for Anticipated Use?

☐ Yes ☒ No

Has the Site Been Put into Reuse?

☒ Yes ☐ No

OU-3 is an active industrial facility along with adjacent closed/capped landfill areas.

APPENDIX C – SITE CHRONOLOGY

Table C-1: Site Chronology

Event	Date
Various site owners manufactured ferro-manganese, ferro-silicon and ferro-phosphorus compounds, phosphoric acid and later organic chemicals	1917 - 1928
Plant operators produced PCBs	1929 - 1971
The EPA conducted an RCRA Facility Assessment to identify SWMUs that might be subject to potential corrective action	1991
The ADEM and the PRP entered into a Consent Order requiring sampling of soils in the stormwater drainage system in an area designated as “Area A” (an area immediately east of the Facility) where PCBs were reported in the sediment samples	April 1995
The ADEM and the PRP entered into a second Consent Order to identify and sample more areas for the presence of PCBs, to upgrade the West End Landfill cap, to improve stormwater runoff controls, and to continue to relocate residents on the east side of the facility	March 1996
The ADEM issued a Post-Closure Permit to the PRP to regulate two hazardous waste Management Areas (WMA-I and WMA-II) and to address corrective action for SWMUs and potential Administrative Orders on Consent	January 1997
Solutia (a new PRP) was formed when the Monsanto Company elected to separate its chemical business	1997
The ADEM issued a Post-Closure Permit Modification	November 1997
The ADEM approved a RCRA Facility Investigation/Confirmation Sampling Work Plan	April 1998
P/S entered into an Administrative Order on Consent with the EPA to address certain off-site areas under a CERCLA removal action	October 2000
P/S began conducting removal actions at residential areas	March 2001
The ADEM issued another Post-Closure Permit Modification	May 2001
Monsanto Chemical Corporation issued an Interim Measures Report	2002
P/S entered into a Partial Consent Decree with the EPA to perform an RI/FS at OU-1/OU-2 and OU-3 and began the RI/FS for OU-1/OU-2, OU-3 and OU-4	August 2003
The ADEM agreed to defer enforcement of certain requirements dictated by the Corrective Action Program provision of the post-closure permit to the EPA to be managed under the Partial Consent Decree	September 2003
The ADEM issued another Post-Closure Permit Modification	November 2003
The ADEM issued an Environmental Indicator Report	2005
The ADEM renewed the Post-Closure Permit	October 2008
The PRP performed RCRA Corrective Measures at the Choccolocco Creek Wastewater Treatment Plant and the Highway 21 Bridge	March 2009
P/S notified the EPA and the ADEM of an intermittent seep at the South Landfill; however, following the notification, the seep flow decreased and eventually stopped	June 2010
The PRP completed the OU-3 RI/FS The EPA issued the OU-3 IROD	September 2011
P/S began the remedial design of the OU-3 remedy	September 2012
The EPA and P/S entered into a Consent Decree to conduct remedial design and remedial action activities at OU-3	April 2013
P/S notified the EPA and the ADEM of an intermittent seep at the South Landfill; however, following the notification, the seep flow decreased and eventually stopped	May 2014
P/S completed the OU-3 remedial design and began the remedial action	June 2015
P/S observed water from the previously noted seep area near the upgradient boundary of Cell 3E in the South Landfill from beneath the recently installed landfill cover system	February 2016
The EPA conducted a public meeting for the Proposed Plan for OU-1/OU-2	March 2017

Event	Date
P/S notified the EPA and the ADEM of an intermittent seep at the South Landfill; however, following the notification, the seep flow decreased and eventually stopped	May 2017
The PRP completed the RI/FS at OU-1/OU-2 The EPA issued a ROD for OU-1/OU-2	November 2017
P/S completed the OU-3 Construction Completion Report for Remedial Action that included installation of CTS #3 to address the South Landfill seep	December 2017
P/S prepared an OU-3 Construction Completion Report Addendum	July 2018
P/S submitted an OU-3 Operations & Maintenance Plan	August 2018
P/S completed an OU-3 Interim Remedial Action Report	August 2018
The PRP completed the remedial action and the EPA approved the OU-3 Interim Remedial Action Report	September 2018
P/S notified the EPA of a release from the CTS #3 system due to heavy precipitation in early January, resulting in increased seep flow rate coupled with rapid iron fouling and causing an overflow of seep water at the seep junction box and subsequent release of the seep overflow water to the ground surface	February 2019
The ADEM renewed the Post-Closure Permit	July 2019
The EPA identified a new PRP to remediate two unapproved PCB and lead waste disposal areas unrelated to the P/S operations through a Consent Decree	December 2019
The ADEM issued a Minor Modification to the Post-Closure Permit	May 2020
The PRP began the remedial design for OU-1/OU-2	August 2020
The EPA signed the first FYR report	September 2020
P/S recorded the Environmental Covenant with the land records of the Probate Office of Calhoun County pursuant to Section 12 of the Alabama Uniform Environmental Covenants Act	February 2021
P/S prepared an OU-3 Construction Completion Report Second Addendum and a Seep Investigation Report	June 2021
P/S submitted the Operable Unit 3 Institutional Control Implementation and Assurance Plan to the ADEM and the EPA	September 2021
P/S submitted a Cell 3E Seep Groundwater Modeling Study of Potential Upgradient Capture for Seep Mitigation	April 2022
P/S submitted the Quintard Mall Redevelopment Construction Project Completion Report for the Site	December 2022
P/S submitted a Design Basis Report for a Cell 3E Seep Carbon Treatment System	April 2024
The EPA issued a ROD for OU-4	December 2024

APPENDIX D – EARLY ACTIONS TABLES AND FIGURES

Table D-1: OU-1/OU-2 RCRA Interim Corrective Measures and CERCLA Removal Actions

Program	Areas	Actions	Date
RCRA Interim Corrective Measures	Northside	<ul style="list-style-type: none"> Demolished structures and installed stormwater features and associated lined drainage features. Installed soil and asphalt caps with a geotextile marker as needed over an 11-acre area. Installed fence around interim measure areas. 	1998 - 2003
	Eastside	<ul style="list-style-type: none"> Demolished structures and installed stormwater management features. Constructed soil caps with a geotextile marker layer over about an 18-acre area. Backfilled and lined a ditch within the 18-acre area. Installed perimeter fencing. 	1997 - 2012
	Eastside Drainage Areas	<ul style="list-style-type: none"> Constructed soil caps with a geotextile marker layer over about 3 acres. Constructed stormwater management features. Eliminated a ditch and backfilled with a cap and geotextile marker. Installed fencing. 	1997 - 1998
	Alabama Power Company Drainage Ditch	<ul style="list-style-type: none"> Lined a stormwater drainage ditch. 	1996
	Quintard Mall	<ul style="list-style-type: none"> Excavated contaminated sediment and soil from the main channel of Snow Creek and adjacent floodplain that passes through the mall property. Widened and lined the creek channel that flows beneath the mall and mall parking lot. 	1998 - 2001
CERCLA Removal Actions	11 th Street Ditch	<ul style="list-style-type: none"> Excavated contaminated soils and lined the ditch. 	1989 - 2004
	Hall Street Properties	<ul style="list-style-type: none"> Constructed an isolation marker layer over about 1 acre. 	2004 - 2006
	Snow Creek Sediment Removal and Dredge Spoil Pile Removal	<ul style="list-style-type: none"> Excavated dredged soil piles from previous Snow Creek dredging performed by the city of Anniston and disposed of the material off-site at a permitted facility. Restored areas with a clean vegetated soil cover. 	2009
Source: The Site's OU-1/OU-2 ROD, Section 2.3.			

Table D-2: OU-3 Interim Corrective Measures Prior to the 2011 IROD

RCRA Area Type	RCRA Area ID	Area Description / Site Designation	Description of Interim Corrective Measures (ICMs)	Dimensions (if Applicable)
SWMU	1	South Landfill (unregulated cells) Note - Regulated Cells are designated WMA-I	<ul style="list-style-type: none"> • Portions covered with multi-layer cap and drainage controls over waste; clay and vegetated cap around disposal area, soil stabilization measures to control erosion (1997-1998) • Cap portions over waste, from top: vegetative cover; 6 inches of topsoil; minimum of 18 inches of cover soil; geocomposite drainage layer anchored along the entire perimeter three-sides (west, north, and east) of which contain a toe drain consisting of a 4-inch corrugated, slotted HDPE pipe surrounded by a filter sock and sand bedding; with 4-inch solid pipe toe drain outlets installed every 200 feet that daylight outside the limits of the cover system; 40-mil High Density Polyethylene (HDPE) textured geomembrane, 6-inches of foundation soil, waste • Cap portions around disposal area, from top: vegetative cover, either a geotextile with 12 inches of compacted soil or varying thicknesses of clay, former soil surface • Drainage controls - construction of South Diversion Berm, and associated channels and hard piping to transfer water around South Landfill to DSN-012 • In the late 1970s (approximately 1978), waste material from the northern portion of Cell 1W was excavated and relocated to the RCRA-regulated cell, 4E. 	21.6 Acres
SWMU	2	Landfill Catchment Basins (south landfill)	<ul style="list-style-type: none"> • Part of WMA-I Closure: clay cover and seeding when landfill cells closed 	
WMA	I	WMA-I - South Landfill (regulated cells 4E/5E)	<ul style="list-style-type: none"> • Multi-Layer Cap (and drainage controls) • Cap, from top to bottom: vegetative cover, 24-inches of topsoil, geotextile fabric, 12-inch sand drainage layer, 24-inch compacted clay base, waste • Drainage control includes diversion of storm water run-off from unaffected upgradient areas, allowing closure of ditches in areas of potentially affected soils • Collection of runoff from South Landfill (SWMU-1 and WMA-1), hard piped to ~6.2 Acre detention pond in East Side Area then discharged to DSN-012 • Soil stabilization measures to control erosion 	4.41 Acres
SWMU	4	Leachate Storage Tank	<ul style="list-style-type: none"> • Unit previously located on western edge of South landfill • 1000 gallon steel tank mounted in steel frame above concrete pad, previously pumped leachate from Cell 5E, and then received water from the Western Landfill Groundwater Extraction System • Removed in 1996 	1000 gallon steel tank in steel frame over concrete pad
SWMU	6	Phosphate Landfill	<ul style="list-style-type: none"> • Gravel cover (2 to 8 inches thick) installed in early 1980s 	~150' x 170'
SWMU	7	Santotar® Pit	<ul style="list-style-type: none"> • Removal - remaining solidified Santotar® removed from the pits (12 to 16 feet below grade), and pits backfilled with clay in 1989, currently under gravel cover (7 to 12 inches thick) 	1.1 Acres

RCRA Area Type	RCRA Area ID	Area Description / Site Designation	Description of Interim Corrective Measures (ICMs)	Dimensions (if Applicable)
SWMU	8	Old Limestone Bed Surface Impoundment (OLBSI)	<ul style="list-style-type: none"> • Removal (min 3 feet below old liner) / clay backfill to surface / asphalt cover (end of 1984) • Closed as landfill with ADEM approved closure + post closure monitoring plan (in 1984 - 1985) • Portion of surface concrete • Groundwater corrective action system in place, see details at end of table. 	0.14 Acres
SWMU	9	Former Lagoon	<ul style="list-style-type: none"> • Removal (several feet below grade) / clay / gravel cover (< 2") (1965) • Corrective action system in place, see details at end of table. 	0.53 Acres
WMA	II	WMA-II - New Limestone Bed	<ul style="list-style-type: none"> • Removal (12 feet below grade) / soil backfill / seed • Fenced in area with warning signage • Groundwater corrective action system in place, see details at end of table. 	0.2 Acres
SWMU	12	Phosphoric Acid Basin (South Basin)	<ul style="list-style-type: none"> • Removal / clay / seed then asphalt cover - under extension of employee parking lot (1994) • Removal - clean fill clay placed 10 to 12 ft-bgs, then seeded • Cover - asphalt cover (employee parking lot - 2") 	0.24 Acres
SWMU	12	Phosphoric Acid Basin (North Basin)	<ul style="list-style-type: none"> • Decommission / backfill / seed (1980s) • Horizontal and vertical delineation and removal of impacted soil at SSRI-11 (2010) 	0.11 Acres
SWMU	13	Closed Container Storage Area	<ul style="list-style-type: none"> • Unit was located on southwest corner of ACL warehouse • Closed with ADEM approved closure plan in 1989 (steam clean, decon, wipe test, submit data) 	4" epoxy coated concrete pad
SWMU	14	Hazardous Materials Storage Area	<ul style="list-style-type: none"> • Unit located east of Benzene Satellite Accumulation Area in SE portion of facility, consisting of a 10'x10'x8' metal building on a concrete pad (capacity of 660 gallons, secondary containment of 190 gallons). 	10'x10'x8' steel building on concrete pad
SWMU	15	Spent Nickel Catalyst Storage Area	<ul style="list-style-type: none"> • Unit located north of the Therminol Production Area in center of facility. • 20'x20' concrete pad surrounded by 3' concrete wall on two sides, stores 55-gallon drums on pallets. 	20'x20' concrete 3' wall on two sides
SWMU	16	Laboratory Satellite Accumulation Area	<ul style="list-style-type: none"> • Previously 5-gallon red plastic jugs labeled hazardous waste in each lab room. • Now, waste lab solvents are stored in 55-gallon drum maintained outside the laboratory building in special secondary containment bins designed to hold 2 55-gallon drums with an overspill capacity of 55 gallons. 	Special secondary containment for 2 55-gallon drums with 55-gallons of secondary containment
SWMU	17	Scrap Yard Waste Oil Satellite Accumulation Area	<ul style="list-style-type: none"> • Gravel cover • Contains 28'x12' concrete pad with roof and 15'x25' concrete pad with partial roof 	~50'x220'

RCRA Area Type	RCRA Area ID	Area Description / Site Designation	Description of Interim Corrective Measures (ICMs)	Dimensions (if Applicable)
SWMU	21	Former Boiler	<ul style="list-style-type: none"> Previously located north of 4-nitrophenol production unit on concrete pad within a steel building Operated until 1989, consisted of a 181.7 Million British Thermal Unit (MBTU) / hr boiler Unit and steel building removed, concrete pad remains, replaced by current boiler (SWMU 22) Unit operated under Alabama Air Pollution Control Commission Permit No. 301-0007-Z0003 from June 1978 through Jan 1989 	
SWMU	29	Wastewater Treatment Plant	<ul style="list-style-type: none"> Located on the western border of the facility Consists of: two hold tanks (SWMU 29A), two aeration basins (SWMU 29B), one clarifier (SWMU 29C), one wet well (SWMU 29D), and associated process sewer piping Demolition in place of the hold tanks, four aeration basins, and three clarifiers; conversion of two aeration basins to hold tanks (1987-1991) Only used as equilibration and neutralization area since 2004 after end of 4-nitrophenol production, and water is currently discharged through DSN-002 to the Anniston Publicly Owned Treatment Works (POTW) Discharge to Anniston POTW is permitted under a State Indirect Discharge Permit 	
SWMU	37A	Stormwater Drainage System - Production Area Portion	<ul style="list-style-type: none"> Separation of process and stormwater systems 1996 Sealing of unused collection sewers, installation of sediment control measures at stormwater inlets, and lining of the main stormwater trunk line (~ 1400 LF) with a polyurethane Cure-Line liner system in 1997 to reduce sediment transport, infiltration, and leakage Additional stormwater sewer repairs and upgrades in 2006/2007 	
SWMU	41	Former Parathion Production Area	<ul style="list-style-type: none"> End of production in 1986 Removal - potentially affected soil up to 20 feet bgs and associated process sewer piping Backfill with soil / gravel cover (1 - 2" thick) 	460'x85'
SWMU	42	Former PCB Production Area	<ul style="list-style-type: none"> Decommission / concrete / asphalt cap (1972) Supplemental asphalt cover - (additional 1 -2" thickness in 1993/1994) 	Asphalt cap 180'x100'
SWMU	43	Former Phosphorous Pentasulphide Production Area	<ul style="list-style-type: none"> Decommission (1988) Removal of potentially affected soils (most along drainage ditch - 6' - 8' on N to < 1' on S) Maintenance of concrete-gravel cover (existing slab left in place, gravel down to 1 - 2" thick) 	551'x205'
SWMU	44	Waste Drum Satellite Accumulation Area	<ul style="list-style-type: none"> Partial removal / concrete backfill in former pit and area (near soil sample location SSR-18) of 2 conical sumps to 6' - 8' deep / 4-inch thick Concrete Cover over surrounding area (2002) 	Previously 19'x16' concrete pit with 4" curbing containment

RCRA Area Type	RCRA Area ID	Area Description / Site Designation	Description of Interim Corrective Measures (ICMs)	Dimensions (if Applicable)
SWMU	46	Former Hold Tanks, Aeration Basins and Clarifiers	<ul style="list-style-type: none"> Units cleaned, demolished (basin walls pushed down) and landfilled in place (1987-1988) Soil backfill to grade / gravel cover (1-2 " thick) 	330'x160'
SWMU	47	West End Landfill	<ul style="list-style-type: none"> Multi-layer cap and drainage controls (1996) Cap, from top to bottom: vegetative layer, 18-inch soil cover, geosynthetic drainage layer of continuous nonwoven geotextile with 1'x1" geosynthetic wick drains placed every 50 feet daylighting into a ditch near the toe of the western and northern slopes of the covered area, 60-mil textured HDPE geomembrane, 6-inch compacted clay foundation layer, waste Surrounding area cap, from bottom up, consists of: former soil surface, cover soil, vegetation Drainage control included collection of storm water run-off and installation of hard piping to replace ditches for run-off through areas of affected soils 	8.93 Acres
SWMU	MCC Warehouse	MCC Warehouse	<ul style="list-style-type: none"> Replacement of lower 12 feet of siding panels along entire south and portions of east and west sidewall, plus additional 20 feet from the east wall north of the loading dock Decontamination and paint encapsulation of a 5-foot strip of the concrete floor surface along the entire inside perimeter Decontamination and paint encapsulation of the exterior concrete foundation walls adjacent to replaced siding and two concrete drainage ditches along the exterior of the south and east walls. Replacement of southern 1/4 of roof panels Concrete ditches (40-LF on E sidewall, 100-LF on south sidewall, 12" wide by 8" deep, cleaned and coated with epoxy Asphalt capping of a rail spur adjacent to the west wall (6 to 12 inches of dense graded aggregate topped by 2 inches of asphalt) 	~120'x300'
AOC	A	AOC-A - Product Storage Tank	<ul style="list-style-type: none"> Located in central portion of facility to the east of SWMU 15 Consists of 11,000-gallon Santowax product tank located within a 4-foot high concrete secondary containment wall Removal of stained gravel, upgrade of spill containment to concrete floor, backup secondary level control circuits (1991/1992) 	10' diameter 15,600 gallon tank with 30'x27'x2.5' concrete secondary containment
AOC	C	AOC-C - Product Underground Storage Tanks	<ul style="list-style-type: none"> Removal of 4 tanks (mid to late 1980s) 	

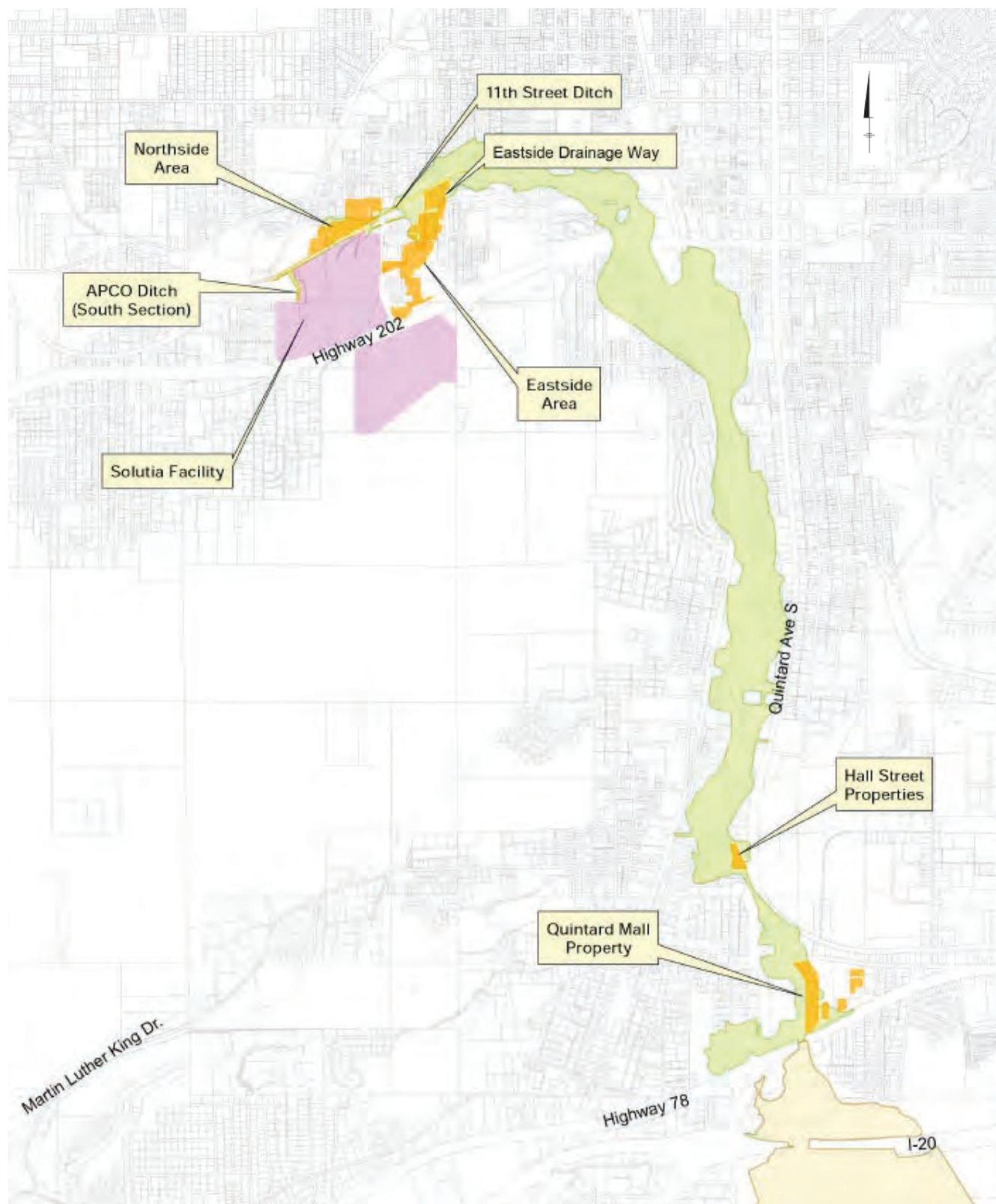
RCRA Area Type	RCRA Area ID	Area Description / Site Designation	Description of Interim Corrective Measures (ICMs)	Dimensions (if Applicable)
SUMMARY OF CORRECTIVE ACTION SYSTEMS				
SWMU WMA	1 I	South Landfill Corrective Action System	<p>Western Landfill Groundwater Extraction System</p> <ul style="list-style-type: none"> • Installation and operation of 4 interceptor wells (IW-1, IW-2, IW-3, and IW-4) in 1983 • Monitoring and observation wells (OW-02 and OW-04) • IW-1, IW-3, and IW-4 turned off in 1998 per RCRA Permit 	
SWMU WMA	1 I	South Landfill Corrective Action System	<p>Northern Landfill Groundwater Extraction System 1982-1983 (IW-5 & IW-6) 1987-1988 (other IWs)</p> <ul style="list-style-type: none"> • Installation and operation of 9 interceptor wells (IW-5, IW-6, IW-7, IW-8, IW-9, IW-10, IW-11, IW-12, and IW-13) • Monitoring and observation wells (MW-1B, OW-6A, OW-7, OW-15, and OW-16A) • IW-10 has been pre-treated by pumping through a carbon filter drum 	
SWMU WMA	1 I	South Landfill Corrective Action System	<p>Plant Site Groundwater Extraction System</p> <ul style="list-style-type: none"> • Installation and operation of 2 interceptor wells (IW-14 and IW-15) (1987-1988) • Monitoring and observation well (OW-08A) • Currently only IW-14 in operation (IW-15 turned off as per RCRA Permit) • IW-14 replaced with IW-14A 200 feet to north (downgradient of OW-8 & OW-8A on Feb 2003) 	
SWMU WMA	8 II	WMA II Corrective Action System	<p>Old Limestone Bed Surface Impoundment Groundwater Extraction System</p> <ul style="list-style-type: none"> • Installation and operation of 6 interceptor wells (IW-16, IW-17, IW-18, IW-19, IW-20, and IW-21 in 1988; addition of IW-22, IW-23, IW-34, IW-25 in Jan-Feb 2003) • Monitoring and observation wells (MW-1B, MW-8, MW-9R, MW-15, MW-16, MW-20A, OW-19, OW-21, OW-22, OW-24, and SBP-5) 	

Source: 2011 OU-3 IROD, Table 9-1.

Table D-3: OU-4 RCRA Final and Interim Corrective Measures and CERCLA Removal Actions

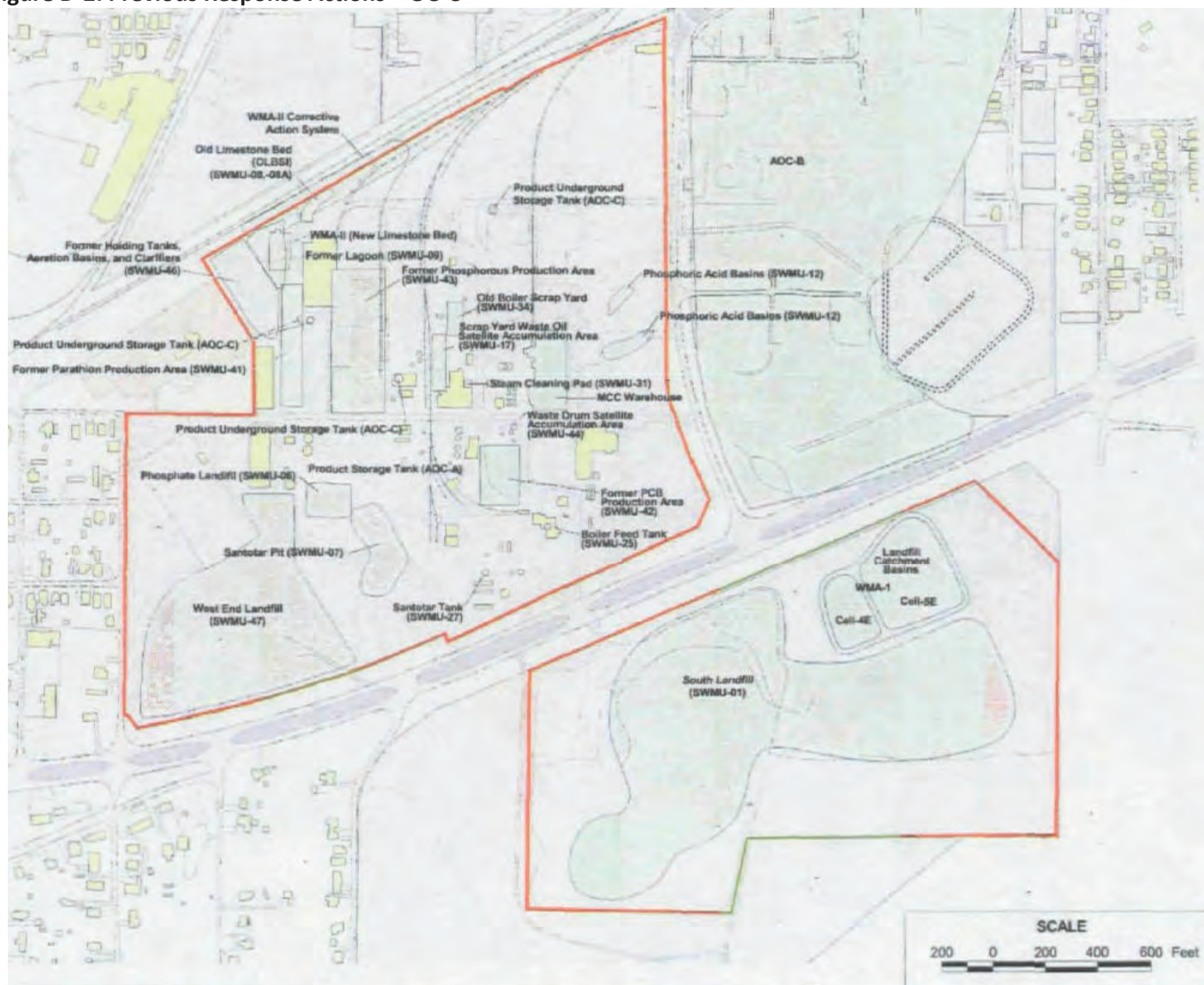
Program	Areas	Actions	Date
RCRA Final Corrective Measures	Highway 21 Bridge	<ul style="list-style-type: none"> Excavated contaminated soil prior to the Alabama Department of Transportation construction of a bridge replacement at State Highway 21 and Choccolocco Creek. Excavated soils capped on-site and also taken off-site for disposal at a permitted facility. Filed deed notices. 	2004 - 2008
	Choccolocco Creek Wastewater Treatment Plant Soil Stockpile	<ul style="list-style-type: none"> Relocated stockpiled soils in a 16-acre parcel east of Snow Creek. Capped relocated soils. Filed deed notice. 	2006 - 2007
RCRA Interim Corrective Measures	Oxford Lake Park	<ul style="list-style-type: none"> Removed contaminated surface soil from three softball fields and replaced it with clean fill and vegetation. Capped soils for use as a parking lot in the western portion of the park complex. Covered a 2-acre area with a soil cover and asphalt to facilitate use as a tennis complex and parking lot. Covered about a 2-acre area in the southwestern portion of the park complex with geotextile fabric, compacted fill, and vegetated topsoil. 	2000 - 2012
	Choccolocco Creek Dredge Spoils Areas	<ul style="list-style-type: none"> Stabilized and covered with topsoil and vegetative cover 19 dredge spoil piles from previous flood protection activities by the National Resources Conservation Service. 	2012
CERCLA Removal Actions	Snow Creek and Choccolocco Creek floodplains	<ul style="list-style-type: none"> Performed a TCRA of residential soils. 	2001
		<ul style="list-style-type: none"> Performed a NTCRA of residential area soils. 	2004
	Infrastructure Improvement Projects	<p>As per a clause in the 2001 TCRA, P/S oversaw an infrastructure improvement project to ensure impacted soil were handled and disposed of properly for the following projects:</p> <ul style="list-style-type: none"> Lighting and drainage upgrades to the Oxford Lake Softball Complex. Construction of a Miracle Field over an interim measure cover in the southwestern portion of Oxford Lake Park. Treatment system upgrades at the Choccolocco Creek Wastewater Treatment Plant. Foundation improvements at a parcel owned by Prime Properties, LLC. Widening and bridge construction of Interstate 20. Parcel improvements for the former Holiday Inn property. Parcel improvements for the city of Oxford to construct a maintenance garage at Oxford Lake Park. 	2001 - 2017
Sources: The Site's 2024 OU-4 ROD, Section 2.3 and the 2019 OU-4 RI Report, Section 3.			

Figure D-1: Previous Response Actions – OU-1/OU-2



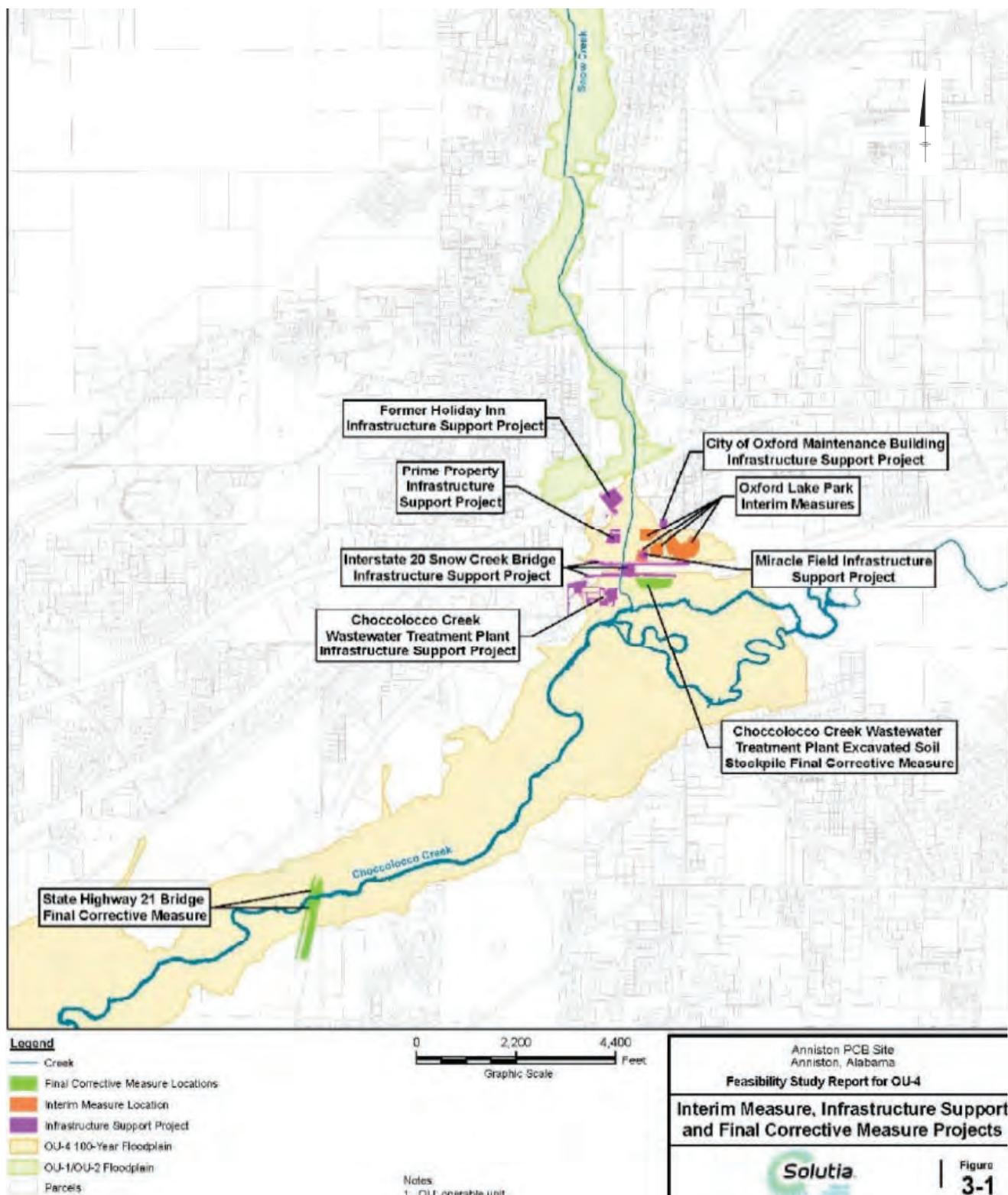
Source: OU-1/OU-2 2017 ROD, Figure 2-1.

Figure D-2: Previous Response Actions – OU-3



Source: OU-3 2011 ROD, Figure 2-1.

Figure D-3: Previous Response Actions – OU-4



Source: 2024 OU-4 ROD, Figure 2.

APPENDIX E – PRESS NOTICE



EPA to review cleanups at 47 Southeast Superfund Sites this year

October 30, 2024

Contact Information

Region 4 Press Office (region4press@epa.gov)

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ATLANTA (October 30, 2024) – Today, the U.S. Environmental Protection Agency (EPA) announced that comprehensive reviews will be conducted of completed cleanup work at 47 Superfund sites in the Southeast.

The sites, located in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee, will undergo a legally required Five-Year Review to ensure that previous remediation efforts at the sites continue to protect public health and the environment.

"Five-Year Reviews are an integral part of the site remediation process because they help make sure remedies are still protective," **said Acting Regional Administrator Jeaneanne Gettle**. "The Southeast Region will benefit tremendously from the full restoration of Superfund sites, which can become valuable parts of the community landscape."

The Superfund Sites where EPA will conduct Five-Year Reviews in 2025 are listed below. The web links provide detailed information on site status as well as past assessment and cleanup activity. Once the Five-Year Review is complete, its findings will be posted in a final report at <https://www.epa.gov/superfund/search-superfund-five-year-reviews>.

Alabama

[ANNISTON ARMY DEPOT \(SOUTHEAST INDUSTRIAL AREA\)](#)

[ANNISTON PCB SITE \(MONSANTO CO\)](#)

[TRIANA/TENNESSEE RIVER](#)

Florida

[AGRICO CHEMICAL CO.](#)

[ARKLA TERRA PROPERTY](#)

[BROWN'S DUMP](#)

[CHEMFORM, INC.](#)

[HIPPS ROAD LANDFILL](#)

[HOMESTEAD AIR FORCE BASE](#)

[JACKSONVILLE ASH SITE](#)

[JJ SEIFERT MACHINE](#)

[MADISON COUNTY SANITARY LANDFILL](#)

[NORTHWEST 58TH STREET LANDFILL](#)
[PEAK OIL CO./BAY DRUM CO.](#)
[PETROLEUM PRODUCTS CORP.](#)
[PIONEER SAND CO.](#)
[SANFORD DRY CLEANERS](#)
[SANFORD GASIFICATION PLANT](#)
[SHERWOOD MEDICAL INDUSTRIES](#)
[STANDARD AUTO BUMPER CORP.](#)
[STAUFFER CHEMICAL CO \(TAMPA\)](#)
[STAUFFER CHEMICAL CO. \(TARPON SPRINGS\)](#)
[YELLOW WATER ROAD](#)

Georgia

[MONSANTO CORP. \(AUGUSTA PLANT\)](#)

North Carolina

[CHARLES MACON LAGOON AND DRUM STORAGE](#)
[CAMP LEJEUNE MILITARY RES. \(USNAVY\)](#)
[CAROLINA TRANSFORMER CO.](#)
[DAVIS PARK ROAD TCE](#)
[FCX, INC. \(WASHINGTON PLANT\)](#)
[JFD ELECTRONICS/CHANNEL MASTER](#)
[SIGMON'S SEPTIC TANK SERVICE](#)
[WEYERHAEUSER CO PLYMOUTH WOOD TRTNG PT](#)

South Carolina

[AQUA-TECH ENVIRONMENTAL INC \(GROCE LABS\)](#)
[MACALLOY CORPORATION](#)
[PARA-CHEM SOUTHERN, INC.](#)
[PARRIS ISLAND MARINE CORPS RECRUIT DEPOT](#)
[SANGAMO WESTON, INC./TWELVE-MILE CREEK/LAKE HARTWELL PCB CONTAMINATION](#)
[SAVANNAH RIVER SITE \(USDOE\)](#)
[SCRDI DIXIANA](#)
[TOWNSEND SAW CHAIN CO.](#)

Tennessee

[CARRIER AIR CONDITIONING CO.](#)
[ICG ISELIN RAILROAD YARD](#)
[MALLORY CAPACITOR CO.](#)
[MILAN ARMY AMMUNITION PLANT](#)
[NORTH HOLLYWOOD DUMP](#)
[SIXTY-ONE INDUSTRIAL PARK](#)
[WRIGLEY CHARCOAL PLANT](#)

Background

Throughout the process of designing and constructing a cleanup at a hazardous waste site, EPA's primary goal is to make sure the remedy will be protective of public health and the environment. At many sites, where the remedy has been constructed, EPA continues to ensure it remains protective by requiring reviews of cleanups every five years. It is important for EPA to regularly check on these sites

to ensure the remedy is working properly. These reviews identify issues (if any) that may affect the protectiveness of the completed remedy and, if necessary, recommend action(s) necessary to address them.

There are many phases of the Superfund cleanup process including considering future use and redevelopment at sites and conducting post cleanup monitoring of sites. EPA must ensure the remedy is protective of public health and the environment and any redevelopment will uphold the protectiveness of the remedy into the future.

The Superfund program, a federal program established by Congress in 1980, investigates and cleans up the most complex, uncontrolled, or abandoned hazardous waste sites in the country and endeavors to facilitate activities to return them to productive use. In total, there are more than 280 Superfund sites across the Southeast.

More information:

EPA's Superfund program: <https://www.epa.gov/superfund>

APPENDIX F – INTERVIEW FORMS

FIVE-YEAR REVIEW INTERVIEW FORM	
Site Name: Anniston PCB Site (Monsanto Co) Superfund Alternative Approach Site	
EPA ID: ALD000400123	
Interviewer name: Jill Billus	Interviewer affiliation: Skeo
Subject name: Marcus “Ricky” Minor	Subject affiliation: ADEM
Subject contact information: 334-274-4198	
Interview date: January 7, 2024	Interview time: Not applicable
Interview location: Not applicable	
Interview format (select one): In Person Phone Mail <u>Email</u> X Other:	
Interview category: State Agency	

1. What is your overall impression of the project, including cleanup, maintenance and reuse activities (as appropriate)?

The project continues to make adequate progress.

2. What is your assessment of the current performance of the remedy in place at the Site?

Continued optimization of groundwater removal and treatment systems should be evaluated as well as continued maintenance of capped areas.

3. Are you aware of any complaints or inquiries regarding site-related environmental issues or remedial activities from residents in the past five years?

No.

4. Has your office conducted any site-related activities or communications in the past five years? If so, please describe the purpose and results of these activities.

ADEM finalized a site-wide environmental covenant for the Facility in 2021. ADEM issued a minor modification to the facility’s permit to revise the identification of a point of compliance well. The Department has been involved in many of the community engagement activities in association with Operable Unit 4 (OU-4) Record of Decision.

5. Are you aware of any changes to state laws that might affect the protectiveness of the Site’s remedy?

No

6. Are you comfortable with the status of the institutional controls at the Site? If not, what are the associated outstanding issues?

Yes.

7. Are you aware of any changes in projected land use(s) at the Site?

To the Department's knowledge, land use at the site will stay industrial along with the adjacent closed landfills with the following exception: The Coldwater Mountain Bike Trail Head property (contiguous to Solutia property, included in the environmental covenant for the site) has been discussed as a parcel to be removed from the environmental covenant through modification.

8. Do you have any comments, suggestions or recommendations regarding the management or operation of the Site's remedy?

No.

9. Do you consent to have your name included along with your responses to this questionnaire in the FYR report?

Yes.

FIVE-YEAR REVIEW INTERVIEW FORM	
Site Name: Anniston PCB Site (Monsanto Co) Superfund Alternative Approach Site	
EPA ID: ALD000400123	
Interviewer name: Jill Billus	Interviewer affiliation: Skeo
Subject name:	Subject affiliation:
Subject contact information:	
Interview date: 1/29/2025	Interview time: Not applicable
Interview location: Not applicable	
Interview format (select one): In Person Phone Mail Email X Other:	
Interview category: Resident/Community Member	

- Are you aware of the former environmental issues at the Site and the cleanup activities that have taken place to date?
Yes.
- What is your overall impression of the project, including cleanup, maintenance and reuse activities (as appropriate)?
The polluters have followed their state of work as outlined in the Anniston PCB Site Consent Decrees.
- What have been the effects of the Site on the surrounding community, if any?
The community has been made more aware of the possibility of contamination and processes, that may be used to effectively remediate, if needed.
- Have there been any problems with unusual or unexpected activities at the Site, such as emergency response, vandalism or trespassing?
Not that I am aware of.
- Has the EPA kept involved parties and surrounding neighbors informed of activities at the Site?
How can the EPA best provide site-related information in the future?
Yes. Continued participation in future Anniston PCB Site Community Advisory Group community meetings.
- Do you own a private well in addition to or instead of accessing city/municipal water supplies? If so, for what purpose(s) is your private well used?
No.
- Do you have any comments, suggestions or recommendations regarding any aspects of the project?
Not currently.

FIVE-YEAR REVIEW INTERVIEW FORM	
Site Name: Anniston PCB Site (Monsanto Co) Superfund Alternative Approach Site	
EPA ID: ALD000400123	
Interviewer name: Jill Billus	Interviewer affiliation: Skeo
Subject name: E. Gayle Pittman Macolly	Subject affiliation: Eastman
Subject contact information: 256-770-1299 egmaco@eastman.com	
Interview date: 3/13/2025	Interview time: Not applicable
Interview location: Anniston, AL	
Interview format (select one): In Person Phone Mail <u>Email</u> Other:	
Interview category: Potentially Responsible Party (PRP)	

1. What is your overall impression of the remedial activities at the Site?

My overall impression is positive. I believe we continue to make progress and perform work as the data dictates. Overall, the remedial activities are effective in meeting the remedial objectives for our Site.

2. What have been the effects of this Site on the surrounding community, if any?

Initially, I believe there may have been fear and a feeling of uncertainty in the community due to the environmental impacts and CERCLA activities at the Site. As we complete different remedial activities, the fear and uncertainty are lessening. In my opinion, most of the past negative effects on the surrounding community was fueled from the previous class action lawsuits that the community was engaged in. We have consistent communications with the community on the remedial activities at the Site. We have built trust and relations with many community members.

3. What is your assessment of the current performance of the remedy in place at the Site?

As of today, the only final remedies we have implemented at the Site is for Operable Unit 3. I believe the final remedies that were completed are effective and performing as they were designed. We are designing an additional Carbon Treatment System to capture and treat the water from the intermittent seep from Cell 3E of the South Landfill. All work is being done as required by the EPA.

4. Are you aware of any complaints or inquiries regarding environmental issues or the remedial action from residents since implementation of the cleanup?

The Community Advisory Group is a group of residents that meet with EPA and Solutia every other month to discuss project updates, activities and/or concerns. If there are any questions and/or concerns on the remedial action activities at the Site, they would be discussed here most of the time. Also, community members call me or members of my team if they have questions. Most of the questions and/or concerns that have been brought up have to do with remedial activity schedules and/or activity results.

5. Do you feel well-informed regarding the Site's activities and remedial progress? If not, how might the EPA convey site-related information in the future?

The EPA does a good job communicating information regarding the remedial activity requirements and progress. The EPA participates in the bimonthly CAG meetings to relay site-related information. The EPA also holds Public Availability meetings when important milestones occur (i.e., the issuance of the Proposed Plan for OU-4). The EPA also participates in the quarterly Technical Advisor's community meetings. We are in regular communication with the EPA about the Site activities.

6. Do you have any comments, suggestions or recommendations regarding the management or operation of the Site's remedy?

None currently.

7. Do you consent to have your name included along with your responses to this questionnaire in the FYR report?

Yes.

FIVE-YEAR REVIEW INTERVIEW FORM	
Site Name: Anniston PCB Site (Monsanto Co) Superfund Alternative Approach Site	
EPA ID: ALD000400123	
Interviewer name: Jill Billus	Interviewer affiliation: Skeo
Subject name: Michael Price	Subject affiliation: Genesis Project, Inc.
Subject contact information: <u>mprice@genproject.com</u>	
Interview date: March 13, 2025	Interview time: Not applicable
Interview location: Anniston Plant Site	
Interview format (select one): In Person Phone Mail <u>Email</u> Other:	
Interview category: O&M Contractor	

1. What is your overall impression of the project, including cleanup, maintenance and reuse activities (as appropriate)?

Overall, the project has been successful in meeting the remedial objectives of risk reduction, exposure prevention and the prevention of contaminant migration in groundwater.

2. What is your assessment of the current performance of the remedy in place at the Site?

The remedies are performing as designed and are successful in the prevention of exposure and contaminant migration.

3. What are the findings from the monitoring data? What are the key trends in contaminant levels that are being documented over time at the Site?

Based on the 2024 Annual Groundwater Monitoring and Corrective Action Effectiveness Report, the contaminant concentrations in groundwater are generally stable or decreasing, indicating the effectiveness of the site remedies.

4. Is there a continuous on-site O&M presence? If so, please describe staff responsibilities and activities. Alternatively, please describe staff responsibilities and the frequency of site inspections and activities if there is not a continuous on-site O&M presence.

O&M personnel are onsite on weekdays from approximately 7 AM to 4 PM. Daily O&M activities generally include mowing, fence maintenance, minor cap and cover maintenance and routine maintenance on the groundwater treatment systems. The groundwater treatment systems are monitored remotely 24/7 and have an alarm call-out feature to alert the O&M staff of any issues. Specialized O&M personnel are onsite on a monthly and quarterly basis to perform routine inspections of the remedy components as prescribed in the OU-3 O&M annual. Issues identified during the routine inspections are addressed by the onsite O&M personnel or the plant site personnel, as necessary.

5. Have there been any significant changes in site O&M requirements, maintenance schedules or sampling routines since start-up or in the last five years? If so, do they affect the protectiveness or effectiveness of the remedy? Please describe changes and impacts.

There have been no significant changes in O&M requirements in the last five years.

6. Have there been unexpected O&M difficulties or costs at the Site since start-up or in the last five years? If so, please provide details.

The only issue that has occurred in the last five years was the toe drain system associated with the SWMU 1 cover system at the South Landfill. During a post-storm inspection, it was discovered that several of the toe drains did not appear to have sufficient flow. A subsequent video inspection showed that several sections were clogged while others were damaged. We completed repairs and installed clean-outs for more efficient maintenance and inspections. The O&M manual is currently being revised to include annual video inspections of this system. We are currently in the process of designing a new collection and treatment system to address the expected increased flows from the groundwater seep flow from Cell 3E of the South Landfill.

7. Have there been opportunities to optimize O&M activities or sampling efforts? Please describe changes and any resulting or desired cost savings or improved efficiencies.

The upgrades to the groundwater treatment systems to allow 24/7 monitoring has improved the efficiencies of those systems resulting in less frequent system interruptions. The installation of the new treatment system for the Cell 3E seep will allow for more reliable and effective treatment of the expected increased flows. We are currently developing a groundwater optimization plan to potentially modify the current extraction systems and potentially modify the sampling frequencies and well locations with the ultimate goal of achieving a final ROD for the facility.

8. Do you have any comments, suggestions or recommendations regarding O&M activities and schedules at the Site?

Not currently.

9. Do you consent to have your name included along with your responses to this questionnaire in the FYR report?

Yes.

APPENDIX G – SITE INSPECTION CHECKLIST

FIVE-YEAR REVIEW SITE INSPECTION CHECKLIST			
I. SITE INFORMATION			
Site Name: <u>Anniston PCB Site (Monsanto Co) Superfund Alternative Approach Site</u>		Date of Inspection: <u>11/20/2024</u>	
Location and Region: <u>Anniston, Alabama, EPA Region 4</u>		EPA ID: <u>ALD000400123</u>	
Agency, Office or Company Leading the Five-Year Review: <u>The EPA</u>		Weather/Temperature: <u>63 F, Sunny</u>	
Remedy Includes: (check all that apply) (OU-3) <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input checked="" type="checkbox"/> Landfill cover/containment <input checked="" type="checkbox"/> Access controls <input checked="" type="checkbox"/> Institutional controls <input checked="" type="checkbox"/> Groundwater pump and treatment <input type="checkbox"/> Surface water collection and treatment <input checked="" type="checkbox"/> Other: <u>P/S installed a seep collection, conveyance and carbon treatment system in 2017 to address a seep near Cell 3E of the South Landfill due to groundwater upwelling.</u> </div> <div style="width: 50%;"> <input checked="" type="checkbox"/> Monitored natural attenuation <input type="checkbox"/> Groundwater containment <input type="checkbox"/> Vertical barrier walls </div> </div>			
Attachments: <input type="checkbox"/> Inspection team roster attached <input type="checkbox"/> Site map attached			
II. INTERVIEWS (check all that apply)			
1. O&M Site Manager <u>Michael Price</u> <u>3/13/2025</u> <div style="display: flex; justify-content: space-between; width: 100%;"> Name Title Date </div> Interviewed <input type="checkbox"/> at site <input type="checkbox"/> at office <input type="checkbox"/> by phone Phone: _____ Problems, suggestions <input type="checkbox"/> Report attached: <u>See Appendix F</u>			
2. O&M Staff _____ _____ _____ <div style="display: flex; justify-content: space-between; width: 100%;"> Name Title Date </div> Interviewed <input type="checkbox"/> at site <input type="checkbox"/> at office <input type="checkbox"/> by phone Phone: _____ Problems/suggestions <input type="checkbox"/> Report attached: _____			
3. Local Regulatory Authorities and Response Agencies (i.e., state and tribal offices, emergency response office, police department, office of public health or environmental health, zoning office, recorder of deeds, or other city and county offices). Fill in all that apply.			
Agency <u>ADEM</u> <div style="display: flex; justify-content: space-between;"> <div> Contact <u>Ricky Minor</u> Name _____ </div> <div> Project <u>1/7/2025</u> Manager _____ Title _____ </div> <div> Date _____ Phone _____ </div> </div> Problems/suggestions <input type="checkbox"/> Report attached: <u>See Appendix F</u>			
Agency _____ <div style="display: flex; justify-content: space-between;"> <div> Contact _____ Name _____ </div> <div> Title _____ Date _____ </div> <div> Phone _____ </div> </div> Problems/suggestions <input type="checkbox"/> Report attached: _____			
Agency _____ <div style="display: flex; justify-content: space-between;"> <div> Contact _____ Name _____ </div> <div> Title _____ Date _____ </div> <div> Phone _____ </div> </div> Problems/suggestions <input type="checkbox"/> Report attached: _____			
Agency _____ <div style="display: flex; justify-content: space-between;"> <div> Contact _____ Name _____ </div> <div> Title _____ Date _____ </div> <div> Phone _____ </div> </div> Problems/suggestions <input type="checkbox"/> Report attached: _____			

Agency _____ Contact _____ <div style="display: flex; justify-content: space-between; margin-top: 5px;"> Name _____ Title _____ Date _____ Phone _____ </div> Problems/suggestions <input type="checkbox"/> Report attached: _____				
4. Other Interviews (optional) <input type="checkbox"/> Report attached: <u>See Appendix F</u>				
E. Gayle Pittman Macolly				
III. ON-SITE DOCUMENTS AND RECORDS VERIFIED (check all that apply)				
1.	O&M Documents <input checked="" type="checkbox"/> O&M manual <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A <input checked="" type="checkbox"/> O&M manual <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A <input checked="" type="checkbox"/> O&M manual <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A Remarks: <u>PRP retains O&M documents on-site</u>			
2.	Site-Specific Health and Safety Plan <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A <input checked="" type="checkbox"/> Contingency plan/emergency response plan <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A Remarks: <u>PRP retains safety documents on-site. All visitors must attend a 20-minute health and safety training prior to visiting the Facility (OU-3).</u>			
3.	O&M and OSHA Training Records <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A Remarks: <u>PRP retains training records on-site.</u>			
4.	Permits and Service Agreements <input type="checkbox"/> Air discharge permit <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A <input checked="" type="checkbox"/> Effluent discharge <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A <input checked="" type="checkbox"/> Waste disposal, POTW <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A <input type="checkbox"/> Other permits: _____ <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks: _____			
5.	Gas Generation Records <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks: _____			
6.	Settlement Monument Records <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks: _____			
7.	Groundwater Monitoring Records <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A Remarks: _____			
8.	Leachate Extraction Records <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks: _____			
9.	Discharge Compliance Records <input type="checkbox"/> Air <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A <input checked="" type="checkbox"/> Water (effluent) <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A Remarks: _____			
10.	Daily Access/Security Logs <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A Remarks: _____			
IV. O&M COSTS				
1.	O&M Organization <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> State in-house <input checked="" type="checkbox"/> PRP in-house <input type="checkbox"/> Federal facility in-house <input type="checkbox"/> _____ </div> <div> <input type="checkbox"/> Contractor for state <input checked="" type="checkbox"/> Contractor for PRP <input type="checkbox"/> Contractor for Federal facility </div> </div>			
2.	O&M Cost Records (OU-3) <input checked="" type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input type="checkbox"/> Funding mechanism/agreement in place <input type="checkbox"/> Unavailable Original O&M cost estimate: _____ <input type="checkbox"/> Breakdown attached <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> From: <u>2019</u> Date </div> <div> To: <u>2019</u> Date </div> <div> <u>\$565,400</u> Total cost </div> <div> <input type="checkbox"/> Breakdown attached </div> </div>			

Remarks: _____		
VI. GENERAL SITE CONDITIONS		
A. Roads <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A		
1. Roads Damaged <input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> Roads adequate <input type="checkbox"/> N/A Remarks: <u>There are unimproved roads (mostly dirt/gravel) on OU-3 entering the landfill areas and areas around the extraction wells for the CTS systems. Access is limited by locked gates and security fencing.</u>		
B. Other Site Conditions Remarks: _____		
VII. LANDFILL COVERS <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A		
A. Landfill Surface		
1. Settlement (low spots) <input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> Settlement not evident Area extent: _____ Depth: _____ Remarks: _____		
2. Cracks <input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> Cracking not evident Lengths: _____ Widths: _____ Depths: _____ Remarks: _____		
3. Erosion <input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> Erosion not evident Area extent: _____ Depth: _____ Remarks: <u>Multiple toe drain repairs completed in 2024 at SWMU-1.</u>		
4. Holes <input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> Holes not evident Area extent: _____ Depth: _____ Remarks: _____		
5. Vegetative Cover <input checked="" type="checkbox"/> Grass <input checked="" type="checkbox"/> Cover properly established <input checked="" type="checkbox"/> No signs of stress <input type="checkbox"/> Trees/shrubs (indicate size and locations on a diagram) Remarks: _____		
6. Alternative Cover (e.g., armored rock, concrete) <input checked="" type="checkbox"/> N/A Remarks: _____		
7. Bulges <input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> Bulges not evident Area extent: _____ Height: _____ Remarks: _____		
8. Wet Areas/Water Damage <input type="checkbox"/> Wet areas/water damage not evident <input checked="" type="checkbox"/> Wet areas <input type="checkbox"/> Location shown on site map Area extent: _____ <input type="checkbox"/> Ponding <input type="checkbox"/> Location shown on site map Area extent: _____ <input checked="" type="checkbox"/> Seeps <input type="checkbox"/> Location shown on site map Area extent: _____ <input type="checkbox"/> Soft subgrade <input type="checkbox"/> Location shown on site map Area extent: _____ Remarks: <u>Due to recent heavy rain, the PCB cell area was wet on the surface. However, CTS #3 was operational and in the process of being upgraded. Also, a drain pipe to capture water passing the first collection trench has been damaged by heavy equipment and P/S are in the process of repairing the drain pipe that captures this water for treatment in the iron treatment system.</u>		
9. Slope Instability <input type="checkbox"/> Slides <input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> No evidence of slope instability Area extent: _____ Remarks: _____		
B. Benches <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A (Horizontally constructed mounds of earth placed across a steep landfill side slope to interrupt the slope in order to slow down the velocity of surface runoff and intercept and convey the runoff to a lined channel.)		
1. Flows Bypass Bench <input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> N/A or okay Remarks: <u>Benches in the form of large riprap features are present across the steep portions of South Landfill to slow surface flow.</u>		
2. Bench Breached <input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> N/A or okay Remarks: _____		

3.	Bench Overtopped	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> N/A or okay
Remarks: _____			
C. Letdown Channels <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A (Channel lined with erosion control mats, riprap, grout bags or gabions that descend down the steep side slope of the cover and will allow the runoff water collected by the benches to move off of the landfill cover without creating erosion gullies.)			
1.	Settlement (Low spots)	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> No evidence of settlement
Area extent: _____		Depth: _____	
Remarks: <u>Channels lined by large riprap.</u>			
2.	Material Degradation	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> No evidence of degradation
Material type: _____		Area extent: _____	
Remarks: _____			
3.	Erosion	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> No evidence of erosion
Area extent: _____		Depth: _____	
Remarks: _____			
4.	Undercutting	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> No evidence of undercutting
Area extent: _____		Depth: _____	
Remarks: _____			
5.	Obstructions	Type: _____	<input checked="" type="checkbox"/> No obstructions
<input type="checkbox"/> Location shown on site map		Area extent: _____	
Size: _____			
Remarks: _____			
6.	Excessive Vegetative Growth	Type: _____	
<input checked="" type="checkbox"/> No evidence of excessive growth			
<input checked="" type="checkbox"/> Vegetation in channels does not obstruct flow			
<input type="checkbox"/> Location shown on site map		Area extent: _____	
Remarks: _____			
D. Cover Penetrations <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A			
1.	Gas Vents	<input type="checkbox"/> Active	<input type="checkbox"/> Passive
<input type="checkbox"/> Properly secured/locked		<input type="checkbox"/> Functioning	<input type="checkbox"/> Routinely sampled <input type="checkbox"/> Good condition
<input type="checkbox"/> Evidence of leakage at penetration		<input type="checkbox"/> Needs maintenance	<input checked="" type="checkbox"/> N/A
Remarks: _____			
2.	Gas Monitoring Probes	<input type="checkbox"/> Functioning	<input type="checkbox"/> Routinely sampled <input type="checkbox"/> Good condition
<input type="checkbox"/> Properly secured/locked		<input type="checkbox"/> Needs maintenance	<input checked="" type="checkbox"/> N/A
<input type="checkbox"/> Evidence of leakage at penetration			
Remarks: _____			
3.	Monitoring Wells (within surface area of landfill)	<input checked="" type="checkbox"/> Functioning	<input checked="" type="checkbox"/> Routinely sampled <input checked="" type="checkbox"/> Good condition
<input checked="" type="checkbox"/> Properly secured/locked		<input type="checkbox"/> Needs maintenance	<input type="checkbox"/> N/A
<input type="checkbox"/> Evidence of leakage at penetration			
Remarks: _____			
4.	Extraction Wells Leachate	<input checked="" type="checkbox"/> Functioning	<input checked="" type="checkbox"/> Routinely sampled <input checked="" type="checkbox"/> Good condition
<input checked="" type="checkbox"/> Properly secured/locked		<input type="checkbox"/> Needs maintenance	<input type="checkbox"/> N/A
<input type="checkbox"/> Evidence of leakage at penetration			
Remarks: _____			
5.	Settlement Monuments	<input type="checkbox"/> Located	<input type="checkbox"/> Routinely surveyed <input checked="" type="checkbox"/> N/A
Remarks: _____			
E. Gas Collection and Treatment <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A			
1.	Gas Treatment Facilities	<input type="checkbox"/> Collection for reuse	
<input type="checkbox"/> Flaring		<input type="checkbox"/> Thermal destruction	
<input type="checkbox"/> Good condition		<input type="checkbox"/> Needs maintenance	

Remarks: _____		
2.	Gas Collection Wells, Manifolds and Piping <input type="checkbox"/> Good condition <input type="checkbox"/> Needs maintenance Remarks: _____	
3.	Gas Monitoring Facilities (e.g., gas monitoring of adjacent homes or buildings) <input type="checkbox"/> Good condition <input type="checkbox"/> Needs maintenance <input type="checkbox"/> N/A Remarks: _____	
F. Cover Drainage Layer <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A		
1.	Outlet Pipes Inspected <input checked="" type="checkbox"/> Functioning <input type="checkbox"/> N/A Remarks: <u>Drain pipes have been cleaned out and the end of the pipes are capped with screens to prevent animals from bringing debris into the drain pipes.</u>	
2.	Outlet Rock Inspected <input checked="" type="checkbox"/> Functioning <input type="checkbox"/> N/A Remarks: _____	
G. Detention/Sedimentation Ponds <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A		
1.	Siltation Area extent: _____ Depth: _____ <input type="checkbox"/> N/A <input type="checkbox"/> Siltation not evident Remarks: _____	
2.	Erosion Area extent: _____ Depth: _____ <input type="checkbox"/> Erosion not evident Remarks: _____	
3.	Outlet Works <input type="checkbox"/> Functioning <input type="checkbox"/> N/A Remarks: _____	
4.	Dam <input type="checkbox"/> Functioning <input type="checkbox"/> N/A Remarks: _____	
H. Retaining Walls <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A		
1.	Deformations <input type="checkbox"/> Location shown on site map <input type="checkbox"/> Deformation not evident Horizontal displacement: _____ Vertical displacement: _____ Rotational displacement: _____ Remarks: _____	
2.	Degradation <input type="checkbox"/> Location shown on site map <input type="checkbox"/> Degradation not evident Remarks: _____	
I. Perimeter Ditches/Off-Site Discharge <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A		
1.	Siltation <input type="checkbox"/> Location shown on site map <input type="checkbox"/> Siltation not evident Area extent: _____ Depth: _____ Remarks: _____	
2.	Vegetative Growth <input type="checkbox"/> Location shown on site map <input type="checkbox"/> N/A <input type="checkbox"/> Vegetation does not impede flow Area extent: _____ Type: _____ Remarks: _____	
3.	Erosion <input type="checkbox"/> Location shown on site map <input type="checkbox"/> Erosion not evident Area extent: _____ Depth: _____ Remarks: _____	
4.	Discharge Structure <input type="checkbox"/> Functioning <input type="checkbox"/> N/A Remarks: _____	
VIII. VERTICAL BARRIER WALLS <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A		
1.	Settlement <input type="checkbox"/> Location shown on site map <input type="checkbox"/> Settlement not evident Area extent: _____ Depth: _____ Remarks: _____	
2.	Performance Monitoring Type of monitoring: _____ <input type="checkbox"/> Performance not monitored Frequency: _____ <input type="checkbox"/> Evidence of breaching Head differential: _____ Remarks: _____	
IX. GROUNDWATER/SURFACE WATER REMEDIES <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A		

A. Groundwater Extraction Wells, Pumps and Pipelines		<input checked="" type="checkbox"/> Applicable	<input type="checkbox"/> N/A
1.	Pumps, Wellhead Plumbing and Electrical <input checked="" type="checkbox"/> Good condition <input checked="" type="checkbox"/> All required wells properly operating <input type="checkbox"/> Needs maintenance <input type="checkbox"/> N/A Remarks: _____		
2.	Extraction System Pipelines, Valves, Valve Boxes and Other Appurtenances <input checked="" type="checkbox"/> Good condition <input type="checkbox"/> Needs maintenance Remarks: _____		
3.	Spare Parts and Equipment <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Good condition <input type="checkbox"/> Requires upgrade <input type="checkbox"/> Needs to be provided Remarks: _____		
B. Surface Water Collection Structures, Pumps and Pipelines		<input type="checkbox"/> Applicable	<input checked="" type="checkbox"/> N/A
1.	Collection Structures, Pumps and Electrical <input type="checkbox"/> Good condition <input type="checkbox"/> Needs maintenance Remarks: _____		
2.	Surface Water Collection System Pipelines, Valves, Valve Boxes and Other Appurtenances <input type="checkbox"/> Good condition <input type="checkbox"/> Needs maintenance Remarks: _____		
3.	Spare Parts and Equipment <input type="checkbox"/> Readily available <input type="checkbox"/> Good condition <input type="checkbox"/> Requires upgrade <input type="checkbox"/> Needs to be provided Remarks: _____		
C. Treatment System		<input checked="" type="checkbox"/> Applicable	<input type="checkbox"/> N/A
1.	Treatment Train (check components that apply) <input type="checkbox"/> Metals removal <input type="checkbox"/> Oil/water separation <input type="checkbox"/> Bioremediation <input type="checkbox"/> Air stripping <input checked="" type="checkbox"/> Carbon adsorbers* <input type="checkbox"/> Filters: _____ <input type="checkbox"/> Additive (e.g., chelation agent, flocculent): _____ <input checked="" type="checkbox"/> Others: <u>iron oxide treatment</u> <input type="checkbox"/> Good condition <input type="checkbox"/> Needs maintenance <input type="checkbox"/> Sampling ports properly marked and functional <input type="checkbox"/> Sampling/maintenance log displayed and up to date <input type="checkbox"/> Equipment properly identified <input type="checkbox"/> Quantity of groundwater treated annually: _____ <input type="checkbox"/> Quantity of surface water treated annually: _____ Remarks: <u>* The groundwater is collected by capture and treatment systems and run through activated carbon filters and after treatment discharged to the local publicly owned treatment works.</u>		
2.	Electrical Enclosures and Panels (properly rated and functional) <input type="checkbox"/> N/A <input checked="" type="checkbox"/> Good condition <input type="checkbox"/> Needs maintenance Remarks: _____		
3.	Tanks, Vaults, Storage Vessels <input type="checkbox"/> N/A <input checked="" type="checkbox"/> Good condition <input checked="" type="checkbox"/> Proper secondary containment <input type="checkbox"/> Needs maintenance Remarks: _____		
4.	Discharge Structure and Appurtenances <input type="checkbox"/> N/A <input checked="" type="checkbox"/> Good condition <input type="checkbox"/> Needs maintenance Remarks: _____		
5.	Treatment Building(s) <input type="checkbox"/> N/A <input checked="" type="checkbox"/> Good condition (esp. roof and doorways) <input type="checkbox"/> Needs repair <input checked="" type="checkbox"/> Chemicals and equipment properly stored Remarks: _____		
6.	Monitoring Wells (pump and treatment remedy) <input checked="" type="checkbox"/> Properly secured/locked <input checked="" type="checkbox"/> Functioning <input checked="" type="checkbox"/> Routinely sampled <input checked="" type="checkbox"/> Good condition <input checked="" type="checkbox"/> All required wells located <input type="checkbox"/> Needs maintenance <input type="checkbox"/> N/A Remarks: _____		
D. Monitoring Data			
1.	Monitoring Data		

<input checked="" type="checkbox"/> Is routinely submitted on time	<input checked="" type="checkbox"/> Is of acceptable quality
2. Monitoring Data Suggests: <input checked="" type="checkbox"/> Groundwater plume is effectively contained <input checked="" type="checkbox"/> Contaminant concentrations are declining Remarks: <u>COC concentration trends are generally stable or decreasing.</u>	
E. Monitored Natural Attenuation	
1. Monitoring Wells (natural attenuation remedy) <input checked="" type="checkbox"/> Properly secured/locked <input checked="" type="checkbox"/> Functioning <input checked="" type="checkbox"/> Routinely sampled <input checked="" type="checkbox"/> Good condition <input checked="" type="checkbox"/> All required wells located <input type="checkbox"/> Needs maintenance <input type="checkbox"/> N/A Remarks: _____	
X. OTHER REMEDIES	
If there are remedies applied at the site and not covered above, attach an inspection sheet describing the physical nature and condition of any facility associated with the remedy. An example would be soil vapor extraction.	
XI. OVERALL OBSERVATIONS	
A. Implementation of the Remedy	
Describe issues and observations relating to whether the remedy is effective and functioning as designed. Begin with a brief statement of what the remedy is designed to accomplish (e.g., to contain contaminant plume, minimize infiltration and gas emissions). <u>The interim OU-3 remedy was to address contaminated soil and groundwater at the PRP's facility. The remedy included filling data gaps, installing RCRA Subtitle C compliant caps on the South Landfill, and expanding the existing RCRA corrective action groundwater system in two areas (OW-21A and OW-10) that includes an extraction system and CTS as well as engineering controls such as fencing.</u>	
B. Adequacy of O&M	
Describe issues and observations related to the implementation and scope of O&M procedures. In particular, discuss their relationship to the current and long-term protectiveness of the remedy. <u>The PRP completes the requisite O&M activities for the OU-3 remedial features and is in the process of finalizing a ICIAP for monitoring the implemented institutional controls. In addition, the PRP has implemented some repairs to the seep collection and treatment system and is in the process of optimizing this system further.</u>	
C. Early Indicators of Potential Remedy Problems	
Describe issues and observations such as unexpected changes in the cost or scope of O&M or a high frequency of unscheduled repairs that suggest that the protectiveness of the remedy may be compromised in the future. <u>None.</u>	
D. Opportunities for Optimization	
Describe possible opportunities for optimization in monitoring tasks or the operation of the remedy. <u>The PRP completed additional remedial activities upon discovery of additional areas requiring covers during data gap sampling. These activities are planned to be included in a final ROD. The PRP is also optimizing the seep capture system at the South Landfill and plans to add a fourth CTS to improve seep capture and treatment.</u>	

APPENDIX H – SITE INSPECTION PHOTOS



Paved and grass portion of Area A, looking south



Area A, looking northeast, with CTS #2 building in the background



Vaults for interceptor wells near CTS #2



CTS #2 treatment building



CTS #2 treatment building interior



Fence around the area north of Area A



Locked vault for interceptor well 27



CTS #1, with residence in the background



Observation well OW-21A near CTS #1



WMA I



The South Landfill, looking southwest



Line of extraction wells north of the South Landfill



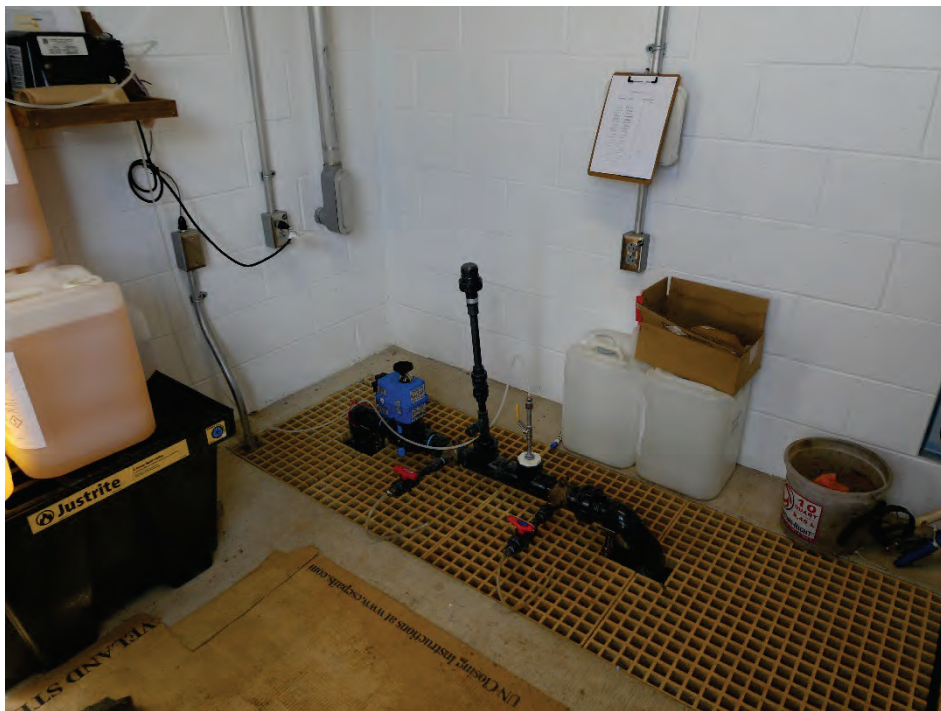
Seep trench area near Cell 3E



PCB cells



The seep treatment building



Interior of the seep treatment building



Secondary trench for seeps



The South Landfill, looking east



Fencing around WMA II



Interceptor well 25



Line of interceptor wells north of the Old Limestone Bed and WMA II, looking east



Instrumentation for the interceptor well system associated with OW-21A north of WMA II



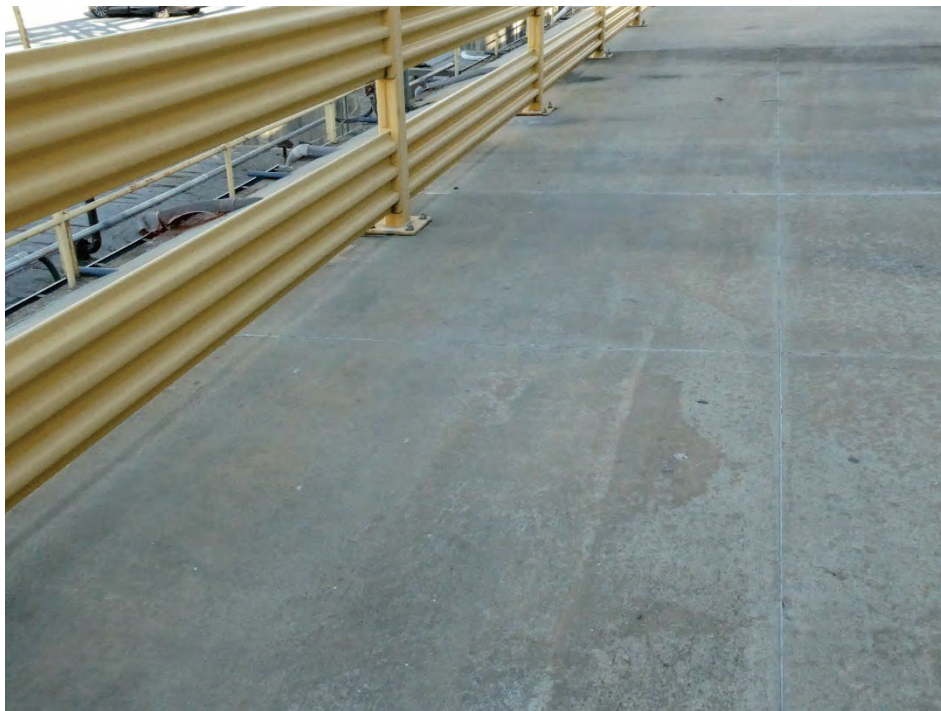
Temporary storage tank for WMA II corrective action system and CTS #1 to treat extracted groundwater in the vicinity of OW-21A



Areas C (former Phosphate Landfill) and Area D (former Santotar Pits)



Paved Autoclave Area



The Autoclave Area



Area E, grassed area



Area E, paved area



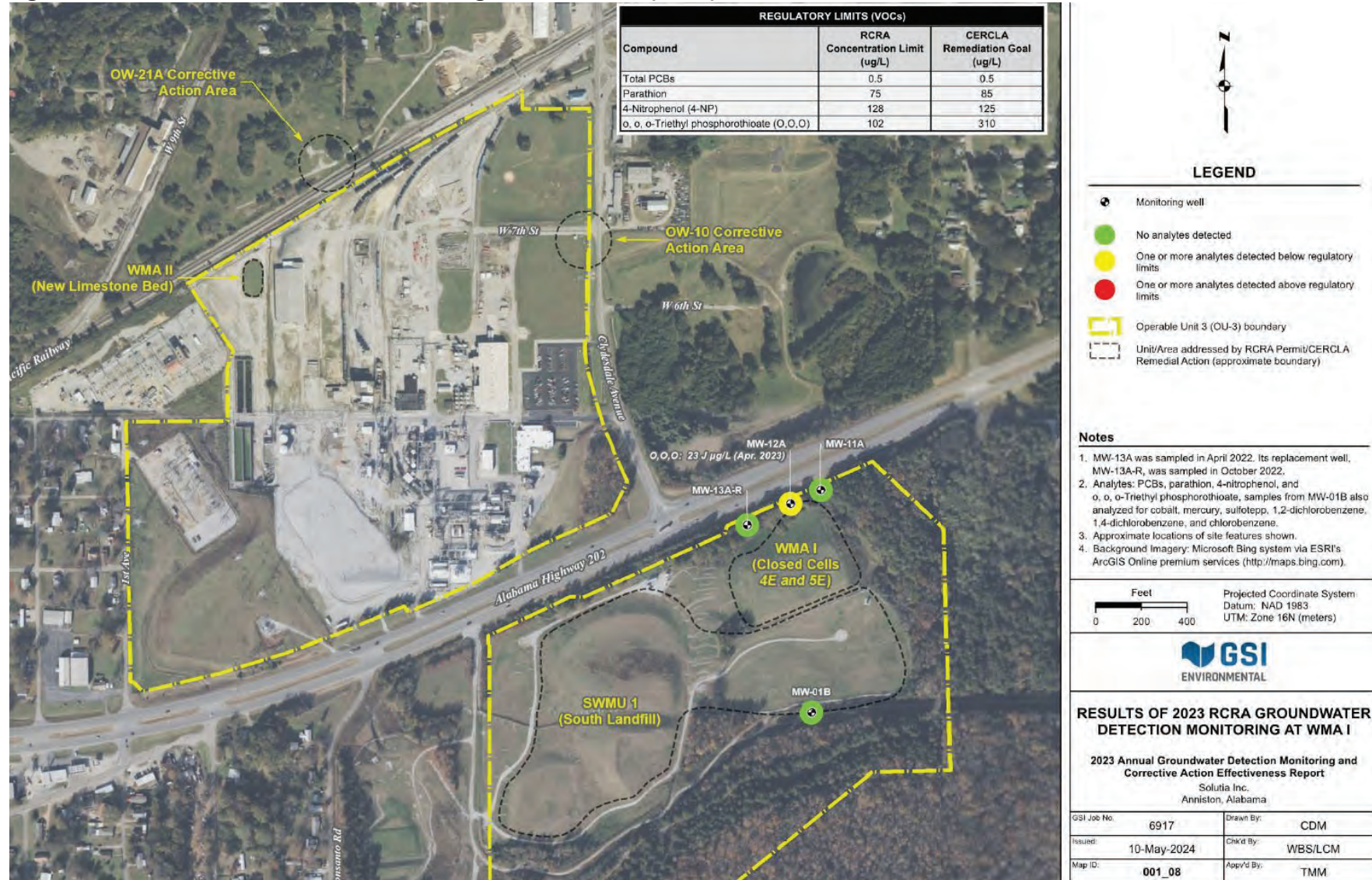
Paved former PCB production area



Area H

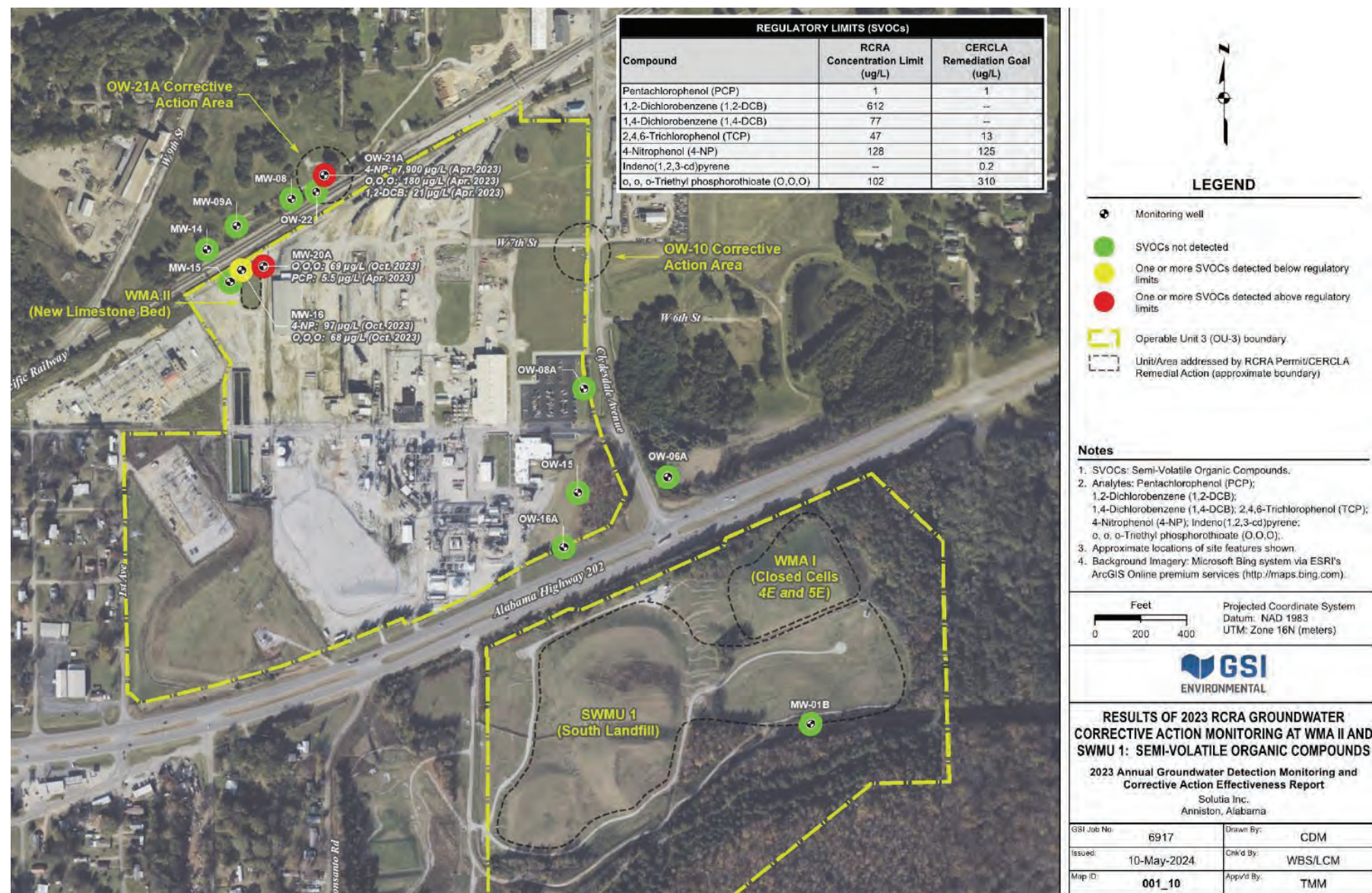
APPENDIX I – DATA REVIEW FIGURES

Figure I-1: Groundwater Detection Monitoring Well Locations (OU-3)



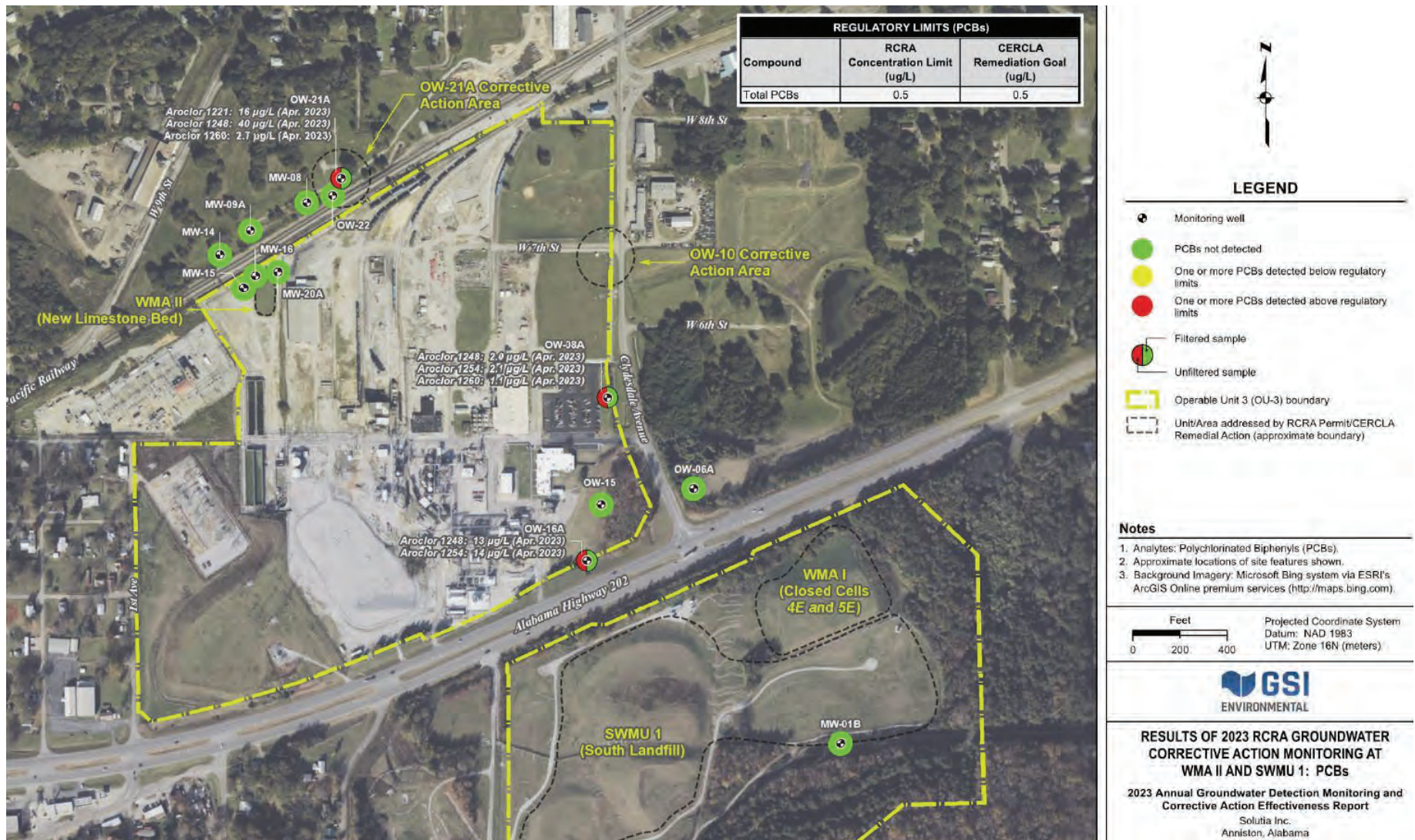
Source: 2023 Annual Groundwater Detection Monitoring and Corrective Action Effectiveness Report, figure 8. Anniston PCB Site. Anniston, Calhoun County, Alabama. Solutia. May 2024.

Figure I-2: SVOC RCRA Corrective Action Monitoring Results for WMA II and South Landfill, 2023



Source: 2023 Annual Groundwater Detection Monitoring and Corrective Action Effectiveness Report, Figure 10. Anniston PCB Site. Anniston, Calhoun County, Alabama. Solutia. May 2024.

Figure I-3: PCB RCRA Corrective Action Monitoring Results for WMA II and South Landfill, 2023



Source: 2023 Annual Groundwater Detection Monitoring and Corrective Action Effectiveness Report, Figure 11. Anniston PCB Site. Anniston, Calhoun County, Alabama. Solutia. May 2024.

REGULATORY LIMITS (PCBs)

Compound	RCRA Concentration Limit (ug/L)	CERCLA Remediation Goal (ug/L)
Total PCBs	0.5	0.5

LEGEND

- Monitoring well
- PCBs not detected
- One or more PCBs detected below regulatory limits
- One or more PCBs detected above regulatory limits
- Filtered sample
- Unfiltered sample
- Operable Unit 3 (OU-3) boundary
- Unit/Area addressed by RCRA Permit/CERCLA Remedial Action (approximate boundary)

Notes

1. Analytes: Polychlorinated Biphenyls (PCBs).
2. Approximate locations of site features shown.
3. Samples from well OW-21A analyzed per the RCRA Groundwater Corrective Action Program.
4. Wells OWR-13, OWR-14D, and T-18 are analyzed by both Method 8081B/8082A (Aroclors) and Method 680 (PCB Homologs). For these wells, the method with the higher total PCBs is shown.
5. Background Imagery: Microsoft Bing system via ESRI's ArcGIS Online premium services (<http://maps.bing.com>).

RESULTS OF 2023 CERCLA PERFORMANCE VERIFICATION SAMPLING AT OU-3: PCBs

2023 Annual Groundwater Detection Monitoring and Corrective Action Effectiveness Report

Solutia Inc.
Anniston, Alabama

APPENDIX J – DATA REVIEW TABLES

Table J-1: Results of Groundwater Testing, 2023

						RCRA Background Well		RCRA Groundwater Detection Monitoring			
Analyte	CASNo	RCRA Concentration Limits	CERCLA Remediation Goals	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater
				EFFLUENT	EFFLUENT	MW-01B	MW-01B	MW-11A	MW-11A	MW-12A	MW-12A
				4/17/2023	8/9/2023	4/11/2023	10/17/2023	4/11/2023	10/17/2023	4/11/2023	10/17/2023
				N	N	N	N	N	N	N	N
				No	No	No	No	No	No	No	No
Sample ID:				Purgewater	Purge Water	MW-01B	MW-01B	MW-11A	MW-11A	MW-12A	MW-12A
Analyte	CASNo	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L
VOCs By Method 8260D											
1,2,4-Trichlorobenzene	120-82-1	--	70	-	-	-	-	-	-	-	-
Chlorobenzene	108-90-7	102	--	-	-	<1	<1	-	-	-	-
Trichloroethylene	79-01-6	--	5	-	-	-	-	-	-	-	-
SVOCs By Methods 8270D and 8270D SIM											
1,2-Dichlorobenzene	95-50-1	612	--	-	-	<10	-	-	-	-	-
4-Nitrophenol	100-02-7	128	125	-	-	<25	<25	<25	<25	<25 J	<25
o, o, o-Triethyl phosphorothioate	126-68-1	102	310	-	-	<10	<10	<10	<10	23 J	<10
Pentachlorophenol, 8270 SIM	87-86-5	1	1	-	-	-	-	-	-	-	-
PCBs, Aroclor Specific By Method 8081B/8082A											
Aroclor 1221	11104-28-2	--	--	<0.5 J	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
Aroclor 1232	11141-16-5	--	--	<0.5 J	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
Aroclor 1248	12672-29-6	--	--	<0.5 J	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
Aroclor 1254	11097-69-1	--	--	<0.5 J	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
Aroclor 1260	11096-82-5	--	--	<0.5 J	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
Total PCBs, Aroclor Specific	1336-36-3	0.5	0.5	<0.5 J	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
PCBs, Homolog Specific By Method 680											
Monochlorobiphenyl	27323-18-8	--	--	-	-	-	-	-	-	-	-
Dichlorobiphenyl	25512-42-9	--	--	-	-	-	-	-	-	-	-
Trichlorobiphenyl	25323-68-6	--	--	-	-	-	-	-	-	-	-
Tetrachlorobiphenyl	26914-33-0	--	--	-	-	-	-	-	-	-	-
Pentachlorobiphenyl	25429-29-2	--	--	-	-	-	-	-	-	-	-
Hexachlorobiphenyl	26601-64-9	--	--	-	-	-	-	-	-	-	-
Total PCBs, Homolog Specific	1336-36-3	0.5	0.5	-	-	-	-	-	-	-	-
Pesticides By Method 8141B											
Parathion	56-38-2	75	85	-	-	<1 J	<1	<1 J	<1	<1 J	<1
Metals By Methods 6010C, 6010D, and 7470A											
Beryllium	7440-41-7	--	4	-	-	-	-	-	-	-	-
Cobalt	7440-48-4	694	73	-	-	<10	<10 J	-	-	-	-
Manganese	7439-96-5	--	880	-	-	-	-	-	-	-	-
Mercury	7439-97-6	2	2	-	-	<0.2	-	-	-	-	-

				RCRA Groundwater Detection Monitoring		RCRA Corrective Action Monitoring						
Matrix: Location ID: Sample Date: Sample Type: Filtered: Sample ID:		RCRA Concentration Limits	CERCLA Remediation Goals	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	
				MW-13A-R	MW-13A-R	MW-08	MW-09A	MW-14	MW-15	MW-15		
				4/12/2023	10/18/2023	4/14/2023	4/14/2023	4/15/2023	4/12/2023	4/12/2023		
				N	N	N	N	N	N	N		
				No	No	No	No	No	No	Yes	No	
				MW-13A-R	MW-13A-R	MW-08	MW-09A	MW-14	MW-15	MW-15F	MW-15	
Analyte	CASNo	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	
VOCs By Method 8260D												
1,2,4-Trichlorobenzene	120-82-1	--	70	-	-	-	-	-	-	-	-	
Chlorobenzene	108-90-7	102	--	-	-	<1	<1	<1	<1	-	<1	
Trichloroethylene	79-01-6	--	5	-	-	-	-	-	-	-	-	
SVOCs By Methods 8270D and 8270D SIM												
1,2-Dichlorobenzene	95-50-1	612	--	-	-	<10	<10 J	<10	<10	-	-	
4-Nitrophenol	100-02-7	128	125	<25	<25	<25	<25 J	<25	<25	-	<25	
o, o, o-Triethyl phosphorothioate	126-68-1	102	310	<10	<10	<10	<10 J	<10	<10	-	<10	
Pentachlorophenol, 8270 SIM	87-86-5	1	1	-	-	-	-	-	-	-	-	
PCBs, Aroclor Specific By Method 8081B/8082A												
Aroclor 1221	11104-28-2	--	--	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5	
Aroclor 1232	11141-16-5	--	--	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5	
Aroclor 1248	12672-29-6	--	--	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5	
Aroclor 1254	11097-69-1	--	--	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5	
Aroclor 1260	11096-82-5	--	--	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5	
Total PCBs, Aroclor Specific	1336-36-3	0.5	0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5	
PCBs, Homolog Specific By Method 680												
Monochlorobiphenyl	27323-18-8	--	--	-	-	-	-	-	-	-	-	
Dichlorobiphenyl	25512-42-9	--	--	-	-	-	-	-	-	-	-	
Trichlorobiphenyl	25323-68-6	--	--	-	-	-	-	-	-	-	-	
Tetrachlorobiphenyl	26914-33-0	--	--	-	-	-	-	-	-	-	-	
Pentachlorobiphenyl	25429-29-2	--	--	-	-	-	-	-	-	-	-	
Hexachlorobiphenyl	26601-64-9	--	--	-	-	-	-	-	-	-	-	
Total PCBs, Homolog Specific	1336-36-3	0.5	0.5	-	-	-	-	-	-	-	-	
Pesticides By Method 8141B												
Parathion	56-38-2	75	85	<1	<1	<1	<1	<1 J	<1	-	<1	
Metals By Methods 6010C, 6010D, and 7470A												
Beryllium	7440-41-7	--	4	-	-	-	-	-	-	-	-	
Cobalt	7440-48-4	694	73	-	-	<10	<10	<10	<10	<10	<10	
Manganese	7439-96-5	--	880	-	-	-	-	20	-	-	-	
Mercury	7439-97-6	2	2	-	-	<0.2	<0.2	<0.2	<0.2	<0.2	-	

RCRA Corrective Action Monitoring											
Matrix: Location ID: Sample Date: Sample Type: Filtered: Sample ID:	CASNo	RCRA Concentration Limits	CERCLA Remediation Goals	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater
				MW-16	MW-16	MW-16	MW-20A	MW-20A	MW-20A	MW-20A	MW-20A
				4/12/2023	4/12/2023	10/18/2023	4/14/2023	4/14/2023	4/14/2023	10/18/2023	10/18/2023
				N	N	N	N	N	Dup	N	Dup
				No	Yes	No	No	Yes	No	No	No
Analyte	CASNo	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L
VOCs By Method 8260D											
1,2,4-Trichlorobenzene	120-82-1	--	70	-	-	-	-	-	-	-	-
Chlorobenzene	108-90-7	102	--	<1	-	<1	2.0	-	2.0	<1 J	1.4 J
Trichloroethylene	79-01-6	--	5	-	-	-	-	-	-	-	-
SVOCs By Methods 8270D and 8270D SIM											
1,2-Dichlorobenzene	95-50-1	612	--	<10	-	-	<10	-	<10	-	-
4-Nitrophenol	100-02-7	128	125	<25	-	97	<25	-	<25	<25	<25
o, o, α-Triethyl phosphorothioate	126-68-1	102	310	58	-	68	38	-	41	59	69
Pentachlorophenol, 8270 SIM	87-86-5	1	1	-	-	-	5.0	-	5.5	-	-
PCBs, Aroclor Specific By Method 8081B/8082A											
Aroclor 1221	11104-28-2	--	--	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5 J	<0.5	<0.5
Aroclor 1232	11141-16-5	--	--	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5 J	<0.5	<0.5
Aroclor 1248	12672-29-6	--	--	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5 J	<0.5	<0.5
Aroclor 1254	11097-69-1	--	--	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5 J	<0.5	<0.5
Aroclor 1260	11096-82-5	--	--	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5 J	<0.5	<0.5
Total PCBs, Aroclor Specific	1336-36-3	0.5	0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5 J	<0.5	<0.5
PCBs, Homolog Specific By Method 680											
Monochlorobiphenyl	27323-18-8	--	--	-	-	-	-	-	-	-	-
Dichlorobiphenyl	25512-42-9	--	--	-	-	-	-	-	-	-	-
Trichlorobiphenyl	25323-68-6	--	--	-	-	-	-	-	-	-	-
Tetrachlorobiphenyl	26914-33-0	--	--	-	-	-	-	-	-	-	-
Pentachlorobiphenyl	25429-29-2	--	--	-	-	-	-	-	-	-	-
Hexachlorobiphenyl	26601-64-9	--	--	-	-	-	-	-	-	-	-
Total PCBs, Homolog Specific	1336-36-3	0.5	0.5	-	-	-	-	-	-	-	-
Pesticides By Method 8141B											
Parathion	56-38-2	75	85	<1	-	<1	<1	-	<1	<1	<1
Metals By Methods 6010C, 6010D, and 7470A											
Beryllium	7440-41-7	--	4	-	-	-	-	-	-	-	-
Cobalt	7440-48-4	694	73	<10	<10	<10	<10	-	<10	<10	<10
Manganese	7439-96-5	--	880	-	-	-	-	-	-	-	-
Mercury	7439-97-6	2	2	<0.2	<0.2	-	<0.2 J	-	<0.2 J	-	-

				RCRA Corrective Action Monitoring							
Matrix: Location ID: Sample Date: Sample Type: Filtered: Sample ID:	RCRA Concentration Limits	CERCLA Remediation Goals	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	
			OW-06A	OW-08A	OW-08A	OW-15	OW-15	OW-16A	OW-16A	OW-21A	
			4/12/2023	4/16/2023	4/16/2023	4/17/2023	4/17/2023	4/17/2023	4/17/2023	4/16/2023	
			N	N	N	N	N	N	N	N	
			No	No	Yes	No	Yes	No	Yes	No	
			OW-06A	OW-08A	OW-08AF	OW-15	OW-15F	OW-16A	OW-16AF	OW-21A	
Analyte	CASNo	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	
VOCs By Method 8260D											
1,2,4-Trichlorobenzene	120-82-1	--	70	-	-	-	-	-	410	-	-
Chlorobenzene	108-90-7	102	--	<1	<1	-	<1	-	<1	-	8.5
Trichloroethylene	79-01-6	--	5	-	-	-	-	-	-	-	-
SVOCs By Methods 8270D and 8270D SIM											
1,2-Dichlorobenzene	95-50-1	612	--	<10	<10	-	<10	-	<10	-	21
4-Nitrophenol	100-02-7	128	125	<25	<25	-	<25	-	<25	-	7900
o, o, o-Triethyl phosphorothioate	126-68-1	102	310	<10	<10	-	<10	-	<10	-	180
Pentachlorophenol, 8270 SIM	87-86-5	1	1	-	-	-	-	-	-	-	-
PCBs, Aroclor Specific By Method 8081B/8082A											
Aroclor 1221	11104-28-2	--	--	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5	<0.5 J	16
Aroclor 1232	11141-16-5	--	--	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5	<0.5 J	<0.5
Aroclor 1248	12672-29-6	--	--	<0.5	2.0	<0.5	<0.5	<0.5 J	13	<0.5 J	40
Aroclor 1254	11097-69-1	--	--	<0.5	2.1	<0.5	<0.5	<0.5 J	14	<0.5 J	<0.5
Aroclor 1260	11096-82-5	--	--	<0.5	1.1	<0.5	<0.5	<0.5 J	<0.5	<0.5 J	2.7
Total PCBs, Aroclor Specific	1336-36-3	0.5	0.5	<0.5	5.2	<0.5	<0.5	<0.5 J	27	<0.5 J	59
PCBs, Homolog Specific By Method 680											
Monochlorobiphenyl	27323-18-8	--	--	-	-	-	-	-	-	-	-
Dichlorobiphenyl	25512-42-9	--	--	-	-	-	-	-	-	-	-
Trichlorobiphenyl	25323-68-6	--	--	-	-	-	-	-	-	-	-
Tetrachlorobiphenyl	26914-33-0	--	--	-	-	-	-	-	-	-	-
Pentachlorobiphenyl	25429-29-2	--	--	-	-	-	-	-	-	-	-
Hexachlorobiphenyl	26601-64-9	--	--	-	-	-	-	-	-	-	-
Total PCBs, Homolog Specific	1336-36-3	0.5	0.5	-	-	-	-	-	-	-	-
Pesticides By Method 8141B											
Parathion	56-38-2	75	85	<1	<1 J	-	<1	-	12	-	1900 J
Metals By Methods 6010C, 6010D, and 7470A											
Beryllium	7440-41-7	--	4	-	-	-	-	-	-	-	-
Cobalt	7440-48-4	694	73	<10	<10	<10	<10	18	39	40	36
Manganese	7439-96-5	--	880	-	<10	<10	-	-	800	830	900
Mercury	7439-97-6	2	2	<0.2	<0.2	<0.2	<0.2	<0.2	<0.2	<0.2	<0.2

				RCRA Corrective Action Monitoring			CERCLA Remedial Action				
Analyte	CASNo	RCRA Concentration Limits	CERCLA Remediation Goals	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater
				OW-21A	OW-22	OW-22	OW-10	OW-10	OW-10	OW-10	OW-10
				4/16/2023	4/14/2023	4/14/2023	4/14/2023	4/14/2023	4/14/2023	4/14/2023	6/13/2023
				N	N	N	N	N	Dup	Dup	N
				Yes	No	Yes	No	Yes	No	Yes	No
Sample ID:	Sample ID:			OW-21AF	OW-22	OW-22F	OW-10	OW-10F	Field Duplicate 3	Field Duplicate 3F	OW-10
		µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L
VOCs By Method 8260D											
1,2,4-Trichlorobenzene	120-82-1	--	70	-	-	-	-	-	-	-	-
Chlorobenzene	108-90-7	102	--	-	<1 J	-	-	-	-	-	-
Trichloroethylene	79-01-6	--	5	-	-	-	3.3	-	3.2	-	-
SVOCs By Methods 8270D and 8270D SIM											
1,2-Dichlorobenzene	95-50-1	612	--	-	<10	-	-	-	-	-	-
4-Nitrophenol	100-02-7	128	125	-	<25	-	-	-	-	-	-
α, α, o-Triethyl phosphorothioate	126-68-1	102	310	-	<10	-	-	-	-	-	-
Pentachlorophenol, 8270 SIM	87-86-5	1	1	-	-	-	-	-	-	-	-
PCBs, Aroclor Specific By Method 8081B/8082A											
Aroclor 1221	11104-28-2	--	--	<0.5 J	<0.5	<0.5 J	-	-	-	-	<0.5
Aroclor 1232	11141-16-5	--	--	<0.5 J	<0.5	<0.5 J	-	-	-	-	<0.5
Aroclor 1248	12672-29-6	--	--	<0.5 J	<0.5	<0.5 J	-	-	-	-	<0.5
Aroclor 1254	11097-69-1	--	--	<0.5 J	<0.5	<0.5 J	-	-	-	-	<0.5
Aroclor 1260	11096-82-5	--	--	<0.5 J	<0.5	<0.5 J	-	-	-	-	<0.5
Total PCBs, Aroclor Specific	1336-36-3	0.5	0.5	<0.5 J	<0.5	<0.5 J	-	-	-	-	<0.5
PCBs, Homolog Specific By Method 680											
Monochlorobiphenyl	27323-18-8	--	--	-	-	-	-	-	-	-	-
Dichlorobiphenyl	25512-42-9	--	--	-	-	-	-	-	-	-	-
Trichlorobiphenyl	25323-68-6	--	--	-	-	-	-	-	-	-	-
Tetrachlorobiphenyl	26914-33-0	--	--	-	-	-	-	-	-	-	-
Pentachlorobiphenyl	25429-29-2	--	--	-	-	-	-	-	-	-	-
Hexachlorobiphenyl	26601-64-9	--	--	-	-	-	-	-	-	-	-
Total PCBs, Homolog Specific	1336-36-3	0.5	0.5	-	-	-	-	-	-	-	-
Pesticides By Method 8141B											
Parathion	56-38-2	75	85	-	<1	-	-	-	-	-	-
Metals By Methods 6010C, 6010D, and 7470A											
Beryllium	7440-41-7	--	4	-	-	-	4.1	5.2	4.1	5.4	-
Cobalt	7440-48-4	694	73	35	<10	<10	-	-	-	-	-
Manganese	7439-96-5	--	880	890	-	-	1100	580	1100	720	-
Mercury	7439-97-6	2	2	<0.2	<0.2	<0.2	4.2	5.7	4.1	6.9	-

				CERCLA Remedial Action							
Analyte	Matrix: Location ID: Sample Date: Sample Type: Filtered: Sample ID:	RCRA Concentration Limits	CERCLA Remediation Goals	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater
				OW-10	OW-10	OW-10	OWR-03S	OWR-11	OWR-11	OWR-13	OWR-13
				6/13/2023	6/13/2023	6/13/2023	4/12/2023	4/17/2023	4/17/2023	4/14/2023	4/14/2023
				N	Dup	Dup	N	N	N	N	N
				Yes	No	Yes	No	No	Yes	No	Yes
				OW-10F	Field Duplicate 3	Field Duplicate 3F	OWR-03S	OWR-11	OWR-11F	OWR-13	OWR-13F
	CASNo	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L
VOCs By Method 8260D											
1,2,4-Trichlorobenzene	120-82-1	--	70	-	-	-	-	-	-	-	-
Chlorobenzene	108-90-7	102	--	-	-	-	-	-	-	-	-
Trichloroethylene	79-01-6	--	5	-	-	-	-	-	-	-	-
SVOCs By Methods 8270D and 8270D SIM											
1,2-Dichlorobenzene	95-50-1	612	--	-	-	-	-	-	-	-	-
4-Nitrophenol	100-02-7	128	125	-	-	-	-	-	-	-	-
o, o, o-Triethyl phosphorothioate	126-68-1	102	310	-	-	-	-	-	-	-	-
Pentachlorophenol, 8270 SIM	87-86-5	1	1	-	-	-	-	-	-	-	-
PCBs, Aroclor Specific By Method 8081B/8082A											
Aroclor 1221	11104-28-2	--	--	<0.5	<0.5	<0.5	<0.5	150	<0.5 J	<0.5	<0.5 J
Aroclor 1232	11141-16-5	--	--	<0.5	<0.5	<0.5	<0.5	130	<0.5 J	<0.5	<0.5 J
Aroclor 1248	12672-29-6	--	--	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J	<0.5	<0.5 J
Aroclor 1254	11097-69-1	--	--	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J	4.6	<0.5 J
Aroclor 1260	11096-82-5	--	--	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J	0.66	<0.5 J
Total PCBs, Aroclor Specific	1336-36-3	0.5	0.5	<0.5	<0.5	<0.5	<0.5	280	<0.5 J	5.3	<0.5 J
PCBs, Homolog Specific By Method 680											
Monochlorobiphenyl	27323-18-8	--	--	-	-	-	-	-	-	<0.1	<0.1
Dichlorobiphenyl	25512-42-9	--	--	-	-	-	-	-	-	<0.1	<0.1
Trichlorobiphenyl	25323-68-6	--	--	-	-	-	-	-	-	<0.1	<0.1
Tetrachlorobiphenyl	26914-33-0	--	--	-	-	-	-	-	-	3.7	<0.2
Pentachlorobiphenyl	25429-29-2	--	--	-	-	-	-	-	-	1.6	<0.2
Hexachlorobiphenyl	26601-64-9	--	--	-	-	-	-	-	-	0.27	<0.2
Total PCBs, Homolog Specific	1336-36-3	0.5	0.5	-	-	-	-	-	-	5.6	<0.5
Pesticides By Method 8141B											
Parathion	56-38-2	75	85	-	-	-	-	-	-	-	-
Metals By Methods 6010C, 6010D, and 7470A											
Beryllium	7440-41-7	--	4	-	-	-	-	-	-	-	-
Cobalt	7440-48-4	694	73	-	-	-	-	140	140	-	-
Manganese	7439-96-5	--	880	-	-	-	-	2700	2800	-	-
Mercury	7439-97-6	2	2	-	-	-	-	-	-	-	-

				CERCLA Remedial Action							
Matrix:	RCRA Concentration Limits	CERCLA Remediation Goals	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater
Location ID:			OWR-14D	OWR-14D	OWR-14D	OWR-14D	OWR-15D	OWR-15D	T-04	T-04	
Sample Date:			4/14/2023	4/14/2023	4/14/2023	4/14/2023	4/13/2023	4/13/2023	4/15/2023	4/15/2023	
Sample Type:			N	N	Dup	Dup	N	N	N	N	
Filtered:			No	Yes	No	Yes	No	Yes	No	Yes	
Sample ID:	OWR-14D	OWR-14DF	Field Duplicate 2	Field Duplicate 2F	OWR-15D	OWR-15DF	T-04	T-04F			
Analyte	CASNo	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	
VOCs By Method 8260D											
1,2,4-Trichlorobenzene	120-82-1	--	70	-	-	-	-	-	-	-	
Chlorobenzene	108-90-7	102	--	-	-	-	-	-	-	-	
Trichloroethylene	79-01-6	--	5	-	-	-	-	-	-	-	
SVOCs By Methods 8270D and 8270D SIM											
1,2-Dichlorobenzene	95-50-1	612	--	-	-	-	-	-	-	-	
4-Nitrophenol	100-02-7	128	125	-	-	-	-	-	-	-	
o, o, o-Triethyl phosphorothioate	126-68-1	102	310	-	-	-	-	-	-	-	
Pentachlorophenol, 8270 SIM	87-86-5	1	1	-	-	-	-	-	-	-	
PCBs, Aroclor Specific By Method 8081B/8082A											
Aroclor 1221	11104-28-2	--	--	<0.5	<0.5	<0.5	<0.5	43 J	<0.5 J	-	-
Aroclor 1232	11141-16-5	--	--	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J	-	-
Aroclor 1248	12672-29-6	--	--	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J	-	-
Aroclor 1254	11097-69-1	--	--	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J	-	-
Aroclor 1260	11096-82-5	--	--	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J	-	-
Total PCBs, Aroclor Specific	1336-36-3	0.5	0.5	<0.5	<0.5	<0.5	<0.5	43 J	<0.5 J	-	-
PCBs, Homolog Specific By Method 680											
Monochlorobiphenyl	27323-18-8	--	--	<0.1	<0.1	<0.1	<0.1	-	-	-	-
Dichlorobiphenyl	25512-42-9	--	--	<0.1	<0.1	<0.1	<0.1	-	-	-	-
Trichlorobiphenyl	25323-68-6	--	--	<0.1	<0.1	<0.1	<0.1	-	-	-	-
Tetrachlorobiphenyl	26914-33-0	--	--	0.38	<0.2	0.42	<0.2	-	-	-	-
Pentachlorobiphenyl	25429-29-2	--	--	<0.2 J	<0.2	0.20 J	<0.2	-	-	-	-
Hexachlorobiphenyl	26601-64-9	--	--	<0.2	<0.2	<0.2	<0.2	-	-	-	-
Total PCBs, Homolog Specific	1336-36-3	0.5	0.5	0.38 J	<0.5	0.62 J	<0.5	-	-	-	-
Pesticides By Method 8141B											
Parathion	56-38-2	75	85	-	-	-	-	-	-	-	-
Metals By Methods 6010C, 6010D, and 7470A											
Beryllium	7440-41-7	--	4	-	-	-	-	-	-	-	-
Cobalt	7440-48-4	694	73	-	-	-	-	-	-	-	-
Manganese	7439-96-5	--	880	12 J	<10	18 J	<10	-	-	200	63
Mercury	7439-97-6	2	2	-	-	-	-	-	-	-	-

				CERCLA Remedial Action							
Analyte	CASNo	RCRA Concentration Limits	CERCLA Remediation Goals	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater
				T-04	T-04	T-06	T-06	T-09-R	T-09-R	T-09-R	T-10
				6/14/2023	6/14/2023	4/13/2023	4/13/2023	8/9/2023	8/9/2023	8/9/2023	4/11/2023
				N	N	N	N	N	N	Dup	N
				No	Yes	No	Yes	No	Yes	No	No
Sample ID:				T-04	T-04F	T-06	T-06F	T-09-R	T-09-RF	Field Duplicate 4	T-10
Matrix:											
Location ID:											
Sample Date:											
Sample Type:											
Filtered:											
Sample ID:											
Unit		µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L
VOCs By Method 8260D											
1,2,4-Trichlorobenzene	120-82-1	--	70	-	-	-	-	-	-	-	-
Chlorobenzene	108-90-7	102	--	-	-	-	-	-	-	-	-
Trichloroethylene	79-01-6	--	5	-	-	-	-	-	-	-	-
SVOCs By Methods 8270D and 8270D SIM											
1,2-Dichlorobenzene	95-50-1	612	--	-	-	-	-	-	-	-	-
4-Nitrophenol	100-02-7	128	125	-	-	-	-	<25	-	<25	<25 J
o, o, o-Triethyl phosphorothioate	126-68-1	102	310	-	-	-	-	-	-	-	-
Pentachlorophenol, 8270 SIM	87-86-5	1	1	-	-	-	-	-	-	-	-
PCBs, Aroclor Specific By Method 8081B/8082A											
Aroclor 1221	11104-28-2	--	--	11	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J
Aroclor 1232	11141-16-5	--	--	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J
Aroclor 1248	12672-29-6	--	--	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J
Aroclor 1254	11097-69-1	--	--	14	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J
Aroclor 1260	11096-82-5	--	--	0.57	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J
Total PCBs, Aroclor Specific	1336-36-3	0.5	0.5	26	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5 J
PCBs, Homolog Specific By Method 680											
Monochlorobiphenyl	27323-18-8	--	--	-	-	-	-	-	-	-	-
Dichlorobiphenyl	25512-42-9	--	--	-	-	-	-	-	-	-	-
Trichlorobiphenyl	25323-68-6	--	--	-	-	-	-	-	-	-	-
Tetrachlorobiphenyl	26914-33-0	--	--	-	-	-	-	-	-	-	-
Pentachlorobiphenyl	25429-29-2	--	--	-	-	-	-	-	-	-	-
Hexachlorobiphenyl	26601-64-9	--	--	-	-	-	-	-	-	-	-
Total PCBs, Homolog Specific	1336-36-3	0.5	0.5	-	-	-	-	-	-	-	-
Pesticides By Method 8141B											
Parathion	56-38-2	75	85	-	-	-	-	<1	-	<1	<1 J
Metals By Methods 6010C, 6010D, and 7470A											
Beryllium	7440-41-7	--	4	-	-	-	-	-	-	-	-
Cobalt	7440-48-4	694	73	-	-	-	-	-	-	-	-
Manganese	7439-96-5	--	880	-	-	-	-	-	-	-	-
Mercury	7439-97-6	2	2	-	-	-	-	-	-	-	-

				CERCLA Remedial Action							
Analyte	CASNo	RCRA Concentration Limits	CERCLA Remediation Goals	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater
				T-18	T-18	T-18	T-18	T-20	T-20	T-20	T-20
				4/14/2023	4/14/2023	6/14/2023	6/14/2023	4/16/2023	4/16/2023	6/14/2023	6/14/2023
				N	N	N	N	N	N	N	N
				No	Yes	No	Yes	No	Yes	No	Yes
Sample ID:	Sample ID:			T-18	T-18F	T-18	T-18F	T-20	T-20F	T-20	T-20F
µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L
VOCs By Method 8260D											
1,2,4-Trichlorobenzene	120-82-1	--	70	-	-	-	-	-	-	-	-
Chlorobenzene	108-90-7	102	--	-	-	-	-	-	-	-	-
Trichloroethylene	79-01-6	--	5	-	-	-	-	-	-	-	-
SVOCs By Methods 8270D and 8270D SIM											
1,2-Dichlorobenzene	95-50-1	612	--	-	-	-	-	-	-	-	-
4-Nitrophenol	100-02-7	128	125	-	-	-	-	-	-	-	-
o, o, o-Triethyl phosphorothioate	126-68-1	102	310	-	-	-	-	-	-	-	-
Pentachlorophenol, 8270 SIM	87-86-5	1	1	-	-	-	-	-	-	-	-
PCBs, Aroclor Specific By Method 8081B/8082A											
Aroclor 1221	11104-28-2	--	--	-	-	16 J	<0.5	-	-	<0.5	<0.5
Aroclor 1232	11141-16-5	--	--	-	-	<0.5 J	<0.5	-	-	<0.5	<0.5
Aroclor 1248	12672-29-6	--	--	-	-	<0.5 J	<0.5	-	-	<0.5	<0.5
Aroclor 1254	11097-69-1	--	--	-	-	<0.5 J	<0.5	-	-	<0.5	<0.5
Aroclor 1260	11096-82-5	--	--	-	-	<0.5 J	<0.5	-	-	<0.5	<0.5
Total PCBs, Aroclor Specific	1336-36-3	0.5	0.5	-	-	16 J	<0.5	-	-	<0.5	<0.5
PCBs, Homolog Specific By Method 680											
Monochlorobiphenyl	27323-18-8	--	--	36	0.50	-	-	-	-	-	-
Dichlorobiphenyl	25512-42-9	--	--	12	0.11	-	-	-	-	-	-
Trichlorobiphenyl	25323-68-6	--	--	0.29	<0.1	-	-	-	-	-	-
Tetrachlorobiphenyl	26914-33-0	--	--	<0.2	<0.2	-	-	-	-	-	-
Pentachlorobiphenyl	25429-29-2	--	--	<0.2	<0.2	-	-	-	-	-	-
Hexachlorobiphenyl	26601-64-9	--	--	<0.2	<0.2	-	-	-	-	-	-
Total PCBs, Homolog Specific	1336-36-3	0.5	0.5	48	0.61	-	-	-	-	-	-
Pesticides By Method 8141B											
Parathion	56-38-2	75	85	-	-	-	-	-	-	-	-
Metals By Methods 6010C, 6010D, and 7470A											
Beryllium	7440-41-7	--	4	-	-	-	-	-	-	-	-
Cobalt	7440-48-4	694	73	-	-	-	-	-	-	-	-
Manganese	7439-96-5	--	880	-	-	-	-	2100	2100	-	-
Mercury	7439-97-6	2	2	-	-	-	-	<0.2	-	-	-

				CERCLA Remedial Action					
Matrix: Location ID: Sample Date: Sample Type: Filtered: Sample ID:		RCRA Concentration Limits	CERCLA Remediation Goals	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater	Groundwater
				WEL-01	WEL-01	WEL-01	WEL-01	WEL-04	WEL-04
				4/15/2023	4/15/2023	6/13/2023	6/13/2023	4/12/2023	4/12/2023
				N	N	N	N	N	N
		No	Yes	No	Yes	No	Yes		
		WEL-01	WEL-01F	WEL-01	WEL-01F	WEL-04	WEL-04F		
Analyte	CASNo	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L	µg/L
VOCs By Method 8260D									
1,2,4-Trichlorobenzene	120-82-1	--	70	-	-	-	-	-	-
Chlorobenzene	108-90-7	102	--	-	-	-	-	-	-
Trichloroethylene	79-01-6	--	5	-	-	-	-	-	-
SVOCs By Methods 8270D and 8270D SIM									
1,2-Dichlorobenzene	95-50-1	612	--	-	-	-	-	-	-
4-Nitrophenol	100-02-7	128	125	-	-	-	-	-	-
o, o, o-Triethyl phosphorothioate	126-68-1	102	310	-	-	-	-	-	-
Pentachlorophenol, 8270 SIM	87-86-5	1	1	-	-	-	-	-	-
PCBs, Aroclor Specific By Method 8081B/8082A									
Aroclor 1221	11104-28-2	--	--	-	-	<0.5	<0.5	<0.5	<0.5
Aroclor 1232	11141-16-5	--	--	-	-	<0.5	<0.5	<0.5	<0.5
Aroclor 1248	12672-29-6	--	--	-	-	<0.5	<0.5	<0.5	<0.5
Aroclor 1254	11097-69-1	--	--	-	-	<0.5	<0.5	<0.5	<0.5
Aroclor 1260	11096-82-5	--	--	-	-	<0.5	<0.5	<0.5	<0.5
Total PCBs, Aroclor Specific	1336-36-3	0.5	0.5	-	-	<0.5	<0.5	<0.5	<0.5
PCBs, Homolog Specific By Method 680									
Monochlorobiphenyl	27323-18-8	--	--	-	-	-	-	-	-
Dichlorobiphenyl	25512-42-9	--	--	-	-	-	-	-	-
Trichlorobiphenyl	25323-68-6	--	--	-	-	-	-	-	-
Tetrachlorobiphenyl	26914-33-0	--	--	-	-	-	-	-	-
Pentachlorobiphenyl	25429-29-2	--	--	-	-	-	-	-	-
Hexachlorobiphenyl	26601-64-9	--	--	-	-	-	-	-	-
Total PCBs, Homolog Specific	1336-36-3	0.5	0.5	-	-	-	-	-	-
Pesticides By Method 8141B									
Parathion	56-38-2	75	85	-	-	-	-	-	-
Metals By Methods 6010C, 6010D, and 7470A									
Beryllium	7440-41-7	--	4	-	-	-	-	-	-
Cobalt	7440-48-4	694	73	-	-	-	-	-	-
Manganese	7439-96-5	--	880	15	13	-	-	58	40
Mercury	7439-97-6	2	2	-	-	-	-	-	-

Notes:

1. Concentrations exceeding the applicable regulatory limits or goals are highlighted in yellow.

2. 1,2,4-Trichlorobenzene in well OW-16A and Manganese in wells MW-14, OW-08A, OW-16A, and OW-21A are required for CERCLA. Concentrations compared to CERCLA Remediation Goals.

3. J = Estimated concentration;

-- = not applicable;

- = not analyzed.

Dup = Duplicate sample

N = Original sample

PCBs = Polychlorinated biphenyls

SVOCs = Semi-volatile organic compound

VOCs = Volatile organic compound

CERCLA = Comprehensive Environmental Response, Compensation, and Liability Act

RCRA = Resource Conservation and Recovery Act

Source: 2023 Annual Groundwater Detection Monitoring and Corrective Action Effectiveness Report. Table 5. Anniston PCB Site. Anniston, Calhoun County, Alabama. Solutia. May 2024.

Table J-2: Summary of Mann-Kendall Analysis

Unit or Corrective Action Area/Well	COC	Mann-Kendall Concentration Trend
WMA II		
MW-20A	Pentachlorophenol	Decreasing
OW-22	Total PCBs	No trend
	Total PCBs (Filtered)	Not detected ^a
South Landfill (SWMU-1)		
OW-08A	Total PCBs	Probably decreasing
	Total PCBs (Filtered)	Not detected ^a
OW-15	Total PCBs	Probably increasing
	Total PCBs (Filtered)	Not detected ^a
OW-16A	Total PCBs	Stable
	Total PCBs (Filtered)	Not detected ^a
	1,2,4-Trichlorobenzene	Stable
OW-21A Area		
OW-21A	4-Nitrophenol	Probably decreasing
	o,o,o-Triethylphosphorothioate	Probably decreasing
	Total PCBs	Decreasing
	Total PCBs (Filtered)	Not detected ^a
	Parathion	Decreasing
	Manganese	No trend
T-04	Total PCBs	No trend
OW-10 Area		
OW-10	Total PCBs	No trend
	Manganese	Probably decreasing
	Mercury	No trend
	Beryllium	Stable
T-20	Total PCBs	No trend
	Manganese	Decreasing
Other OU-3 Areas		
OWR-11 (Area A)	Total PCBs	Stable
	Cobalt	Decreasing
	Manganese	Decreasing
OWR-13 (MCC Warehouse)	Total PCBs	Stable
OWR-14D (MCC Warehouse)	Total PCBs	No trend
OWR-15D (southeast of the former PCB Production Area)	Total PCBs	No trend
T-06 (Area E)	Total PCBs	Probably decreasing
T-18 (Area E)	Total PCBs	No trend
WEL-01 (West Landfill)	Total PCBs	Stable
Notes: a. More than 75% of the sample results were non-detect, so a trend was not calculated to avoid calculating a trend based on detection limits. Source: 2023 Annual Groundwater Detection Monitoring and Corrective Action Effectiveness Report. Exhibit 4. Anniston PCB Site. Anniston, Calhoun County, Alabama. Solutia. May 2024.		

APPENDIX K – DETAILED ARARS REVIEW

CERCLA Section 121(d)(1) requires that Superfund remedial actions attain "a degree of cleanup of hazardous substances, pollutants, and contaminants released into the environment and of control of further release at a minimum which assures protection of human health and the environment." The remedial action must achieve a level of cleanup that at least attains those requirements that are legally applicable or relevant and appropriate. In performing the FYR for compliance with applicable or relevant and appropriate requirements (ARARs), only those ARARs that address the protectiveness of the remedy are reviewed.

The 2011 IROD selected chemical-specific ARARs for groundwater COCs or, in the absence of chemical-specific ARARs, the EPA developed risk-based remedial goals, which are reviewed further in the screening-level risk review in Appendix L. Table K-1 shows that, with one exception, the MCLs selected in the 2011 IROD have not changed. The EPA changed the MCL for lead to a lower, more stringent value. This lower value does not impact the protectiveness of the remedy as groundwater restrictions are in place across the Site.

Table K-1: OU-3 Groundwater COC ARARs Review

Groundwater COC	2011 IROD Remedial Goal (µg/L)	Current MCL (µg/L) ^a	Change
Benzo(a)pyrene	0.2	0.2	No change
gamma-BHC	0.2	0.2	No change
Methylene Chloride	5	5	No change
Pentachlorophenol	1	1	No change
Total PCBs	0.5	0.5	No change
1,2,4-Trichlorobenzene	70	70	No change
Trichloroethylene	5	5	No change
Beryllium	4	4	No change
Mercury	2	2	No change
Lead	15	10 (action level)	More stringent
<p><i>Notes:</i></p> <p>a. Current MCLs (action level for lead) established by the EPA's National Primary Drinking Water Regulations accessed 3/20/2025 https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations.</p> <p><i>Source:</i> The Site's 2011 IROD, Table 8-2.</p> <p>MCL = maximum contaminant level</p> <p>µg/L = micrograms per liter</p>			

APPENDIX L – SCREENING-LEVEL RISK REVIEW

The 2011 IROD established soil remedial goals for OU-3 based on human health risks. The remedial goals for surface soil were based on a current or future operations worker and a target cancer risk of 1×10^{-5} . The subsurface soil remedial goals were based on the protection of a construction worker who may come into contact with subsurface soil during excavation activities or utility repairs. To evaluate if the 2011 IROD remedial goals remain valid, they were compared to the EPA's RSLs based on a standard default worker since the exposure duration and exposure frequency are the same as the values used in the baseline risk assessment. This FYR calculated construction worker-based RSLs using the exposure assumptions presented in Table 7-6 of the 2011 IROD. Table L-1 shows that the soil remedial goals remain valid because the surface soil and subsurface soil remedial goals are equivalent to cancer risks that fall within the EPA's cancer risk management range of 1×10^{-6} to 1×10^{-4} and below the noncancer HQ threshold of 1.

Table L-1: Screening-Level Risk Evaluation of the 2011 IROD Soil Remedial Goals

COC	2011 IROD Remedial Goal (mg/kg)	Industrial RSL ^a (mg/kg)		Cancer Risk ^b	Noncancer HQ ^c
		1 x 10 ⁻⁶ Risk	HQ = 1.0		
Surface Soil – Operations Worker					
Arsenic	66	3	480	2 x 10 ⁻⁵	0.1
Total PCBs	25	0.94	-	3 x 10 ⁻⁵	-
Subsurface Soil – Construction Worker					
Arsenic	217	59.3 ^d	381	4 x 10 ⁻⁶	0.6
Total PCBs	40	20.8 ^d	-	2 x 10 ⁻⁶	-
Notes:					
a. Current EPA RSLs, dated November 2024, are available at www.epa.gov/risk/regional-screening-levels-rsls-generic-tables (accessed 3/4/2025).					
b. The cancer risks were calculated using the following equation, based on the fact that RSLs are derived based on 1 x 10 ⁻⁶ risk: cancer risk = (cleanup level/cancer-based RSL) x 10 ⁻⁶ .					
c. The noncancer HQ was calculated using the following equation: HQ = cleanup level/noncancer-based RSL.					
d. Construction worker RSLs were developed using the EPA's RSL calculator (https://epa-prgs.ornl.gov/cgi-bin/chemicals/csl_search) (accessed 11/2/2024) and using the exposure frequency, exposure duration, adherence factor and ingestion rate from IROD Table 7-6 along with the EPA's updated default exposure factors for surface area and body weight.					
Source: The Site's 2011 IROD, Table 8-1.					
mg/kg = milligram per kilogram					

The EPA selected chemical-specific ARARs for groundwater COCs. In the absence of chemical specific ARARs, the EPA developed risk-based remedial goals or selected the ADEM's permit remedial goals. To evaluate if these risk-based or RCRA permit-based remedial goals remain valid, the remedial goals were compared to the EPA's tap water RSLs based on a standard default residential tap water exposure scenario. Table L-2 shows that, except for cobalt and manganese, groundwater preliminary remedial goals are equivalent to cancer risks that fall within the EPA's cancer risk management range of 1×10^{-6} to 1×10^{-4} and below the noncancer HQ threshold of 1.

The IROD preliminary remedial goals for cobalt and manganese are not health protective based on current EPA Superfund exposure and toxicity inputs. The cobalt preliminary remedial goal was based

on EPA Region 9 PRGs, which were replaced by the EPA's RSLs. The current tap water RSL for cobalt is more stringent than the preliminary remedial goal of 73 µg/L. The tap water RSL for cobalt is based on a provisional RfD that has considerable uncertainty. Similarly, the EPA derived a manganese tap water RSL using a modified RfD due to a number of uncertainties that are discussed in the EPA's Integrated Risk Information System file for manganese. The Tap Water RSLs for both cobalt and manganese are conservatively based on a child-only exposure. A risk assessment would determine if this child-only exposure is appropriate to assume for drinking water exposure to that particular constituent. In addition, the preliminary remedial goals for o,o,o-triethylphosphorothioate (cited as based on "professional judgement") and 4-nitrophenol cannot be judged for protectiveness as there are currently no recommended toxicity values for these contaminants. There is no unacceptable health risk associated with groundwater exposure as there is currently no completed exposure pathway to groundwater.

Table L-2: Screening-Level Risk Evaluation of the 2011 IROD Groundwater Preliminary Remedial Goals

COC	2011 IROD Preliminary Remedial Goal (µg/L)	Tap Water RSL ^a (µg/L)		Cancer Risk ^b	Noncancer HQ ^c
		1 x 10 ⁻⁶ Risk	HQ = 1.0		
Indeno(1,2,3-cd)pyrene	0.2	0.25	-	8 x 10 ⁻⁷	-
Methyl parathion	4	-	4.5	-	0.9
4-Nitrophenol	125	-	-	-	-
Parathion	85	-	86	-	1
Sulfotepp	7	-	-	--	-
1,1,2,2-Tetrachloroethane	0.067	0.076	360	9 x 10 ⁻⁷	0.0002
2,4,6-Trichlorophenol	13	4.1	12	3 x 10 ⁻⁶	1
o,o,o-Triethylphosphorothioate	310	-	-	-	-
Cobalt	73	--	6	--	12
Manganese	880		430	-	2

Notes:

a. Current tap water EPA RSLs, dated November 2024, are available at www.epa.gov/risk/regional-screening-levels-rsls-generic-tables (accessed 2/11/2025).

b. The cancer risks were calculated using the following equation, based on the fact that RSLs are derived based on 1 x 10⁻⁶ risk: cancer risk = (cleanup level/cancer-based RSL) x 10⁻⁶.

c. The noncancer HQ was calculated using the following equation: HQ = cleanup level/noncancer-based RSL.

HQ = hazard quotient

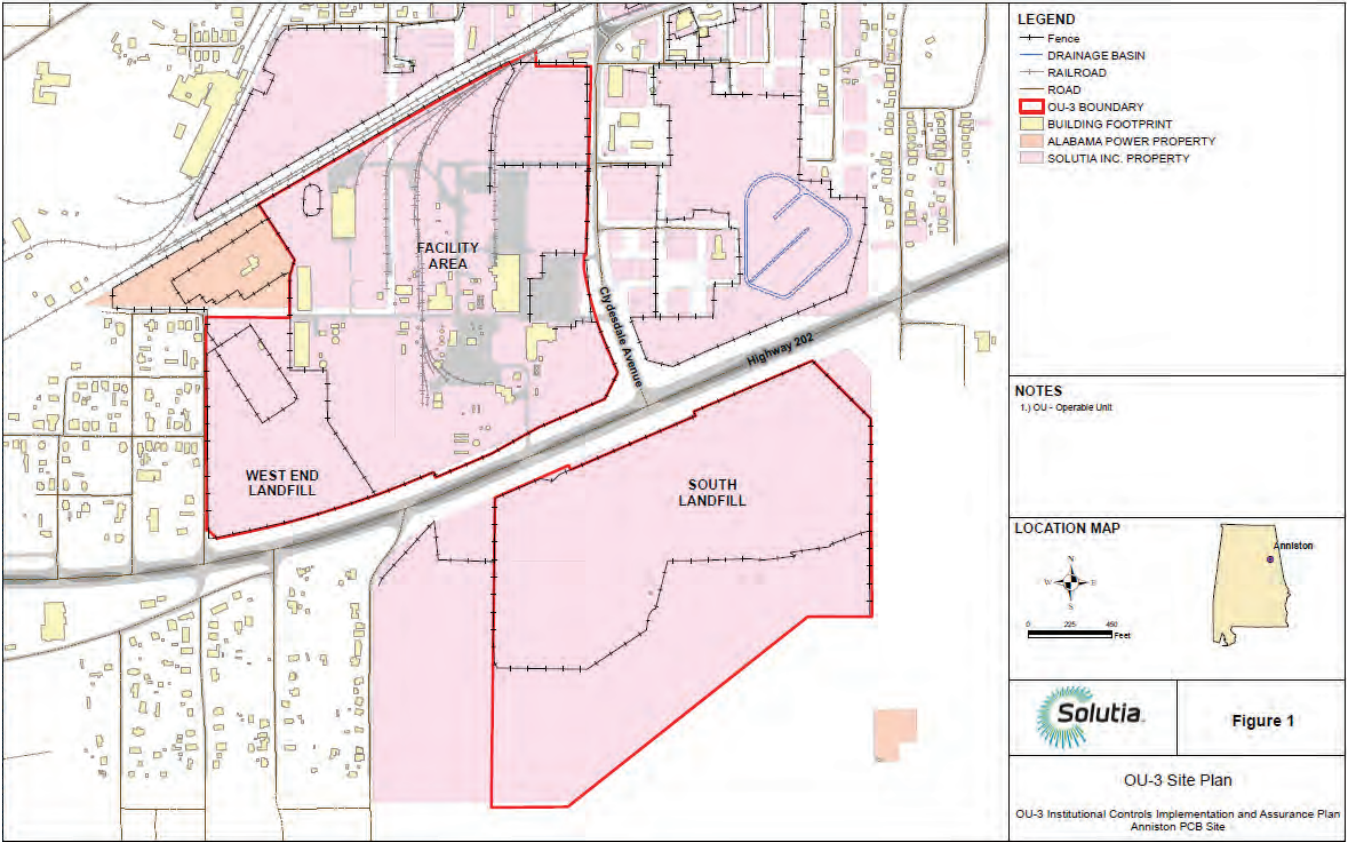
-- = not applicable; toxicity criteria not established.

Bold = remedial goal is equivalent to a noncancer screening HQ above the target HQ of 1.

µg/L = micrograms per liter

Source: The Site's 2011 IROD, Table 8-2.

APPENDIX M – Solutia-OWNED PROPERTY NEAR OU-3



Source: 2021 OU-3 ICIAP, Revision 2.0.

APPENDIX N – UNAUTHORIZED WASTE DISPOSAL AREAS AT THE ANNISTON PCB SITE

This is part of the second Five-year Review (FYR) for the Anniston Polychlorinated (PCB) Site. Remedial Designs (RDs) and Remedial Actions (RAs) for this part were implemented since the last FYR in 2020, and so this part is being included for the first time in the FYR.

Two Unapproved Waste Disposal Areas (UWDAs) were found during the investigation of Operable Unit (OU)1/OU2, a combination of what was originally two OUs representing residential properties and non-residential properties around the facility currently owned by Solutia Inc. (Solutia, a wholly owned subsidiary of Eastman Chemical Company), and downstream along Snow Creek to Highway 78. The EPA negotiated a separate agreement with MRC to design and implement the remedy for the UWDAs selected in the November 8, 2017, OU1/OU2 Record of Decision (ROD) for the Anniston PCB Site.

Review of the UWDAs was led by Pam Scully and George Skala, Remedial Project Managers (RPMs) in the EPA's Region 4 Office. The onsite review included participation of Andy Lawn with Verdantas, a contractor representing MRC, and Darrin Wells with Earth Services, a subcontractor to Verdantas. The review began on December 17, 2024, with a visit to the UWDA locations.

Site Background

In conducting the investigation for OU1/OU2 of the Anniston PCB Site, two areas were identified that were used for the unapproved disposal of waste materials: the Wilborn Property UWDA and Ashley-Legrande UWDA (see Figure 1).

The Ashley-Legrande UWDA (A-L UWDA) included residential parcels identified as 510 Legrande Street, 0 Ashley Street, and 505 Ashley Street. The three properties are unoccupied, and the former structures on the 510 Legrande property were demolished by Calhoun County due to their dilapidated and uninhabitable condition. A portion of these properties, where elevated levels of PCBs and lead were identified, is a fill area containing auto fluff and other debris. The Site has been identified as a dump site for the former U.S. Reduction facility that was previously located across and north of the railroad tracks.

The A-L UWDA is located approximately 0.25 miles west of the Solutia Facility outside of the 100-year floodplain of Snow Creek. The waste covers an area of approximately 1.3 acres. The depth of waste material was estimated to average about 4 feet over this footprint and 5 to 6 feet in depth over large portions of this UWDA. PCBs detected in surface soil ranged from 0.23 mg/kg to 70 mg/kg, and PCBs detected in subsurface soil ranged from 0.40 mg/kg to 64.9 mg/kg. Lead detected in surface soil ranged from 110 mg/kg to 960 mg/kg, and lead detected in subsurface soil ranged from 19 mg/kg to 13,000 mg/kg.

The Wilborn Property UWDA (Wilborn UWDA) includes 830 W. 10th Street and 0 W. 9th Street. This non-residential area is located approximately one mile east of the Solutia Facility with a portion of the property located inside the lateral limits of the historical 100-year floodplain of Snow Creek. Although a portion of the property is located inside of this historical floodplain boundary, significant filling of the

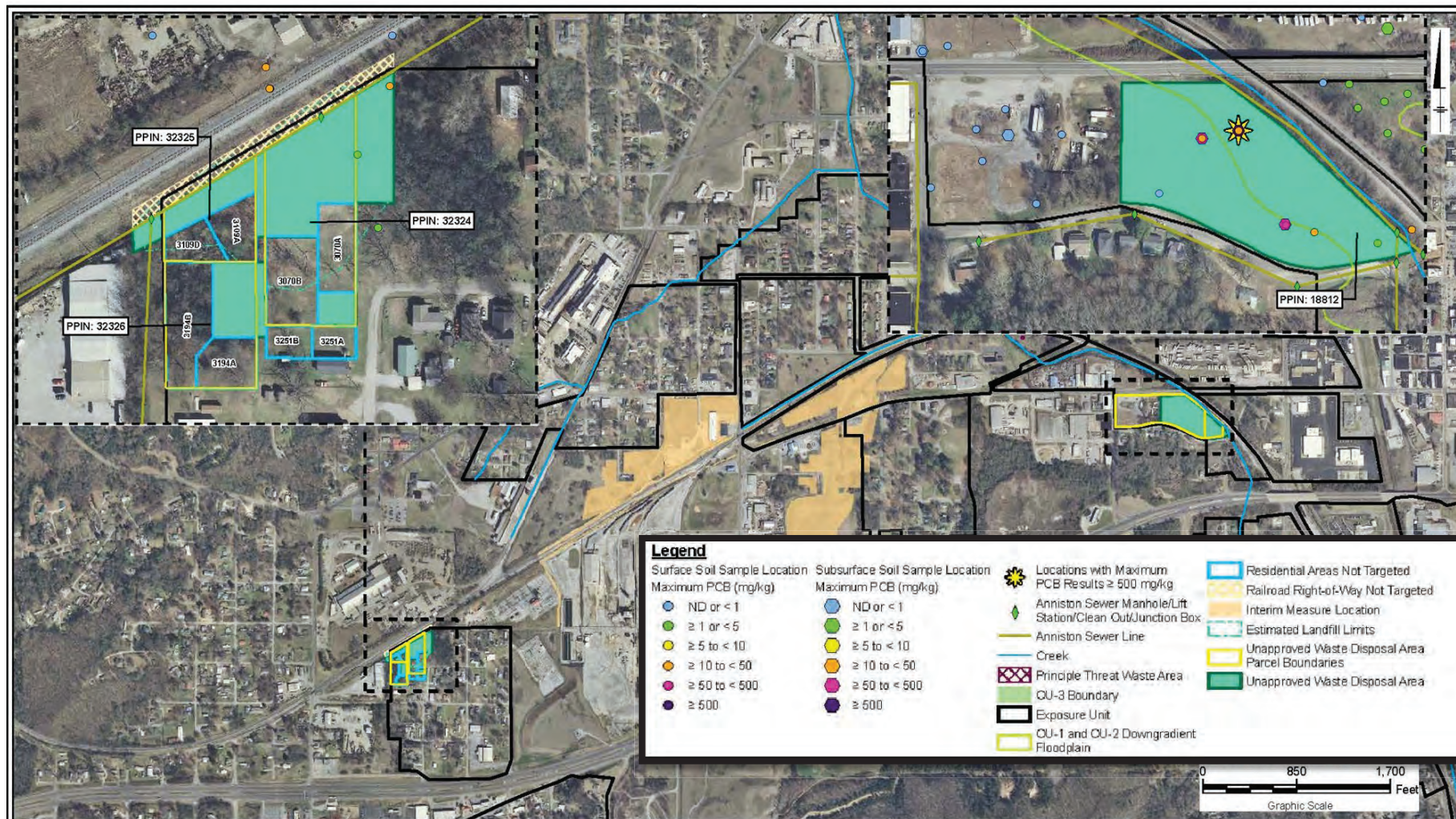


Figure 1. Location of Unapproved Waste Disposal Areas.

property (with auto fluff and other debris) has elevated the ground surface approximately 20 feet above Snow Creek.

A limited investigation was conducted at this property, including the installation of monitoring well T-13. The estimated waste limits are approximately 3.2 acres. The depth of waste material was estimated to be an average of 18 feet thick, based on the boring log and analytical data collected for well T-13. PCB concentrations were detected in surface soil ranging from 0.58 mg/kg to 190 mg/kg, and PCB concentrations were detected in subsurface soil ranging from 0.72 mg/kg to 562 mg/kg. No PCBs were detected in groundwater on this property.

Basis for Taking Action

- Contaminants of concern in soil on the UWDAs are PCBs and Lead.
- Auto fluff waste is also present to depths of 6 to 8 feet on the A-L UWDA and averaged 18 feet on the Wilborn UWDA.
- Contaminants were detected above residential standards on the UWDA properties. One UWDA property is zoned residential and the other is adjacent to residential property without engineering controls to prevent access from residents. Because of waste is being encapsulated, the boundary cleanup goal was set at residential standards.

Response Actions

The Remedial Action Objectives (RAOs) for soil were defined in the Record of Decision:

- Reduce risks to residents or commercial/industrial workers and trespassers from activities associated with direct contact with, inhalation of, or incidental ingestion of contaminants of concern from surface soil to levels that are protective.
- Prevent migration of contaminants of concern from surface soil to surface water and sediment to levels that are protective.
- Reduce risks to construction and utility workers from direct contact with, inhalation of, or incidental ingestion of contaminants of concern from surface and subsurface soil to levels that are protective.

To meet the Remedial Action Objectives, the EPA selected the following remedy:

- Construction of a RCRA Subtitle D composite cap system including:
 - Clear and prepare surface for cover;
 - 40 mil (minimum) geomembrane liner;
 - Geocomposite drainage layer;
 - 18-inch-thick protective soil cover; and
 - 6-inch-thick topsoil and vegetative surface.
- Execute environmental covenants to restrict future use of these areas and to protect the cap
- Conduct operation and maintenance (O&M) and monitoring of the cap

The remedy also includes:

- Gates at the access road, and fence extending around the perimeter of the cap to limit access to the property, with warning signs posted around the landfill perimeter.

Status of Implementation

A Remedial Design/Remedial Action (RD/RA) Consent Decree (CD) was negotiated with MRC to implement the remedy for the UWDA. The CD was lodged in the Federal District Court of Northern Alabama on July 23, 2019. A Federal Register Notice of the agreement was published on July 31, 2019. A comment period for the agreement expired on September 30, 2019, and the CD was entered by the court on December 16, 2019.

A-L UWDA

Two Preliminary Design Investigations (PDIs) were conducted for the RD of the cap at the A-L UWDA. The investigation consisted of 129 sample locations using a combination of test pits, hand augers, and direct push samples. Surface and subsurface soil samples were analyzed for PCB (Figure 2) and lead (Figure 3), and concentrations were compared to the remedial goals of 1 mg/kg for PCBs and 400 mg/kg for lead. Waste was observed outside the proposed cap limits to depths up to 5 feet below existing grade (Figure 4). The total amount of material excavated and consolidated within the limits of the cap is approximately 5,500 cubic yards. The final composite cap is approximately 1.3 acres and includes, from the surface down, the following components:

- A 6-inch vegetative cover;
- An 18-inch protective layer;
- An 8 oz geotextile separation layer;
- Minimal areas of a geocomposite drainage fabric;
- A 50-mil textured linear low-density polyethylene (LLDPE) MicroDrain geomembrane; and
- A geotextile cushion.

Once cap construction activities were completed, site restoration activities were initiated, including hydroseeding and installation of erosion control measures. The perimeter swales were lined with an erosion and sediment control blanket to prevent erosion and scour prior to vegetation establishing. Stone check dams were constructed at various points throughout the perimeter swale to control the flow of storm water runoff. The stormwater from the perimeter swales discharges to the existing drainage swale at the northwest corner of the cap. A perimeter chain link fence equipped with an access gate was installed at least 2 ft beyond the limits of the cap (see Figure 5).

Major demobilization activities occurred during August and September 2022, and all construction work was completed by September 21, 2022. The Remedial Action Report (Construction Completion Report) was submitted in February 2023 and approved by EPA in correspondence dated March 2, 2023.

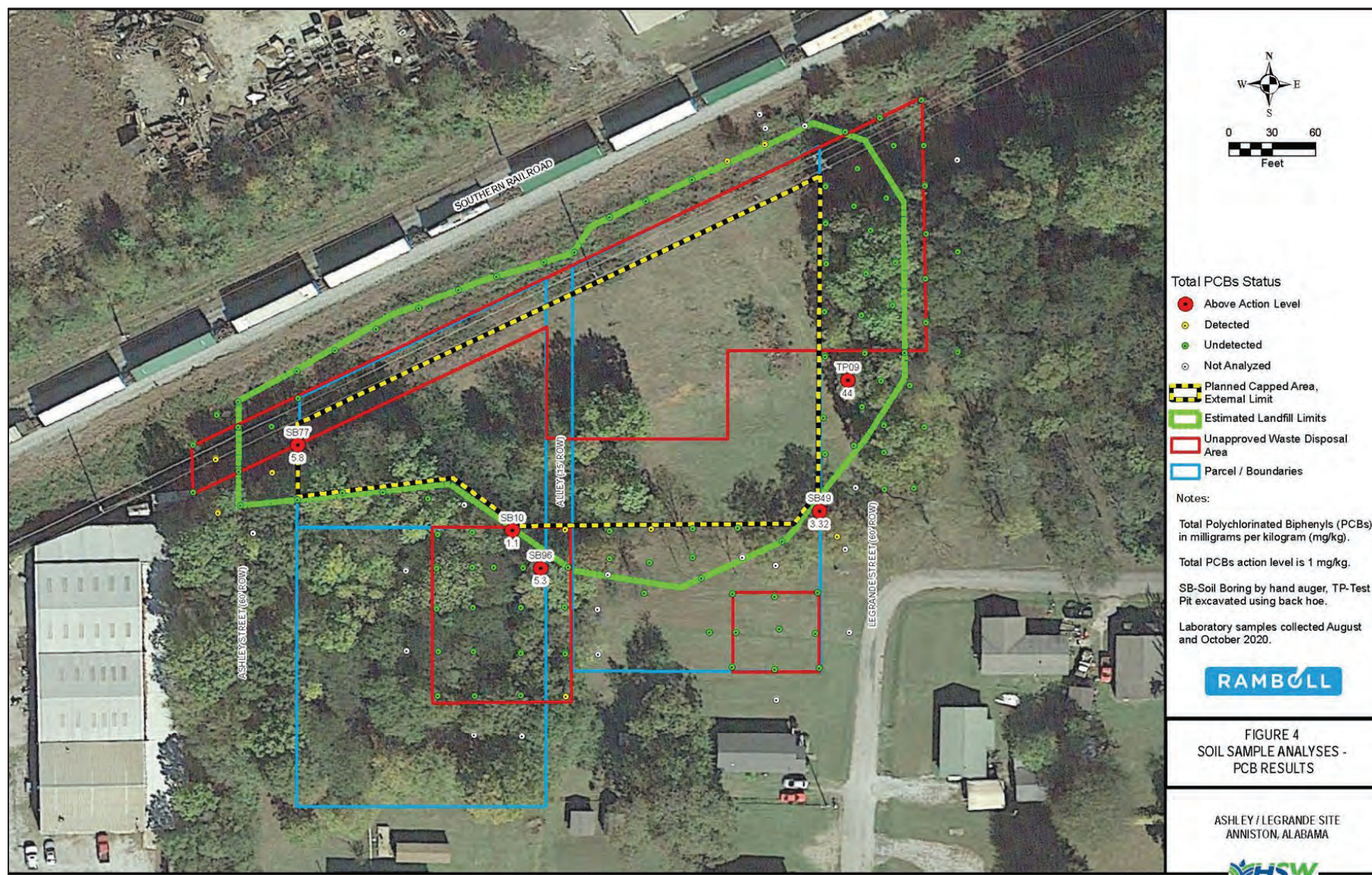


Figure 2. Soil Sampling Analyses PCB Results at Ashley/Legrande UWDA

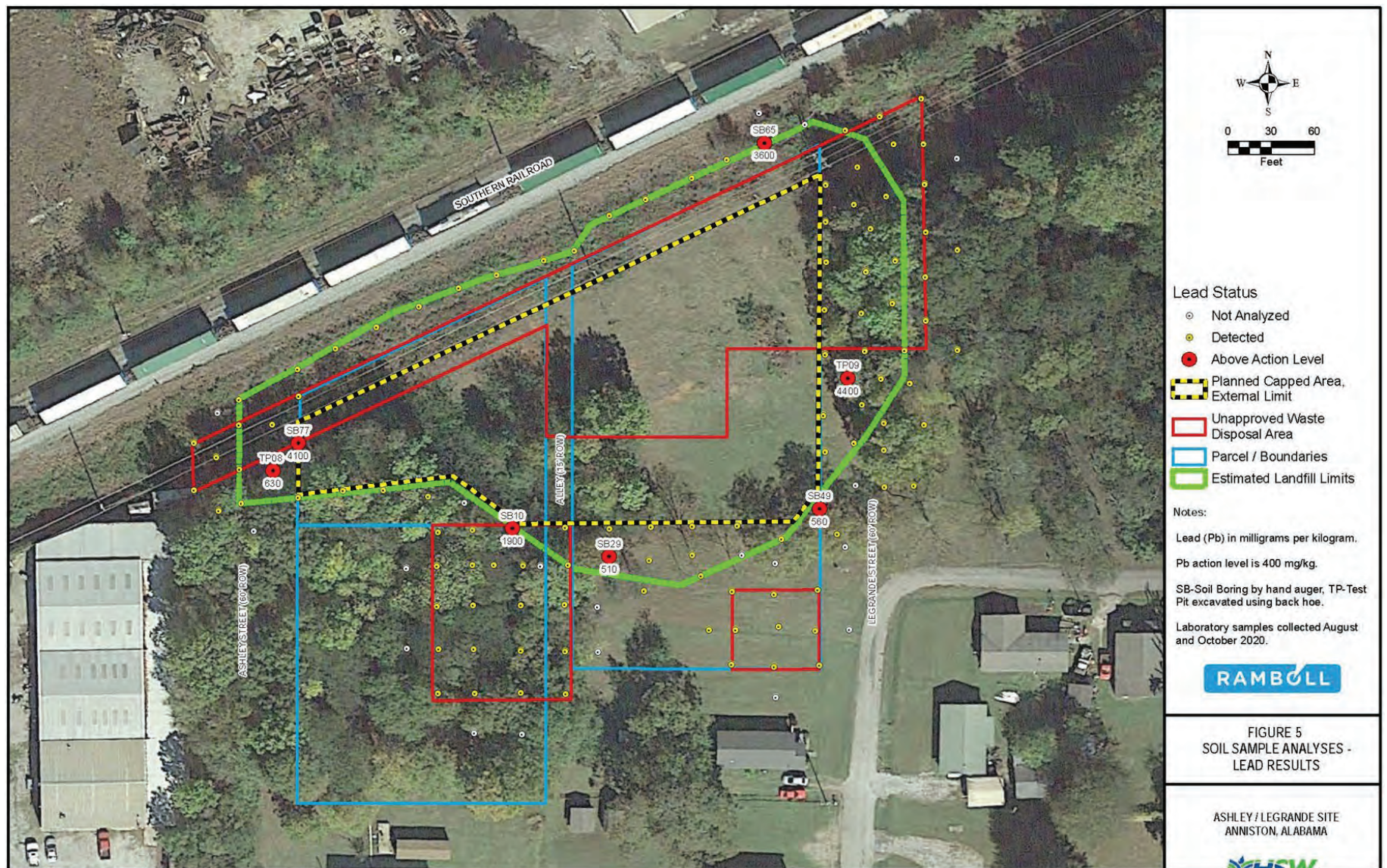


Figure 3. Soil Sampling Analyses Lead Results at Ashley/Legrande UWDA

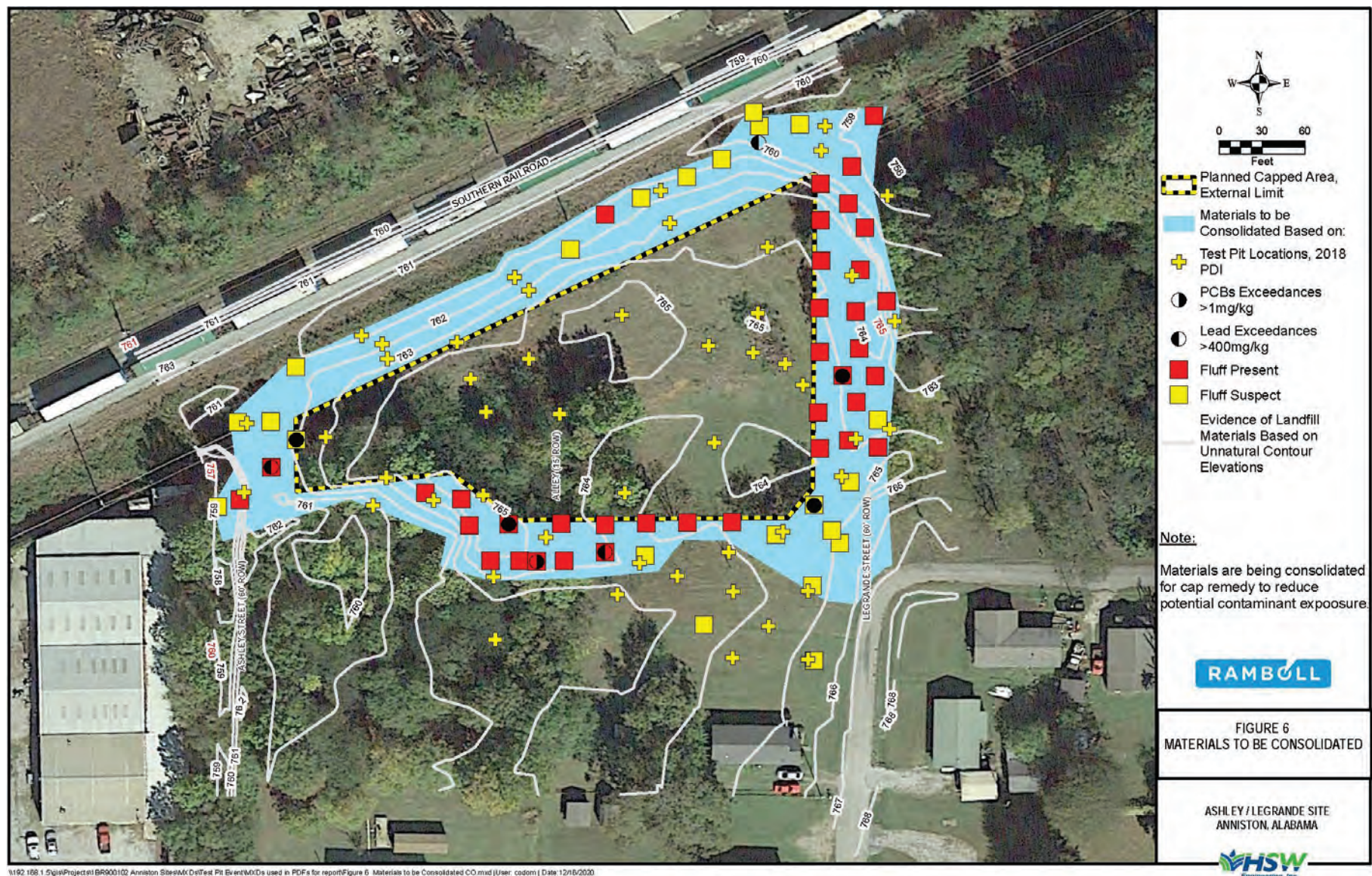


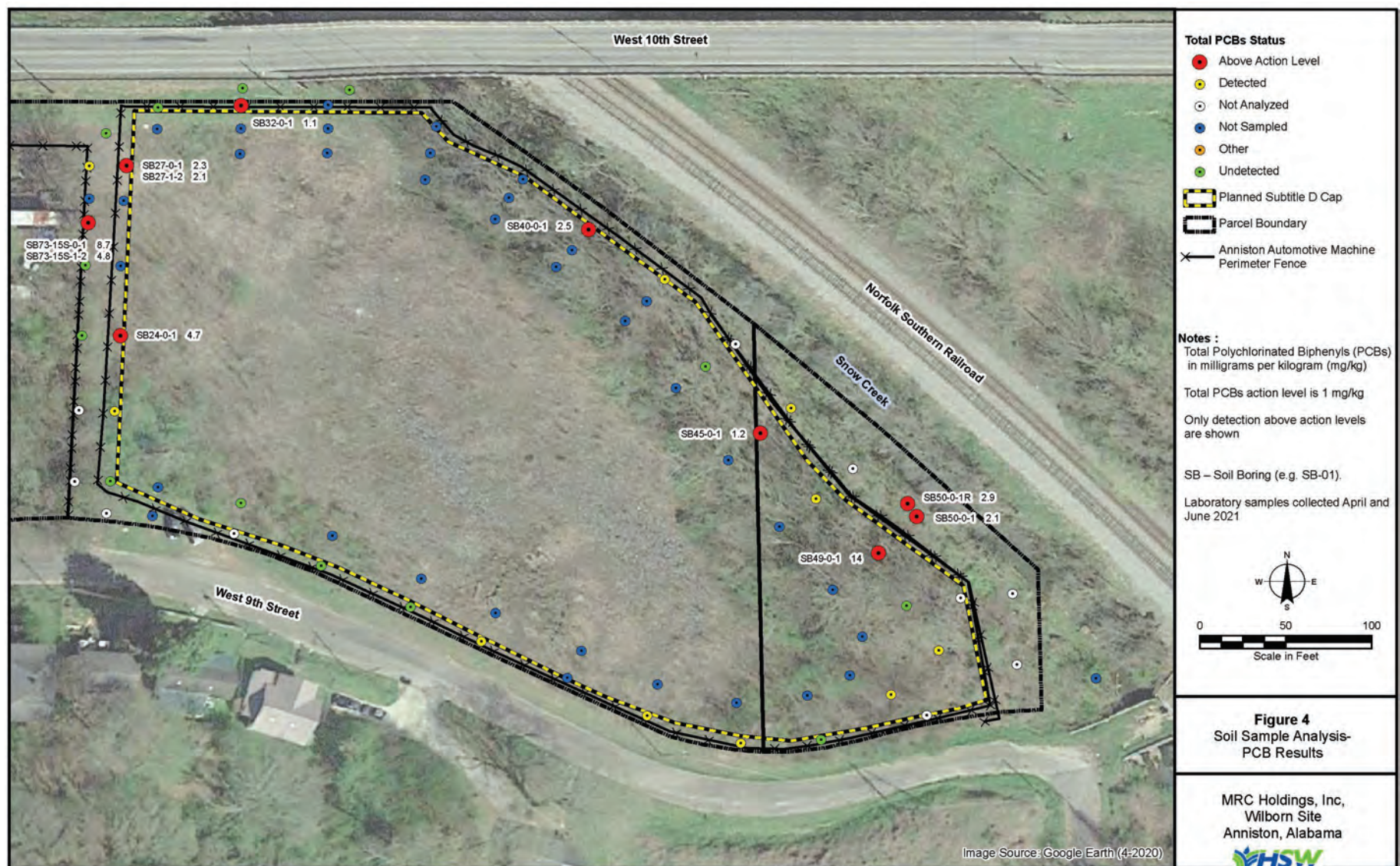
Figure 4. Materials to be Consolidated at Ashley/Legrande UWDA



Figure 5. Final Cap at Ashley/Legrande UWDA

Wilborn UWDA

Several PDIs were conducted for the Remedial Design of the cap at the Wilborn UWDA. The PDIs were completed in September 2019, April, June, August and September 2021, and February 2022. PCBs were detected at concentration exceeding the cleanup goal to the north along 10th street at SB32 (1.1 mg/kg), to the northeast on the Snow Creek slope at SB40 (2.5 mg/kg), SB45 (1.2 mg/kg), SB49 (14 mg/kg), SB50 (2.1 mg/kg), and west along the fence at SB24 (4.7 mg/kg) and SB27 (2.3 mg/kg) (Figure 6). Lead was detected above the cleanup goal in soil samples collected along the west fence at SB24 (4,700 mg/kg) and SB27 (530 mg/kg) (Figure 7). The final limits of excavation and consolidation for the waste and soils exceeding the remedial goals for PCB and lead concentrations was 13,509 cubic yards (Figure 8).



O:\Projects\11BR900102 Anniston Sites\MXDs\Wilborn Site\Wilborn PDI MXDs\Figure 4 - PCB Analytical results KAM rev3 11-2021.mxd | User: kmarin | Date: 12/17/2021

Figure 6. Soil Sampling Analyses PCB Results at Wilborn UWDA

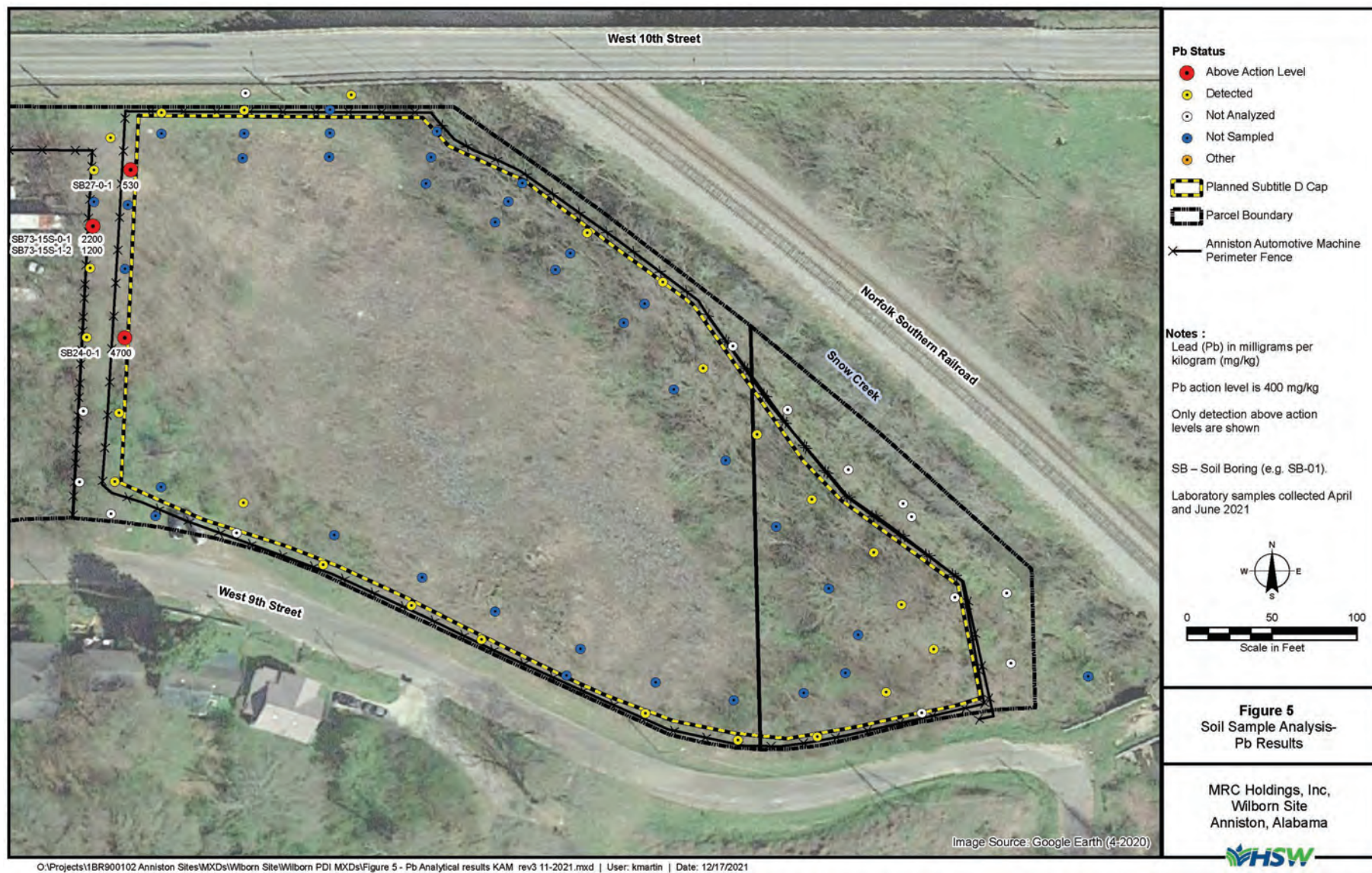
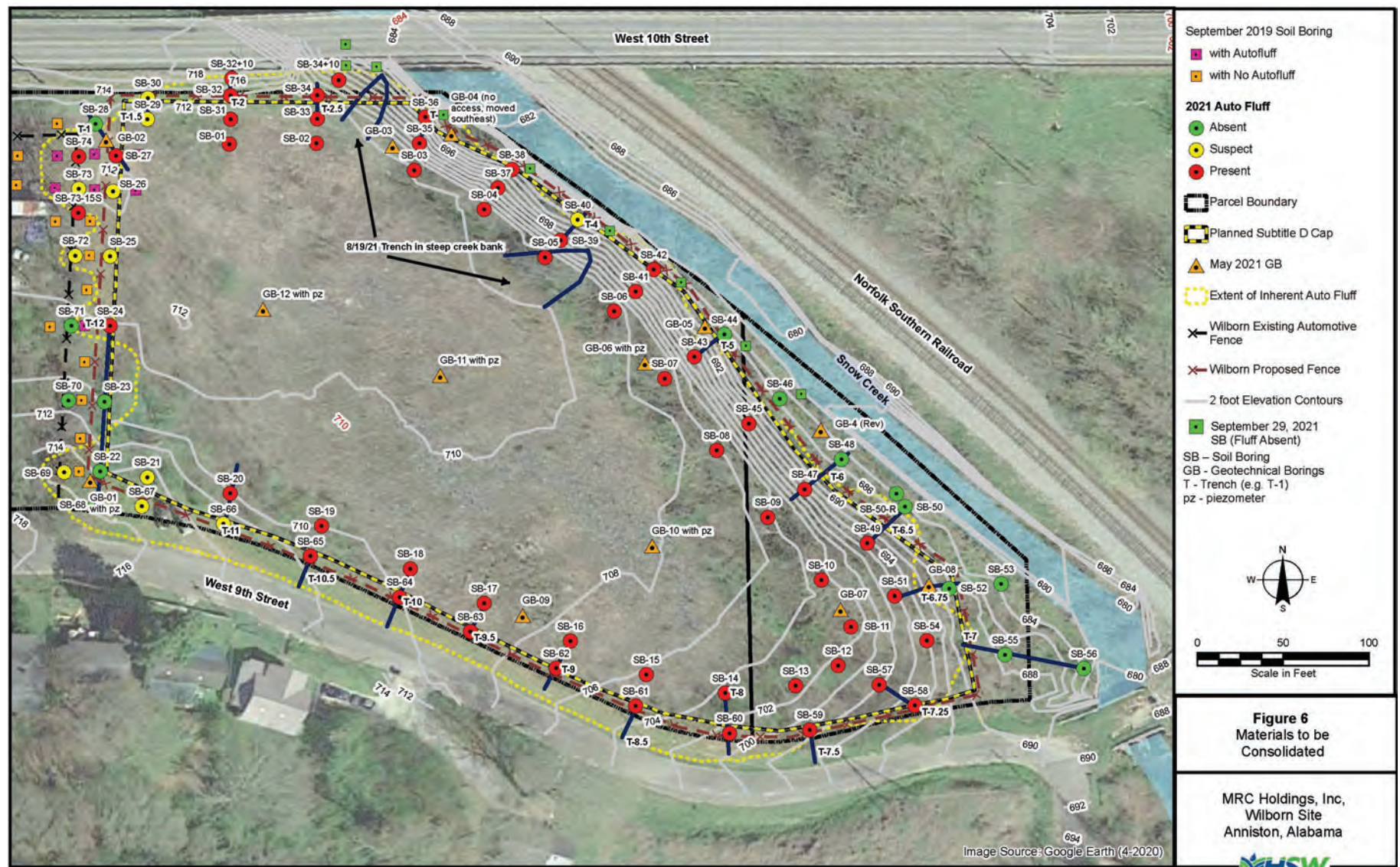


Figure 7. Soil Sampling Analyses Lead Results at Wilborn UWDA



O:\Projects\1BR900102 Anniston Sites\MXDs\Wilborn Site\Wilborn PDI MXDs\Figure 6 - Materials to be Consolidated KAM 11-2021.mxd | User: kmartin | Date: 12/17/2021

Figure 8. Materials to be Consolidated at Wilborn UWDA

The final composite cap is approximately 2.16 acres and includes, from the surface down, the following components:

- A 6-inch vegetative cover;
- An 18-inch protective layer;
- An 8 oz geotextile separation layer;
- Minimal areas of a geocomposite drainage fabric;
- A 50-mil textured linear low-density polyethylene (LLDPE) MicroDrain geomembrane; and
- A geotextile cushion.

The cap generally has slopes of 33% (1V:3H) and 16.7% (1V:6H). There are minimal length slopes of 50% (1V:2H) at the tie into the perimeter drainage swales on the west and south side of the W-UWDA. The slopes along Snow Creek were reinforced with turf reinforcement mats to an elevation of 693.0 feet for protection during flood events.

Once cap construction activities were completed, site restoration activities were initiated, including hydroseeding and installation of erosion control measures. The side slope and perimeter swales were lined with an erosion and sediment control blanket to prevent erosion and scour prior to vegetation establishment. Stone check dams were constructed at various points throughout each of the swales to reduce stormwater flows within the swales. The drainage swales discharge to a sediment basin located on the east corner of the Site, which discharges into Snow Creek. Additional erosion control measures including wattles were installed by the contractor along the 9th Street swale (see Figure 9).

A perimeter chain link fence equipped with an access gate was installed at least 2 ft beyond the limits of the cap. Major demobilization activities occurred in January 2024, and all construction work was completed by January 30, 2024. The Remedial Action Report (Construction Completion Report) was submitted in June 2024 and approved by EPA in correspondence dated August 12, 2024.

Institutional Control (IC) Review

The 2017 OU1/OU2 ROD required environmental covenants to restrict future use of the UWDA and to protect the caps. Environmental Covenants were executed and for each of the parcels where the UWDA closures are located in Table 1.

At the A-L UWDA wastes were consolidated and capped on Calhoun County Parcel Identification Numbers (PPINs) 32324 and 32325 (see Figure 10). At the Wilborn UWDA wastes were consolidated and capped on Calhoun County PPINs 18533 and 18812 (see Figure 11). Documentation of the A-L UWDA and Wilborn UWDA Environmental Covenants include Notice to Successor-In-Title, Grant of Easement, and Authorization, Restriction and Agreement to Record Environmental Covenant. The Environmental Covenant documents are included in Subappendix 1.



Figure 9. Final Cap at Wilborn UWDA

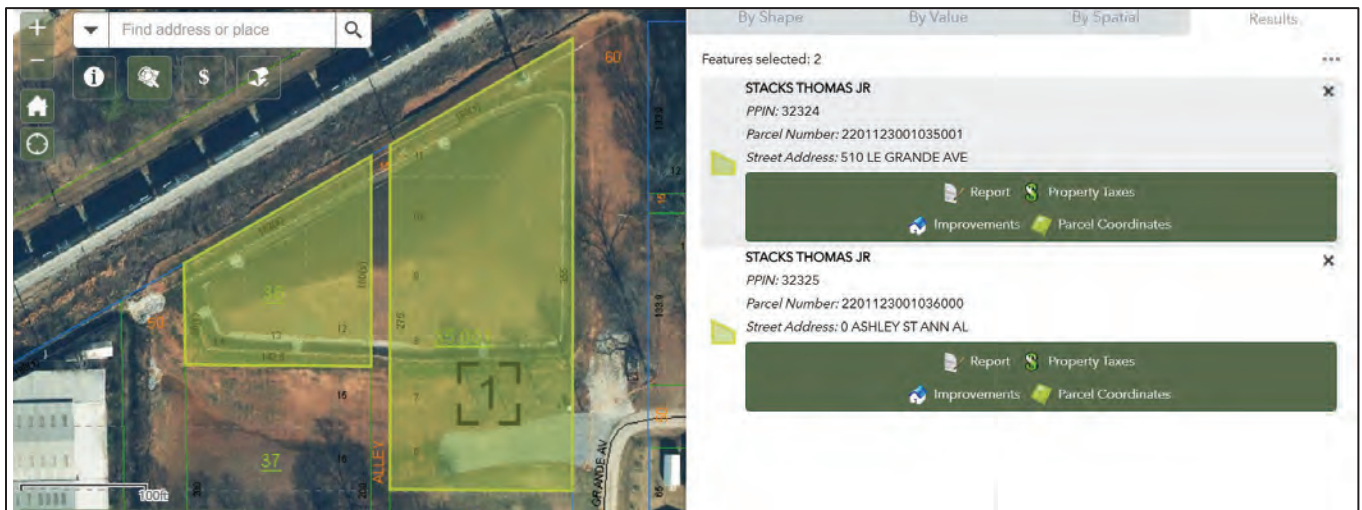


Figure 10. A-L UWDA Parcels subject to Environmental Covenants (from Calhoun County Parcel Viewer Accessed 2/10/2025, @ <https://gis.calhouncounty.org/Parcelviewer2/>).



Figure 11. Wilborn UWDA Parcels Subject to Environmental Covenants (from Calhoun County Parcel Viewer Accessed 2/10/2025, @ <https://gis.calhouncounty.org/Parcelviewer2/>).

Table 1: Summary of Implemented ICs

Media, engineered controls, and areas that do not support UU/UE based on current conditions	ICs Needed	ICs Called for in the Decision Documents	Impacted Parcel(s)	IC Objective	Title of IC Instrument Implemented and Date (or planned)
Landfill Cap	Yes	Yes	Calhoun County Parcel PPINs # 32324; 32325; 18533; 18812	Prevent disturbance of capping remedy	Environmental Covenant: A-L UWDA 11/4/2020 and 11/12/2020 Wilborn UWDA 3/24/2021
Groundwater	Yes	Yes	Calhoun County Parcel PPINs # 32324; 32325; 18533; 18812	Prevent ground-water use	Environmental Covenant: A-L UWDA 11/4/2020 and 11/12/2020 Wilborn UWDA 3/24/2021

Operation & Maintenance

In accordance with Section 5 of the EPA-approved Ashley-Legrande (A-L) UWDA Final Remedial Design Report (100%) and Remedial Action (Construction Completion) Report in correspondence dated March 2, 2023, the following post-closure care activities have been initiated:

- Maintaining the integrity and effectiveness of the cap system including making repairs to the cap system as necessary to correct the effects of settling, dead vegetation, subsidence, ponding, erosion, or other events, and preventing run-on and runoff from eroding or otherwise damaging the cap system.
- Quarterly inspection of the A-L UWDA for the first two years after completion of the remedy with annual reports submitted to the EPA.
 - April 15, 2023 – quarterly inspection complete
 - July 22, 2023 – quarterly inspection complete
 - November 7, 2023 – quarterly inspection complete
 - January 13, 2024 – quarterly inspection complete
 - ❖ April 24, 2024 –, 1st Annual Report submitted to the EPA
 - April 11, 2024 - quarterly inspection complete
 - July 2024 – quarterly inspection complete
 - October 2024 – quarterly inspection complete
 - January 2025 – quarterly inspection complete
 - ❖ April 2025 - 2nd Annual Report due to EPA

In accordance with Section 5 of the EPA-approved Wilborn UWDA Final (100%) Remedial Design Report and Remedial Action (Construction Completion) Report in correspondence dated August 12, 2024, the following post-closure care activities have been initiated:

- Maintaining the integrity and effectiveness of the cap system including making repairs to the cap system as necessary to correct the effects of settling, dead vegetation, subsidence, ponding, erosion, or other events, and preventing run-on and runoff from eroding or otherwise damaging the cap system.
- Quarterly inspection of the Wilborn UWDA for the first two years after completion of the remedy and completion of annual report to be submitted to the EPA. The frequency of inspections is to be revised after the first two years based on professional judgement.
 - October 2024 – quarterly inspection complete
 - January 2025 – quarterly inspection complete

The most significant O&M issue that arose during the past five years was establishing the vegetative cover. No irrigation of the cover has been performed, and parts of the cap have become bare. Watering may be required if the bare areas begin to erode. Vegetation mixes may need to be altered as part of routine O&M tasks.

Annual O&M costs during the review period are for the A-L UWDA only and are summarized below.

O&M Costs Over the FYR Period

Year	Routine O&M Costs
2019	
2020	Construction
2021	Construction
2022	Construction
2023	\$14,892
2024	\$14,892

There are no past issues and recommendations as this is the first FYR

FIVE-YEAR REVIEW PROCESS

Data Review

This FYR includes review of relevant, Site-related documents, including:

- Record of Decision;
- Remedial Design Reports;
- Construction Complete Reports; and
- Annual Operation and Maintenance Reports.

A complete list of documents reviewed can be found in the References Section at the end of the FYR.

Site Inspection

The inspection of the UWDAs was conducted on 12/17/2024. In attendance were George Skala and Pam Scully, EPA, Andy Lawn of Verdantas, Inc., and Darren Wells of Earth Services, Inc. The purpose of the inspection was to assess the protectiveness of the remedy.

The site inspection began at 0815 at the Wilborn UWDA (see Inspection Checklist in Subappendix 2). Participants accessed the Wilborn UWDA via the main gate and proceeded to walk the perimeter of the landfill to observe the fencing and signage. No issues with the fencing or signage were noted. The inspectors ascended the Wellborn UWDA to observe the condition of the cap and cover. Portions of the cap were bare and lacking grass cover as outlined by the Operations and Maintenance Plan. No issues were noted with the condition of the cap. A photolog demonstrating the condition of the UWDAs during the is attached as Subappendix 3.

Participants drove to the Ashley-LeGrande Avenue UWDA and accessed the Site via the main gate (see Inspection Checklist in Subappendix 2). Fencing and signage were observed to be in acceptable conditions; no issues were noted. The inspectors ascended the A LeGrand Avenue UWDA to observe the condition of the cap and cover. Portions of the cap were lacking grass cover as outlined by the Operations and Maintenance Plan. In addition, pooled water was observed in the drainage channels along the base of the cap. No issues were noted with the condition of the cap. EPA personnel recommended that additional cover (e.g. grass seed) be applied to maintain the cover as needed. A photolog demonstrating the condition of the A-L UWDAs during the is attached as Subappendix 3.

Interviews

During the FYR process, interviews were conducted to document any perceived problems or successes with the remedy that has been implemented to date. The results of these interviews are summarized below and in Subappendix 3.

The supervising contractor maintains a subcontract for operation and maintenance activities at the UWDAs. The supervisory contractor's representative said that his "overall impression of the remedial activities at the Site is very positive for all involved stakeholders, local residents and small businesses, the City of Anniston, the County of Calhoun, the Alabama Department of Environmental Management (ADEM), and the EPA. Project completion and ongoing maintenance efforts put forth have been effective and well-managed, ensuring both safety and improvement for the surrounding community."

The O&M subcontractor said that "Inspections are conducted quarterly with site visits occurring at least once a month. These visits include mowing, identifying potential concerns, re-seeding as necessary, filling in erosion rills, checking for animal burrows, and assessing overall site conditions and security."

ARARs Review

See main FYR for ARARs analysis.

Technical Assessment

Question A: Is the remedy functioning as intended by the decision documents?

Yes, the UWDAs are functioning as intended. The caps were observed to be intact, in good condition, and access control measures (fencing and signage) were adequate. Operating measures and maintenance, as implemented, are working in a manner that will continue to maintain the effectiveness of the remedy.

Institutional controls have been implemented (Subappendix 1).

The Site is inspected on a quarterly basis by contractors of the PRP. The Site has access control measures (signage, fencing, gates) that restrict unauthorized access

Question B: Are the exposure assumptions, toxicity data, cleanup levels, and remedial action objectives (RAOs) used at the time of the remedy selection still valid?

The exposure assumptions, toxicity data, cleanup levels, and RAOs are still valid.

Question C: Has any **other** information come to light that could call into question the protectiveness of the remedy?

No additional information is available that would question the protectiveness of the remedy. The Site is monitored, fenced, with no apparent signs of trespassing observed.

Protectiveness Statement:

The remedy at the UWDAs protects human health and the environment since the impacted soil is capped and operations/maintenance of the cap is ongoing. Access control measures are adequate and in working condition. Institutional controls are in place and effective.

REFERENCES

Ashley-Legrande Unapproved Waste Disposal Area, Final Remedial Design Report (100%). Ramboll/HSW Engineering Inc. August 2021. <https://sems.epa.gov/work/1744047469130/04-11213221.pdf>

Construction Completion Report, Ashley-Legrande Unapproved Waste Disposal Area. Ramboll/HSW Engineering Inc. February 2023. <https://sems.epa.gov/work/1744050323600/04-11185112.pdf>

Construction Completion Report, Wilborn Unapproved Waste Disposal Area. Prepared by Ramboll/Verdantas. June 7, 2024. <https://sems.epa.gov/work/1739541404776/04-11200885.pdf>

Letter from Derek Matory, USEPA, to Andrew M. Lawn, Verdantas. Subject: Approval of the Remedial Action Report for the capping of the Ashley-LeGrande Unapproved Waste Disposal Area, a project

within the larger Anniston PCB Site. Dated March 2, 2023.
<https://sems.epa.gov/work/1739189844986/04-11185113.pdf>

Letter from Kehinde Ogunsusi, USEPA, to Andrew M Lawn, HSW Engineering Inc. Subject: Approval of the Ashley-Legrande Site Unapproved Waste Disposal Area 100% Final Remedial Design Report. November 1, 2021. <https://sems.epa.gov/work/1739539424956/04-11153239.pdf>

Letter from Kehinde Ogunsusi, USEPA, to Andrew M Lawn, Verdantas. Subject: Approval of the Wilborn Unapproved Waste Disposal Area 100% Final Remedial Design Report. July 10, 2023.
<https://sems.epa.gov/work/1739539424956/04-11189214.pdf>

Letter from Leigh Lattimore, USEPA, to Andrew M Lawn, Verdantas, Subject: Approval of the Construction Completion Report for the capping of the Wilborn Unapproved Waste Disposal Area, a project within the larger Anniston PCB Site. August 12, 2024.
<https://sems.epa.gov/work/1739541404776/04-11209481.pdf>

Letter from Pamela J Langston Scully, USEPA to Andrew M Lawn, HSW Engineering Inc. Subject: Approval of Pre-Design Investigation Report #2 dated January 2021 for the Ashley-Legrande Site, an Unapproved Waste Disposal Area (UWDA) within the larger Anniston PCB Site, in Anniston, Alabama. March 16, 2021. <https://sems.epa.gov/work/1744050323600/04-11212701.pdf>

Pre-Design Investigation Report, Ashley-Legrande Site, Anniston, Alabama. Prepared by HSW Engineering, Inc. September 2018. <https://sems.epa.gov/work/1744050323600/04-11212710.pdf>

Pre-Design Investigation Report #2, Ashley-Legrande Site, Anniston, Alabama. Prepared by HSW Engineering, Inc. January 2021. <https://sems.epa.gov/work/1744050323600/04-11212705.pdf>

Pre-Design Investigation Report, Wilborn Site, Anniston, Alabama. Prepared by HSW Engineering, Inc. December 2021.

Remedial Design Fact Sheet, Unapproved Waste Disposal Area at Ashley Street and Legrande Street (Portion of OU1/OU2 of the Anniston PCB Site). Prepared by USEPA. December 2021.
<https://sems.epa.gov/work/1744118140645/04-11166856.pdf>

Remedial Action Fact Sheet, Unapproved Waste Disposal Area at Wilborn Property (10th and 9th Street) (Portion of OU1/OU2 of the Anniston PCB Site). Prepared by USEPA. July 20223.

Wilborn Unapproved Waste Disposal Area, 100% Final Remedial Design Report. Prepared by Ramboll/HSW Engineering Inc. June 2023.

SUBAPPENDIX 1 - ENVIRONMENTAL COVENANTS

Recorded Stacks Access Authorization and Restrictions

DEED 3272 241
Recorded In Above Book and Page
11/12/2020 02:52:14 PM
Alice K. Martin
Judge of Probate
Calhoun County, Alabama

Mental Health Fee \$ 4.00
Recording Fee \$ 267.00
TOTAL \$ 271.00

***This Instrument Prepared By, And
After Recording Return To:***

Scott I. Steady, Esq.
Burr & Forman LLP
201 N Franklin Street, Suite 3200
Tampa, Florida 33602

Cross Reference:

Deed Book 1614, Page 297
Calhoun County Records

STATE OF ALABAMA)
CALHOUN COUNTY)

**ACCESS AUTHORIZATION, USE RESTRICTION AND AGREEMENT TO
RECORD AN ENVIRONMENTAL COVENANT**

**THIS ACCESS AUTHORIZATION, USE RESTRICTION AND AGREEMENT TO
RECORD AN ENVIRONMENTAL COVENANT** (this "Authorization") is made this 1st day
of January, 2020 by Grantor, **TOM JUNIOR STACKS**, whose address is 2406 Calhoun Street,
Anniston, Alabama, for the benefit of the **UNITED STATES OF AMERICA, CARE OF THE
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4 ("EPA")** whose address is
61 Forsyth Street, S.W., Atlanta, GA 30062 and **MRC HOLDINGS, INC., ("MRC")**, whose
address is 1000 North West Street, 5th Floor, Wilmington, Delaware 19801 (collectively,
"Grantees").

Recitals

1. Grantor is the titleholder of the real property located in the City of Anniston, Alabama as described in the legal description attached hereto as Exhibit "A" (the "Property"). Grantor is one and the same person as "Thomas Stacks, Jr." as set forth in the vesting deed to the Property, and Grantor hereby warrants and confirms that he is the true and lawful owner of the Property.
2. The Property lies within a portion of the Anniston PCB Superfund Site that is referred to as the Unapproved Waste Disposal Areas ("UWDAs"). The Property has a street address of 0 Ashley Street and 510 LeGrande Avenue and has been

assigned by Calhoun County, PPIN# 32325, County Parcel # 22-01-12-3-001-036.000 and PPIN# 32324, County Parcel # 22-01-12-3-001-035-001, respectively.

3. In a letter dated May 18, 2018, MRC received a Special Notice Letter pursuant to Section 122(e) of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9622(e) to conduct work related to the specific response actions on the Property for a portion of the Operable Unit 1/Operable Unit 2 (OU1/OU2) for the Anniston PCB Superfund Site.
4. EPA had previously approved the OU1/OU2 Remedial Investigation ("RI") on January 21, 2015 and EPA approved the OU1/OU2 Feasibility Study ("FS") on March 7, 2017.
5. The decision by EPA on the OU1/OU2 remedial action to be implemented on the Property is embodied in a final Record of Decision ("ROD") executed on November 9, 2017.
6. In order to resolve claims brought by the United States in United States of America v. MRC Holdings, Inc., the United States and MRC have entered into a Consent Decree (the "Decree") requiring MRC to implement the Remedial Design/Remedial Action ("RD/RA") for specified activities relating to the UWDAs in accordance with the OU1/OU2 ROD. The Decree was lodged on July 23, 2019 with the United States District Court for the Northern District of Alabama, in the case of the United States of America v. MRC Holdings, Inc., Civil Action No. 1:19-CV-01153-CLM. Under Section VI of the Decree, MRC is required to perform the remedy as defined by the Decree (the "Work"), which includes the placement of a RCRA Subtitle D multi-layer cap on a portion of the Property. Under Paragraphs 13 and 17 of the Decree, EPA has reserved the right to modify the Work and has retained the authority to select and require performance of further actions at the Property. The Decree is attached as Exhibit "B".
7. Paragraphs 20 and 21 of the Consent Decree request the Grantor to agree to the obligations of this Authorization.

NOW, THEREFORE:

1. Right of Access. Grantor does hereby grant, bargain, sell, assign, convey, declare and establish to and for the benefit of Grantees, Grantees' successors and assigns, and their respective agents, contractors and subcontractors, a perpetual exclusive easement on, in, over, under, across and through the Property for the purpose of conducting all activities required by the Consent Decree.
2. Scope of Access. Subject to Section 104(a) and (b) of CERCLA (42 U.S.C. § 9604(a)-(b)), the scope of this access right shall include the right to enter and traverse the Property for the purpose of conducting activities required by the Decree, including, without limitation, the following activities:
 - (a) Monitoring the Work;

- (b) Verifying any data or information to the United States or the State;
 - (c) Conducting investigations regarding contamination at or near the UWDAs;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the UWDAs;
 - (f) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
 - (g) Implementing the Work pursuant to the conditions set forth in ¶ 71 (Work Takeover) of the Decree;
 - (h) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by MRC or its agents, consistent with Section XVIII (Access to Information) of the Decree;
 - (i) Assessing MRC's compliance with the Decree;
 - (j) Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Decree; and
 - (k) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls; and
 - (l) Other activities reasonably necessary and incidental to the implementation of the foregoing activities.
3. Use Restrictions. The Grantor does hereby grant, declare and establish for the benefit of Grantees and Grantees' successors and assigns a perpetual prohibition and restriction upon the Property against any use thereof which, as determined by the EPA, would or might pose an unacceptable risk to human health or to the environment due to exposure to waste material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including, without limitation, the following:
- (a) All activities that are prohibited or could interfere with the Remedial Action including anything that will disturb the caps and covers on segments of the Property as part of the Remedial Action is prohibited because such activities could result in direct and indirect exposure to contaminants in soil, sediments, surface water and groundwater;
 - (b) All use of contaminated groundwater;

- (c) All activities that could result in exposure to contaminants in soils, sediments, surface water and groundwater;
 - (d) Any activities, including the construction of any structures or improvements, on the UWDAs that could interfere with the Remedial Action; and
 - (e) Any new structures or improvements on the UWDAs will be constructed to minimize potential risk of inhalation of contaminants.
4. Agreement to Record Restrictions on Land Use (Environmental Covenant). In order to ensure the implementation of the above Use Restrictions, Grantor agrees to cooperate with the Grantees and permit an Environmental Covenant pursuant to the Alabama Department of Environmental Management Land Division – Uniform Environmental Covenants Program Division 335-5 (ADEM Admin. Code r. 335-5-x-xx) or similar Institutional Control to be recorded on the Property.
5. Covenants, Easements and Restrictions To Run With Land. It is the intention of Grantor that all covenants, easements and restrictions set forth herein shall run with the Property and be binding upon Grantor and all successors or assigns of Grantor having any interest in the Property, for the express benefit of Grantees.
6. Counterparts. This Authorization may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document. Copies of signatures to this Authorization shall have the same force and effect as an original.

IN WITNESS WHEREOF, the parties have caused this Authorization to be properly executed and delivered as of the day and year first set forth above.

[No further text on this page. Signature pages follow.]

GRANTOR'S SIGNATURE PAGE

WITNESSES:

Name: Jessica Renee Pruitt
(Print/Type Name)

Name: Madeline B. Smith
(Print/Type Name)

GRANTOR:

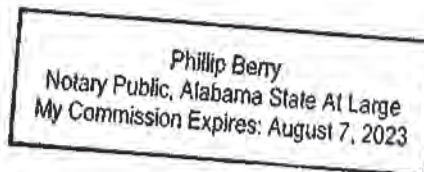
Tom Junior Stacks
TOM JUNIOR STACKS, a/k/a
"Thomas Stacks, Jr."

STATE OF AL
COUNTY OF Calhoun

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Tom Junior Stacks, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 4th day of December, 2019.

Phillip Berry
Notary Public
My Commission Expires: 08-7-2023



[Signatures continue on following page]

WITNESSES:

Name: Michelle T. Gray
(Print/Type Name) Michelle T. Gray

Name: Lynn P. Yoder
(Print/Type Name) Lynn P. Yoder

GRANTEE:

MRC HOLDINGS, INC.

By: [Signature]
Name: Richard J. Carroll
Title: President, Secretary, Treasurer

STATE OF Delaware)
COUNTY OF New Castle)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Richard J. Carroll, whose name as President, Secretary, Treasurer of MRC Holdings, Inc., a Delaware corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 18th day of December, 2019.

Lorraine M. Goodman
Notary Public
My Commission Expires: 1/10/21

[End of signatures.]

LORRAINE M. GOODMAN
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires Jan. 10, 2021

EXHIBIT A – THE PROPERTY

Lots 6, 7, 8, 9, 10, 11, 12, 13 and 14, Block 1, as shown on the Plan of Mechanicsville, as recorded in the Office of the Judge of Probate of Calhoun County, Alabama, in Plat Book T, Page 46, together with all appurtenant rights and all additional lands accruing to said Lots by virtue of any roadway or alley vacation.

Being the same property conveyed to Grantor by deed recorded in the Office of the Judge of Probate of Calhoun County, Alabama, in Deed Book 1614, Page 297.

EXHIBIT B – THE DECREE

[See Attached]

FILED

2019 Dec-18 PM 03:09
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

Civil Action No. 1:19-cv-01153-CLM

v.

MRC HOLDINGS, INC.

Defendant.

REMEDIAL DESIGN/REMEDIAL ACTION

CONSENT DECREE

**(For Operable Unit 1/Operable Unit 2
Concerning the Record of Decision for the "Unapproved Waste Disposal Areas"
Section 5.6.1.2.4)**

TABLE OF CONTENTS

I.	BACKGROUND.....	1
II.	JURISDICTION.....	2
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS.....	3
V.	GENERAL PROVISIONS.....	7
VI.	PERFORMANCE OF THE WORK.....	7
VII.	REMEDY REVIEW.....	10
VIII.	PROPERTY REQUIREMENTS.....	11
IX.	FINANCIAL ASSURANCE.....	13
X.	PAYMENTS FOR RESPONSE COSTS.....	18
XI.	INDEMNIFICATION AND INSURANCE.....	21
XII.	FORCE MAJEURE.....	22
XIII.	DISPUTE RESOLUTION.....	24
XIV.	STIPULATED PENALTIES.....	26
XV.	COVENANTS BY PLAINTIFF.....	28
XVI.	COVENANTS BY SD.....	31
XVII.	EFFECT OF SETTLEMENT; CONTRIBUTION.....	33
XVIII.	ACCESS TO INFORMATION.....	34
XIX.	RETENTION OF RECORDS.....	35
XX.	NOTICES AND SUBMISSIONS.....	35
XXI.	RETENTION OF JURISDICTION.....	37
XXII.	APPENDICES.....	37
XXIII.	MODIFICATION.....	37
XXIV.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT.....	38
XXV.	SIGNATORIES/SERVICE.....	38
XXVI.	FINAL JUDGMENT.....	38

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency (EPA), filed a complaint in this matter pursuant to Sections 106, 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9606, 9607 and 9613(g)(2) (the "Complaint").

B. The United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice ("DOJ") for response actions at the Anniston PCB Superfund Site in Anniston, Alabama ("Site"), together with accrued interest; (2) performance of response actions by the defendants at the Site consistent with CERCLA and the National Contingency Plan, 40 C.F.R. Part 300 ("NCP"); and (3) a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Alabama (the "State") on June 6, 2018, of negotiations with potentially responsible parties ("PRPs") regarding the implementation of the remedial design and remedial action ("RD/RA") for OU1/OU2, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree ("CD").

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior and the National Oceanic and Atmospheric Administration on June 6, 2018, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this CD.

E. The defendant that has entered into this CD ("Settling Defendant" or "SD") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

F. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced on August 4, 2003, a Remedial Investigation and Feasibility Study ("RI/FS") for the OU1/OU2 pursuant to 40 C.F.R. § 300.430.

G. EPA approved the OU1/OU2 Remedial Investigation (RI) Report on January 21, 2015, and EPA approved the OU1/OU2 Feasibility Study (FS) Report on March 7, 2017.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on March 12, 2017, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator, EPA Region 4, based the selection of the response action.

I. The decision by EPA on the OU1/OU2 remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), attached as Appendix A, executed on November 9, 2017, on which the State had a reasonable opportunity to review and comment and on which the State has given its concurrence. The OU1/OU2 ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

J. In order to resolve the claims brought by the United States in its Complaint, the United States and the Settling Defendant have entered into this Consent Decree ("Consent Decree"), which requires the Settling Defendant to implement the Remedial Design/Remedial Action ("RD/RA") for specific activities related to the Unapproved Waste Disposal Areas in accordance with the OU1/OU2 ROD and to fulfill the requirements of this Consent Decree.

K. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by SD if conducted in accordance with this CD and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the Work to be performed by SD shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

M. The Parties recognize, and the Court by entering this CD finds, that this CD has been negotiated by the Parties in good faith and implementation of this CD will expedite the cleanup of the Unapproved Waste Disposal Areas and will avoid prolonged and complicated litigation between the Parties, and that this CD is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over SD. Solely for the purposes of this CD and the underlying complaint, SD waives all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. SD shall not challenge the terms of this CD or this Court's jurisdiction to enter and enforce this CD.

III. PARTIES BOUND

2. This CD is binding upon the United States and upon SD and its successors, and assigns. Any change in ownership or corporate or other legal status of SD including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such SD's responsibilities under this CD.

3. SD shall provide a copy of this CD to each contractor hired to perform the Work and to each person representing SD with respect to the Unapproved Waste Disposal Areas or the

Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this CD. SD or its contractors shall provide written notice of the CD to all subcontractors hired to perform any portion of the Work. SD shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this CD. With regard to the activities undertaken pursuant to this CD, each contractor and subcontractor shall be deemed to be in a contractual relationship with SD within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

"ADEM" shall mean the Alabama Department of Environmental Management and any successor departments or agencies of the State.

"Anniston Community Advisory Group" or "Anniston CAG" shall mean the community advisory group created under the Revised Partial Consent Decree.

"Anniston PCB Site Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and established pursuant to the Revised Partial Consent Decree entered into between the United States, Solutia Inc., and Pharmacia Corp., Civil Action No. 1:02-cv-0749, entered by the Court on August 4, 2003.

"Affected Property" shall mean all real property at the Unapproved Waste Disposal Areas and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Action.

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

"Consent Decree" or "CD" shall mean this consent decree and all appendices attached hereto (listed in Section XXII). In the event of conflict between this CD and any appendix, this CD shall control.

"Day" or "day" shall mean a calendar day. In computing any period of time under this CD, 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.

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Effective Date" shall mean the date upon which the approval of this CD is recorded on the Court's docket.

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

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

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising SD's performance of the Work to determine whether such performance is consistent with the requirements of this CD, including costs incurred in reviewing deliverables submitted pursuant to this CD, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to ¶ 11 (Emergencies and Releases), Section VII (Remedy Review), Section VIII (Property Requirements), and ¶ 31 (Access to Financial Assurance), or the costs incurred by the United States in enforcing this CD, including all costs incurred pursuant to Section XIII (Dispute Resolution), and all litigation costs.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this CD, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this CD, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to ¶ 11 (Emergencies and Releases), ¶ 12 (Community Involvement) (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), ¶ 31 (Access to Financial Assurance), Section VII (Remedy Review), Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including the amount of just compensation), and Section XIII (Dispute Resolution), and all litigation costs. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs SD has agreed to pay under this CD that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from February 2, 2017, to the Effective Date, and Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Unapproved Waste Disposal Areas.

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

"Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with the Unapproved Waste Disposal Areas between February 2, 2017, and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

"Institutional Control Implementation and Assurance Plan" or "ICIAP" shall mean the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls set forth in the OU1/OU2 ROD, prepared in accordance with ¶ 6.7(i) of the SOW.

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

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

"Non-Settling Owner" shall mean any person, other than a SD, that owns or controls any Affected Property. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.

"Operable Unit 1/Operable Unit 2 (OU1/OU2)" shall mean the residential and non-residential properties around the Anniston Plant and downstream along Snow Creek to Highway 78.

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

"Paragraph" or "¶" shall mean a portion of this CD identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States and SD.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Unapproved Waste Disposal Areas through February 1, 2017, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" or "PS" shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the ROD.

"Plaintiff" shall mean the United States.

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

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

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to OU1/OU2 at the Site signed on November 9, 2017, by the Regional Administrator, EPA Region 4, or his/her delegate, and all attachments thereto. The ROD is accessible at <https://semspub.epa.gov/work/04/11094816.pdf>, EPA's offices in Atlanta, Georgia, and the Anniston PCB Site Information Repositories (Anniston Public Library and Carter Center).

"Remedial Action" or "RA" shall mean the remedial action selected in the Unauthorized Waste Disposal Areas of the ROD.

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

"Section" shall mean a portion of this CD identified by a Roman numeral.

"Settling Defendant" or "SD" shall mean MRC Holdings, Inc.

"State" shall mean the State of Alabama.

"Statement of Work" or "SOW" shall mean the document describing the activities SD must perform to implement the RD, the RA, and O&M regarding OU1/OU2, which is attached as Appendix A.

"Supervising Contractor" shall mean the principal contractor retained by SD to supervise and direct the implementation of the Work under this CD.

"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.

"Unapproved Waste Disposal Areas" or "UWDAs" shall mean the Unapproved Waste Disposal Areas identified in Part 2, Section 5.6.1.2.4 of the ROD, more particularly identified as 830 W. 10th Street (County PPIN# 18533, 0 9th and Mulberry Avenue (County PPIN# 18812), 510 LeGrande Avenue (County PPIN# 32324), 0 Ashely Street (County PPIN# 32325) and 505 Ashley Street (County PPIN# 32326).

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA, and any federal natural resource trustee.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities and obligations SD is required to perform under this CD, except the activities required under Section XIX (Retention of Records).

V. GENERAL PROVISIONS

5. **Objectives of the Parties.** The objectives of the Parties in entering into this CD are to protect public health or welfare or the environment by the design and implementation of response actions within the UWDAs for OU1/OU2 by SD, to pay response costs of Plaintiff, and to resolve the claims of Plaintiff against SD and the claims of the SD that have been or could have been asserted against the United States with regard to OU1/OU2 as provided in this CD.

6. Commitments by SD

a. SD shall finance and perform the Work in accordance with this CD and all deliverables developed by SD and approved or modified by EPA pursuant to this CD. SD shall pay the United States for its response costs as provided in this CD.

7. **Compliance with Applicable Law.** Nothing in this CD limits SD's obligations to comply with the requirements of all applicable federal and state laws and regulations. SD must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this CD, if approved by EPA, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, SD shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. SD may seek relief under the provisions of Section XII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 8.a and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. This CD is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK

9. Coordination and Supervision

a. Project Coordinators

(1) SD's Project Coordinator must have sufficient technical expertise to coordinate the Work. SD's Project Coordinator may not be an attorney

representing SD in this matter and may not act as the Supervising Contractor. SD's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA shall designate and notify the SD of EPA's Project Coordinator and Alternate Project Coordinator. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the UWDAs constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) The State shall designate and notify EPA and the SD of its Project Coordinator[s] and Alternate Project Coordinator[s]. The State may designate other representatives, including its employees, contractors and/or consultants to oversee the Work. For any meetings and inspections in which EPA's Project Coordinator participates, the State's Project Coordinator also may participate. SD shall notify the State reasonably in advance of any such meetings or inspections.

(4) SD's Project Coordinators shall meet with EPA's at least monthly.

b. **Supervising Contractor.** SD's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard).

c. **Procedures for Disapproval/Notice to Proceed**

(1) SD shall designate, and notify EPA, within 30 days after the Effective Date, of the name[s], title[s], contact information, and qualifications of the SD's proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

(2) EPA, after a reasonable opportunity for review and comment by the State, shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, SD shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. SD may select any

coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of SD's selection.

(3) SD may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 9.c(1) and 9.c(2).

(4) Notwithstanding the procedures of ¶¶ 9.c(1) through 9.c(3), SD have proposed, and EPA has authorized SD to proceed, regarding the following Project Coordinator and Supervising Contractor: HSW Engineering, Inc., c/o Joel Balmat, 605 E. Robinson Street, Suite 308, Orlando, Florida 32801.

(5) The UWDAs are owned by different Non-Settling Owners, not the SD. The UWDA located at 830 W. 10th Street and 0 W. 9th Street & Mulberry Avenue is geographically separated from the UWDA located at 510 LeGrand Avenue, 0 Ashley Street, and 505 Ashley Street. In the event agreements regarding access to the two geographically separated UWDAs are obtained at different times, in accordance with Section III, EPA shall issue separate Notices to Proceed for the two UWDAs. In response to each Notice to Proceed, SD shall prepare the RD and RA schedules for the applicable UWDA in accordance with Section 7 of the SOW. All other applicable provision of this CD and the SOW shall be implemented to reflect the separate schedules.

10. **Performance of Work in Accordance with SOW.** SD shall: (a) develop the RD; (b) perform the RA; and (c) operate, maintain, and monitor the effectiveness of the RA; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the CD or SOW shall be subject to approval by EPA in accordance with ¶ [6.6] (Approval of Deliverables) of the SOW.

11. **Emergencies and Releases.** SD shall comply with the emergency and release response and reporting requirements under ¶ [4.4] (Emergency Response and Reporting) of the SOW. Subject to Section XV (Covenants by Plaintiff), nothing in this CD, including ¶ [4.4] of the SOW, limits any authority of Plaintiff: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the UWDAs, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the UWDAs. If, due to SD's failure to take appropriate response action under ¶ [4.4] of the SOW, EPA takes such action instead, SD shall reimburse EPA under Section X (Payments for Response Costs) for all costs of the response action.

12. **Community Involvement.** If requested by EPA, SD shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section [2] (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator and attending Community Advisory Group (CAG) and Technical Assistance meetings. Costs incurred by the United States

under this Section constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

13. Modification of SOW or Related Deliverables

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy set forth in ¶ [1.3] of the SOW, then EPA may notify SD of such modification. If SD objects to the modification it may, within 30 days after EPA's notification, seek dispute resolution under Section XIII.

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if SD invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this CD, and SD shall implement all work required by such modification. SD shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this CD.

14. Nothing in this CD, the SOW, or any deliverable required under the SOW constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards.

VII. REMEDY REVIEW

15. **Periodic Review.** SD shall conduct, in accordance with ¶ [4.7] (Periodic Review Support Plan) of the SOW, studies and investigations to support EPA's reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the RA is protective of human health and the environment.

16. **EPA Selection of Further Response Actions.** If EPA determines, at any time, that the RA is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

17. **Opportunity to Comment.** SD and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

18. **SD's Obligation to Perform Further Response Actions.** If EPA selects further response actions relating to the UWDAs, EPA may require SD to perform such further response actions, but only to the extent that the reopener conditions in ¶ 67 or 68 (United States' Pre- and Post-Certification Reservations) are satisfied. SD may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of ¶ 67 or 68 are satisfied, (b) EPA's determination that the RA is not protective of human health and the

environment, or (c) EPA's selection of the further response actions. Disputes regarding EPA's determination that the RA is not protective or EPA's selection of further response actions shall be resolved pursuant to ¶ 51 (Record Review).

19. **Submission of Plans.** If SD is required to perform further response actions pursuant to ¶ 18, they shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work by SD). SD shall implement the approved plan in accordance with this CD.

VIII. PROPERTY REQUIREMENTS

20. **Agreements Regarding Access and Non-Interference.** SD shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by SD and by Plaintiff, providing that such Non-Settling Owner (i) provide Plaintiff and the SD, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the CD, including those listed in ¶ 20.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 20.b (Land, Water, or Other Resource Use Restrictions). SD shall provide a copy of such access and use restriction agreements to EPA and the State.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations regarding contamination at or near the UWDAs;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the UWDAs;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
- (7) Implementing the Work pursuant to the conditions set forth in ¶ 71 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by SD or its agents, consistent with Section XVIII (Access to Information);

(9) Assessing SD's compliance with the CD;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the CD; and

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

b. **Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

(1) Prohibiting activities that could interfere with the RA including anything that will disturb the caps and covers on segments of the Affected Properties as part of the RA is prohibited because such activities could result in direct and indirect exposure to contaminants in soil and groundwater;

(2) Prohibiting use of contaminated groundwater;

(3) Prohibiting the activities that could result in exposure to contaminants in soils and groundwater;

(4) Ensuring that any new structures on the UWDAs will not be constructed that could interfere with the RA; and

(5) Ensuring that any new structures on the UWDAs will be constructed to minimize potential risk of inhalation of contaminants.

21. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of SD would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If SD is unable to accomplish what is required through "best efforts" in a timely manner, they shall notify the United States and EPA, and include a description of the steps taken to comply with the requirements. If the United States deems it appropriate, it may assist SD, or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

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

23. Notice to Successors-in-Title

a. SD shall, within 45 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the UWDAs; (ii) that EPA has selected a remedy for the UWDAs; and (iii) that a potentially responsible party has entered into a CD requiring implementation of such remedy; and (3) identify the U.S. District Court in which the CD was filed, the name and civil action number of this case, and the date the CD was entered by the Court. SD shall recommend that the owner of the Affected Property record the notice within 30 days after EPA's approval of the notice and submit to EPA, within 30 days thereafter, a certified copy of the recorded notice.

b. SD shall recommend that the owner of the Affected Property, prior to entering into a contract to transfer the Affected Property, or 60 days prior to transferring the Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a remedy regarding the UWDAs, that potentially responsible parties have entered into a Consent Decree requiring implementation of such remedy, and that the United States District Court has entered the CD (identifying the name and civil action number of this case and the date the CD was entered by the Court); and

(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the notice that it provided to the proposed transferee.

24. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, SD shall continue to comply with their obligations under the CD, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property and to implement, maintain, monitor, and report on Institutional Controls.

25. Notwithstanding any provision of the CD, Plaintiff 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.

IX. FINANCIAL ASSURANCE

26. In order to ensure completion of the Work, SD shall secure financial assurance, initially in the amount of \$2,715,000.00 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to

EPA. SD may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by a SD that it meets the relevant test criteria of ¶ 28, accompanied by a standby funding commitment, which obligates the affected SD to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of SD or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a SD; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of ¶ 27.

27. SD has selected, and EPA has found satisfactory, a surety bond as an initial form of financial assurance. Within 10 days after the Effective Date, SD shall obtain EPA's approval of the form of SD's financial assurance. Within 30 days of such approval, SD shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to Paula V. Painter the "**Regional Financial Management Officer**", to the United States, and to EPA as specified in Section XX (Notices and Submissions).

28. SD seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 26.e or 26.f, must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) the SD or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total

liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

- ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The SD or guarantor has:

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

b. Submit to EPA for the SD or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

29. SD providing financial assurance by means of a demonstration or guarantee under ¶ 26.e or 26.f must also:

a. Annually resubmit the documents described in ¶ 28.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

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

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 28.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

30. SD shall diligently monitor the adequacy of the financial assurance. If SD becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such SD shall notify EPA of such information within 10 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the SD of such determination. SD shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected SD, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. SD shall follow the procedures of ¶ 32 (Modification of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. SD's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

31. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 71.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 31.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the SD fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 31.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 71.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding

commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 26.e or 26.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. SD shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 31 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Anniston PCB Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the UWDAs, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 31 must be reimbursed as Future Response Costs under Section X (Payments for Response Costs).

32. Modification of Amount, Form, or Terms of Financial Assurance. SD may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 27, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify SD of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. SD may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution). SD may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, SD shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 27.

33. Release, Cancellation, or Discontinuation of Financial Assurance. SD may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ [4.8] (Certification of Work Completion) of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution).

X. PAYMENTS FOR RESPONSE COSTS

34. Payment by SD for United States Past Response Costs.

a. Within 30 days after the Effective Date, SD shall pay to EPA \$25,000.00 in payment for Past Response Costs. Payment shall be made in accordance with ¶ 36.a (instructions for past response cost payments).

b. **Deposit of Past Response Costs Payment.** The total amount to be paid by Setting Defendants pursuant to ¶ 34.a shall be deposited by EPA in the Anniston PCB Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

35. Payments by SD for Future Response Costs. SD shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills.** On a periodic basis, EPA will send SD a bill requiring payment that includes a SCORPIOS report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. SD shall make all payments within 30 days after SD's receipt of each bill requiring payment, except as otherwise provided in ¶ 37, in accordance with ¶ 36.b (instructions for future response cost payments).

b. **Deposit of Future Response Costs Payments.** The total amount to be paid by SD pursuant to ¶ 35.a (Periodic Bills) shall be deposited by EPA in the Anniston PCB Site Special Account to be retained and used to conduct or finance response actions at or in connection with the UWDAs, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Anniston PCB Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the UWDAs. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum.

c. **Unused Amount.** After EPA issues the Certification of RA Completion pursuant to ¶ [4.6] (Certification of RA Completion) of the SOW and a final accounting of the Anniston PCB Site Future Response Costs Special Account, EPA will offset the next Future Response Costs bill by the unused amount paid by SD, apply any unused amount paid by SD to any other unreimbursed response costs or response actions remaining at the UWDAs; or remit and return to SD any unused amount of the funds paid by SD. Any decision by EPA to apply unused amounts to unreimbursed response costs or response actions remaining at the Site shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum.

36. Payment Instructions for SD

a. **Past Response Costs Payments.**

(1) The Financial Litigation Unit (FLU) of the United States Attorney's Office for the Northern District of Alabama shall provide SD, in accordance with ¶ 93, with instructions regarding making payments to DOJ on behalf of EPA. The instructions must include a Consolidated Debt Collection System (CDCS) number to identify payments made under this CD.

(2) For all payments subject to this ¶ 36.a, SD shall make such payment by Fedwire Electronic Funds Transfer (EFT) / at <https://www.pay.gov> to the U.S. DOJ account, in accordance with the instructions provided under ¶ 36.a(1), and including references to the CDCS Number, Site/Spill ID Number 04S9, and DJ Number 90-11-2-07135(14).

(3) For each payment made under this ¶ 36.a, SD shall send notices, including references to the CDCS, Site/Spill ID, and DJ numbers, to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 93.

b. **Future Response Costs Payments and Stipulated Penalties**

(1) For all payments subject to this ¶ 36.b, SD shall make such payment by Fedwire EFT, referencing the Site/Spill ID and DJ numbers. The Fedwire EFT payment must be sent as follows:

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

(2) For all payments subject to this ¶ 36.b, SD shall make such payment by Automated Clearinghouse (ACH) payment as follows:

500 Rivertech Court
Riverdale, Maryland 20737
Contact - John Schmid 202 874 7027 or
REX, 1 866 234 5681
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

(3) For all payments subject to this ¶ 36.b, SD shall make such payment at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to SD by EPA following lodging of the CD.

(4) For all payments subject to this ¶ 36.b, SD shall make such payment by official bank check(s) made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment. SD shall send the check(s) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

(5) For all payments made under this ¶ 36.b, SD must include references to the Site/Spill ID and DJ numbers. At the time of any payment required to be made in accordance with ¶ 36.b, SD shall send notices that payment has been made to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 93. All notices must include references to the Site/Spill ID and DJ numbers.

37. **Contesting Future Response Costs.** SD may submit a Notice of Dispute, initiating the procedures of Section XIII (Dispute Resolution), regarding any Future Response Costs billed under ¶ 35 (Payments by SD for Future Response Costs) if they determine that EPA has made a mathematical or an accounting error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) pursuant to Section XX (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If SD submits a Notice of Dispute, SD shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to the United States, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. SD shall send to the United States, as provided in Section XX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If the United States prevails in the dispute, SD shall pay the sums due (with accrued interest) to the United States within 7 days after the resolution of the dispute. If SD prevails concerning any aspect of the contested costs, SD shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States within 7 days after the resolution of the dispute. SD shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with ¶¶ 36.b (instructions for future response cost payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII

(Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding SD's obligation to reimburse the United States for its Future Response Costs.

38. SD may contest the final accounting of the Anniston PCB Site Future Response Costs Special Account relating to the UWDAs issued under ¶ 35.c (Unused Amount) if they determine that the United States has made a mathematical error. Such objection shall be made in writing within 30 days after receipt of the final accounting and must be sent to the United States pursuant to Section XX (Notices and Submissions). Any such objection shall specifically identify the alleged final mathematical error and the basis for objection. EPA will review the alleged mathematical error and either affirm the initial accounting or issue a corrected final accounting within 30 days. If a corrected final accounting is issued, EPA will take such action as may be necessary to correct the final disposition of unused amounts paid in accordance with ¶ 35.c (Unused Amount). If SD disagree with EPA's decision, SD may, within 7 days after receipt of the decision, appeal the decision to the Director of the Waste Management Division, EPA Region 4. The Director of the Waste Management Division will issue a final administrative decision resolving the dispute, which shall be binding upon SD and shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum.

39. **Interest.** In the event that any payment for Past Response Costs or for Future Response Costs required under this Section is not made by the date required, SD shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of SD's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of SD's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XIV (Stipulated Penalties).

XI. INDEMNIFICATION AND INSURANCE

40. SD's Indemnification of the United States

a. The United States does not assume any liability by entering into this CD or by virtue of any designation of SD as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). SD shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of SD, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on SD's behalf or under their control, in carrying out activities pursuant to this CD, including, but not limited to, any claims arising from any designation of SD as EPA's authorized representatives under Section 104(e) of CERCLA. Further, SD agrees to pay the United States all costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of SD, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this CD. The United States shall not be held out as a party to any contract entered into by or on behalf of SD in carrying out activities

pursuant to this CD. Neither SD nor any such contractor shall be considered an agent of the United States.

b. The United States shall give SD notice of any claim for which the United States plans to seek indemnification pursuant to this ¶ 40, and shall consult with SD prior to settling such claim.

41. SD covenants not to sue and 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 SD and any person for performance of Work on or relating to the UWDAs, including, but not limited to, claims on account of construction delays. In addition, SD shall indemnify, save 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 SD and any person for performance of Work on or relating to the UWDAs, including, but not limited to, claims on account of construction delays.

42. **Insurance.** No later than 15 days before commencing any on-site Work, SD shall secure, and shall maintain until the first anniversary after the RA has been performed in accordance with this CD and the Performance Standards have been achieved, commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$3 million in excess of the required commercial general liability and automobile liability limits, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of SD pursuant to this CD. In addition, for the duration of this CD, SD shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of SD in furtherance of this CD. Prior to commencement of the Work, SD shall provide to EPA certificates of such insurance and a copy of each insurance policy. SD shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If SD demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, SD need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. SD shall ensure that all submittals to EPA under this Paragraph identify the Anniston PCB Site, Anniston, Alabama and the civil action number of this case.

XII. FORCE MAJEURE

43. "Force majeure," for purposes of this CD, is defined as any event arising from causes beyond the control of SD, of any entity controlled by SD, or of SD's contractors that delays or prevents the performance of any obligation under this CD despite SD's best efforts to fulfill the obligation. The requirement that SD exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential

force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

44. If any event occurs or has occurred that may delay the performance of any obligation under this CD for which SD intends or may intend to assert a claim of force majeure, SD shall notify EPA's Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region 4, within three business days of when SD first knew that the event might cause a delay. Within 10 days thereafter, SD shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; SD's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of SD, such event may cause or contribute to an endangerment to public health or welfare, or the environment. SD shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. SD shall be deemed to know of any circumstance of which SD, any entity controlled by SD, or SD's contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude SD 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 ¶ 43 and whether SD has exercised their best efforts under ¶ 43, EPA may, in its unreviewable discretion, excuse in writing SD's failure to submit timely or complete notices under this Paragraph.

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

46. If SD elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution) regarding EPA's decision, they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, SD 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 SD complied with the requirements of ¶¶ 43 and 44. If SD carries this burden, the delay at issue shall be deemed not to be a violation by SD of the affected obligation of this CD identified to EPA and the Court and schedules for the affected obligations shall be modified in accordance with Paragraph 13.b (Modification of the SOW and Related Deliverables).

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

XIII. DISPUTE RESOLUTION

48. Unless otherwise expressly provided for in this CD, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this CD. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of SD that have not been disputed in accordance with this Section.

49. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Any dispute regarding this CD shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

50. Statements of Position

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 28 days after the conclusion of the informal negotiation period, SD invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by SD. The Statement of Position shall specify SD's position as to whether formal dispute resolution should proceed under ¶ 51 (Record Review) or 52.

b. Within 28 days after receipt of SD's Statement of Position, EPA will serve on SD its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under ¶ 51 (Record Review) or 52. Within 20 days after receipt of EPA's Statement of Position, SD may submit a Reply.

c. If there is disagreement between EPA and SD as to whether dispute resolution should proceed under ¶ 51 (Record Review) or 52, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if SD ultimately appeals to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in ¶¶ 51 and 52.

51. **Record Review.** Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of

plans, procedures to implement plans, or any other items requiring approval by EPA under this CD, and the adequacy of the performance of response actions taken pursuant to this CD. Nothing in this CD shall be construed to allow any dispute by SD regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Waste Management Division, EPA Region 4, will issue a final administrative decision resolving the dispute based on the administrative record described in ¶ 51.a. This decision shall be binding upon SD, subject only to the right to seek judicial review pursuant to ¶¶ 51.c and 51.d.

c. Any administrative decision made by EPA pursuant to ¶ 51.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by SD with the Court and served on all Parties within 10 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this CD. The United States may file a response to SD's motion.

d. In proceedings on any dispute governed by this Paragraph, SD shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to ¶ 51.a.

52. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. The Director of the Waste Management Division, EPA Region 4, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under ¶ 50. The Waste Management Division Director's decision shall be binding on SD unless, within 20 days after receipt of the decision, SD files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the CD. The United States may file a response to SD's motion.

b. Notwithstanding ¶ M (CERCLA § 113(j) record review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

53. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of SD under this CD, except as

provided in ¶ 37 (Contesting Future Response Costs), as agreed by EPA, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in ¶ 61. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CD. In the event that SD does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

XIV. STIPULATED PENALTIES

54. SD shall be liable to the United States for stipulated penalties in the amounts set forth in ¶¶ 55.a and 56 for failure to comply with the obligations specified in ¶¶ 55.b and 56, unless excused under Section XII (Force Majeure). "Comply" as used in the previous sentence includes compliance by SD with all applicable requirements of this CD, within the deadlines established under this CD. If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under ¶ 6.6(a) (Initial Submissions) or 6.6(b) (Resubmissions) of the SOW due to such material defect, then the material defect shall constitute a lack of compliance for purposes of this Paragraph.

55. Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in ¶ 55.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$1,000
15th through 30th day	\$2,000
31st day and beyond	\$5,000

b. Obligations

- (1) Payment of any amount due under Section X (Payments for Response Costs).
- (2) Establishment and maintenance of financial assurance in accordance with Section IX (Financial Assurance).
- (3) Establishment of an escrow account to hold any disputed Future Response Costs under ¶ 37 (Contesting Future Response Costs).
- (4) Completion of any Deliverables listed in Section 6 of the SOW.

56. **Stipulated Penalty Amounts – Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to the CD other than those specified in Paragraph 55.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$1,000

15th through 30th day	\$2,000
31st day and beyond	\$5,000

57. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 71 (Work Takeover), SD shall be liable for a stipulated penalty in the amount of \$100,000. Stipulated penalties under this Paragraph are in addition to the remedies available under ¶¶ 31 (Access to Financial Assurance) and 71 (Work Takeover).

58. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ [6.6] (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies SD of any deficiency; (b) with respect to a decision by the Director of the Waste Management Division, EPA Region 4, under ¶ 51.b or 52.a of Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that SD's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this CD shall prevent the simultaneous accrual of separate penalties for separate violations of this CD.

59. Following EPA's determination that SD has failed to comply with a requirement of this CD, EPA may give SD written notification of the same and describe the noncompliance. EPA may send SD a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified SD of a violation.

60. All penalties accruing under this Section shall be due and payable to the United States within 30 days after SD's receipt from EPA of a demand for payment of the penalties, unless SD invokes the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 36.b (instructions for future response cost payments).

61. Penalties shall continue to accrue as provided in ¶ 58 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 15 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, SD shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in ¶ 61.c;

c. If the District Court's decision is appealed by any Party, SD shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to SD to the extent that they prevail.

62. If SD fails to pay stipulated penalties when due, SD shall pay Interest on the unpaid stipulated penalties as follows: (a) if SD has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 61 until the date of payment; and (b) if SD fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 60 until the date of payment. If SD fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

64. Nothing in this CD shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of SD's violation of this CD or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(f) of CERCLA, 42 U.S.C. § 9622(f), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(f) of CERCLA for any violation for which a stipulated penalty is provided in this CD, except in the case of a willful violation of this CD.

65. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CD.

XV. COVENANTS BY PLAINTIFF

66. Covenants for SD by United States

Except as provided in ¶ 70 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against SD pursuant to Sections 106 and 107(a) of CERCLA for the Work, Past Response Costs, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by SD of its obligations under this CD. These covenants extend only to SD and do not extend to any other person.

67. **United States' Pre-Certification Reservations.** Notwithstanding any other provision of this CD, the United States reserves, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel SD to perform further response actions relating to the UWDAs and/or to pay

the United States for additional costs of response if, (a) prior to Certification of RA Completion, (1) conditions at the UWDAs, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the RA is not protective of human health or the environment.

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

69. For purposes of ¶ 67 (United States' Pre-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the ROD for the UWDAs and the administrative record supporting the ROD. For purposes of ¶ 68 (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of RA Completion and set forth in the ROD, the administrative record supporting the ROD, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this CD prior to Certification of RA Completion.

70. **General Reservations of Rights.** The United States reserves, and this CD is without prejudice to, all rights against SD, with respect to all matters not expressly included within Plaintiff's covenants. Notwithstanding any other provision of this CD, the United States reserves all rights against SD, with respect to:

- a. liability for failure by SD to meet a requirement of this CD;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the UWDAs for OU1/OU2;
- c. liability based on the ownership or operation of the UWDAs for OU1/OU2 by SD when such ownership or operation commences after signature of this CD by SD;
- d. liability based on the operation of the UWDAs for OU1/OU2 by SD when such operation commences after signature of this CD by SD;
- e. liability based on SD's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the UWDAs for OU1/OU2, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this CD by SD;

- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. criminal liability;
- h. liability for violations of federal or state law that occur during or after implementation of the Work; and
- i. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to ¶ 13 (Modification of SOW or Related Deliverables);
- j. liability for additional operable units at the UWDAs or the final response action; and
- k. liability for costs that the United States will incur regarding the UWDAs for OUI/OU2 but that are not within the definition of Future Response Costs.

71. Work Takeover

a. In the event EPA determines that SD: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to SD. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide SD a period of 15 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 15-day notice period specified in ¶ 71.a, SD has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify SD in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 71.b. Funding of Work Takeover costs is addressed under ¶ 31 (Access to Financial Assurance).

c. SD may invoke the procedures set forth in ¶ 51 (Record Review), to dispute EPA's implementation of a Work Takeover under ¶ 71.b. However, notwithstanding SD's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 71.b until the earlier of (1) the date that SD remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with ¶ 51 (Record Review) requiring EPA to terminate such Work Takeover.

72. Notwithstanding any other provision of this CD, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XVI. COVENANTS BY SD

73. **Covenants by SD.** Subject to the reservations in ¶ 75, SD covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Work, past response actions regarding the UWDAs, Past Response Costs, Future Response Costs, and this CD, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or any other provision of law;
- b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, past response actions regarding the UWDAs, Past Response Costs, Future Response Costs, and this CD; or
- c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Alabama Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

74. Except as provided in ¶¶ 77 (Waiver of Claims by SD) and 84 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XV (Covenants by Plaintiff), other than in ¶¶ 70.a (claims for failure to meet a requirement of the CD), 70.g (criminal liability), and 70.h (violations of federal/state law during or after implementation of the Work), but only to the extent that SD's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

75. SD reserves, and this CD is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of SD's deliverables or activities.

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

77. **Waiver of Claims by SD**

a. SD agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have:

(1) **De Micromis Waiver.** For all matters relating to the UWDAs against any person where the person's liability to SD with respect to OU1/OU2 is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the UWDAs, or having accepted for transport for disposal or treatment of hazardous substances at the UWDAs, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

(2) **De Minimis Waiver.** For response costs relating to the UWDAs against any person that has entered or in the future enters into a final CERCLA § 122(g) *de minimis* settlement with EPA with respect to the UWDAs.

b. **Exceptions to Waiver**

(1) The waivers under this ¶ 77 shall not apply with respect to any defense, claim, or cause of action that SD may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the UWDAs against such SD.

(2) The waiver under ¶ 77.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the UWDAs by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the UWDAs; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the UWDAs; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

78. SD agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XVII. EFFECT OF SETTLEMENT; CONTRIBUTION

79. Except as provided in ¶ 77 (Waiver of Claims by SD), nothing in this CD shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this CD. Except as provided in Section XVI (Covenants by SD), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the UWDAs for OU1/OU2 against any person not a Party hereto, other than Solutia, Inc. and Pharmacia LLC pursuant to CERCLA, 42 U.S.C. § 9613(f)(1). Nothing in this CD diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

80. The Parties agree, and by entering this CD this Court finds, that this CD constitutes a judicially-approved settlement pursuant to which SD has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this CD. The "matters addressed" in this CD are the Work, Past Response Costs and Future Response Costs.

81. The Parties further agree, and by entering this CD this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this CD constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

82. SD shall, with respect to any suit or claim brought by it for matters related to this CD, notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

83. SD shall, with respect to any suit or claim brought against it for matters related to this CD, notify in writing the United States within 10 days after service of the complaint on such SD. In addition, SD shall notify the United States within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

84. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to OU1/OU2, SD 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 brought in the instant

case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XV (Covenants by Plaintiff).

XVIII. ACCESS TO INFORMATION

85. SD shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within SD's possession or control or that of their contractors or agents relating to activities at OU1/OU2 or to the implementation of this CD, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. SD shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

86. Privileged and Protected Claims

a. SD may assert that all or part of a Record requested by Plaintiff is privileged or protected as provided under federal law, in lieu of providing the Record, provided SD complies with ¶ 86.b, and except as provided in ¶ 86.c.

b. If SD asserts a claim of privilege or protection, it shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, SD shall provide the Record to Plaintiff in redacted form to mask the privileged or protected portion only. SD shall retain all Records that they claim to be privileged or protected until Plaintiff has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the SD's favor.

c. SD may make no claim of privilege or protection regarding: (1) any data regarding the UWDAs, 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 UWDAs; or (2) the portion of any Record that SD is required to create or generate pursuant to this CD.

87. **Business Confidential Claims.** SD may assert that all or part of a Record provided to Plaintiff under this Section or Section XIX (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). SD shall segregate and clearly identify all Records or parts thereof submitted under this CD for which SD asserts business confidentiality claims. Records that SD claims to be 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 SD that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to SD.

88. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this CD.

89. Notwithstanding any provision of this CD, Plaintiff retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIX. RETENTION OF RECORDS

90. Until 7 years after EPA's Certification of Work Completion under ¶ [4.8] (Certification of Work Completion) of the SOW, SD shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the UWDAs, provided, however, that SD who is potentially liable as owner or operator of the UWDAs must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the UWDAs. SD must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that SD (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.

91. At the conclusion of this record retention period, SD shall notify the United States at least 90 days prior to the destruction of any such Records, and, upon request by the United States or the State, and except as provided in ¶ 86 (Privileged and Protected Claims), SD shall deliver any such Records to EPA or the State.

92. SD certifies individually 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 UWDAs since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the UWDAs pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XX. NOTICES AND SUBMISSIONS

93. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this CD must be in writing unless otherwise specified. Whenever, under this CD, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the persons specified below at the addresses specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to

EPA, and not to the United States, should not be sent to the DOJ. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the CD regarding such Party.

As to the United States:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
eesdcopy.enrd@usdoj.gov
Re: DJ # 90-11-2-07135/1

As to EPA:

Franklin B. Hill
Director, Superfund Division
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30062
hill.franklin@epa.gov

and:

Pamela J. Langston Scully
EPA Project Coordinator
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30062
scully.pam@epa.gov
404-562-8935

**As to the Regional Financial
Management Officer:**

Paula V. Painter
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, GA 30062
painter.paula@epa.gov

**At to EPA Cincinnati Finance
Center:**

EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

As to SD:

Joel Balmat
HSW Engineering, Inc.
605 E. Robinson St., Suite 308
Orlando, FL 32801
jbalmat@hsweng.com
407-872-6893

Scott I. Steady
Burr Forman,
201 North Franklin Street, Suite 3200,
Tampa, FL 33602
ssteady@burr.com
813-221-2626

XXI. RETENTION OF JURISDICTION

94. This Court retains jurisdiction over both the subject matter of this CD and SD for the duration of the performance of the terms and provisions of this CD for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this CD, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIII (Dispute Resolution).

XXII. APPENDICES

95. The following appendices are attached to and incorporated into this CD:

"Appendix A" is the SOW.

"Appendix B" contains maps of the UWDAs.

XXIII. MODIFICATION

96. Except as provided in ¶ 13 (Modification of SOW or Related Deliverables), material modifications to this CD, including the SOW, shall be in writing, signed by the United States and SD, and shall be effective upon approval by the Court. Except as provided in ¶ 13, non-material modifications to this CD, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and SD. A modification to the SOW shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

97. Nothing in this CD shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this CD.

XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

98. This CD shall be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the CD disclose facts or considerations that indicate that the CD is inappropriate, improper, or inadequate. SD consents to the entry of this CD without further notice.

99. If for any reason the Court should decline to approve this CD in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXV. SIGNATORIES/SERVICE

100. Each undersigned representative of SD to this CD and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this CD and to execute and legally bind such Party to this document.

101. SD agrees not to oppose entry of this CD by this Court or to challenge any provision of this CD unless the United States has notified SD in writing that it no longer supports entry of the CD.

102. SD shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this CD. SD agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. SD need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this CD.

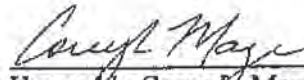
XXVI. FINAL JUDGMENT

103. This CD and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the CD. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this CD.

Upon entry of this CD by the Court, this CD shall constitute a final judgment between and among the United States and SD. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 18th DAY OF December, 2019.

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 41 of 79

A handwritten signature in cursive script, reading "Corey L. Maze", is written over a horizontal line.

Honorable Corey L. Maze
United States District Judge

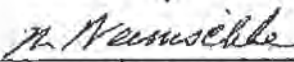
Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 42 of 79

Signature Page for RD/RA CD regarding the Anniston PCB Superfund Site

FOR THE UNITED STATES OF AMERICA:

Jay E. Town
United States Attorney
Northern District of Alabama
1801 Fourth Avenue
Birmingham, Alabama 35203


Date: 12/17/2018



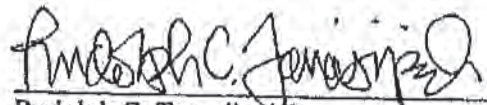
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Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 43 of 79

Signature Page for RD/RA CD regarding the Anniston PCB Superfund Site



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Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 45 of 79

Signature Page for RD/RA CD regarding the Anniston PCB Superfund Site

FOR MRC HOLDINGS, INC.

By: MRC Holdings, Inc.



5/7/2019
Dated

Richard J. Carroll
Name (print):

Title: President, Secretary, Treasurer

Address: 1000 North West Street
5th Floor
Wilmington, DE 19801

Agent Authorized to Accept Service Name (print): Scott I. Steady, Esq.

on Behalf of Above-signed Party: Title: Partner

Company: Burr & Forman LLP

Address: 201 N. Franklin Street, Suite 3200
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Phone: 813-367-5719

email: ssteady@burr.com

Recorded In DEED BK 3272 PG 294, 11/12/2020 02:52:14 PM
Alice K. Martin, Judge of Probate, Calhoun County, Alabama

Appendix A

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 49 of 79

Appendix B

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 51 of 79

**REMEDIAL DESIGN/REMEDIAL ACTION
STATEMENT OF WORK**

**FOR OPERABLE UNITS 1 AND 2
UNAPPROVED WASTE DISPOSAL AREAS
ANNISTON PCB SUPERFUND SITE**

MAY 2019

Anniston, Calhoun County, Alabama

EPA Region 4

TABLE OF CONTENTS

1.	INTRODUCTION	1
2.	COMMUNITY INVOLVEMENT	2
3.	REMEDIAL DESIGN	3
4.	REMEDIAL ACTION	5
5.	REPORTING	9
6.	DELIVERABLES	10
7.	SCHEDULES	16
8.	STATE PARTICIPATION	17
9.	REFERENCES	18

1. INTRODUCTION

- 1.1 Purpose of the SOW.** This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work.
- 1.2 Structure of the SOW**
- Section 2 (Community Involvement) sets forth EPA's and Settling Defendant's (SD's) responsibilities for community involvement.
 - Section 3 (Remedial Design) sets forth the process for developing the RD, which includes the submission of specified primary deliverables.
 - Section 4 (Remedial Action) sets forth requirements regarding the completion of the RA, including primary deliverables related to completion of the RA.
 - Section 5 (Reporting) sets forth SD's reporting obligations.
 - Section 6 (Deliverables) describes the content of the supporting deliverables and the general requirements regarding SD's submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
 - Section 7 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the RA.
 - Section 8 (State Participation) addresses State participation.
 - Section 9 (References) provides a list of references, including URLs.
- 1.3 The Scope of the Remedy** includes the actions described in Section 12.2 of the ROD. This Scope of Work (SOW) includes actions for the Unapproved Waste Disposal Areas (UWDAs) at the Ashley-LeGrande and Wilborn properties in Anniston, Alabama.
- The components of the selected remedy are as follows:
- Clear and prepare the surface for cover.
 - Consolidate waste into a smaller footprint or dispose of a portion of the waste offsite as determined appropriate during remedial design.
 - Install a RCRA Subtitle D multi-layer cap consisting of at a minimum:
 - 40-mil geomembrane liner,
 - geocomposite drainage layer, and
 - 18-inch-thick protective soil cover.

- Vegetate surface or provide other erosion protection for cap.
- Execute environmental covenants to restrict future use of these areas and to protect the cap.
- Conduct O&M and monitoring of the cap.

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

2. COMMUNITY INVOLVEMENT

2.1 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. Previously, during the RI/FS phase, EPA developed a Community Involvement Plan (CIP) for the Site. Pursuant to 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP.
- (b) If requested by EPA, SD shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the UWDA at the Site. SD's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any Community Advisory Groups, (2) any Technical Assistance Plan recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP SD's responsibilities for community involvement activities. All community involvement activities conducted by SD at EPA's request are subject to EPA's oversight.
- (c) SD's CI Coordinator. If requested by EPA, SD shall, designate and notify EPA of SD's Community Involvement Coordinator (SD's CI Coordinator). SD's CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the UWDA at the Site.

2.2 SD's Responsibilities for Technical Assistance

- (a) If requested by EPA, SD shall provide funding for a qualified community group to receive the services of a technical advisor(s) who can: (i) help group members understand UWDA Site cleanup issues (specifically, to interpret and comment on UWDA Site-related documents developed under this SOW); and (ii) share this

information with others in the community. The technical advisor(s) will be independent from SD. SD's TAP assistance will be limited to \$30,000 during the RD/RA, and will end when EPA issues the Certification of Work Completion under Section 4.8. SD shall implement this requirement under the existing Technical Assistance Plan (TAP) for the Anniston PCB Site. Incremental funding will be based on a reasonable budget request based on the work anticipated.

3. REMEDIAL DESIGN

- 3.1 RD Work Plan.** SD shall submit a Remedial Design (RD) Work Plan (RDWP) for EPA approval. The RDWP must include:
- (a) Plans for implementing all RD activities identified in this SOW, in the RDWP, or required by EPA to be conducted to develop the RD;
 - (b) A description of the overall management strategy for performing the RD, including a proposal for phasing of design and construction, if applicable;
 - (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the Remedial Action (RA) as necessary to implement the Work;
 - (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;
 - (e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);
 - (f) Description of any proposed pre-design investigation;
 - (g) Descriptions of any applicable permitting requirements and other regulatory requirements;
 - (h) Description of plans for obtaining access in connection with the Work, such as property acquisition, property leases, and/or easements; and
 - (i) The following supporting deliverables described in Section 6.7 (Supporting Deliverables): Health and Safety Plan; and Emergency Response Plan.
- 3.2** SD shall meet regularly with EPA to discuss design issues as necessary, as directed or determined by EPA.
- 3.3 Pre-Design Investigation.** The purpose of the Pre-Design Investigation (PDI) is to address data gaps by conducting additional field investigations.
- (a) **PDI Work Plan.** SD shall submit a PDI Work Plan (PDIWP) for EPA approval. The PDIWP must include:

- (1) An evaluation and summary of existing data and description of data gaps;
 - (2) A sampling plan including media to be sampled, contaminants or parameters for which sampling will be conducted, location (areal extent and depths), and number of samples; and
 - (3) Cross references to quality assurance/quality control (QA/QC) requirements set forth in the Quality Assurance Project Plan (QAPP) as described in Section 6.7(d).
- (b) Following the PDI, SD shall submit a PDI Evaluation Report. This report must include:
- (1) Summary of the investigations performed;
 - (2) Summary of investigation results;
 - (3) Summary of validated data (i.e., tables and graphics);
 - (4) Data validation reports and laboratory data reports;
 - (5) Narrative interpretation of data and results;
 - (6) Results of statistical and modeling analyses;
 - (7) Photographs documenting the work conducted; and
 - (8) Conclusions and recommendations for RD, including design parameters and criteria.
- (c) EPA may require SD to supplement the PDI Evaluation Report and/or to perform additional pre-design studies.
- 3.4 Intermediate (50%) RD.** SD shall submit an Intermediate (50%) RD for EPA's comment. The Intermediate RD must include:
- (a) Preliminary drawings and specifications;
 - (b) Descriptions of permit requirements, if applicable;
 - (c) Preliminary Operation and Maintenance (O&M) Plan and O&M Manual;
 - (d) A description of how the RA will be implemented in a manner that minimizes environmental impacts in accordance with EPA's *Principles for Greener Cleanups* (Aug. 2009);
 - (e) A description of monitoring and control measures to protect human health and the environment, such as air monitoring and dust suppression, during the RA;

- (f) Any proposed revisions to the RA Schedule that is set forth in Section 7.3 (RA Schedule); and
 - (g) Updates of all supporting deliverables required to accompany the RDWP and the following additional supporting deliverables described in Section 6.7 (Supporting Deliverables): Field Sampling Plan; Quality Assurance Project Plan; Site Wide Monitoring Plan; Construction Quality Assurance/Quality Control Plan; Transportation and Off-Site Disposal Plan; and Institutional Controls Implementation and Assurance Plan.
- 3.5 Pre-Final (95%) RD.** SD shall submit the Pre-final (95%) RD for EPA's comment. The Pre-final RD must be a continuation and expansion of the previous design submittal and must address EPA's comments regarding the Intermediate RD. The Pre-final RD will serve as the approved Final (100%) RD if EPA approves the Pre-final RD without comments. The Pre-final RD must include:
- (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's Master Format 2012;
 - (b) A survey and engineering drawings showing existing Site features, such as elements, property borders, easements, and Site conditions;
 - (c) Pre-Final versions of the same elements and deliverables as are required for the Intermediate RD;
 - (d) A specification for photographic documentation of the RA; and
 - (e) Updates of all supporting deliverables required to accompany the Intermediate (50%) RD.
- 3.6 Final (100%) RD.** If the EPA approves the Pre-Final 95% RD with no comments, it will be the Final (100%) RD. Otherwise, SD shall submit the Final (100%) RD for EPA approval. The Final RD must address EPA's comments on the Pre-final RD and must include final versions of all Pre-final RD deliverables.

4. REMEDIAL ACTION

- 4.1 RA Work Plan.** SD shall submit a RA Work Plan (RAWP) for EPA approval that includes:
- (a) A proposed RA Construction Schedule;
 - (b) An updated health and safety plan that covers activities during the RA; and
 - (c) Plans for satisfying permitting requirements, including obtaining permits for off-Site activity and for satisfying substantive requirements of permits for on-Site activity.

4.2 **Independent Quality Assurance Team.** SD shall notify EPA of SD's designated Independent Quality Assurance Team (IQAT). The IQAT will be independent of the Supervising Contractor. SD may hire a third party for this purpose. SD's notice must include the names, titles, contact information, and qualifications of the members of the IQAT. The IQAT will have the responsibility to determine whether Work is of expected quality and conforms to applicable plans and specifications. The IQAT will have the responsibilities as described in Section 2.1.3 of the *Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties*, EPA/540/G-90/001 (Apr. 1990).

4.3 **Meetings and Inspections**

- (a) **Preconstruction Conference.** SD shall hold a preconstruction conference with EPA and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). SD shall prepare minutes of the conference and shall distribute the minutes to all Parties.
- (b) **Periodic Meetings.** During the construction portion of the RA (RA Construction), SD shall meet monthly with EPA, and others as directed or determined by EPA, to discuss construction issues. SD shall distribute an agenda to all Parties prior to each meeting. SD shall prepare minutes of the meetings and shall distribute the minutes to all Parties.
- (c) **Inspections**
 - (1) EPA or its representative shall conduct periodic inspections of (or have an on-Site presence during) the Work. At EPA's request, the Supervising Contractor or other designee shall accompany EPA or its representative during inspections.
 - (2) SD shall provide office space for EPA personnel to perform their oversight duties including access to office equipment available to SD's on-Site Contractor.
 - (3) Upon notification by EPA of any deficiencies in the RA Construction, SD shall take all necessary steps to correct the deficiencies and/or bring the RA Construction into compliance with the approved Final RD, any approved design changes, and/or the approved RAWP. If applicable, SD shall comply with any schedule provided by EPA in its notice of deficiency.

4.4 **Emergency Response and Reporting**

- (a) **Emergency Response and Reporting.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, SD shall: (1) immediately take all appropriate action to prevent, abate, or minimize

such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in Section 4.4(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.

- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that SD are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, SD shall immediately notify the authorized EPA officer orally.
- (c) The "authorized EPA officer" for purposes of immediate oral notifications and consultations under Section 4.4(a) and Section 4.4(b) is the EPA Project Coordinator, the EPA Alternate Project Coordinator (if the EPA Project Coordinator is unavailable), or the EPA [Emergency Response Unit], Region 4 (if neither EPA Project Coordinator is available).
- (d) For any event covered by Section 4.4(a) and Section 4.4(b), SD shall: (1) within 14 days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under Section 4.4 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

4.5 Off-Site Shipments

- (a) SD may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. SD will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if SD obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
- (b) SD may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. SD also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a

decision to ship the Waste Material to a different out-of-state facility. SD shall provide the notice after the award of the contract for RA construction and before the Waste Material is shipped.

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

4.6 Certification of RA Completion

- (a) **RA Completion Inspection.** The RA is "Complete" for purposes of this Section 4.6 when it has been fully performed and the Performance Standards have been achieved. SD shall schedule an inspection for the purpose of obtaining EPA's Certification of RA Completion. The inspection must be attended by SD and EPA and/or their representatives.
- (b) **RA Report/Monitoring Report.** Following the inspection, SD shall submit a RA Report/Monitoring Report to EPA requesting EPA's Certification of RA Completion. The report must: (1) include certifications by a registered professional engineer and by SD's Project Coordinator that the RA is complete; (2) include as-built drawings signed and stamped by a registered professional engineer; (3) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); (4) contain monitoring data to demonstrate that Performance Standards have been achieved; and (5) be certified in accordance with Section 6.5 (Certification).
- (c) If EPA concludes that the RA is not Complete, EPA shall so notify SD. EPA's notice must include a description of any deficiencies. EPA's notice may include a schedule for addressing such deficiencies or may require SD to submit a schedule for EPA approval. SD shall perform all activities described in the notice in accordance with the schedule.
- (d) If EPA concludes, based on the initial or any subsequent RA Report/Monitoring Report requesting Certification of RA Completion, that the RA is Complete, EPA shall so certify to SD. This certification will constitute the Certification of RA Completion for purposes of the CD, including Section XV of the CD (Covenants by Plaintiff[s]). Certification of RA Completion will not affect SD's remaining obligations under the CD.

- 4.7 **Periodic Review Support Plan (PRSP).** SD shall submit the PRSP for EPA approval. The PRSP addresses the studies and investigations that SD shall conduct to support EPA's reviews of whether the RA is protective of human health and the environment in accordance with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c) (also known as "Five-year Reviews"). SD shall develop the plan in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidance.

4.8 **Certification of Work Completion**

- (a) **Work Completion Inspection.** SD shall schedule an inspection for the purpose of obtaining EPA's Certification of Work Completion. The inspection must be attended by SD and EPA and/or their representatives.
- (b) **Work Completion Report.** Following the inspection, SD shall submit a report to EPA requesting EPA's Certification of Work Completion. The report must:
 - (1) include certifications by a registered professional engineer and by SD's Project Coordinator that the Work, including all O&M activities, is complete; and
 - (2) be certified in accordance with Section 6.5 (Certification). If the RA Report/Monitoring Report submitted under Section 4.6(b) includes all elements required under this Section 4.8(b), then the RA Report/Monitoring Report suffices to satisfy all requirements under this Section 4.8(b).
- (c) If EPA concludes that the Work is not complete, EPA shall so notify SD. EPA's notice must include a description of the activities that SD must perform to complete the Work. EPA's notice must include specifications and a schedule for such activities or must require SD to submit specifications and a schedule for EPA approval. SD shall perform all activities described in the notice or in the EPA-approved specifications and schedule.
- (d) If EPA concludes, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, EPA shall so certify in writing to SD. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) activities under the Periodic Review Support Plan; (2) obligations under Sections VIII (Property Requirements), XIX (Retention of Records), and XVIII (Access to Information) of the CD; (3) Institutional Controls obligations as provided in the ICIAP; (4) reimbursement of EPA's Future Response Costs under Section X (Payments for Response Costs) of the CD.

5. **REPORTING**

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

- (a) The actions that have been taken toward achieving compliance with the CD;

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 62 of 79

- (b) A summary of all results of sampling, tests, and all other data received or generated by SD;
- (c) A description of all deliverables that SD submitted to EPA;
- (d) A description of all activities relating to RA Construction that are scheduled for the next month;
- (e) An updated RA Construction Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) A description of any modifications to the work plans or other schedules that SD have proposed or that have been approved by EPA; and
- (g) A description of all activities undertaken in support of the Community Involvement Plan (CIP) during the reporting period and those to be undertaken in the next month.

5.2 Notice of Progress Report Schedule Changes. If the schedule for any activity described in the Progress Reports, including activities required to be described under Section 5.1(d), changes, SD shall notify EPA of such change at least 7 days before performance of the activity.

6. DELIVERABLES

- 6.1 Applicability.** SD shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 6.2 (In Writing) through 6.4 (Technical Specifications) apply to all deliverables. Paragraph 6.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 6.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.
- 6.2 In Writing.** As provided in ¶ 93 of the CD, all deliverables under this SOW must be in writing unless otherwise specified.
- 6.3 General Requirements for Deliverables.** All deliverables must be submitted by the deadlines in the RD Schedule or RA Schedule, as applicable. SD shall submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Section 6.4. All other deliverables shall be submitted to EPA in the electronic form specified by the EPA Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", SD shall also provide EPA with paper copies of such exhibits.
- 6.4 Technical Specifications**

- (a) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. All required information, instructions and guidance are available via the EPA web site www.epa.gov/region4/waste/sf/edd/edd.html free of charge. This web site contains links to obtain the required software, as well as the most recent versions of the Environmental Data Submission Guidance, the Region 4 EDD Reference Guide, and the Region 4 EDP Reference Manual. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- (b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
- (c) Each file must include an attribute name for each Site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (d) Spatial data submitted by SD does not, and is not intended to, define the boundaries of the Site.

6.5 Certification. All deliverables that require compliance with this Section 6.5 must be signed by SD's Project Coordinator, or other responsible official of SD, 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.

6.6 Approval of Deliverables

- (a) Initial Submissions

- (1) After review of any deliverable that is required to be submitted for EPA approval under the CD or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
 - (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.
- (b) **Resubmissions.** Upon receipt of a notice of disapproval under Section 6.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under Section 6.6(a), SD shall, within 60 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 SD to correct the deficiencies; or (5) any combination of the foregoing.
- (c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under Section 6.6(a) (Initial Submissions) or Section 6.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the CD; and (2) SD shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under Section 6.6(a) or Section 6.6(b) does not relieve SD of any liability for stipulated penalties under Section XIV (Stipulated Penalties) of the CD.
- 6.7 **Supporting Deliverables.** SD shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. SD shall develop the deliverables in accordance with all applicable regulations, guidance, and policies (see Section 9 [References]). SD shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.
- (a) **Health and Safety Plan.** The Health and Safety Plan (HASP) describes all activities to be performed to protect on-Site personnel and area residents from physical, chemical, and all other hazards posed by the Work. SD 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 RD activities and should be, as appropriate, updated to cover activities during the RA and updated to cover activities after RA completion. EPA does not approve the HASP, but will review

it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.

- (b) **Emergency Response Plan.** The Emergency Response Plan (ERP) must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:
- (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for, spills and discharges;
 - (4) Notification activities in accordance with Section 4.4(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004; and
 - (5) A description of all necessary actions to ensure compliance with Paragraph 11 (Emergencies and Releases) of the CD in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (c) **Field Sampling Plan.** The Field Sampling Plan (FSP) addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. SD shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).
- (d) **Quality Assurance Project Plan.** The Quality Assurance Project Plan (QAPP) augments the FSP and addresses sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of SD's quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. SD 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). The QAPP also must include procedures:

- (1) To ensure that EPA and the State and their authorized representatives have reasonable access to laboratories used by SD in implementing the CD (SD's Labs);
 - (2) To ensure that SD's Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
 - (3) To ensure that SD's Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)) or other methods acceptable to EPA;
 - (4) To ensure that SD's Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;
 - (5) For SD to provide EPA and the State with notice at least 28 days prior to any sample collection activity;
 - (6) For SD to provide split samples and/or duplicate samples to EPA and the State upon request;
 - (7) For EPA and the State to take any additional samples that they deem necessary;
 - (8) For EPA and the State to provide to SD, upon request, split samples and/or duplicate samples in connection with EPA's and the State's oversight sampling; and
 - (9) For SD to submit to EPA and the State all sampling and tests results and other data in connection with the implementation of the CD.
- (e) **Construction Quality Assurance/Quality Control Plan (CQA/QCP).** The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQA/QCP must:

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 67 of 79

- (1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/QCP;
 - (2) Describe the PS required to be met to achieve Completion of the RA;
 - (3) Describe the activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;
 - (5) Describe industry standards and technical specifications used in implementing the CQA/QCP;
 - (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
 - (7) Describe procedures for documenting all CQA/QCP activities; and
 - (8) Describe procedures for retention of documents and for final storage of documents.
- (f) **Transportation and Off-Site Disposal Plan.** The Transportation and Off-Site Disposal Plan (TODP) describes plans to ensure compliance with Section 4.5 (Off-Site Shipments). The TODP must include:
- (1) Proposed routes for off-Site shipment of Waste Material;
 - (2) Identification of communities affected by shipment of Waste Material; and
 - (3) Description of plans to minimize impacts on affected communities.
- (g) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the RA. SD shall develop the O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:
- (1) Description of PS required to be met to implement the ROD;
 - (2) Description of activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (3) **O&M Reporting.** Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;

- (4) Description of corrective action in case of systems failure, including:
 - (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve PS; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and
 - (5) Description of corrective action to be implemented in the event that PS are not achieved; and a schedule for implementing these corrective actions.
- (h) **O&M Manual.** The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy. SD shall develop the O&M Manual in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017).
- (i) **Institutional Controls Implementation and Assurance Plan.** The Institutional Controls Implementation and Assurance Plan (ICIAP) describes plans to implement, maintain, and enforce the Institutional Controls (ICs) at the Site. SD shall develop the ICIAP in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). The ICIAP must include the following additional requirements:
- (1) Locations of recorded real property interests (e.g., easements, liens) and resource interests in the property that may affect ICs (e.g., surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and
 - (2) Legal descriptions and survey maps that are prepared according to current American Land Title Association (ALTA) Survey guidelines and certified by a licensed surveyor.

7. SCHEDULES

- 7.1 **Applicability and Revisions.** All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the RD and RA Schedules set forth below. SD may submit proposed revised RD Schedules or RA Schedules for EPA approval. Upon EPA's approval, the revised RD and/or RA Schedules supersede the RD and RA Schedules set forth below, and any previously-approved RD and/or RA Schedules.

7.2 RD Schedule

	Description of Deliverable, Task	Section Ref.	Deadline
1	RDWP	3.1	60 days following receipt of EPA Authorization to Proceed regarding Supervising Contractor under CD § 9.c
2	PDIWP	3.3(a)	30 days following EPA approval of RDWP
3	PDI Evaluation Report	3.3(b)	60 days following receipt of validated PDI data
4	Intermediate (50%) RD	3.4	120 days following EPA approval of PDI Evaluation Report
5	Pre-final (95%) RD	3.5	120 days following receipt of EPA comments on Intermediate RD
6	Final (100%) RD	3.6	30 days following receipt of EPA comments on Pre-final RD

7.3 RA Schedule

	Description of Deliverable / Task	Section Ref.	Deadline
1	RAWP	4.1	60 days after EPA Notice of Authorization to Proceed with RA
2	Pre-Construction Conference	4.3(a)	30 days following EPA approval of RAWP
3	Start of Construction		30 days following pre-construction conference
4	Completion of Construction		TBD
5	RA Completion Inspection	4.6(a)	30 days following completion of construction
6	RA Report	4.6(b)	60 days following completion of RA Completion Inspection
7	Work Completion Inspection	4.8(a)	TBD
8	Work Completion Report	4.8(b)	60 days following Work Completion Inspection
9	Periodic Review Support Plan	4.7	Five-Year Reviews, triggered by start of first RA

8. STATE PARTICIPATION

- 8.1 **Copies.** SD shall, at any time they send a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to SD, send a copy of such document to the State.
- 8.2 **Review and Comment.** The State will have a reasonable opportunity for review and comment prior to:

- (a) Any EPA approval or disapproval under Section 6.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
- (b) Any approval or disapproval of the Construction Phase under Section 4.6 (RA Construction Completion), any disapproval of, or Certification of RA Completion under Section 4.6 (Certification of RA Completion), and any disapproval of, or Certification of Work Completion under Section 4.8 (Certification of Work Completion).

9. REFERENCES

9.1 The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in Section 9.2:

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

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 71 of 79

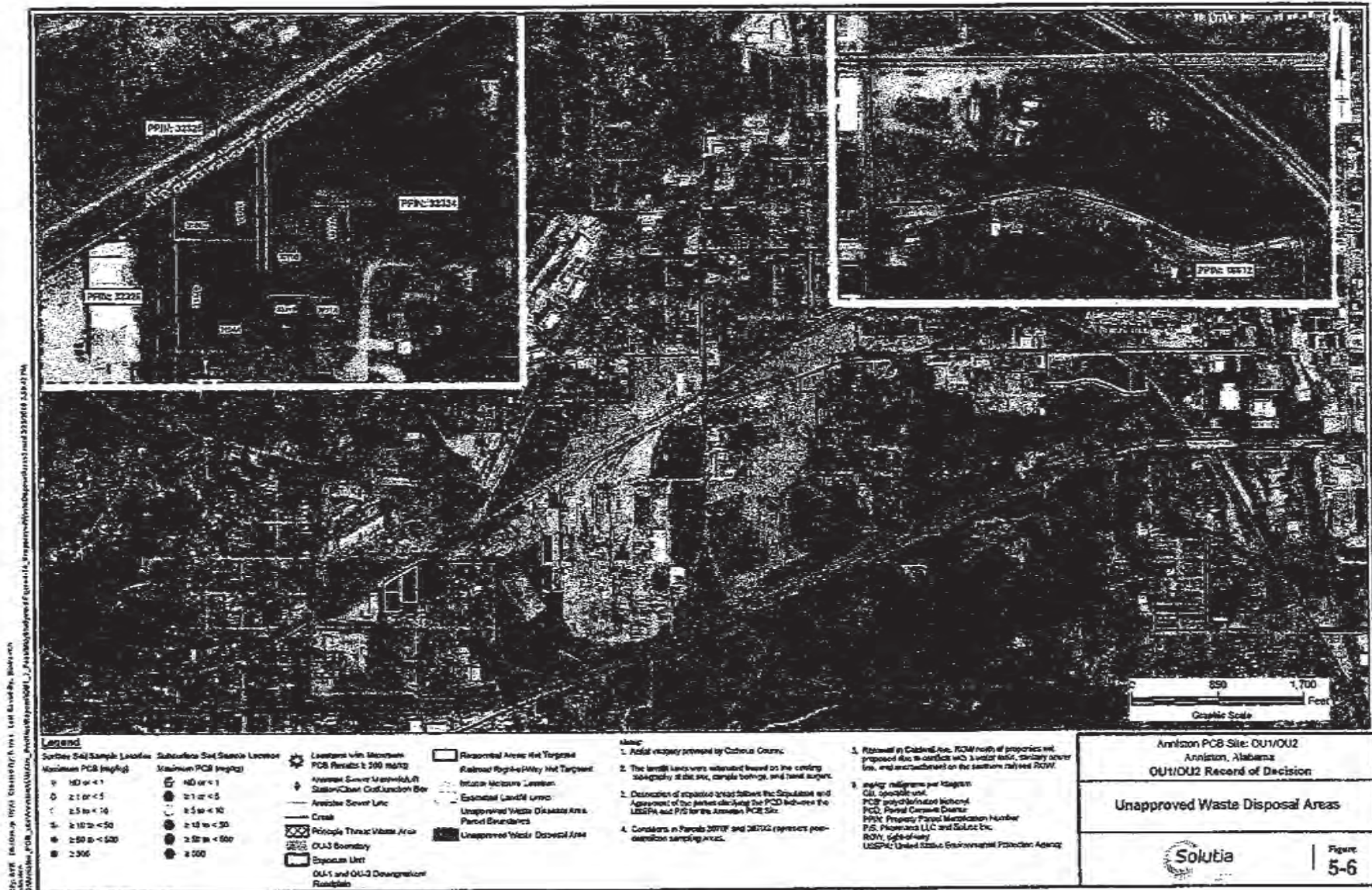
- (l) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (m) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, 540-R-01-007 (June 2001).
- (n) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).
- (o) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).
- (p) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).
- (q) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (r) Superfund Community Involvement Handbook, SEMS 100000070 (January 2016), <https://www.epa.gov/superfund/community-involvement-tools-and-resources>.
- (s) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (t) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (u) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (v) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).
- (w) USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2 (amended Apr. 2007).
- (x) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), <https://www.epa.gov/geospatial/geospatial-policies-and-standards> and <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (y) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (z) Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements, Interim (Sep. 2009).

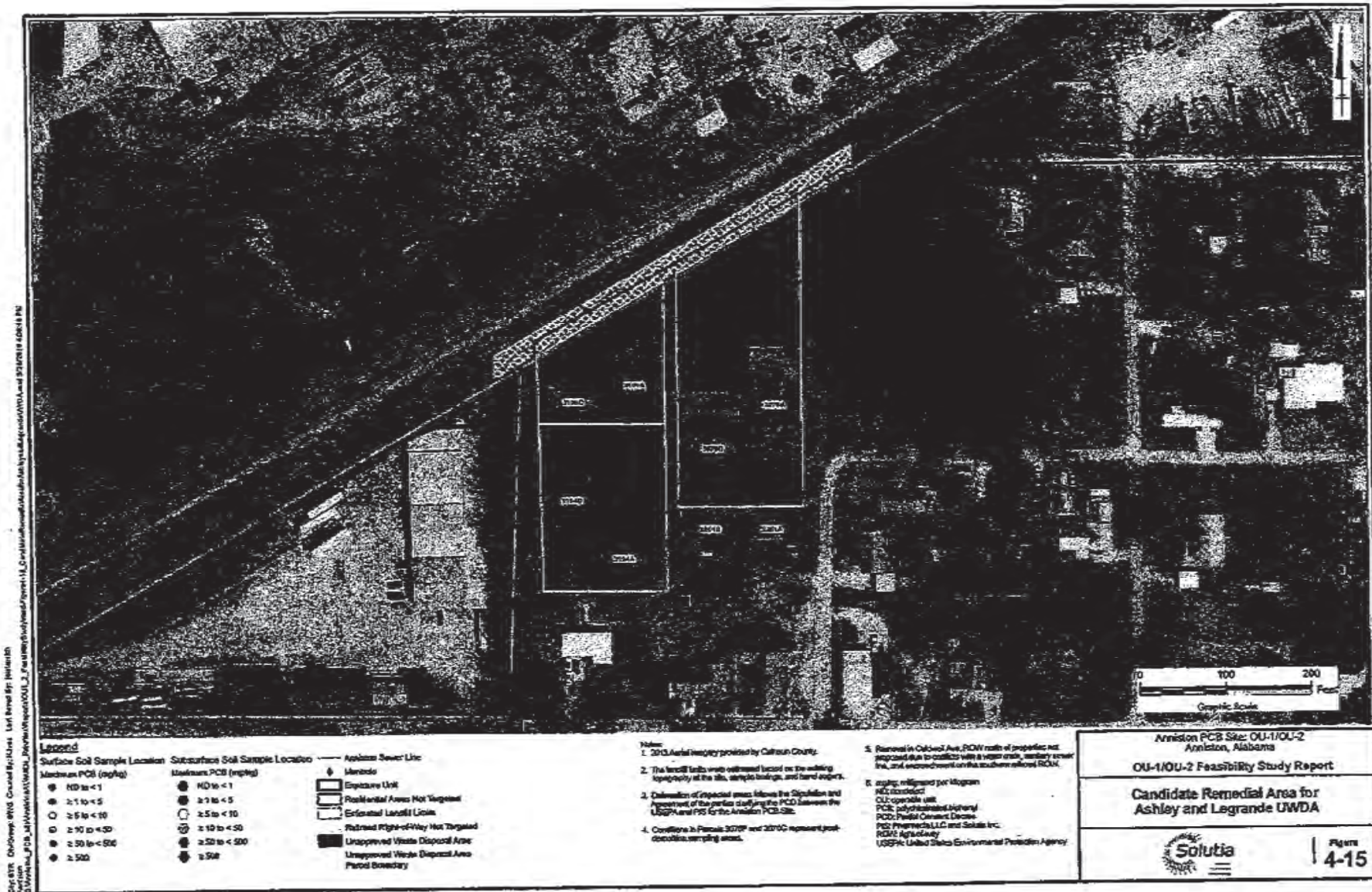
Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 72 of 79

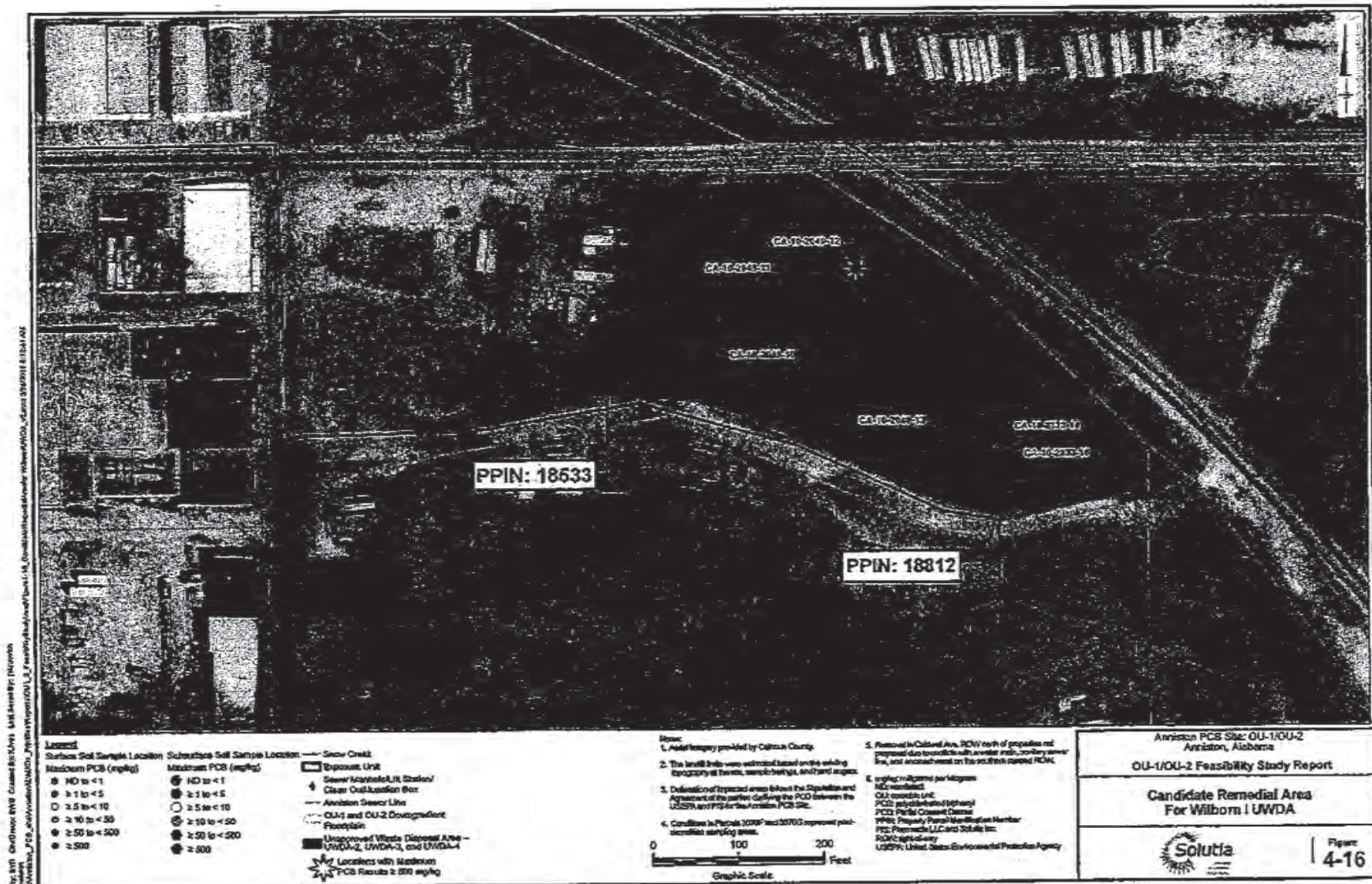
- (aa) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).
 - (bb) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
 - (cc) Recommended Evaluation of Institutional Controls: Supplement to the "Comprehensive Five-Year Review Guidance," OSWER 9355.7-18 (Sep. 2011).
 - (dd) Construction Specifications Institute's Master Format 2012, available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
 - (ee) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach, OSWER 9200.2-125 (Sep. 2012)
 - (ff) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).
 - (gg) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).
 - (hh) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), https://www.epaossc.org/_HealthSafetyManual/manual-index.htm.
 - (ii) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
 - (jj) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.
- 9.2 A more complete list may be found on the following EPA Web pages:
- Laws, Policy, and Guidance: <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>
- Test Methods Collections: <https://www.epa.gov/measurements/collection-methods>
- 9.3 For any regulation or guidance referenced in the CD or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after SD receive notification from EPA of the modification, amendment, or replacement.

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 73 of 79

Appendix C







File Path: C:\Users\jmartin\OneDrive\Documents\Anniston PCB Site\OU-1/OU-2 Feasibility Study Report\Figure 4-16_Candidate Remedial Area For Wilborn I UWDA.mxd
Map Scale: 1 inch = 100 feet
Map Date: 12/18/19
Map Author: jmartin
Map Reviewer: jmartin
Map Status: Draft

Recorded Stacks Notice

MISC A10 654
Recorded In Above Book and Page
11/12/2020 02:49:52 PM
Alice K. Martin
Judge of Probate
Calhoun County, Alabama

Mental Health Fee \$ 4.00
Recording Fee \$ 258.00
TOTAL \$ 262.00

***This Instrument Prepared By, And
After Recording Return To:***

Scott I. Steady, Esq.
Burr & Forman LLP
201 N Franklin Street, Suite 3200
Tampa, Florida 33602

Cross Reference:

Deed Book 1614, Page 297
Calhoun County Records

STATE OF ALABAMA)
CALHOUN COUNTY)

NOTICE TO SUCCESSORS-IN-TITLE

KNOW ALL MEN BY THESE PRESENTS, That the undersigned **TOM JUNIOR STACKS** ("Stacks"), as owner of all of that certain tract or parcel of real property more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"), does hereby give notice to all successors-in-title to the Property that the Property is subject to environmental restrictions. Stacks is one and the same person as "Thomas Stacks, Jr." as set forth in the vesting deed to the Property, and Stacks hereby warrants and confirms that he is the true and lawful owner of the Property.

The Property is part of the Anniston PCB Superfund Site ("Site"). The United States Environmental Protection Agency ("EPA") utilized the "Superfund Alternative Approach" to designate the Site.

In order to resolve claims brought by the United States in *United States of America v. MRC Holdings, Inc.*, the United States and MRC Holdings, Inc. ("MRC") have entered into a Consent Decree (the "Decree") requiring MRC to implement the Remedial Design/Remedial Action ("RD/RA") on the Property for specified activities relating to the Unapproved Waste Disposal Areas ("UWDAs") in accordance with the OU1/OU2 Record of Decision ("ROD"). The Decree was lodged on July 23, 2019 with the United States District Court for the Northern District of Alabama, in the case of the *United States of America v. MRC Holdings Inc.*, Civil Action No. 1:19-CV-01153-CLM. Under Section VI of the Decree, MRC is required to perform the "UWDA" remedy as defined by the Decree (the "Work"), which includes the placement of a RCRA Subtitle

D multi-layer cap on a portion of the Property. Under Paragraphs 13 and 17 of the Decree, EPA has reserved the right to modify the Work and has retained the authority to select and require performance of further actions at the Property. The Decree is attached as Exhibit "B".

Based upon the results of a remedial investigation to determine the nature and extent of contamination and a feasibility study to identify and evaluate remedial alternatives, the ROD and for the OU1/OU2 portion of the Site was issued by EPA in November, 2017.

As documented in the ROD, the UWDAs contain auto fluff that was deposited over time. Low levels of PCBs were detected in soils. No PCBs were detected in groundwater. The selected RA provides for:

- Installation of a RCRA Subtitle D multi-layer cap consisting of a minimum:
 - 40-mil geomembrane liner,
 - Geocomposite drainage layer, and
 - 18-inch-thick protective soil cover.
 - Vegetate surface or provide other erosion protection for cap.
 - Environmental covenants shall be recorded to restrict future use of these areas and to protect the cap.

[No further text on this page. Signature page follows.]

IN WITNESS WHEREOF, Stacks has caused this Notice to be properly executed and delivered as of the day and year first set forth above.

WITNESSES:

GRANTOR:

Name: Jessica Renee Pruitt
(Print/Type Name)

Tom Junior Stacks
TOM JUNIOR STACKS, a/k/a
"Thomas Stacks, Jr."

Name: Madeline B. Smith
(Print/Type Name) Madeline B. Smith

STATE OF AL
COUNTY OF Calhoun)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Tom Junior Stacks, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 4th day of December, 2019.

Phillip Berry

Notary Public

My Commission Expires: 08-7-2023

Phillip Berry
Notary Public, Alabama State At Large
My Commission Expires: August 7, 2023

EXHIBIT A – THE EASEMENT PROPERTY

Lots 6, 7, 8, 9, 10, 11, 12, 13 and 14, Block 1, as shown on the Plan of Mechanicsville, as recorded in the Office of the Judge of Probate of Calhoun County, Alabama, in Plat Book T, Page 46, together with all appurtenant rights and all additional lands accruing to said Lots by virtue of any roadway or alley vacation.

Being the same property conveyed to Grantor by deed recorded in the Office of the Judge of Probate of Calhoun County, Alabama, in Deed Book 1614, Page 297.

EXHIBIT B – THE DECREE

[See Attached]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

Civil Action No. 1:19-cv-01153-CLM

v.

MRC HOLDINGS, INC.

Defendant.

REMEDIAL DESIGN/REMEDIAL ACTION

CONSENT DECREE

(For Operable Unit 1/Operable Unit 2
Concerning the Record of Decision for the "Unapproved Waste Disposal Areas"
Section 5.6.1.2.4)

TABLE OF CONTENTS

I.	BACKGROUND.....	1
II.	JURISDICTION.....	2
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS.....	3
V.	GENERAL PROVISIONS.....	7
VI.	PERFORMANCE OF THE WORK.....	7
VII.	REMEDY REVIEW.....	10
VIII.	PROPERTY REQUIREMENTS.....	11
IX.	FINANCIAL ASSURANCE.....	13
X.	PAYMENTS FOR RESPONSE COSTS.....	18
XI.	INDEMNIFICATION AND INSURANCE.....	21
XII.	FORCE MAJEURE.....	22
XIII.	DISPUTE RESOLUTION.....	24
XIV.	STIPULATED PENALTIES.....	26
XV.	COVENANTS BY PLAINTIFF.....	28
XVI.	COVENANTS BY SD.....	31
XVII.	EFFECT OF SETTLEMENT; CONTRIBUTION.....	33
XVIII.	ACCESS TO INFORMATION.....	34
XIX.	RETENTION OF RECORDS.....	35
XX.	NOTICES AND SUBMISSIONS.....	35
XXI.	RETENTION OF JURISDICTION.....	37
XXII.	APPENDICES.....	37
XXIII.	MODIFICATION.....	37
XXIV.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT.....	38
XXV.	SIGNATORIES/SERVICE.....	38
XXVI.	FINAL JUDGMENT.....	38

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency (EPA), filed a complaint in this matter pursuant to Sections 106, 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9606, 9607 and 9613(g)(2) (the "Complaint").

B. The United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice ("DOJ") for response actions at the Anniston PCB Superfund Site in Anniston, Alabama ("Site"), together with accrued interest; (2) performance of response actions by the defendants at the Site consistent with CERCLA and the National Contingency Plan, 40 C.F.R. Part 300 ("NCP"); and (3) a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Alabama (the "State") on June 6, 2018, of negotiations with potentially responsible parties ("PRPs") regarding the implementation of the remedial design and remedial action ("RD/RA") for OU1/OU2, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree ("CD").

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior and the National Oceanic and Atmospheric Administration on June 6, 2018, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this CD.

E. The defendant that has entered into this CD ("Settling Defendant" or "SD") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

F. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced on August 4, 2003, a Remedial Investigation and Feasibility Study ("RI/FS") for the OU1/OU2 pursuant to 40 C.F.R. § 300.430.

G. EPA approved the OU1/OU2 Remedial Investigation (RI) Report on January 21, 2015, and EPA approved the OU1/OU2 Feasibility Study (FS) Report on March 7, 2017.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on March 12, 2017, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator, EPA Region 4, based the selection of the response action.

I. The decision by EPA on the OU1/OU2 remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), attached as Appendix A, executed on November 9, 2017, on which the State had a reasonable opportunity to review and comment and on which the State has given its concurrence. The OU1/OU2 ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

J. In order to resolve the claims brought by the United States in its Complaint, the United States and the Settling Defendant have entered into this Consent Decree ("Consent Decree"), which requires the Settling Defendant to implement the Remedial Design/Remedial Action ("RD/RA") for specific activities related to the Unapproved Waste Disposal Areas in accordance with the OU1/OU2 ROD and to fulfill the requirements of this Consent Decree.

K. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by SD if conducted in accordance with this CD and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the Work to be performed by SD shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

M. The Parties recognize, and the Court by entering this CD finds, that this CD has been negotiated by the Parties in good faith and implementation of this CD will expedite the cleanup of the Unapproved Waste Disposal Areas and will avoid prolonged and complicated litigation between the Parties, and that this CD is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over SD. Solely for the purposes of this CD and the underlying complaint, SD waives all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. SD shall not challenge the terms of this CD or this Court's jurisdiction to enter and enforce this CD.

III. PARTIES BOUND

2. This CD is binding upon the United States and upon SD and its successors, and assigns. Any change in ownership or corporate or other legal status of SD including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such SD's responsibilities under this CD.

3. SD shall provide a copy of this CD to each contractor hired to perform the Work and to each person representing SD with respect to the Unapproved Waste Disposal Areas or the

Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this CD. SD or its contractors shall provide written notice of the CD to all subcontractors hired to perform any portion of the Work. SD shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this CD. With regard to the activities undertaken pursuant to this CD, each contractor and subcontractor shall be deemed to be in a contractual relationship with SD within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

"ADEM" shall mean the Alabama Department of Environmental Management and any successor departments or agencies of the State.

"Anniston Community Advisory Group" or "Anniston CAG" shall mean the community advisory group created under the Revised Partial Consent Decree.

"Anniston PCB Site Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and established pursuant to the Revised Partial Consent Decree entered into between the United States, Solutia Inc., and Pharmacia Corp., Civil Action No. 1:02-cv-0749, entered by the Court on August 4, 2003.

"Affected Property" shall mean all real property at the Unapproved Waste Disposal Areas and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Action.

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

"Consent Decree" or "CD" shall mean this consent decree and all appendices attached hereto (listed in Section XXII). In the event of conflict between this CD and any appendix, this CD shall control.

"Day" or "day" shall mean a calendar day. In computing any period of time under this CD, 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.

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Effective Date" shall mean the date upon which the approval of this CD is recorded on the Court's docket.

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

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

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising SD's performance of the Work to determine whether such performance is consistent with the requirements of this CD, including costs incurred in reviewing deliverables submitted pursuant to this CD, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to ¶ 11 (Emergencies and Releases), Section VII (Remedy Review), Section VIII (Property Requirements), and ¶ 31 (Access to Financial Assurance), or the costs incurred by the United States in enforcing this CD, including all costs incurred pursuant to Section XIII (Dispute Resolution), and all litigation costs.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this CD, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this CD, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to ¶ 11 (Emergencies and Releases), ¶ 12 (Community Involvement) (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), ¶ 31 (Access to Financial Assurance), Section VII (Remedy Review), Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including the amount of just compensation), and Section XIII (Dispute Resolution), and all litigation costs. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs SD has agreed to pay under this CD that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from February 2, 2017, to the Effective Date, and Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Unapproved Waste Disposal Areas.

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

"Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with the Unapproved Waste Disposal Areas between February 2, 2017, and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

"Institutional Control Implementation and Assurance Plan" or "ICIAP" shall mean the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls set forth in the OUI/OU2 ROD, prepared in accordance with ¶ 6.7(i) of the SOW.

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

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

"Non-Settling Owner" shall mean any person, other than a SD, that owns or controls any Affected Property. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.

"Operable Unit 1/Operable Unit 2 (OUI/OU2)" shall mean the residential and non-residential properties around the Anniston Plant and downstream along Snow Creek to Highway 78.

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

"Paragraph" or "¶" shall mean a portion of this CD identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States and SD.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Unapproved Waste Disposal Areas through February 1, 2017, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" or "PS" shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the ROD.

"Plaintiff" shall mean the United States.

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

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

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to OU1/OU2 at the Site signed on November 9, 2017, by the Regional Administrator, EPA Region 4, or his/her delegate, and all attachments thereto. The ROD is accessible at <https://semspub.epa.gov/work/04/11094816.pdf>, EPA's offices in Atlanta, Georgia, and the Anniston PCB Site Information Repositories (Anniston Public Library and Carter Center).

"Remedial Action" or "RA" shall mean the remedial action selected in the Unauthorized Waste Disposal Areas of the ROD.

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

"Section" shall mean a portion of this CD identified by a Roman numeral.

"Settling Defendant" or "SD" shall mean MRC Holdings, Inc.

"State" shall mean the State of Alabama.

"Statement of Work" or "SOW" shall mean the document describing the activities SD must perform to implement the RD, the RA, and O&M regarding OU1/OU2, which is attached as Appendix A.

"Supervising Contractor" shall mean the principal contractor retained by SD to supervise and direct the implementation of the Work under this CD.

"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.

"Unapproved Waste Disposal Areas" or "UWDAs" shall mean the Unapproved Waste Disposal Areas identified in Part 2, Section 5.6.1.2.4 of the ROD, more particularly identified as 830 W. 10th Street (County PPIN# 18533, 0 9th and Mulberry Avenue (County PPIN# 18812), 510 LeGrande Avenue (County PPIN# 32324), 0 Ashely Street (County PPIN# 32325) and 505 Ashley Street (County PPIN# 32326).

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA, and any federal natural resource trustee.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities and obligations SD is required to perform under this CD, except the activities required under Section XIX (Retention of Records).

V. GENERAL PROVISIONS

5. **Objectives of the Parties.** The objectives of the Parties in entering into this CD are to protect public health or welfare or the environment by the design and implementation of response actions within the UWDAs for OU1/OU2 by SD, to pay response costs of Plaintiff, and to resolve the claims of Plaintiff against SD and the claims of the SD that have been or could have been asserted against the United States with regard to OU1/OU2 as provided in this CD.

6. Commitments by SD

a. SD shall finance and perform the Work in accordance with this CD and all deliverables developed by SD and approved or modified by EPA pursuant to this CD. SD shall pay the United States for its response costs as provided in this CD.

7. **Compliance with Applicable Law.** Nothing in this CD limits SD's obligations to comply with the requirements of all applicable federal and state laws and regulations. SD must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this CD, if approved by EPA, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, SD shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. SD may seek relief under the provisions of Section XII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 8.a and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. This CD is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK

9. Coordination and Supervision

a. Project Coordinators

(1) SD's Project Coordinator must have sufficient technical expertise to coordinate the Work. SD's Project Coordinator may not be an attorney

representing SD in this matter and may not act as the Supervising Contractor. SD's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA shall designate and notify the SD of EPA's Project Coordinator and Alternate Project Coordinator. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the UWDAs constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) The State shall designate and notify EPA and the SD of its Project Coordinator[s] and Alternate Project Coordinator[s]. The State may designate other representatives, including its employees, contractors and/or consultants to oversee the Work. For any meetings and inspections in which EPA's Project Coordinator participates, the State's Project Coordinator also may participate. SD shall notify the State reasonably in advance of any such meetings or inspections.

(4) SD's Project Coordinators shall meet with EPA's at least monthly.

b. **Supervising Contractor.** SD's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard).

c. **Procedures for Disapproval/Notice to Proceed**

(1) SD shall designate, and notify EPA, within 30 days after the Effective Date, of the name[s], title[s], contact information, and qualifications of the SD's proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

(2) EPA, after a reasonable opportunity for review and comment by the State, shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, SD shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. SD may select any

coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of SD's selection.

(3) SD may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of §§ 9.c(1) and 9.c(2).

(4) Notwithstanding the procedures of §§ 9.c(1) through 9.c(3), SD have proposed, and EPA has authorized SD to proceed, regarding the following Project Coordinator and Supervising Contractor: HSW Engineering, Inc., c/o Joel Balmat, 605 E. Robinson Street, Suite 308, Orlando, Florida 32801.

(5) The UWDAs are owned by different Non-Settling Owners, not the SD. The UWDA located at 830 W. 10th Street and 0 W. 9th Street & Mulberry Avenue is geographically separated from the UWDA located at 510 LeGrand Avenue, 0 Ashley Street, and 505 Ashley Street. In the event agreements regarding access to the two geographically separated UWDAs are obtained at different times, in accordance with Section III, EPA shall issue separate Notices to Proceed for the two UWDAs. In response to each Notice to Proceed, SD shall prepare the RD and RA schedules for the applicable UWDA in accordance with Section 7 of the SOW. All other applicable provision of this CD and the SOW shall be implemented to reflect the separate schedules.

10. **Performance of Work in Accordance with SOW.** SD shall: (a) develop the RD; (b) perform the RA; and (c) operate, maintain, and monitor the effectiveness of the RA; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the CD or SOW shall be subject to approval by EPA in accordance with ¶ [6.6] (Approval of Deliverables) of the SOW.

11. **Emergencies and Releases.** SD shall comply with the emergency and release response and reporting requirements under ¶ [4.4] (Emergency Response and Reporting) of the SOW. Subject to Section XV (Covenants by Plaintiff), nothing in this CD, including ¶ [4.4] of the SOW, limits any authority of Plaintiff: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the UWDAs, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the UWDAs. If, due to SD's failure to take appropriate response action under ¶ [4.4] of the SOW, EPA takes such action instead, SD shall reimburse EPA under Section X (Payments for Response Costs) for all costs of the response action.

12. **Community Involvement.** If requested by EPA, SD shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section [2] (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator and attending Community Advisory Group (CAG) and Technical Assistance meetings. Costs incurred by the United States

under this Section constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

13. Modification of SOW or Related Deliverables

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy set forth in ¶ [1.3] of the SOW, then EPA may notify SD of such modification. If SD objects to the modification it may, within 30 days after EPA's notification, seek dispute resolution under Section XIII.

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if SD invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this CD, and SD shall implement all work required by such modification. SD shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this CD.

14. Nothing in this CD, the SOW, or any deliverable required under the SOW constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards.

VII. REMEDY REVIEW

15. **Periodic Review.** SD shall conduct, in accordance with ¶ [4.7] (Periodic Review Support Plan) of the SOW, studies and investigations to support EPA's reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the RA is protective of human health and the environment.

16. **EPA Selection of Further Response Actions.** If EPA determines, at any time, that the RA is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

17. **Opportunity to Comment.** SD and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

18. **SD's Obligation to Perform Further Response Actions.** If EPA selects further response actions relating to the UWDAs, EPA may require SD to perform such further response actions, but only to the extent that the reopener conditions in ¶ 67 or 68 (United States' Pre- and Post-Certification Reservations) are satisfied. SD may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of ¶ 67 or 68 are satisfied, (b) EPA's determination that the RA is not protective of human health and the

environment, or (c) EPA's selection of the further response actions. Disputes regarding EPA's determination that the RA is not protective or EPA's selection of further response actions shall be resolved pursuant to ¶ 51 (Record Review).

19. **Submission of Plans.** If SD is required to perform further response actions pursuant to ¶ 18, they shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work by SD). SD shall implement the approved plan in accordance with this CD.

VIII. PROPERTY REQUIREMENTS

20. **Agreements Regarding Access and Non-Interference.** SD shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by SD and by Plaintiff, providing that such Non-Settling Owner (i) provide Plaintiff and the SD, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the CD, including those listed in ¶ 20.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 20.b (Land, Water, or Other Resource Use Restrictions). SD shall provide a copy of such access and use restriction agreements to EPA and the State.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations regarding contamination at or near the UWDAs;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the UWDAs;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
- (7) Implementing the Work pursuant to the conditions set forth in ¶ 71 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by SD or its agents, consistent with Section XVIII (Access to Information);

(9) Assessing SD's compliance with the CD;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the CD; and

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

b. **Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

(1) Prohibiting activities that could interfere with the RA including anything that will disturb the caps and covers on segments of the Affected Properties as part of the RA is prohibited because such activities could result in direct and indirect exposure to contaminants in soil and groundwater;

(2) Prohibiting use of contaminated groundwater;

(3) Prohibiting the activities that could result in exposure to contaminants in soils and groundwater;

(4) Ensuring that any new structures on the UWDAs will not be constructed that could interfere with the RA; and

(5) Ensuring that any new structures on the UWDAs will be constructed to minimize potential risk of inhalation of contaminants.

21. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of SD would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If SD is unable to accomplish what is required through "best efforts" in a timely manner, they shall notify the United States and EPA, and include a description of the steps taken to comply with the requirements. If the United States deems it appropriate, it may assist SD, or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

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

23. Notice to Successors-in-Title

a. SD shall, within 45 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the UWDAs; (ii) that EPA has selected a remedy for the UWDAs; and (iii) that a potentially responsible party has entered into a CD requiring implementation of such remedy; and (3) identify the U.S. District Court in which the CD was filed, the name and civil action number of this case, and the date the CD was entered by the Court. SD shall recommend that the owner of the Affected Property record the notice within 30 days after EPA's approval of the notice and submit to EPA, within 30 days thereafter, a certified copy of the recorded notice.

b. SD shall recommend that the owner of the Affected Property, prior to entering into a contract to transfer the Affected Property, or 60 days prior to transferring the Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a remedy regarding the UWDAs, that potentially responsible parties have entered into a Consent Decree requiring implementation of such remedy, and that the United States District Court has entered the CD (identifying the name and civil action number of this case and the date the CD was entered by the Court); and

(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the notice that it provided to the proposed transferee.

24. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, SD shall continue to comply with their obligations under the CD, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property and to implement, maintain, monitor, and report on Institutional Controls.

25. Notwithstanding any provision of the CD, Plaintiff 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.

IX. FINANCIAL ASSURANCE

26. In order to ensure completion of the Work, SD shall secure financial assurance, initially in the amount of \$2,715,000.00 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to

EPA. SD may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by a SD that it meets the relevant test criteria of ¶ 28, accompanied by a standby funding commitment, which obligates the affected SD to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of SD or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a SD; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of ¶ 27.

27. SD has selected, and EPA has found satisfactory, a surety bond as an initial form of financial assurance. Within 10 days after the Effective Date, SD shall obtain EPA's approval of the form of SD's financial assurance. Within 30 days of such approval, SD shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to Paula V. Painter the "Regional Financial Management Officer", to the United States, and to EPA as specified in Section XX (Notices and Submissions).

28. SD seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 26.e or 26.f, must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) the SD or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total

liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

- ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The SD or guarantor has:

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

b. Submit to EPA for the SD or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

29. SD providing financial assurance by means of a demonstration or guarantee under ¶ 26.e or 26.f must also:

a. Annually resubmit the documents described in ¶ 28.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

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

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 28.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

30. SD shall diligently monitor the adequacy of the financial assurance. If SD becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such SD shall notify EPA of such information within 10 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the SD of such determination. SD shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected SD, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. SD shall follow the procedures of ¶ 32 (Modification of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. SD's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

31. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 71.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 31.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the SD fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 31.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 71.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding

commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 26.e or 26.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. SD shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 31 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Anniston PCB Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the UWDAs, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 31 must be reimbursed as Future Response Costs under Section X (Payments for Response Costs).

32. Modification of Amount, Form, or Terms of Financial Assurance. SD may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 27, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify SD of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. SD may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution). SD may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, SD shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 27.

33. Release, Cancellation, or Discontinuation of Financial Assurance. SD may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ [4.8] (Certification of Work Completion) of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution).

X. PAYMENTS FOR RESPONSE COSTS

34. Payment by SD for United States Past Response Costs.

a. Within 30 days after the Effective Date, SD shall pay to EPA \$25,000.00 in payment for Past Response Costs. Payment shall be made in accordance with ¶ 36.a (instructions for past response cost payments).

b. **Deposit of Past Response Costs Payment.** The total amount to be paid by Setting Defendants pursuant to ¶ 34.a shall be deposited by EPA in the Anniston PCB Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

35. Payments by SD for Future Response Costs. SD shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills.** On a periodic basis, EPA will send SD a bill requiring payment that includes a SCORPIOS report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. SD shall make all payments within 30 days after SD's receipt of each bill requiring payment, except as otherwise provided in ¶ 37, in accordance with ¶ 36.b (instructions for future response cost payments).

b. **Deposit of Future Response Costs Payments.** The total amount to be paid by SD pursuant to ¶ 35.a (Periodic Bills) shall be deposited by EPA in the Anniston PCB Site Special Account to be retained and used to conduct or finance response actions at or in connection with the UWDAs, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Anniston PCB Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the UWDAs. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum.

c. **Unused Amount.** After EPA issues the Certification of RA Completion pursuant to ¶ [4.6] (Certification of RA Completion) of the SOW and a final accounting of the Anniston PCB Site Future Response Costs Special Account, EPA will offset the next Future Response Costs bill by the unused amount paid by SD, apply any unused amount paid by SD to any other unreimbursed response costs or response actions remaining at the UWDAs; or remit and return to SD any unused amount of the funds paid by SD. Any decision by EPA to apply unused amounts to unreimbursed response costs or response actions remaining at the Site shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum.

36. Payment Instructions for SD

a. Past Response Costs Payments.

(1) The Financial Litigation Unit (FLU) of the United States Attorney's Office for the Northern District of Alabama shall provide SD, in accordance with ¶ 93, with instructions regarding making payments to DOJ on behalf of EPA. The instructions must include a Consolidated Debt Collection System (CDCS) number to identify payments made under this CD.

(2) For all payments subject to this ¶ 36.a, SD shall make such payment by Fedwire Electronic Funds Transfer (EFT) / at <https://www.pay.gov> to the U.S. DOJ account, in accordance with the instructions provided under ¶ 36.a(1), and including references to the CDCS Number, Site/Spill ID Number 04S9, and DJ Number 90-11-2-07135(14).

(3) For each payment made under this ¶ 36.a, SD shall send notices, including references to the CDCS, Site/Spill ID, and DJ numbers, to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 93.

b. Future Response Costs Payments and Stipulated Penalties

(1) For all payments subject to this ¶ 36.b, SD shall make such payment by Fedwire EFT, referencing the Site/Spill ID and DJ numbers. The Fedwire EFT payment must be sent as follows:

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

(2) For all payments subject to this ¶ 36.b, SD shall make such payment by Automated Clearinghouse (ACH) payment as follows:

500 Rivertech Court
Riverdale, Maryland 20737
Contact - John Schmid 202 874 7027 or
REX, 1 866 234 5681
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

(3) For all payments subject to this ¶ 36.b, SD shall make such payment at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to SD by EPA following lodging of the CD.

(4) For all payments subject to this ¶ 36.b, SD shall make such payment by official bank check(s) made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment. SD shall send the check(s) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

(5) For all payments made under this ¶ 36.b, SD must include references to the Site/Spill ID and DJ numbers. At the time of any payment required to be made in accordance with ¶ 36.b, SD shall send notices that payment has been made to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 93. All notices must include references to the Site/Spill ID and DJ numbers.

37. Contesting Future Response Costs. SD may submit a Notice of Dispute, initiating the procedures of Section XIII (Dispute Resolution), regarding any Future Response Costs billed under ¶ 35 (Payments by SD for Future Response Costs) if they determine that EPA has made a mathematical or an accounting error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) pursuant to Section XX (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If SD submits a Notice of Dispute, SD shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to the United States, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. SD shall send to the United States, as provided in Section XX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If the United States prevails in the dispute, SD shall pay the sums due (with accrued interest) to the United States within 7 days after the resolution of the dispute. If SD prevails concerning any aspect of the contested costs, SD shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States within 7 days after the resolution of the dispute. SD shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with ¶¶ 36.b (instructions for future response cost payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII

(Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding SD's obligation to reimburse the United States for its Future Response Costs.

38. SD may contest the final accounting of the Anniston PCB Site Future Response Costs Special Account relating to the UWDAs issued under ¶ 35.c (Unused Amount) if they determine that the United States has made a mathematical error. Such objection shall be made in writing within 30 days after receipt of the final accounting and must be sent to the United States pursuant to Section XX (Notices and Submissions). Any such objection shall specifically identify the alleged final mathematical error and the basis for objection. EPA will review the alleged mathematical error and either affirm the initial accounting or issue a corrected final accounting within 30 days. If a corrected final accounting is issued, EPA will take such action as may be necessary to correct the final disposition of unused amounts paid in accordance with ¶ 35.c (Unused Amount). If SD disagree with EPA's decision, SD may, within 7 days after receipt of the decision, appeal the decision to the Director of the Waste Management Division, EPA Region 4. The Director of the Waste Management Division will issue a final administrative decision resolving the dispute, which shall be binding upon SD and shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum.

39. **Interest.** In the event that any payment for Past Response Costs or for Future Response Costs required under this Section is not made by the date required, SD shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of SD's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of SD's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XIV (Stipulated Penalties).

XI. INDEMNIFICATION AND INSURANCE

40. SD's Indemnification of the United States

a. The United States does not assume any liability by entering into this CD or by virtue of any designation of SD as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). SD shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of SD, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on SD's behalf or under their control, in carrying out activities pursuant to this CD, including, but not limited to, any claims arising from any designation of SD as EPA's authorized representatives under Section 104(e) of CERCLA. Further, SD agrees to pay the United States all costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of SD, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this CD. The United States shall not be held out as a party to any contract entered into by or on behalf of SD in carrying out activities

pursuant to this CD. Neither SD nor any such contractor shall be considered an agent of the United States.

b. The United States shall give SD notice of any claim for which the United States plans to seek indemnification pursuant to this ¶ 40, and shall consult with SD prior to settling such claim.

41. SD covenants not to sue and 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 SD and any person for performance of Work on or relating to the UWDAs, including, but not limited to, claims on account of construction delays. In addition, SD shall indemnify, save 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 SD and any person for performance of Work on or relating to the UWDAs, including, but not limited to, claims on account of construction delays.

42. **Insurance.** No later than 15 days before commencing any on-site Work, SD shall secure, and shall maintain until the first anniversary after the RA has been performed in accordance with this CD and the Performance Standards have been achieved, commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$3 million in excess of the required commercial general liability and automobile liability limits, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of SD pursuant to this CD. In addition, for the duration of this CD, SD shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of SD in furtherance of this CD. Prior to commencement of the Work, SD shall provide to EPA certificates of such insurance and a copy of each insurance policy. SD shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If SD demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, SD need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. SD shall ensure that all submittals to EPA under this Paragraph identify the Anniston PCB Site, Anniston, Alabama and the civil action number of this case.

XII. FORCE MAJEURE

43. "Force majeure," for purposes of this CD, is defined as any event arising from causes beyond the control of SD, of any entity controlled by SD, or of SD's contractors that delays or prevents the performance of any obligation under this CD despite SD's best efforts to fulfill the obligation. The requirement that SD exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential

force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

44. If any event occurs or has occurred that may delay the performance of any obligation under this CD for which SD intends or may intend to assert a claim of force majeure, SD shall notify EPA's Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region 4, within three business days of when SD first knew that the event might cause a delay. Within 10 days thereafter, SD shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; SD's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of SD, such event may cause or contribute to an endangerment to public health or welfare, or the environment. SD shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. SD shall be deemed to know of any circumstance of which SD, any entity controlled by SD, or SD's contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude SD 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 ¶ 43 and whether SD has exercised their best efforts under ¶ 43, EPA may, in its unreviewable discretion, excuse in writing SD's failure to submit timely or complete notices under this Paragraph.

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

46. If SD elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution) regarding EPA's decision, they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, SD 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 SD complied with the requirements of ¶¶ 43 and 44. If SD carries this burden, the delay at issue shall be deemed not to be a violation by SD of the affected obligation of this CD identified to EPA and the Court and schedules for the affected obligations shall be modified in accordance with Paragraph 13.b (Modification of the SOW and Related Deliverables).

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

XIII. DISPUTE RESOLUTION

48. Unless otherwise expressly provided for in this CD, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this CD. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of SD that have not been disputed in accordance with this Section.

49. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Any dispute regarding this CD shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

50. Statements of Position

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 28 days after the conclusion of the informal negotiation period, SD invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by SD. The Statement of Position shall specify SD's position as to whether formal dispute resolution should proceed under ¶ 51 (Record Review) or 52.

b. Within 28 days after receipt of SD's Statement of Position, EPA will serve on SD its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under ¶ 51 (Record Review) or 52. Within 20 days after receipt of EPA's Statement of Position, SD may submit a Reply.

c. If there is disagreement between EPA and SD as to whether dispute resolution should proceed under ¶ 51 (Record Review) or 52, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if SD ultimately appeals to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in ¶¶ 51 and 52.

51. **Record Review.** Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of

plans, procedures to implement plans, or any other items requiring approval by EPA under this CD, and the adequacy of the performance of response actions taken pursuant to this CD. Nothing in this CD shall be construed to allow any dispute by SD regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Waste Management Division, EPA Region 4, will issue a final administrative decision resolving the dispute based on the administrative record described in ¶ 51.a. This decision shall be binding upon SD, subject only to the right to seek judicial review pursuant to ¶¶ 51.c and 51.d.

c. Any administrative decision made by EPA pursuant to ¶ 51.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by SD with the Court and served on all Parties within 10 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this CD. The United States may file a response to SD's motion.

d. In proceedings on any dispute governed by this Paragraph, SD shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to ¶ 51.a.

52. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. The Director of the Waste Management Division, EPA Region 4, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under ¶ 50. The Waste Management Division Director's decision shall be binding on SD unless, within 20 days after receipt of the decision, SD files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the CD. The United States may file a response to SD's motion.

b. Notwithstanding ¶ M (CERCLA § 113(j) record review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

53. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of SD under this CD, except as

provided in ¶ 37 (Contesting Future Response Costs), as agreed by EPA, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in ¶ 61. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CD. In the event that SD does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

XIV. STIPULATED PENALTIES

54. SD shall be liable to the United States for stipulated penalties in the amounts set forth in ¶¶ 55.a and 56 for failure to comply with the obligations specified in ¶¶ 55.b and 56, unless excused under Section XII (Force Majeure). "Comply" as used in the previous sentence includes compliance by SD with all applicable requirements of this CD, within the deadlines established under this CD. If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under ¶ 6.6(a) (Initial Submissions) or 6.6(b) (Resubmissions) of the SOW due to such material defect, then the material defect shall constitute a lack of compliance for purposes of this Paragraph.

55. Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in ¶ 55.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$1,000
15th through 30th day	\$2,000
31st day and beyond	\$5,000

b. Obligations

- (1) Payment of any amount due under Section X (Payments for Response Costs).
- (2) Establishment and maintenance of financial assurance in accordance with Section IX (Financial Assurance).
- (3) Establishment of an escrow account to hold any disputed Future Response Costs under ¶ 37 (Contesting Future Response Costs).
- (4) Completion of any Deliverables listed in Section 6 of the SOW.

56. **Stipulated Penalty Amounts – Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to the CD other than those specified in Paragraph 55.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$1,000

15th through 30th day	\$2,000
31st day and beyond	\$5,000

57. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 71 (Work Takeover), SD shall be liable for a stipulated penalty in the amount of \$100,000. Stipulated penalties under this Paragraph are in addition to the remedies available under ¶¶ 31 (Access to Financial Assurance) and 71 (Work Takeover).

58. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ [6.6] (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies SD of any deficiency; (b) with respect to a decision by the Director of the Waste Management Division, EPA Region 4, under ¶ 51.b or 52.a of Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that SD's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this CD shall prevent the simultaneous accrual of separate penalties for separate violations of this CD.

59. Following EPA's determination that SD has failed to comply with a requirement of this CD, EPA may give SD written notification of the same and describe the noncompliance. EPA may send SD a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified SD of a violation.

60. All penalties accruing under this Section shall be due and payable to the United States within 30 days after SD's receipt from EPA of a demand for payment of the penalties, unless SD invokes the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 36.b (instructions for future response cost payments).

61. Penalties shall continue to accrue as provided in ¶ 58 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 15 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, SD shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in ¶ 61.c;

c. If the District Court's decision is appealed by any Party, SD shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to SD to the extent that they prevail.

62. If SD fails to pay stipulated penalties when due, SD shall pay Interest on the unpaid stipulated penalties as follows: (a) if SD has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 61 until the date of payment; and (b) if SD fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 60 until the date of payment. If SD fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

64. Nothing in this CD shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of SD's violation of this CD or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this CD, except in the case of a willful violation of this CD.

65. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CD.

XV. COVENANTS BY PLAINTIFF

66. Covenants for SD by United States

Except as provided in ¶ 70 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against SD pursuant to Sections 106 and 107(a) of CERCLA for the Work, Past Response Costs, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by SD of its obligations under this CD. These covenants extend only to SD and do not extend to any other person.

67. **United States' Pre-Certification Reservations.** Notwithstanding any other provision of this CD, the United States reserves, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel SD to perform further response actions relating to the UWDAs and/or to pay

the United States for additional costs of response if, (a) prior to Certification of RA Completion, (1) conditions at the UWDAs, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the RA is not protective of human health or the environment.

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

69. For purposes of ¶ 67 (United States' Pre-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the ROD for the UWDAs and the administrative record supporting the ROD. For purposes of ¶ 68 (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of RA Completion and set forth in the ROD, the administrative record supporting the ROD, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this CD prior to Certification of RA Completion.

70. **General Reservations of Rights.** The United States reserves, and this CD is without prejudice to, all rights against SD, with respect to all matters not expressly included within Plaintiff's covenants. Notwithstanding any other provision of this CD, the United States reserves all rights against SD, with respect to:

- a. liability for failure by SD to meet a requirement of this CD;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the UWDAs for OU1/OU2;
- c. liability based on the ownership or operation of the UWDAs for OU1/OU2 by SD when such ownership or operation commences after signature of this CD by SD;
- d. liability based on the operation of the UWDAs for OU1/OU2 by SD when such operation commences after signature of this CD by SD;
- e. liability based on SD's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the UWDAs for OU1/OU2, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this CD by SD;

- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. criminal liability;
- h. liability for violations of federal or state law that occur during or after implementation of the Work; and
- i. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to ¶ 13 (Modification of SOW or Related Deliverables);
- j. liability for additional operable units at the UWDAs or the final response action; and
- k. liability for costs that the United States will incur regarding the UWDAs for OUI/OU2 but that are not within the definition of Future Response Costs.

71. Work Takeover

a. In the event EPA determines that SD: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to SD. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide SD a period of 15 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 15-day notice period specified in ¶ 71.a, SD has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify SD in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 71.b. Funding of Work Takeover costs is addressed under ¶ 31 (Access to Financial Assurance).

c. SD may invoke the procedures set forth in ¶ 51 (Record Review), to dispute EPA's implementation of a Work Takeover under ¶ 71.b. However, notwithstanding SD's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 71.b until the earlier of (1) the date that SD remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with ¶ 51 (Record Review) requiring EPA to terminate such Work Takeover.

72. Notwithstanding any other provision of this CD, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XVI. COVENANTS BY SD

73. **Covenants by SD.** Subject to the reservations in ¶ 75, SD covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Work, past response actions regarding the UWDAs, Past Response Costs, Future Response Costs, and this CD, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, past response actions regarding the UWDAs, Past Response Costs, Future Response Costs, and this CD; or

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

74. - Except as provided in ¶¶ 77 (Waiver of Claims by SD) and 84 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XV (Covenants by Plaintiff), other than in ¶¶ 70.a (claims for failure to meet a requirement of the CD), 70.g (criminal liability), and 70.h (violations of federal/state law during or after implementation of the Work), but only to the extent that SD's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

75. SD reserves, and this CD is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of SD's deliverables or activities.

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

77. **Waiver of Claims by SD**

a. SD agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have:

(1) **De Micromis Waiver.** For all matters relating to the UWDAs against any person where the person's liability to SD with respect to OU1/OU2 is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the UWDAs, or having accepted for transport for disposal or treatment of hazardous substances at the UWDAs, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

(2) **De Minimis Waiver.** For response costs relating to the UWDAs against any person that has entered or in the future enters into a final CERCLA § 122(g) *de minimis* settlement with EPA with respect to the UWDAs.

b. **Exceptions to Waiver**

(1) The waivers under this ¶ 77 shall not apply with respect to any defense, claim, or cause of action that SD may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the UWDAs against such SD.

(2) The waiver under ¶ 77.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the UWDAs by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the UWDAs; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the UWDAs; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

78. SD agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XVII. EFFECT OF SETTLEMENT; CONTRIBUTION

79. Except as provided in ¶ 77 (Waiver of Claims by SD), nothing in this CD shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this CD. Except as provided in Section XVI (Covenants by SD), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the UWDAs for OU1/OU2 against any person not a Party hereto, other than Solutia, Inc. and Pharmacia LLC pursuant to CERCLA, 42 U.S.C. § 9613(f)(1). Nothing in this CD diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

80. The Parties agree, and by entering this CD this Court finds, that this CD constitutes a judicially-approved settlement pursuant to which SD has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this CD. The "matters addressed" in this CD are the Work, Past Response Costs and Future Response Costs.

81. The Parties further agree, and by entering this CD this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this CD constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

82. SD shall, with respect to any suit or claim brought by it for matters related to this CD, notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

83. SD shall, with respect to any suit or claim brought against it for matters related to this CD, notify in writing the United States within 10 days after service of the complaint on such SD. In addition, SD shall notify the United States within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

84. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to OU1/OU2, SD 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 brought in the instant

case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XV (Covenants by Plaintiff).

XVIII. ACCESS TO INFORMATION

85. SD shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within SD's possession or control or that of their contractors or agents relating to activities at OU1/OU2 or to the implementation of this CD, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. SD shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

86. Privileged and Protected Claims

a. SD may assert that all or part of a Record requested by Plaintiff is privileged or protected as provided under federal law, in lieu of providing the Record, provided SD complies with ¶ 86.b, and except as provided in ¶ 86.c.

b. If SD asserts a claim of privilege or protection, it shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, SD shall provide the Record to Plaintiff in redacted form to mask the privileged or protected portion only. SD shall retain all Records that they claim to be privileged or protected until Plaintiff has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the SD's favor.

c. SD may make no claim of privilege or protection regarding: (1) any data regarding the UWDAs, 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 UWDAs; or (2) the portion of any Record that SD is required to create or generate pursuant to this CD.

87. **Business Confidential Claims.** SD may assert that all or part of a Record provided to Plaintiff under this Section or Section XIX (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). SD shall segregate and clearly identify all Records or parts thereof submitted under this CD for which SD asserts business confidentiality claims. Records that SD claims to be 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 SD that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to SD.

88. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this CD.

89. Notwithstanding any provision of this CD, Plaintiff retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIX. RETENTION OF RECORDS

90. Until 7 years after EPA's Certification of Work Completion under ¶ [4.8] (Certification of Work Completion) of the SOW, SD shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the UWDAs, provided, however, that SD who is potentially liable as owner or operator of the UWDAs must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the UWDAs. SD must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that SD (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.

91. At the conclusion of this record retention period, SD shall notify the United States at least 90 days prior to the destruction of any such Records, and, upon request by the United States or the State, and except as provided in ¶ 86 (Privileged and Protected Claims), SD shall deliver any such Records to EPA or the State.

92. SD certifies individually 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 UWDAs since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the UWDAs pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XX. NOTICES AND SUBMISSIONS

93. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this CD must be in writing unless otherwise specified. Whenever, under this CD, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the persons specified below at the addresses specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to

EPA, and not to the United States, should not be sent to the DOJ. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the CD regarding such Party.

As to the United States:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
eescdcopy.enrd@usdoj.gov
Re: DJ # 90-11-2-07135/1

As to EPA:

Franklin E. Hill
Director, Superfund Division
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30062
hill.franklin@epa.gov

and:

Pamela J. Langston Scully
EPA Project Coordinator
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30062
scully.pam@epa.gov
404-562-8935

**As to the Regional Financial
Management Officer:**

Paula V. Painter
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, GA 30062
painter.paula@epa.gov

**At to EPA Cincinnati Finance
Center:**

EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

As to SD:

Joel Balmat
HSW Engineering, Inc.
605 E. Robinson St., Suite 308
Orlando, FL 32801
jbalmat@hsweng.com
407-872-6893

Scott I. Steady
Burr Forman,
201 North Franklin Street, Suite 3200,
Tampa, FL 33602
ssteady@burr.com
813-221-2626

XXI. RETENTION OF JURISDICTION

94. This Court retains jurisdiction over both the subject matter of this CD and SD for the duration of the performance of the terms and provisions of this CD for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this CD, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIII (Dispute Resolution).

XXII. APPENDICES

95. The following appendices are attached to and incorporated into this CD:

"Appendix A" is the SOW.

"Appendix B" contains maps of the UWDAs.

XXIII. MODIFICATION

96. Except as provided in ¶ 13 (Modification of SOW or Related Deliverables), material modifications to this CD, including the SOW, shall be in writing, signed by the United States and SD, and shall be effective upon approval by the Court. Except as provided in ¶ 13, non-material modifications to this CD, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and SD. A modification to the SOW shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

97. Nothing in this CD shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this CD.

XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

98. This CD shall be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the CD disclose facts or considerations that indicate that the CD is inappropriate, improper, or inadequate. SD consents to the entry of this CD without further notice.

99. If for any reason the Court should decline to approve this CD in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXV. SIGNATORIES/SERVICE

100. Each undersigned representative of SD to this CD and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this CD and to execute and legally bind such Party to this document.

101. SD agrees not to oppose entry of this CD by this Court or to challenge any provision of this CD unless the United States has notified SD in writing that it no longer supports entry of the CD.

102. SD shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this CD. SD agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. SD need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this CD.

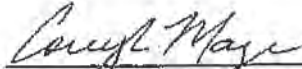
XXVI. FINAL JUDGMENT

103. This CD and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the CD. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this CD.

Upon entry of this CD by the Court, this CD shall constitute a final judgment between and among the United States and SD. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 18th DAY OF December, 2019.

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 41 of 79



Honorable Corey L. Maze
United States District Judge

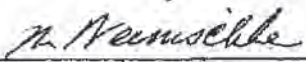
Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 42 of 79

Signature Page for RD/RA CD regarding the Anniston PCB Superfund Site

FOR THE UNITED STATES OF AMERICA:

Jay E. Town
United States Attorney
Northern District of Alabama
1801 Fourth Avenue
Birmingham, Alabama 35203

Date: 12/17/2018



William A. Weinischke
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 43 of 79

Signature Page for RD/RA CD regarding the Anniston PCB Superfund Site



Franklin E. Hill
Director, Superfund Division, Region 4
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, GA 30062



Rudolph C. Tanasijevich
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30062

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 45 of 79

Signature Page for RD/RA CD regarding the Anniston PCB Superfund Site

FOR MRC HOLDINGS, INC.

By: MRC Holdings, Inc.



5/7/2019
Dated

Richard J. Carroll
Name (print):

Title: President, Secretary, Treasurer

Address: 1000 North West Street
5th Floor
Wilmington, DE 19801

Agent Authorized to Accept Service Name (print): Scott L. Steady, Esq.

on Behalf of Above-signed Party: Title: Partner

Company: Burr & Forman LLP

Address: 201 N. Franklin Street, Suite 3200
Tampa, FL 33602

Phone: 813-367-5719

email: ssteady@burri.com

Recorded In MISC BK A10 PG 704, 11/12/2020 02:49:52 PM
Alice K. Martin, Judge of Probate, Calhoun County, Alabama

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 47 of 79

Appendix A

Appendix B

**REMEDIAL DESIGN/REMEDIAL ACTION
STATEMENT OF WORK**

**FOR OPERABLE UNITS 1 AND 2
UNAPPROVED WASTE DISPOSAL AREAS
ANNISTON PCB SUPERFUND SITE**

MAY 2019

Anniston, Calhoun County, Alabama

EPA Region 4

TABLE OF CONTENTS

1.	INTRODUCTION	1
2.	COMMUNITY INVOLVEMENT	2
3.	REMEDIAL DESIGN	3
4.	REMEDIAL ACTION.....	5
5.	REPORTING	9
6.	DELIVERABLES.....	10
7.	SCHEDULES	16
8.	STATE PARTICIPATION.....	17
9.	REFERENCES	18

1. INTRODUCTION

- 1.1 Purpose of the SOW.** This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work.
- 1.2 Structure of the SOW**
- Section 2 (Community Involvement) sets forth EPA's and Settling Defendant's (SD's) responsibilities for community involvement.
 - Section 3 (Remedial Design) sets forth the process for developing the RD, which includes the submission of specified primary deliverables.
 - Section 4 (Remedial Action) sets forth requirements regarding the completion of the RA, including primary deliverables related to completion of the RA.
 - Section 5 (Reporting) sets forth SD's reporting obligations.
 - Section 6 (Deliverables) describes the content of the supporting deliverables and the general requirements regarding SD's submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
 - Section 7 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the RA.
 - Section 8 (State Participation) addresses State participation.
 - Section 9 (References) provides a list of references, including URLs.
- 1.3** The Scope of the Remedy includes the actions described in Section 12.2 of the ROD. This Scope of Work (SOW) includes actions for the Unapproved Waste Disposal Areas (UWDAs) at the Ashley-LeGrande and Wilborn properties in Anniston, Alabama.
- The components of the selected remedy are as follows:
- Clear and prepare the surface for cover.
 - Consolidate waste into a smaller footprint or dispose of a portion of the waste offsite as determined appropriate during remedial design.
 - Install a RCRA Subtitle D multi-layer cap consisting of at a minimum:
 - 40-mil geomembrane liner,
 - geocomposite drainage layer, and
 - 18-inch-thick protective soil cover.

- Vegetate surface or provide other erosion protection for cap.
 - Execute environmental covenants to restrict future use of these areas and to protect the cap.
 - Conduct O&M and monitoring of the cap.
- 1.4 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Consent Decree (CD), have the meanings assigned to them in CERCLA, in such regulations, or in the CD, except that the term "Paragraph" or "¶" means a paragraph of the CD, and the term "Section" means a section of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

2.1 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. Previously, during the RI/FS phase, EPA developed a Community Involvement Plan (CIP) for the Site. Pursuant to 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP.
- (b) If requested by EPA, SD shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the UWDA at the Site. SD's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any Community Advisory Groups, (2) any Technical Assistance Plan recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP SD's responsibilities for community involvement activities. All community involvement activities conducted by SD at EPA's request are subject to EPA's oversight.
- (c) **SD's CI Coordinator.** If requested by EPA, SD shall, designate and notify EPA of SD's Community Involvement Coordinator (SD's CI Coordinator). SD's CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the UWDA at the Site.

2.2 SD's Responsibilities for Technical Assistance

- (a) If requested by EPA, SD shall provide funding for a qualified community group to receive the services of a technical advisor(s) who can: (i) help group members understand UWDA Site cleanup issues (specifically, to interpret and comment on UWDA Site-related documents developed under this SOW); and (ii) share this

information with others in the community. The technical advisor(s) will be independent from SD. SD's TAP assistance will be limited to \$30,000 during the RD/RA, and will end when EPA issues the Certification of Work Completion under Section 4.8. SD shall implement this requirement under the existing Technical Assistance Plan (TAP) for the Anniston PCB Site. Incremental funding will be based on a reasonable budget request based on the work anticipated.

3. REMEDIAL DESIGN

- 3.1 RD Work Plan.** SD shall submit a Remedial Design (RD) Work Plan (RDWP) for EPA approval. The RDWP must include:
- (a) Plans for implementing all RD activities identified in this SOW, in the RDWP, or required by EPA to be conducted to develop the RD;
 - (b) A description of the overall management strategy for performing the RD, including a proposal for phasing of design and construction, if applicable;
 - (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the Remedial Action (RA) as necessary to implement the Work;
 - (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;
 - (e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);
 - (f) Description of any proposed pre-design investigation;
 - (g) Descriptions of any applicable permitting requirements and other regulatory requirements;
 - (h) Description of plans for obtaining access in connection with the Work, such as property acquisition, property leases, and/or easements; and
 - (i) The following supporting deliverables described in Section 6.7 (Supporting Deliverables): Health and Safety Plan; and Emergency Response Plan.
- 3.2** SD shall meet regularly with EPA to discuss design issues as necessary, as directed or determined by EPA.
- 3.3 Pre-Design Investigation.** The purpose of the Pre-Design Investigation (PDI) is to address data gaps by conducting additional field investigations.
- (a) **PDI Work Plan.** SD shall submit a PDI Work Plan (PDIWP) for EPA approval. The PDIWP must include:

- (1) An evaluation and summary of existing data and description of data gaps;
 - (2) A sampling plan including media to be sampled, contaminants or parameters for which sampling will be conducted, location (areal extent and depths), and number of samples; and
 - (3) Cross references to quality assurance/quality control (QA/QC) requirements set forth in the Quality Assurance Project Plan (QAPP) as described in Section 6.7(d).
- (b) Following the PDI, SD shall submit a PDI Evaluation Report. This report must include:
- (1) Summary of the investigations performed;
 - (2) Summary of investigation results;
 - (3) Summary of validated data (i.e., tables and graphics);
 - (4) Data validation reports and laboratory data reports;
 - (5) Narrative interpretation of data and results;
 - (6) Results of statistical and modeling analyses;
 - (7) Photographs documenting the work conducted; and
 - (8) Conclusions and recommendations for RD, including design parameters and criteria.
- (c) EPA may require SD to supplement the PDI Evaluation Report and/or to perform additional pre-design studies.
- 3.4 Intermediate (50%) RD.** SD shall submit an Intermediate (50%) RD for EPA's comment. The Intermediate RD must include:
- (a) Preliminary drawings and specifications;
 - (b) Descriptions of permit requirements, if applicable;
 - (c) Preliminary Operation and Maintenance (O&M) Plan and O&M Manual;
 - (d) A description of how the RA will be implemented in a manner that minimizes environmental impacts in accordance with EPA's *Principles for Greener Cleanups* (Aug. 2009);
 - (e) A description of monitoring and control measures to protect human health and the environment, such as air monitoring and dust suppression, during the RA;

- (f) Any proposed revisions to the RA Schedule that is set forth in Section 7.3 (RA Schedule); and
 - (g) Updates of all supporting deliverables required to accompany the RDWP and the following additional supporting deliverables described in Section 6.7 (Supporting Deliverables): Field Sampling Plan; Quality Assurance Project Plan; Site Wide Monitoring Plan; Construction Quality Assurance/Quality Control Plan; Transportation and Off-Site Disposal Plan; and Institutional Controls Implementation and Assurance Plan.
- 3.5 Pre-Final (95%) RD.** SD shall submit the Pre-final (95%) RD for EPA's comment. The Pre-final RD must be a continuation and expansion of the previous design submittal and must address EPA's comments regarding the Intermediate RD. The Pre-final RD will serve as the approved Final (100%) RD if EPA approves the Pre-final RD without comments. The Pre-final RD must include:
- (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's Master Format 2012;
 - (b) A survey and engineering drawings showing existing Site features, such as elements, property borders, easements, and Site conditions;
 - (c) Pre-Final versions of the same elements and deliverables as are required for the Intermediate RD;
 - (d) A specification for photographic documentation of the RA; and
 - (e) Updates of all supporting deliverables required to accompany the Intermediate (50%) RD.
- 3.6 Final (100%) RD.** If the EPA approves the Pre-Final 95% RD with no comments, it will be the Final (100%) RD. Otherwise, SD shall submit the Final (100%) RD for EPA approval. The Final RD must address EPA's comments on the Pre-final RD and must include final versions of all Pre-final RD deliverables.

4. REMEDIAL ACTION

- 4.1 RA Work Plan.** SD shall submit a RA Work Plan (RAWP) for EPA approval that includes:
- (a) A proposed RA Construction Schedule;
 - (b) An updated health and safety plan that covers activities during the RA; and
 - (c) Plans for satisfying permitting requirements, including obtaining permits for off-Site activity and for satisfying substantive requirements of permits for on-Site activity.

4.2 **Independent Quality Assurance Team.** SD shall notify EPA of SD's designated Independent Quality Assurance Team (IQAT). The IQAT will be independent of the Supervising Contractor. SD may hire a third party for this purpose. SD's notice must include the names, titles, contact information, and qualifications of the members of the IQAT. The IQAT will have the responsibility to determine whether Work is of expected quality and conforms to applicable plans and specifications. The IQAT will have the responsibilities as described in Section 2.1.3 of the *Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties*, EPA/540/G-90/001 (Apr. 1990).

4.3 **Meetings and Inspections**

- (a) **Preconstruction Conference.** SD shall hold a preconstruction conference with EPA and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). SD shall prepare minutes of the conference and shall distribute the minutes to all Parties.
- (b) **Periodic Meetings.** During the construction portion of the RA (RA Construction), SD shall meet monthly with EPA, and others as directed or determined by EPA, to discuss construction issues. SD shall distribute an agenda to all Parties prior to each meeting. SD shall prepare minutes of the meetings and shall distribute the minutes to all Parties.
- (c) **Inspections**
 - (1) EPA or its representative shall conduct periodic inspections of (or have an on-Site presence during) the Work. At EPA's request, the Supervising Contractor or other designee shall accompany EPA or its representative during inspections.
 - (2) SD shall provide office space for EPA personnel to perform their oversight duties including access to office equipment available to SD's on-Site Contractor.
 - (3) Upon notification by EPA of any deficiencies in the RA Construction, SD shall take all necessary steps to correct the deficiencies and/or bring the RA Construction into compliance with the approved Final RD, any approved design changes, and/or the approved RAWP. If applicable, SD shall comply with any schedule provided by EPA in its notice of deficiency.

4.4 **Emergency Response and Reporting**

- (a) **Emergency Response and Reporting.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, SD shall: (1) immediately take all appropriate action to prevent, abate, or minimize

such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in Section 4.4(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.

- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that SD are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, SD shall immediately notify the authorized EPA officer orally.
- (c) The "authorized EPA officer" for purposes of immediate oral notifications and consultations under Section 4.4(a) and Section 4.4(b) is the EPA Project Coordinator, the EPA Alternate Project Coordinator (if the EPA Project Coordinator is unavailable), or the EPA [Emergency Response Unit], Region 4 (if neither EPA Project Coordinator is available).
- (d) For any event covered by Section 4.4(a) and Section 4.4(b), SD shall: (1) within 14 days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under Section 4.4 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

4.5 Off-Site Shipments

- (a) SD may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. SD will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if SD obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
- (b) SD may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. SD also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a

decision to ship the Waste Material to a different out-of-state facility. SD shall provide the notice after the award of the contract for RA construction and before the Waste Material is shipped.

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

4.6 Certification of RA Completion

- (a) **RA Completion Inspection.** The RA is "Complete" for purposes of this Section 4.6 when it has been fully performed and the Performance Standards have been achieved. SD shall schedule an inspection for the purpose of obtaining EPA's Certification of RA Completion. The inspection must be attended by SD and EPA and/or their representatives.
- (b) **RA Report/Monitoring Report.** Following the inspection, SD shall submit a RA Report/Monitoring Report to EPA requesting EPA's Certification of RA Completion. The report must: (1) include certifications by a registered professional engineer and by SD's Project Coordinator that the RA is complete; (2) include as-built drawings signed and stamped by a registered professional engineer; (3) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); (4) contain monitoring data to demonstrate that Performance Standards have been achieved; and (5) be certified in accordance with Section 6.5 (Certification).
- (c) If EPA concludes that the RA is not Complete, EPA shall so notify SD. EPA's notice must include a description of any deficiencies. EPA's notice may include a schedule for addressing such deficiencies or may require SD to submit a schedule for EPA approval. SD shall perform all activities described in the notice in accordance with the schedule.
- (d) If EPA concludes, based on the initial or any subsequent RA Report/Monitoring Report requesting Certification of RA Completion, that the RA is Complete, EPA shall so certify to SD. This certification will constitute the Certification of RA Completion for purposes of the CD, including Section XV of the CD (Covenants by Plaintiff[s]). Certification of RA Completion will not affect SD's remaining obligations under the CD.

4.7 **Periodic Review Support Plan (PRSP).** SD shall submit the PRSP for EPA approval. The PRSP addresses the studies and investigations that SD shall conduct to support EPA's reviews of whether the RA is protective of human health and the environment in accordance with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c) (also known as "Five-year Reviews"). SD shall develop the plan in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidance.

4.8 **Certification of Work Completion**

- (a) **Work Completion Inspection.** SD shall schedule an inspection for the purpose of obtaining EPA's Certification of Work Completion. The inspection must be attended by SD and EPA and/or their representatives.
- (b) **Work Completion Report.** Following the inspection, SD shall submit a report to EPA requesting EPA's Certification of Work Completion. The report must:
 - (1) include certifications by a registered professional engineer and by SD's Project Coordinator that the Work, including all O&M activities, is complete; and
 - (2) be certified in accordance with Section 6.5 (Certification). If the RA Report/Monitoring Report submitted under Section 4.6(b) includes all elements required under this Section 4.8(b), then the RA Report/Monitoring Report suffices to satisfy all requirements under this Section 4.8(b).
- (c) If EPA concludes that the Work is not complete, EPA shall so notify SD. EPA's notice must include a description of the activities that SD must perform to complete the Work. EPA's notice must include specifications and a schedule for such activities or must require SD to submit specifications and a schedule for EPA approval. SD shall perform all activities described in the notice or in the EPA-approved specifications and schedule.
- (d) If EPA concludes, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, EPA shall so certify in writing to SD. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) activities under the Periodic Review Support Plan; (2) obligations under Sections VIII (Property Requirements), XIX (Retention of Records), and XVIII (Access to Information) of the CD; (3) Institutional Controls obligations as provided in the ICIAP; (4) reimbursement of EPA's Future Response Costs under Section X (Payments for Response Costs) of the CD.

5. **REPORTING**

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

- (a) The actions that have been taken toward achieving compliance with the CD;

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 62 of 79

- (b) A summary of all results of sampling, tests, and all other data received or generated by SD;
- (c) A description of all deliverables that SD submitted to EPA;
- (d) A description of all activities relating to RA Construction that are scheduled for the next month;
- (e) An updated RA Construction Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) A description of any modifications to the work plans or other schedules that SD have proposed or that have been approved by EPA; and
- (g) A description of all activities undertaken in support of the Community Involvement Plan (CIP) during the reporting period and those to be undertaken in the next month.

5.2 Notice of Progress Report Schedule Changes. If the schedule for any activity described in the Progress Reports, including activities required to be described under Section 5.1(d), changes, SD shall notify EPA of such change at least 7 days before performance of the activity.

6. DELIVERABLES

6.1 Applicability. SD shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 6.2 (In Writing) through 6.4 (Technical Specifications) apply to all deliverables. Paragraph 6.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 6.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.

6.2 In Writing. As provided in ¶ 93 of the CD, all deliverables under this SOW must be in writing unless otherwise specified.

6.3 General Requirements for Deliverables. All deliverables must be submitted by the deadlines in the RD Schedule or RA Schedule, as applicable. SD shall submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Section 6.4. All other deliverables shall be submitted to EPA in the electronic form specified by the EPA Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", SD shall also provide EPA with paper copies of such exhibits.

6.4 Technical Specifications

- (a) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. All required information, instructions and guidance are available via the EPA web site www.epa.gov/region4/waste/sf/edd/edd.html free of charge. This web site contains links to obtain the required software, as well as the most recent versions of the Environmental Data Submission Guidance, the Region 4 EDD Reference Guide, and the Region 4 EDP Reference Manual. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- (b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
- (c) Each file must include an attribute name for each Site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (d) Spatial data submitted by SD does not, and is not intended to, define the boundaries of the Site.

6.5 Certification. All deliverables that require compliance with this Section 6.5 must be signed by SD's Project Coordinator, or other responsible official of SD, 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.

6.6 Approval of Deliverables

- (a) Initial Submissions

- (1) After review of any deliverable that is required to be submitted for EPA approval under the CD or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
 - (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.
- (b) **Resubmissions.** Upon receipt of a notice of disapproval under Section 6.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under Section 6.6(a), SD shall, within 60 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 SD to correct the deficiencies; or (5) any combination of the foregoing.
- (c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under Section 6.6(a) (Initial Submissions) or Section 6.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the CD; and (2) SD shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under Section 6.6(a) or Section 6.6(b) does not relieve SD of any liability for stipulated penalties under Section XIV (Stipulated Penalties) of the CD.
- 6.7 Supporting Deliverables.** SD shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. SD shall develop the deliverables in accordance with all applicable regulations, guidance, and policies (see Section 9 [References]). SD shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.
- (a) **Health and Safety Plan.** The Health and Safety Plan (HASP) describes all activities to be performed to protect on-Site personnel and area residents from physical, chemical, and all other hazards posed by the Work. SD 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 RD activities and should be, as appropriate, updated to cover activities during the RA and updated to cover activities after RA completion. EPA does not approve the HASP, but will review

it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.

- (b) **Emergency Response Plan.** The Emergency Response Plan (ERP) must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:
- (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for, spills and discharges;
 - (4) Notification activities in accordance with Section 4.4(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004; and
 - (5) A description of all necessary actions to ensure compliance with Paragraph 11 (Emergencies and Releases) of the CD in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (c) **Field Sampling Plan.** The Field Sampling Plan (FSP) addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. SD shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).
- (d) **Quality Assurance Project Plan.** The Quality Assurance Project Plan (QAPP) augments the FSP and addresses sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of SD's quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. SD 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). The QAPP also must include procedures:

- (1) To ensure that EPA and the State and their authorized representatives have reasonable access to laboratories used by SD in implementing the CD (SD's Labs);
 - (2) To ensure that SD's Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
 - (3) To ensure that SD's Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)) or other methods acceptable to EPA;
 - (4) To ensure that SD's Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;
 - (5) For SD to provide EPA and the State with notice at least 28 days prior to any sample collection activity;
 - (6) For SD to provide split samples and/or duplicate samples to EPA and the State upon request;
 - (7) For EPA and the State to take any additional samples that they deem necessary;
 - (8) For EPA and the State to provide to SD, upon request, split samples and/or duplicate samples in connection with EPA's and the State's oversight sampling; and
 - (9) For SD to submit to EPA and the State all sampling and tests results and other data in connection with the implementation of the CD.
- (e) **Construction Quality Assurance/Quality Control Plan (CQA/QCP).** The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQA/QCP must:

- (1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/QCP;
 - (2) Describe the PS required to be met to achieve Completion of the RA;
 - (3) Describe the activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;
 - (5) Describe industry standards and technical specifications used in implementing the CQA/QCP;
 - (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
 - (7) Describe procedures for documenting all CQA/QCP activities; and
 - (8) Describe procedures for retention of documents and for final storage of documents.
- (f) **Transportation and Off-Site Disposal Plan.** The Transportation and Off-Site Disposal Plan (TODP) describes plans to ensure compliance with Section 4.5 (Off-Site Shipments). The TODP must include:
- (1) Proposed routes for off-Site shipment of Waste Material;
 - (2) Identification of communities affected by shipment of Waste Material; and
 - (3) Description of plans to minimize impacts on affected communities.
- (g) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the RA. SD shall develop the O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:
- (1) Description of PS required to be met to implement the ROD;
 - (2) Description of activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (3) **O&M Reporting.** Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;

- (4) Description of corrective action in case of systems failure, including:
 - (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve PS; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and
 - (5) Description of corrective action to be implemented in the event that PS are not achieved; and a schedule for implementing these corrective actions.
- (h) **O&M Manual.** The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy. SD shall develop the O&M Manual in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017).
- (i) **Institutional Controls Implementation and Assurance Plan.** The Institutional Controls Implementation and Assurance Plan (ICIAP) describes plans to implement, maintain, and enforce the Institutional Controls (ICs) at the Site. SD shall develop the ICIAP in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). The ICIAP must include the following additional requirements:
- (1) Locations of recorded real property interests (e.g., easements, liens) and resource interests in the property that may affect ICs (e.g., surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and
 - (2) Legal descriptions and survey maps that are prepared according to current American Land Title Association (ALTA) Survey guidelines and certified by a licensed surveyor.

7. SCHEDULES

- 7.1 **Applicability and Revisions.** All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the RD and RA Schedules set forth below. SD may submit proposed revised RD Schedules or RA Schedules for EPA approval. Upon EPA's approval, the revised RD and/or RA Schedules supersede the RD and RA Schedules set forth below, and any previously-approved RD and/or RA Schedules.

7.2 RD Schedule

	Description of Deliverable, Task	Section Ref.	Deadline
1	RDWP	3.1	60 days following receipt of EPA Authorization to Proceed regarding Supervising Contractor under CD ¶ 9.c
2	PDIWP	3.3(a)	30 days following EPA approval of RDWP
3	PDI Evaluation Report	3.3(b)	60 days following receipt of validated PDI data
4	Intermediate (50%) RD	3.4	120 days following EPA approval of PDI Evaluation Report
5	Pre-final (95%) RD	3.5	120 days following receipt of EPA comments on Intermediate RD
6	Final (100%) RD	3.6	30 days following receipt of EPA comments on Pre-final RD

7.3 RA Schedule

	Description of Deliverable / Task	Section Ref.	Deadline
1	RAWP	4.1	60 days after EPA Notice of Authorization to Proceed with RA
2	Pre-Construction Conference	4.3(a)	30 days following EPA approval of RAWP
3	Start of Construction		30 days following pre-construction conference
4	Completion of Construction		TBD
5	RA Completion Inspection	4.6(a)	30 days following completion of construction
6	RA Report	4.6(b)	60 days following completion of RA Completion Inspection
7	Work Completion Inspection	4.8(a)	TBD
8	Work Completion Report	4.8(b)	60 days following Work Completion Inspection
9	Periodic Review Support Plan	4.7	Five-Year Reviews, triggered by start of first RA

8. STATE PARTICIPATION

- 8.1 Copies.** SD shall, at any time they send a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to SD, send a copy of such document to the State.
- 8.2 Review and Comment.** The State will have a reasonable opportunity for review and comment prior to:

- (a) Any EPA approval or disapproval under Section 6.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
- (b) Any approval or disapproval of the Construction Phase under Section 4.6 (RA Construction Completion), any disapproval of, or Certification of RA Completion under Section 4.6 (Certification of RA Completion), and any disapproval of, or Certification of Work Completion under Section 4.8 (Certification of Work Completion).

9. REFERENCES

- 9.1 The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in Section 9.2:
- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
 - (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
 - (c) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
 - (d) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr. 1990).
 - (e) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
 - (f) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
 - (g) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
 - (h) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).
 - (i) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).
 - (j) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
 - (k) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).

- (l) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (m) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, 540-R-01-007 (June 2001).
- (n) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).
- (o) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).
- (p) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).
- (q) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (r) Superfund Community Involvement Handbook, SEMS 100000070 (January 2016), <https://www.epa.gov/superfund/community-involvement-tools-and-resources>.
- (s) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (t) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (u) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (v) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).
- (w) USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2 (amended Apr. 2007).
- (x) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), <https://www.epa.gov/geospatial/geospatial-policies-and-standards> and <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (y) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (z) Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements, Interim (Sep. 2009).

- (aa) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).
- (bb) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (cc) Recommended Evaluation of Institutional Controls: Supplement to the "Comprehensive Five-Year Review Guidance," OSWER 9355.7-18 (Sep. 2011).
- (dd) Construction Specifications Institute's Master Format 2012, available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
- (ee) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach, OSWER 9200.2-125 (Sep. 2012)
- (ff) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).
- (gg) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).
- (hh) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), https://www.epaossc.org/_HealthSafetyManual/manual-index.htm.
- (ii) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (jj) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.

9.2 A more complete list may be found on the following EPA Web pages:

Laws, Policy, and Guidance: <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>

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

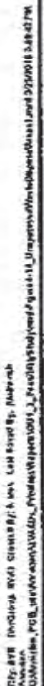
9.3 For any regulation or guidance referenced in the CD or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after SD receive notification from EPA of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

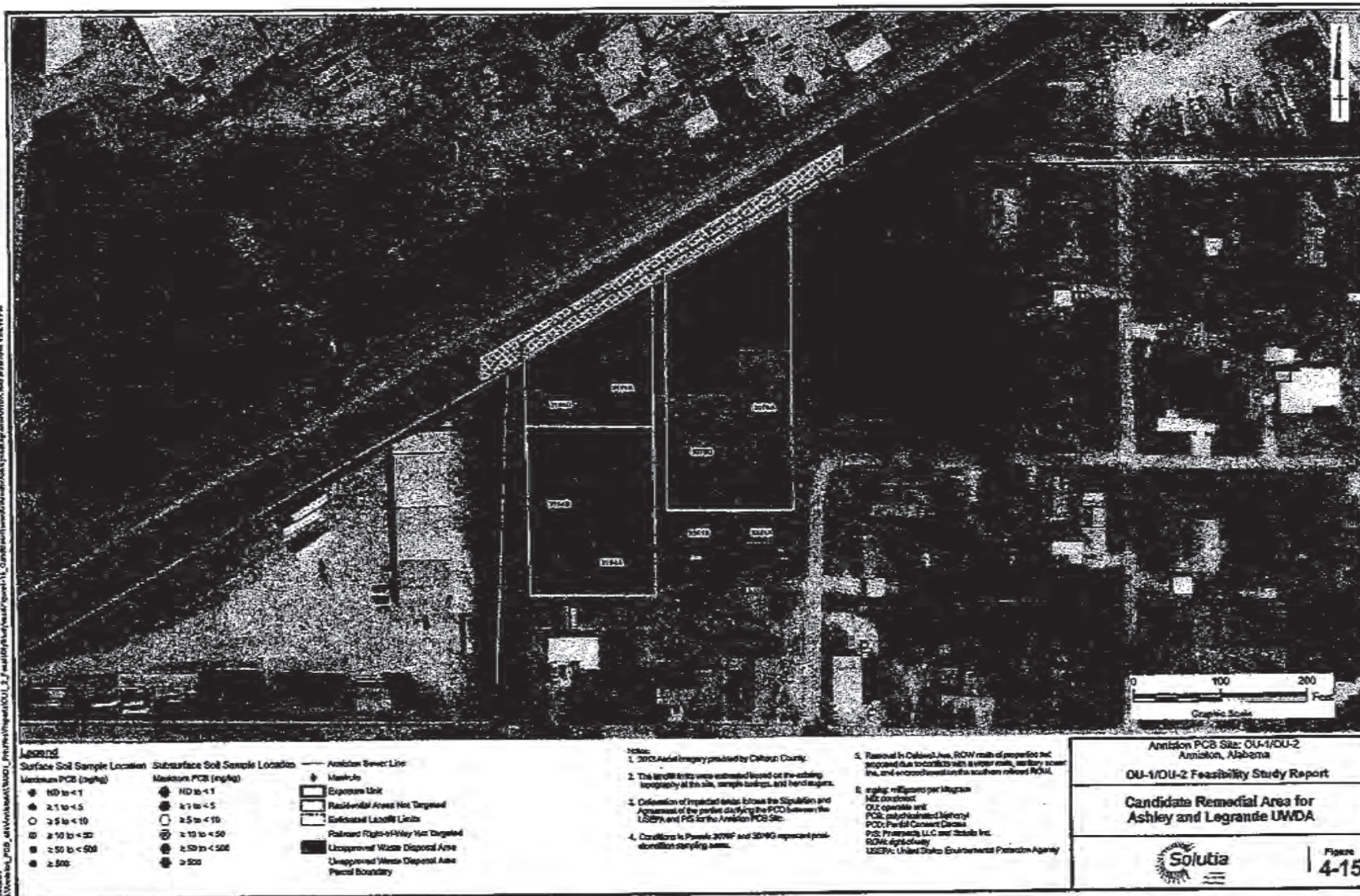
Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 73 of 79

Appendix C

Recorded In MISC BK A10 PG 732, 11/12/2020 02:49:52 PM

Alice K. Martin, Judge of Probate, Calhoun County, Alabama







Recorded Stacks Easement

DEED 3271 963
Recorded In Above Book and Page
11/04/2020 01:35:00 PM
Alice K. Martin
Judge of Probate
Calhoun County, Alabama

Deed Tax \$ 1.00
Mental Health Fee \$ 4.00
Recording Fee \$ 18.00
TOTAL \$ 23.00

***This Instrument Prepared By, And
After Recording Return To:***

Scott I. Steady, Esq.
Burr & Forman LLP
201 N Franklin Street, Suite 3200
Tampa, Florida 33602

Cross Reference:

Deed Book 1614, Page 297
Calhoun County Records

STATE OF ALABAMA)
CALHOUN COUNTY)

GRANT OF EASEMENT

THIS GRANT OF EASEMENT (this "Easement") is made this 16th day of October, 2019 by **TOM JUNIOR STACKS** ("Grantor"), whose address is 2406 Calhoun Street, Anniston, Alabama, to and for the benefit of **MRC HOLDINGS INC.** ("MRC"), whose address is 1000 North West Street, 5th Floor, Wilmington, Delaware 19801 ("Grantee").

Recitals

1. Grantor is the titleholder of the real property located in the City of Anniston, Alabama as described in the legal description attached hereto as Exhibit "A" (the "Easement Property"). Grantor is one and the same person as "Thomas Stacks, Jr." as set forth in the vesting deed to the Easement Property, and Grantor hereby warrants and confirms that he is the true and lawful owner of the Easement Property.
2. The Easement Property comprises a portion of the Anniston PCB Superfund Site. The Easement Property has a street address of 0 Ashley Street and 510 LeGrande Avenue and has been assigned by Calhoun County, PPIN# 32325, County Parcel # 22-01-12-3-001-036.000 and PPIN# 32324, County Parcel # 22-01-12-3-001-035.001, respectively.

3. Concurrently with the execution of this Easement, the Grantor and Grantee entered into an Access Authorization, Use Restriction and Agreement to Record an Environmental Covenant dated January 1, 2020 ("Authorization") to permit the implementation of the Remedial Action ("RA") as provided for in the Authorization.
4. This Grant of Easement shall further implement the purpose and intent of the Authorization.

WITNESSETH:

THAT Grantor, in consideration of the sum of ONE and no/100s Dollars (\$1.00) to it in hand paid by Grantee, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell, assign, convey, declare and establish to and for the benefit of Grantee, and Grantee's successors and assigns, a perpetual exclusive easement on, in, over, under, across and through the Easement Property for the purpose of the design, construction, repair, operation and maintenance and monitoring of a RCRA Subtitle D multi-layer cap, including, without limitation, drainage lines, pipes, ditches, drainage ponds, related equipment and improvements, and appurtenances thereto (herein collectively referred to as the "Facilities"), together with full rights of ingress, egress and access to the Easement Property for the foregoing purposes.

THIS GRANT OF EASEMENT is also made subject to the following terms, conditions, representations and warranties:

1. Grantor warrants and represents to Grantee that Grantor possesses marketable fee simple title to the Easement Property; and that this Easement does not violate, breach or create a default on the part of Grantor under any matter affecting title to the Easement Property.
2. Grantor represents and warrants to Grantee that this Easement has been duly authorized by Grantor; and that the person executing this Easement on behalf of the Grantor has the full right and authority to do so on behalf of the Grantor.
3. Grantor agrees that the terms and conditions of this Easement shall be deemed covenants and conditions running with title to the Easement Property and shall be binding upon Grantor and its successors and assigns. This Easement shall for all purposes be deemed a commercial easement, and the rights and benefits of Grantee hereunder shall be freely alienable by Grantee and shall vest fully in Grantee's successors and assigns.
4. Grantor covenants and agrees that it shall not at any time suffer, permit or commit any use or activity upon the Easement Property which would or could damage, disturb or interfere with the Facilities, or otherwise impede, hinder or prevent the Facilities from functioning for their intended purposes.

[No further text on this page. Signature page follows.]

IN WITNESS WHEREOF, the Grantor has caused this Easement to be properly executed and delivered as of the day and year first set forth above.

WITNESSES:

GRANTOR:

Name: Yvonne Renee Pruitt
(Print/Type Name)

Tom Junior Stacks
TOM JUNIOR STACKS, a/k/a
"Thomas Stacks, Jr."

Name: Madeline B. Smith
(Print/Type Name) Madeline B. Smith

STATE OF AL)
COUNTY OF Calhoun)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Tom Junior Stacks, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 4th day of December, 2019.

Phillip Berry

Notary Public

My Commission Expires: 08-7-2023

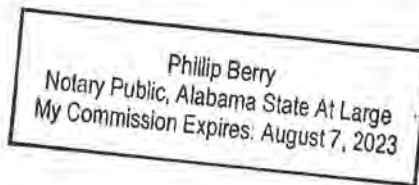


EXHIBIT A – THE EASEMENT PROPERTY

Lots 6, 7, 8, 9, 10, 11, 12, 13 and 14, Block 1, as shown on the Plan of Mechanicsville, as recorded in the Office of the Judge of Probate of Calhoun County, Alabama, in Plat Book T, Page 46, together with all appurtenant rights and all additional lands accruing to said Lots by virtue of any roadway or alley vacation.

Being the same property conveyed to Grantor by deed recorded in the Office of the Judge of Probate of Calhoun County, Alabama, in Deed Book 1614, Page 297.

Recorded Wilborn Access Authorization and Restrictions

Mental Health Fee \$ 4.00
Recording Fee \$ 267.00
TOTAL \$ 271.00

***This Instrument Prepared By, And
After Recording Return To:***

Scott I. Steady, Esq.
Burr & Forman LLP
201 N Franklin Street, Suite 3200
Tampa, Florida 33602

Cross Reference:

Deed Book 1583, Page 752
Calhoun County Records

STATE OF ALABAMA)
CALHOUN COUNTY)

**ACCESS AUTHORIZATION, USE RESTRICTION AND AGREEMENT TO
RECORD AN ENVIRONMENTAL COVENANT**

**THIS ACCESS AUTHORIZATION, USE RESTRICTION AND AGREEMENT TO
RECORD AN ENVIRONMENTAL COVENANT** (this "Authorization") is made this 22nd
day of March, 2021 by Grantor, **GARY WILBORN, as Personal Representative of
the Estate of WALDEN J. WILBORN, DECEASED** (Case No. 31082, Probate Court Of
Calhoun County, Alabama) ("Grantor"), whose address is 820 Creek Trail, Anniston, Alabama,
for the benefit of the **UNITED STATES OF AMERICA, CARE OF THE U.S.
ENVIRONMENTAL PROTECTION AGENCY, REGION 4** ("EPA") whose address is 61
Forsyth Street, S.W., Atlanta, GA 30062 and **MRC HOLDINGS, INC.**, ("MRC"), whose address
is 1000 North West Street, 5th Floor, Wilmington, Delaware 19801 (collectively, "Grantees").

Recitals

1. Grantor is the titleholder of the real property located in the City of Anniston, Alabama as described in the legal description attached hereto as Exhibit "A" (the "Property").
2. The Property lies within a portion of the Anniston PCB Superfund Site that is referred to as the Unapproved Waste Disposal Areas ("UWDAs"). The Property has a street address of 830 W. 10th Street and 0 9th and Mulberry Avenue and has been assigned by Calhoun County, PPIN# 18533, County Parcel # 21-03-07-2-001-073.000 and PPIN# 18812, County Parcel # 21-03-07-1-002-011-000, respectively.

3. In a letter dated May 18, 2018, MRC received a Special Notice Letter pursuant to Section 122(e) of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9622(e) to conduct work related to the specific response actions on the Property for a portion of the Operable Unit 1/Operable Unit 2 (OU1/OU2) for the Anniston PCB Superfund Site.
4. EPA had previously approved the OU1/OU2 Remedial Investigation ("RI") on January 21, 2015 and EPA approved the OU1/OU2 Feasibility Study ("FS") on March 7, 2017.
5. The decision by EPA on the OU1/OU2 remedial action to be implemented on the Property is embodied in a final Record of Decision ("ROD") executed on November 9, 2017.
6. In order to resolve claims brought by the United States in United States of America v. MRC Holdings, Inc., the United States and MRC have entered into a Consent Decree (the "Decree") requiring MRC to implement the Remedial Design/Remedial Action ("RD/RA") for specified activities relating to the UWDAs in accordance with the OU1/OU2 ROD. The Decree was lodged on July 23, 2019 with the United States District Court for the Northern District of Alabama, in the case of the United States of America v. MRC Holdings, Inc., Civil Action No. 1:19-CV-01153-CLM. Under Section VI of the Decree, MRC is required to perform the remedy as defined by the Decree (the "Work"), which includes the placement of a RCRA Subtitle D multi-layer cap on a portion of the Property. Under Paragraphs 13 and 17 of the Decree, EPA has reserved the right to modify the Work and has retained the authority to select and require performance of further actions at the Property. The Decree is attached as Exhibit "B".
7. Paragraphs 20 and 21 of the Consent Decree request the Grantor to agree to the obligations of this Authorization.

NOW, THEREFORE:

1. Right of Access. Grantor does hereby grant, bargain, sell, assign, convey, declare and establish to and for the benefit of Grantees, Grantees' successors and assigns, and their respective agents, contractors and subcontractors, a perpetual exclusive easement on, in, over, under, across and through the Property for the purpose of conducting all activities required by the Consent Decree.
2. Scope of Access. Subject to Section 104(a) and (b) of CERCLA (42 U.S.C. § 9604(a)-(b)), the scope of this access right shall include the right to enter and traverse the Property for the purpose of conducting activities required by the Decree, including, without limitation, the following activities:
 - (a) Monitoring the Work;
 - (b) Verifying any data or information to the United States or the State;
 - (c) Conducting investigations regarding contamination at or near the UWDAs;

- (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the UWDAs;
 - (f) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
 - (g) Implementing the Work pursuant to the conditions set forth in ¶ 71 (Work Takeover) of the Decree;
 - (h) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by MRC or its agents, consistent with Section XVIII (Access to Information) of the Decree;
 - (i) Assessing MRC's compliance with the Decree;
 - (j) Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Decree; and
 - (k) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls; and
 - (l) Other activities reasonably necessary and incidental to the implementation of the foregoing activities.
3. Use Restrictions. The Grantor does hereby grant, declare and establish for the benefit of Grantees and Grantees' successors and assigns a perpetual prohibition and restriction upon the Property against any use thereof which, as determined by the EPA, would or might pose an unacceptable risk to human health or to the environment due to exposure to waste material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including, without limitation, the following:
- (a) All activities that are prohibited or could interfere with the Remedial Action including anything that will disturb the caps and covers on segments of the Property as part of the Remedial Action is prohibited because such activities could result in direct and indirect exposure to contaminants in soil, sediments, surface water and groundwater;
 - (b) All use of contaminated groundwater;
 - (c) All activities that could result in exposure to contaminants in soils, sediments, surface water and groundwater;

- (d) Any activities, including the construction of any structures or improvements, on the UWDAs that could interfere with the Remedial Action; and
 - (e) Any new structures or improvements on the UWDAs will be constructed to minimize potential risk of inhalation of contaminants.
4. Agreement to Record Restrictions on Land Use (Environmental Covenant). In order to ensure the implementation of the above Use Restrictions, Grantor agrees to cooperate with the Grantees and permit an Environmental Covenant pursuant to the Alabama Department of Environmental Management Land Division – Uniform Environmental Covenants Program Division 335-5 (ADEM Admin. Code r. 335-5-x-xx) or similar Institutional Control to be recorded on the Property.
5. Covenants, Easements and Restrictions To Run With Land. It is the intention of Grantor that all covenants, easements and restrictions set forth herein shall run with the Property and be binding upon Grantor and all successors or assigns of Grantor having any interest in the Property, for the express benefit of Grantees.
6. Counterparts. This Authorization may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document. This Authorization may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Signatures to this Authorization through the use of an electronic process adopted by a Party with the intent to execute this Agreement (i.e., electronic signature through a process such as DocuSign®) or signature transmitted by facsimile transmission, by electronic mail in portable document format (“pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have caused this Authorization to be properly executed and delivered as of the day and year first set forth above.

[No further text on this page. Signature pages follow.]

GRANTOR'S SIGNATURE PAGE

WITNESSES

Sara A. Ervin

Name: *Sara A. Ervin*
(Print/Type Name)

Name: *Liz Moore*
(Print/Type Name) *Liz Moore*

GRANTOR:

Gary Wilborn

GARY WILBORN, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
WALDEN J. WILBORN, DECEASED
(CASE NO. 31082, PROBATE COURT OF
CALHOUN COUNTY, ALABAMA)

STATE OF ALABAMA)
COUNTY OF Calhoun)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that GARY WILBORN, whose name as Personal Representative of the Estate of WALDEN J. WILBORN, Deceased, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, in such capacity and with full authority, executed the same voluntarily.

Given under my hand and official seal, this 22 day of March, 2021.

Jane S. Allen

Notary Public

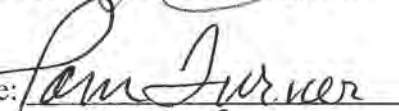
My Commission Expires:

My Commission Expires
June 13, 2022

[Signatures continue on following page]


WITNESSES:

Name: 
(Print/Type Name) Michelle Guerra

Name: 
(Print/Type Name) Pam Turner

GRANTEE:

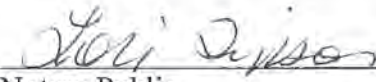
MRC HOLDINGS, INC.

By: 
Name: Scott I. Steady
Title: Counsel to MRC Holdings, Inc.

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 18th day of March, 2021 by Scott I. Steady, as Counsel to MRC Holdings, Inc., a Delaware corporation, on behalf of the corporation. He is ☒ personally known to me or ☐ has produced (type of identification) as identification.

LORI TIPSON
Notary Public, State of Florida
My Comm. Expires Feb. 10, 2023
No. GG 291198


Notary Public
My Commission Expires: 2-10-23

[End of signatures.]

EXHIBIT A – PROPERTY

All that tract or parcel of land lying and being in Section 7, Township 16 South, Range 8 East, as described in Deed Book 1583, page 752, in the Probate Office of Calhoun County, Alabama and being more particularly described as follows:

Commencing at a point at the intersection of southerly right-of-way of W 10th Street (apparent 60-foot R/W) with the eastern right-of-way of Legarde Avenue (apparent 50-foot R/W); thence, South 89° 10' 31" East, along the aforesaid right-of-way of W 10th Street 415.11 feet to a point and the Point of Beginning; thence, from said Point of Beginning continue along W 10th Street

South 89° 10' 31" East, 212.32 feet to a point on the northwestern right-of-way of the Norfolk Southern Railroad (100-foot R/W); thence, leaving W 10th Street and continue along the aforesaid Norfolk Southern Railroad right-of way the following two calls;

217.80 feet along the arc of a curve to the right, having a radius of 2,878.73 feet and a chord bearing and distance of South 52° 43' 27" East, 217.75 feet to the point of intersection with the western line of the NE 1/4 of the NW 1/4, Sect 07, T16S, R8E; thence,

218.83 feet along the arc of a curve to the right, having a radius of 2,878.73 feet and a chord bearing and distance of South 48° 22' 44" East, 218.78 feet to the point of intersection of with the westerly right-of-way of Mulberry Avenue (apparent 50-foot R/W); thence, continue along aforesaid right-of-way of Mulberry Avenue

South 00° 30' 04" East, 81.56 feet to a point of the northerly right-of-way of W 9th Street (apparent 50-foot R/W); thence, continue along W 9th Street the following six calls;

South 85° 55' 28" West, 22.54 feet; thence,

86.79 feet along the arc of a curve to the left having a radius of 501.30 feet and a chord bearing and distance of South 79° 56' 05" West, 86.68 feet; thence,

54.79 feet along the arc of a curve to the right having a radius of 181.71 feet and a chord bearing and distance of South 83° 36' 48" West, 54.59 feet to the point of intersection with the western line of the NE 1/4 of the NW 1/4, Sect 07, T16S, R8E; thence,

74.58 feet along the arc of a curve to the right, having a radius of 181.71 feet and a chord bearing and distance of North 75° 59' 25" West, 74.06 feet; thence,

North 64° 13' 57" West, 197.07 feet; thence,

160.36 feet along the arc of a curve to the left, having a radius of 389.46 feet and a chord bearing and distance of North 76° 01' 42" West, 159.23 feet; thence, leaving the aforesaid right-of-way of W 9th Street

North 03° 47' 45" East, 243.12 feet to the Point of Beginning, containing 136,912 square feet or 3.1431 acres of land, more or less.

EXHIBIT B – THE DECREE

[See Attached]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

Civil Action No. 1:19-cv-01153-CLM

v.

MRC HOLDINGS, INC.

Defendant.

REMEDIAL DESIGN/REMEDIAL ACTION

CONSENT DECREE

(For Operable Unit 1/Operable Unit 2
Concerning the Record of Decision for the "Unapproved Waste Disposal Areas"
Section 5.6.1.2.4)

TABLE OF CONTENTS

I.	BACKGROUND.....	1
II.	JURISDICTION.....	2
III.	PARTIES BOUND	2
IV.	DEFINITIONS.....	3
V.	GENERAL PROVISIONS.....	7
VI.	PERFORMANCE OF THE WORK.....	7
VII.	REMEDY REVIEW.....	10
VIII.	PROPERTY REQUIREMENTS.....	11
IX.	FINANCIAL ASSURANCE.....	13
X.	PAYMENTS FOR RESPONSE COSTS	18
XI.	INDEMNIFICATION AND INSURANCE.....	21
XII.	FORCE MAJEURE.....	22
XIII.	DISPUTE RESOLUTION	24
XIV.	STIPULATED PENALTIES	26
XV.	COVENANTS BY PLAINTIFF	28
XVI.	COVENANTS BY SD	31
XVII.	EFFECT OF SETTLEMENT; CONTRIBUTION.....	33
XVIII.	ACCESS TO INFORMATION.....	34
XIX.	RETENTION OF RECORDS.....	35
XX.	NOTICES AND SUBMISSIONS	35
XXI.	RETENTION OF JURISDICTION	37
XXII.	APPENDICES.....	37
XXIII.	MODIFICATION.....	37
XXIV.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	38
XXV.	SIGNATORIES/SERVICE	38
XXVI.	FINAL JUDGMENT.....	38

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency (EPA), filed a complaint in this matter pursuant to Sections 106, 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9606, 9607 and 9613(g)(2) (the "Complaint").

B. The United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice ("DOJ") for response actions at the Anniston PCB Superfund Site in Anniston, Alabama ("Site"), together with accrued interest; (2) performance of response actions by the defendants at the Site consistent with CERCLA and the National Contingency Plan, 40 C.F.R. Part 300 ("NCP"); and (3) a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Alabama (the "State") on June 6, 2018, of negotiations with potentially responsible parties ("PRPs") regarding the implementation of the remedial design and remedial action ("RD/RA") for OU1/OU2, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree ("CD").

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior and the National Oceanic and Atmospheric Administration on June 6, 2018, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this CD.

E. The defendant that has entered into this CD ("Settling Defendant" or "SD") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

F. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced on August 4, 2003, a Remedial Investigation and Feasibility Study ("RI/FS") for the OU1/OU2 pursuant to 40 C.F.R. § 300.430.

G. EPA approved the OU1/OU2 Remedial Investigation (RI) Report on January 21, 2015, and EPA approved the OU1/OU2 Feasibility Study (FS) Report on March 7, 2017.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on March 12, 2017, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator, EPA Region 4, based the selection of the response action.

I. The decision by EPA on the OU1/OU2 remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), attached as Appendix A, executed on November 9, 2017, on which the State had a reasonable opportunity to review and comment and on which the State has given its concurrence. The OU1/OU2 ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

J. In order to resolve the claims brought by the United States in its Complaint, the United States and the Settling Defendant have entered into this Consent Decree ("Consent Decree"), which requires the Settling Defendant to implement the Remedial Design/Remedial Action ("RD/RA") for specific activities related to the Unapproved Waste Disposal Areas in accordance with the OU1/OU2 ROD and to fulfill the requirements of this Consent Decree.

K. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by SD if conducted in accordance with this CD and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the Work to be performed by SD shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

M. The Parties recognize, and the Court by entering this CD finds, that this CD has been negotiated by the Parties in good faith and implementation of this CD will expedite the cleanup of the Unapproved Waste Disposal Areas and will avoid prolonged and complicated litigation between the Parties, and that this CD is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over SD. Solely for the purposes of this CD and the underlying complaint, SD waives all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. SD shall not challenge the terms of this CD or this Court's jurisdiction to enter and enforce this CD.

III. PARTIES BOUND

2. This CD is binding upon the United States and upon SD and its successors, and assigns. Any change in ownership or corporate or other legal status of SD including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such SD's responsibilities under this CD.

3. SD shall provide a copy of this CD to each contractor hired to perform the Work and to each person representing SD with respect to the Unapproved Waste Disposal Areas or the

Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this CD. SD or its contractors shall provide written notice of the CD to all subcontractors hired to perform any portion of the Work. SD shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this CD. With regard to the activities undertaken pursuant to this CD, each contractor and subcontractor shall be deemed to be in a contractual relationship with SD within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

"ADEM" shall mean the Alabama Department of Environmental Management and any successor departments or agencies of the State.

"Anniston Community Advisory Group" or "Anniston CAG" shall mean the community advisory group created under the Revised Partial Consent Decree.

"Anniston PCB Site Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and established pursuant to the Revised Partial Consent Decree entered into between the United States, Solutia Inc., and Pharmacia Corp., Civil Action No. 1:02-cv-0749, entered by the Court on August 4, 2003.

"Affected Property" shall mean all real property at the Unapproved Waste Disposal Areas and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Action.

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

"Consent Decree" or "CD" shall mean this consent decree and all appendices attached hereto (listed in Section XXII). In the event of conflict between this CD and any appendix, this CD shall control.

"Day" or "day" shall mean a calendar day. In computing any period of time under this CD, 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.

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Effective Date" shall mean the date upon which the approval of this CD is recorded on the Court's docket.

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

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

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising SD's performance of the Work to determine whether such performance is consistent with the requirements of this CD, including costs incurred in reviewing deliverables submitted pursuant to this CD, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to ¶ 11 (Emergencies and Releases), Section VII (Remedy Review), Section VIII (Property Requirements), and ¶ 31 (Access to Financial Assurance), or the costs incurred by the United States in enforcing this CD, including all costs incurred pursuant to Section XIII (Dispute Resolution), and all litigation costs.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this CD, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this CD, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to ¶ 11 (Emergencies and Releases), ¶ 12 (Community Involvement) (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), ¶ 31 (Access to Financial Assurance), Section VII (Remedy Review), Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including the amount of just compensation), and Section XIII (Dispute Resolution), and all litigation costs. Future Response Costs shall also include all Interim Response Costs, and all interest on those Past Response Costs SD has agreed to pay under this CD that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from February 2, 2017, to the Effective Date, and Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Unapproved Waste Disposal Areas.

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

"Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with the Unapproved Waste Disposal Areas between February 2, 2017, and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

"Institutional Control Implementation and Assurance Plan" or "ICIAP" shall mean the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls set forth in the OU1/OU2 ROD, prepared in accordance with ¶ 6.7(i) of the SOW.

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

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

"Non-Settling Owner" shall mean any person, other than a SD, that owns or controls any Affected Property. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.

"Operable Unit 1/Operable Unit 2 (OU1/OU2)" shall mean the residential and non-residential properties around the Anniston Plant and downstream along Snow Creek to Highway 78.

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

"Paragraph" or "¶" shall mean a portion of this CD identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States and SD.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Unapproved Waste Disposal Areas through February 1, 2017, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" or "PS" shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the ROD.

"Plaintiff" shall mean the United States.

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

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

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to OU1/OU2 at the Site signed on November 9, 2017, by the Regional Administrator, EPA Region 4, or his/her delegate, and all attachments thereto. The ROD is accessible at <https://semspub.epa.gov/work/04/11094816.pdf>, EPA's offices in Atlanta, Georgia, and the Anniston PCB Site Information Repositories (Anniston Public Library and Carter Center).

"Remedial Action" or "RA" shall mean the remedial action selected in the Unauthorized Waste Disposal Areas of the ROD.

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

"Section" shall mean a portion of this CD identified by a Roman numeral.

"Settling Defendant" or "SD" shall mean MRC Holdings, Inc.

"State" shall mean the State of Alabama.

"Statement of Work" or "SOW" shall mean the document describing the activities SD must perform to implement the RD, the RA, and O&M regarding OU1/OU2, which is attached as Appendix A.

"Supervising Contractor" shall mean the principal contractor retained by SD to supervise and direct the implementation of the Work under this CD.

"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.

"Unapproved Waste Disposal Areas" or "UWDAs" shall mean the Unapproved Waste Disposal Areas identified in Part 2, Section 5.6.1.2.4 of the ROD, more particularly identified as 830 W. 10th Street (County PPIN# 18533, 0 9th and Mulberry Avenue (County PPIN# 18812), 510 LeGrande Avenue (County PPIN# 32324), 0 Ashely Street (County PPIN# 32325) and 505 Ashley Street (County PPIN# 32326).

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA, and any federal natural resource trustee.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities and obligations SD is required to perform under this CD, except the activities required under Section XIX (Retention of Records).

V. GENERAL PROVISIONS

5. **Objectives of the Parties.** The objectives of the Parties in entering into this CD are to protect public health or welfare or the environment by the design and implementation of response actions within the UWDAs for OU1/OU2 by SD, to pay response costs of Plaintiff, and to resolve the claims of Plaintiff against SD and the claims of the SD that have been or could have been asserted against the United States with regard to OU1/OU2 as provided in this CD.

6. Commitments by SD

a. SD shall finance and perform the Work in accordance with this CD and all deliverables developed by SD and approved or modified by EPA pursuant to this CD. SD shall pay the United States for its response costs as provided in this CD.

7. **Compliance with Applicable Law.** Nothing in this CD limits SD's obligations to comply with the requirements of all applicable federal and state laws and regulations. SD must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this CD, if approved by EPA, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, SD shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. SD may seek relief under the provisions of Section XII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 8.a and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. This CD is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK

9. Coordination and Supervision

a. Project Coordinators

(1) SD's Project Coordinator must have sufficient technical expertise to coordinate the Work. SD's Project Coordinator may not be an attorney

representing SD in this matter and may not act as the Supervising Contractor. SD's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA shall designate and notify the SD of EPA's Project Coordinator and Alternate Project Coordinator. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the UWDAs constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) The State shall designate and notify EPA and the SD of its Project Coordinator[s] and Alternate Project Coordinator[s]. The State may designate other representatives, including its employees, contractors and/or consultants to oversee the Work. For any meetings and inspections in which EPA's Project Coordinator participates, the State's Project Coordinator also may participate. SD shall notify the State reasonably in advance of any such meetings or inspections.

(4) SD's Project Coordinators shall meet with EPA's at least monthly.

b. **Supervising Contractor.** SD's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard).

c. **Procedures for Disapproval/Notice to Proceed**

(1) SD shall designate, and notify EPA, within 30 days after the Effective Date, of the name[s], title[s], contact information, and qualifications of the SD's proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

(2) EPA, after a reasonable opportunity for review and comment by the State, shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, SD shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. SD may select any

coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of SD's selection.

(3) SD may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 9.c(1) and 9.c(2).

(4) Notwithstanding the procedures of ¶¶ 9.c(1) through 9.c(3), SD have proposed, and EPA has authorized SD to proceed, regarding the following Project Coordinator and Supervising Contractor: HSW Engineering, Inc., c/o Joel Balmat, 605 E. Robinson Street, Suite 308, Orlando, Florida 32801.

(5) The UWDAs are owned by different Non-Settling Owners, not the SD. The UWDA located at 830 W. 10th Street and 0 W. 9th Street & Mulberry Avenue is geographically separated from the UWDA located at 510 LeGrand Avenue, 0 Ashley Street, and 505 Ashley Street. In the event agreements regarding access to the two geographically separated UWDAs are obtained at different times, in accordance with Section III, EPA shall issue separate Notices to Proceed for the two UWDAs. In response to each Notice to Proceed, SD shall prepare the RD and RA schedules for the applicable UWDA in accordance with Section 7 of the SOW. All other applicable provision of this CD and the SOW shall be implemented to reflect the separate schedules.

10. **Performance of Work in Accordance with SOW.** SD shall: (a) develop the RD; (b) perform the RA; and (c) operate, maintain, and monitor the effectiveness of the RA; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the CD or SOW shall be subject to approval by EPA in accordance with ¶ [6.6] (Approval of Deliverables) of the SOW.

11. **Emergencies and Releases.** SD shall comply with the emergency and release response and reporting requirements under ¶ [4.4] (Emergency Response and Reporting) of the SOW. Subject to Section XV (Covenants by Plaintiff), nothing in this CD, including ¶ [4.4] of the SOW, limits any authority of Plaintiff: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the UWDAs, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the UWDAs. If, due to SD's failure to take appropriate response action under ¶ [4.4] of the SOW, EPA takes such action instead, SD shall reimburse EPA under Section X (Payments for Response Costs) for all costs of the response action.

12. **Community Involvement.** If requested by EPA, SD shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section [2] (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator and attending Community Advisory Group (CAG) and Technical Assistance meetings. Costs incurred by the United States

under this Section constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

13. Modification of SOW or Related Deliverables

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy set forth in ¶ [1.3] of the SOW, then EPA may notify SD of such modification. If SD objects to the modification it may, within 30 days after EPA's notification, seek dispute resolution under Section XIII.

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if SD invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this CD, and SD shall implement all work required by such modification. SD shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this CD.

14. Nothing in this CD, the SOW, or any deliverable required under the SOW constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards.

VII. REMEDY REVIEW

15. **Periodic Review.** SD shall conduct, in accordance with ¶ [4.7] (Periodic Review Support Plan) of the SOW, studies and investigations to support EPA's reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the RA is protective of human health and the environment.

16. **EPA Selection of Further Response Actions.** If EPA determines, at any time, that the RA is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

17. **Opportunity to Comment.** SD and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

18. **SD's Obligation to Perform Further Response Actions.** If EPA selects further response actions relating to the UWDAs, EPA may require SD to perform such further response actions, but only to the extent that the reopener conditions in ¶ 67 or 68 (United States' Pre- and Post-Certification Reservations) are satisfied. SD may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of ¶ 67 or 68 are satisfied, (b) EPA's determination that the RA is not protective of human health and the

environment, or (c) EPA's selection of the further response actions. Disputes regarding EPA's determination that the RA is not protective or EPA's selection of further response actions shall be resolved pursuant to ¶ 51 (Record Review).

19. **Submission of Plans.** If SD is required to perform further response actions pursuant to ¶ 18, they shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work by SD). SD shall implement the approved plan in accordance with this CD.

VIII. PROPERTY REQUIREMENTS

20. **Agreements Regarding Access and Non-Interference.** SD shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by SD and by Plaintiff, providing that such Non-Settling Owner (i) provide Plaintiff and the SD, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the CD, including those listed in ¶ 20.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 20.b (Land, Water, or Other Resource Use Restrictions). SD shall provide a copy of such access and use restriction agreements to EPA and the State.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations regarding contamination at or near the UWDAs;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the UWDAs;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
- (7) Implementing the Work pursuant to the conditions set forth in ¶ 71 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by SD or its agents, consistent with Section XVIII (Access to Information);

(9) Assessing SD's compliance with the CD;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the CD; and

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

b. **Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

(1) Prohibiting activities that could interfere with the RA including anything that will disturb the caps and covers on segments of the Affected Properties as part of the RA is prohibited because such activities could result in direct and indirect exposure to contaminants in soil and groundwater;

(2) Prohibiting use of contaminated groundwater;

(3) Prohibiting the activities that could result in exposure to contaminants in soils and groundwater;

(4) Ensuring that any new structures on the UWDAs will not be constructed that could interfere with the RA; and

(5) Ensuring that any new structures on the UWDAs will be constructed to minimize potential risk of inhalation of contaminants.

21. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of SD would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If SD is unable to accomplish what is required through "best efforts" in a timely manner, they shall notify the United States and EPA, and include a description of the steps taken to comply with the requirements. If the United States deems it appropriate, it may assist SD, or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

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

23. Notice to Successors-in-Title

a. SD shall, within 45 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the UWDAs; (ii) that EPA has selected a remedy for the UWDAs; and (iii) that a potentially responsible party has entered into a CD requiring implementation of such remedy; and (3) identify the U.S. District Court in which the CD was filed, the name and civil action number of this case, and the date the CD was entered by the Court. SD shall recommend that the owner of the Affected Property record the notice within 30 days after EPA's approval of the notice and submit to EPA, within 30 days thereafter, a certified copy of the recorded notice.

b. SD shall recommend that the owner of the Affected Property, prior to entering into a contract to transfer the Affected Property, or 60 days prior to transferring the Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a remedy regarding the UWDAs, that potentially responsible parties have entered into a Consent Decree requiring implementation of such remedy, and that the United States District Court has entered the CD (identifying the name and civil action number of this case and the date the CD was entered by the Court); and

(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the notice that it provided to the proposed transferee.

24. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, SD shall continue to comply with their obligations under the CD, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property and to implement, maintain, monitor, and report on Institutional Controls.

25. Notwithstanding any provision of the CD, Plaintiff 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.

IX. FINANCIAL ASSURANCE

26. In order to ensure completion of the Work, SD shall secure financial assurance, initially in the amount of \$2,715,000.00 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to

EPA. SD may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by a SD that it meets the relevant test criteria of ¶ 28, accompanied by a standby funding commitment, which obligates the affected SD to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of SD or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a SD; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of ¶ 27.

27. SD has selected, and EPA has found satisfactory, a surety bond as an initial form of financial assurance. Within 10 days after the Effective Date, SD shall obtain EPA's approval of the form of SD's financial assurance. Within 30 days of such approval, SD shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to Paula V. Painter the "**Regional Financial Management Officer**", to the United States, and to EPA as specified in Section XX (Notices and Submissions).

28. SD seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 26.e or 26.f, must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) the SD or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total

- liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
 - ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
 - iii. Tangible net worth of at least \$10 million; and
 - iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or
- (2) The SD or guarantor has:
- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
 - ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
 - iii. Tangible net worth of at least \$10 million; and
 - iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the SD or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

29. SD providing financial assurance by means of a demonstration or guarantee under ¶ 26.e or 26.f must also:

a. Annually resubmit the documents described in ¶ 28.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

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

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 28.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

30. SD shall diligently monitor the adequacy of the financial assurance. If SD becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such SD shall notify EPA of such information within 10 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the SD of such determination. SD shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected SD, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. SD shall follow the procedures of ¶ 32 (Modification of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. SD's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

31. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 71.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 31.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the SD fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 31.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 71.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding

commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 26.e or 26.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. SD shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 31 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Anniston PCB Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the UWDAs, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 31 must be reimbursed as Future Response Costs under Section X (Payments for Response Costs).

32. Modification of Amount, Form, or Terms of Financial Assurance. SD may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 27, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify SD of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. SD may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution). SD may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, SD shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 27.

33. Release, Cancellation, or Discontinuation of Financial Assurance. SD may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ [4.8] (Certification of Work Completion) of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution).

X. PAYMENTS FOR RESPONSE COSTS

34. Payment by SD for United States Past Response Costs.

a. Within 30 days after the Effective Date, SD shall pay to EPA \$25,000.00 in payment for Past Response Costs. Payment shall be made in accordance with ¶ 36.a (instructions for past response cost payments).

b. **Deposit of Past Response Costs Payment.** The total amount to be paid by Setting Defendants pursuant to ¶ 34.a shall be deposited by EPA in the Anniston PCB Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

35. Payments by SD for Future Response Costs. SD shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills.** On a periodic basis, EPA will send SD a bill requiring payment that includes a SCORPIOS report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. SD shall make all payments within 30 days after SD's receipt of each bill requiring payment, except as otherwise provided in ¶ 37, in accordance with ¶ 36.b (instructions for future response cost payments).

b. **Deposit of Future Response Costs Payments.** The total amount to be paid by SD pursuant to ¶ 35.a (Periodic Bills) shall be deposited by EPA in the Anniston PCB Site Special Account to be retained and used to conduct or finance response actions at or in connection with the UWDAs, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Anniston PCB Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the UWDAs. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum.

c. **Unused Amount.** After EPA issues the Certification of RA Completion pursuant to ¶ [4.6] (Certification of RA Completion) of the SOW and a final accounting of the Anniston PCB Site Future Response Costs Special Account, EPA will offset the next Future Response Costs bill by the unused amount paid by SD, apply any unused amount paid by SD to any other unreimbursed response costs or response actions remaining at the UWDAs; or remit and return to SD any unused amount of the funds paid by SD. Any decision by EPA to apply unused amounts to unreimbursed response costs or response actions remaining at the Site shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum.

36. Payment Instructions for SD

a. Past Response Costs Payments.

(1) The Financial Litigation Unit (FLU) of the United States Attorney's Office for the Northern District of Alabama shall provide SD, in accordance with ¶ 93, with instructions regarding making payments to DOJ on behalf of EPA. The instructions must include a Consolidated Debt Collection System (CDCS) number to identify payments made under this CD.

(2) For all payments subject to this ¶ 36.a, SD shall make such payment by Fedwire Electronic Funds Transfer (EFT) / at <https://www.pay.gov> to the U.S. DOJ account, in accordance with the instructions provided under ¶ 36.a(1), and including references to the CDCS Number, Site/Spill ID Number 04S9, and DJ Number 90-11-2-07135(14).

(3) For each payment made under this ¶ 36.a, SD shall send notices, including references to the CDCS, Site/Spill ID, and DJ numbers, to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 93.

b. Future Response Costs Payments and Stipulated Penalties

(1) For all payments subject to this ¶ 36.b, SD shall make such payment by Fedwire EFT, referencing the Site/Spill ID and DJ numbers. The Fedwire EFT payment must be sent as follows:

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

(2) For all payments subject to this ¶ 36.b, SD shall make such payment by Automated Clearinghouse (ACH) payment as follows:

500 Rivertech Court
Riverdale, Maryland 20737
Contact – John Schmid 202 874 7027 or
REX, 1 866 234 5681
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

(3) For all payments subject to this ¶ 36.b, SD shall make such payment at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to SD by EPA following lodging of the CD.

(4) For all payments subject to this ¶ 36.b, SD shall make such payment by official bank check(s) made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment. SD shall send the check(s) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

(5) For all payments made under this ¶ 36.b, SD must include references to the Site/Spill ID and DJ numbers. At the time of any payment required to be made in accordance with ¶ 36.b, SD shall send notices that payment has been made to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 93. All notices must include references to the Site/Spill ID and DJ numbers.

37. **Contesting Future Response Costs.** SD may submit a Notice of Dispute, initiating the procedures of Section XIII (Dispute Resolution), regarding any Future Response Costs billed under ¶ 35 (Payments by SD for Future Response Costs) if they determine that EPA has made a mathematical or an accounting error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) pursuant to Section XX (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If SD submits a Notice of Dispute, SD shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to the United States, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. SD shall send to the United States, as provided in Section XX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If the United States prevails in the dispute, SD shall pay the sums due (with accrued interest) to the United States within 7 days after the resolution of the dispute. If SD prevails concerning any aspect of the contested costs, SD shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States within 7 days after the resolution of the dispute. SD shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with ¶¶ 36.b (instructions for future response cost payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII

(Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding SD's obligation to reimburse the United States for its Future Response Costs.

38. SD may contest the final accounting of the Anniston PCB Site Future Response Costs Special Account relating to the UWDAs issued under ¶ 35.c (Unused Amount) if they determine that the United States has made a mathematical error. Such objection shall be made in writing within 30 days after receipt of the final accounting and must be sent to the United States pursuant to Section XX (Notices and Submissions). Any such objection shall specifically identify the alleged final mathematical error and the basis for objection. EPA will review the alleged mathematical error and either affirm the initial accounting or issue a corrected final accounting within 30 days. If a corrected final accounting is issued, EPA will take such action as may be necessary to correct the final disposition of unused amounts paid in accordance with ¶ 35.c (Unused Amount). If SD disagree with EPA's decision, SD may, within 7 days after receipt of the decision, appeal the decision to the Director of the Waste Management Division, EPA Region 4. The Director of the Waste Management Division will issue a final administrative decision resolving the dispute, which shall be binding upon SD and shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum.

39. **Interest.** In the event that any payment for Past Response Costs or for Future Response Costs required under this Section is not made by the date required, SD shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of SD's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of SD's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XIV (Stipulated Penalties).

XI. INDEMNIFICATION AND INSURANCE

40. SD's Indemnification of the United States

a. The United States does not assume any liability by entering into this CD or by virtue of any designation of SD as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). SD shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of SD, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on SD's behalf or under their control, in carrying out activities pursuant to this CD, including, but not limited to, any claims arising from any designation of SD as EPA's authorized representatives under Section 104(e) of CERCLA. Further, SD agrees to pay the United States all costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of SD, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this CD. The United States shall not be held out as a party to any contract entered into by or on behalf of SD in carrying out activities

pursuant to this CD. Neither SD nor any such contractor shall be considered an agent of the United States.

b. The United States shall give SD notice of any claim for which the United States plans to seek indemnification pursuant to this ¶ 40, and shall consult with SD prior to settling such claim.

41. SD covenants not to sue and 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 SD and any person for performance of Work on or relating to the UWDAs, including, but not limited to, claims on account of construction delays. In addition, SD shall indemnify, save 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 SD and any person for performance of Work on or relating to the UWDAs, including, but not limited to, claims on account of construction delays.

42. **Insurance.** No later than 15 days before commencing any on-site Work, SD shall secure, and shall maintain until the first anniversary after the RA has been performed in accordance with this CD and the Performance Standards have been achieved, commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$3 million in excess of the required commercial general liability and automobile liability limits, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of SD pursuant to this CD. In addition, for the duration of this CD, SD shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of SD in furtherance of this CD. Prior to commencement of the Work, SD shall provide to EPA certificates of such insurance and a copy of each insurance policy. SD shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If SD demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, SD need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. SD shall ensure that all submittals to EPA under this Paragraph identify the Anniston PCB Site, Anniston, Alabama and the civil action number of this case.

XII. FORCE MAJEURE

43. "Force majeure," for purposes of this CD, is defined as any event arising from causes beyond the control of SD, of any entity controlled by SD, or of SD's contractors that delays or prevents the performance of any obligation under this CD despite SD's best efforts to fulfill the obligation. The requirement that SD exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential

force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

44. If any event occurs or has occurred that may delay the performance of any obligation under this CD for which SD intends or may intend to assert a claim of force majeure, SD shall notify EPA's Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region 4, within three business days of when SD first knew that the event might cause a delay. Within 10 days thereafter, SD shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; SD's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of SD, such event may cause or contribute to an endangerment to public health or welfare, or the environment. SD shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. SD shall be deemed to know of any circumstance of which SD, any entity controlled by SD, or SD's contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude SD 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 ¶ 43 and whether SD has exercised their best efforts under ¶ 43, EPA may, in its unreviewable discretion, excuse in writing SD's failure to submit timely or complete notices under this Paragraph.

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

46. If SD elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution) regarding EPA's decision, they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, SD 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 SD complied with the requirements of ¶¶ 43 and 44. If SD carries this burden, the delay at issue shall be deemed not to be a violation by SD of the affected obligation of this CD identified to EPA and the Court and schedules for the affected obligations shall be modified in accordance with Paragraph 13.b (Modification of the SOW and Related Deliverables).

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

XIII. DISPUTE RESOLUTION

48. Unless otherwise expressly provided for in this CD, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this CD. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of SD that have not been disputed in accordance with this Section.

49. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Any dispute regarding this CD shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

50. Statements of Position

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 28 days after the conclusion of the informal negotiation period, SD invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by SD. The Statement of Position shall specify SD's position as to whether formal dispute resolution should proceed under ¶ 51 (Record Review) or 52.

b. Within 28 days after receipt of SD's Statement of Position, EPA will serve on SD its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under ¶ 51 (Record Review) or 52. Within 20 days after receipt of EPA's Statement of Position, SD may submit a Reply.

c. If there is disagreement between EPA and SD as to whether dispute resolution should proceed under ¶ 51 (Record Review) or 52, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if SD ultimately appeals to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in ¶¶ 51 and 52.

51. **Record Review.** Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of

plans, procedures to implement plans, or any other items requiring approval by EPA under this CD, and the adequacy of the performance of response actions taken pursuant to this CD. Nothing in this CD shall be construed to allow any dispute by SD regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Waste Management Division, EPA Region 4, will issue a final administrative decision resolving the dispute based on the administrative record described in ¶ 51.a. This decision shall be binding upon SD, subject only to the right to seek judicial review pursuant to ¶¶ 51.c and 51.d.

c. Any administrative decision made by EPA pursuant to ¶ 51.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by SD with the Court and served on all Parties within 10 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this CD. The United States may file a response to SD's motion.

d. In proceedings on any dispute governed by this Paragraph, SD shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to ¶ 51.a.

52. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. The Director of the Waste Management Division, EPA Region 4, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under ¶ 50. The Waste Management Division Director's decision shall be binding on SD unless, within 20 days after receipt of the decision, SD files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the CD. The United States may file a response to SD's motion.

b. Notwithstanding ¶ M (CERCLA § 113(j) record review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

53. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of SD under this CD, except as

provided in ¶ 37 (Contesting Future Response Costs), as agreed by EPA, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in ¶ 61. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CD. In the event that SD does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

XIV. STIPULATED PENALTIES

54. SD shall be liable to the United States for stipulated penalties in the amounts set forth in ¶¶ 55.a and 56 for failure to comply with the obligations specified in ¶¶ 55.b and 56, unless excused under Section XII (Force Majeure). "Comply" as used in the previous sentence includes compliance by SD with all applicable requirements of this CD, within the deadlines established under this CD. If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under ¶ 6.6(a) (Initial Submissions) or 6.6(b) (Resubmissions) of the SOW due to such material defect, then the material defect shall constitute a lack of compliance for purposes of this Paragraph.

55. Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in ¶ 55.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$1,000
15th through 30th day	\$2,000
31st day and beyond	\$5,000

b. Obligations

(1) Payment of any amount due under Section X (Payments for Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section IX (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under ¶ 37 (Contesting Future Response Costs).

(4) Completion of any Deliverables listed in Section 6 of the SOW.

56. **Stipulated Penalty Amounts – Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to the CD other than those specified in Paragraph 55.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$1,000

15th through 30th day	\$2,000
31st day and beyond	\$5,000

57. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 71 (Work Takeover), SD shall be liable for a stipulated penalty in the amount of \$100,000. Stipulated penalties under this Paragraph are in addition to the remedies available under ¶¶ 31 (Access to Financial Assurance) and 71 (Work Takeover).

58. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ [6.6] (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies SD of any deficiency; (b) with respect to a decision by the Director of the Waste Management Division, EPA Region 4, under ¶ 51.b or 52.a of Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that SD's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this CD shall prevent the simultaneous accrual of separate penalties for separate violations of this CD.

59. Following EPA's determination that SD has failed to comply with a requirement of this CD, EPA may give SD written notification of the same and describe the noncompliance. EPA may send SD a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified SD of a violation.

60. All penalties accruing under this Section shall be due and payable to the United States within 30 days after SD's receipt from EPA of a demand for payment of the penalties, unless SD invokes the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 36.b (instructions for future response cost payments).

61. Penalties shall continue to accrue as provided in ¶ 58 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 15 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, SD shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in ¶ 61.c;

c. If the District Court's decision is appealed by any Party, SD shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to SD to the extent that they prevail.

62. If SD fails to pay stipulated penalties when due, SD shall pay Interest on the unpaid stipulated penalties as follows: (a) if SD has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 61 until the date of payment; and (b) if SD fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 60 until the date of payment. If SD fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

64. Nothing in this CD shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of SD's violation of this CD or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(f) of CERCLA, 42 U.S.C. § 9622(f), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(f) of CERCLA for any violation for which a stipulated penalty is provided in this CD, except in the case of a willful violation of this CD.

65. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CD.

XV. COVENANTS BY PLAINTIFF

66. Covenants for SD by United States

Except as provided in ¶ 70 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against SD pursuant to Sections 106 and 107(a) of CERCLA for the Work, Past Response Costs, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by SD of its obligations under this CD. These covenants extend only to SD and do not extend to any other person.

67. **United States' Pre-Certification Reservations.** Notwithstanding any other provision of this CD, the United States reserves, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel SD to perform further response actions relating to the UWDAs and/or to pay

the United States for additional costs of response if, (a) prior to Certification of RA Completion, (1) conditions at the UWDAs, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the RA is not protective of human health or the environment.

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

69. For purposes of ¶ 67 (United States' Pre-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the ROD for the UWDAs and the administrative record supporting the ROD. For purposes of ¶ 68 (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of RA Completion and set forth in the ROD, the administrative record supporting the ROD, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this CD prior to Certification of RA Completion.

70. **General Reservations of Rights.** The United States reserves, and this CD is without prejudice to, all rights against SD, with respect to all matters not expressly included within Plaintiff's covenants. Notwithstanding any other provision of this CD, the United States reserves all rights against SD, with respect to:

- a. liability for failure by SD to meet a requirement of this CD;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the UWDAs for OU1/OU2;
- c. liability based on the ownership or operation of the UWDAs for OU1/OU2 by SD when such ownership or operation commences after signature of this CD by SD;
- d. liability based on the operation of the UWDAs for OU1/OU2 by SD when such operation commences after signature of this CD by SD;
- e. liability based on SD's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the UWDAs for OU1/OU2, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this CD by SD;

- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. criminal liability;
- h. liability for violations of federal or state law that occur during or after implementation of the Work; and
- i. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to ¶ 13 (Modification of SOW or Related Deliverables);
- j. liability for additional operable units at the UWDAs or the final response action; and
- k. liability for costs that the United States will incur regarding the UWDAs for OU1/OU2 but that are not within the definition of Future Response Costs.

71. Work Takeover

a. In the event EPA determines that SD: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to SD. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide SD a period of 15 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 15-day notice period specified in ¶ 71.a, SD has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify SD in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 71.b. Funding of Work Takeover costs is addressed under ¶ 31 (Access to Financial Assurance).

c. SD may invoke the procedures set forth in ¶ 51 (Record Review), to dispute EPA's implementation of a Work Takeover under ¶ 71.b. However, notwithstanding SD's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 71.b until the earlier of (1) the date that SD remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with ¶ 51 (Record Review) requiring EPA to terminate such Work Takeover.

72. Notwithstanding any other provision of this CD, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XVI. COVENANTS BY SD

73. **Covenants by SD.** Subject to the reservations in ¶ 75, SD covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Work, past response actions regarding the UWDAs, Past Response Costs, Future Response Costs, and this CD, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, past response actions regarding the UWDAs, Past Response Costs, Future Response Costs, and this CD; or

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

74. Except as provided in ¶¶ 77 (Waiver of Claims by SD) and 84 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XV (Covenants by Plaintiff), other than in ¶¶ 70.a (claims for failure to meet a requirement of the CD), 70.g (criminal liability), and 70.h (violations of federal/state law during or after implementation of the Work), but only to the extent that SD's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

75. SD reserves, and this CD is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of SD's deliverables or activities.

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

77. **Waiver of Claims by SD**

a. SD agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have:

(1) **De Micromis Waiver.** For all matters relating to the UWDAs against any person where the person's liability to SD with respect to OU1/OU2 is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the UWDAs, or having accepted for transport for disposal or treatment of hazardous substances at the UWDAs, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

(2) **De Minimis Waiver.** For response costs relating to the UWDAs against any person that has entered or in the future enters into a final CERCLA § 122(g) *de minimis* settlement with EPA with respect to the UWDAs.

b. **Exceptions to Waiver**

(1) The waivers under this ¶ 77 shall not apply with respect to any defense, claim, or cause of action that SD may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the UWDAs against such SD.

(2) The waiver under ¶ 77.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the UWDAs by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the UWDAs; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the UWDAs; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

78. SD agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XVII. EFFECT OF SETTLEMENT; CONTRIBUTION

79. Except as provided in ¶ 77 (Waiver of Claims by SD), nothing in this CD shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this CD. Except as provided in Section XVI (Covenants by SD), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the UWDAs for OUI/OU2 against any person not a Party hereto, other than Solutia, Inc. and Pharmacia LLC pursuant to CERCLA, 42 U.S.C. § 9613(f)(1). Nothing in this CD diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

80. The Parties agree, and by entering this CD this Court finds, that this CD constitutes a judicially-approved settlement pursuant to which SD has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this CD. The "matters addressed" in this CD are the Work, Past Response Costs and Future Response Costs.

81. The Parties further agree, and by entering this CD this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this CD constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

82. SD shall, with respect to any suit or claim brought by it for matters related to this CD, notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

83. SD shall, with respect to any suit or claim brought against it for matters related to this CD, notify in writing the United States within 10 days after service of the complaint on such SD. In addition, SD shall notify the United States within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

84. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to OUI/OU2, SD 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 brought in the instant

case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XV (Covenants by Plaintiff).

XVIII. ACCESS TO INFORMATION

85. SD shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within SD's possession or control or that of their contractors or agents relating to activities at OU1/OU2 or to the implementation of this CD, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. SD shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

86. Privileged and Protected Claims

a. SD may assert that all or part of a Record requested by Plaintiff is privileged or protected as provided under federal law, in lieu of providing the Record, provided SD complies with ¶ 86.b, and except as provided in ¶ 86.c.

b. If SD asserts a claim of privilege or protection, it shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, SD shall provide the Record to Plaintiff in redacted form to mask the privileged or protected portion only. SD shall retain all Records that they claim to be privileged or protected until Plaintiff has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the SD's favor.

c. SD may make no claim of privilege or protection regarding: (1) any data regarding the UWDAs, 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 UWDAs; or (2) the portion of any Record that SD is required to create or generate pursuant to this CD.

87. **Business Confidential Claims.** SD may assert that all or part of a Record provided to Plaintiff under this Section or Section XIX (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). SD shall segregate and clearly identify all Records or parts thereof submitted under this CD for which SD asserts business confidentiality claims. Records that SD claims to be 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 SD that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to SD.

88. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this CD.

89. Notwithstanding any provision of this CD, Plaintiff retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIX. RETENTION OF RECORDS

90. Until 7 years after EPA's Certification of Work Completion under ¶ [4.8] (Certification of Work Completion) of the SOW, SD shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the UWDAs, provided, however, that SD who is potentially liable as owner or operator of the UWDAs must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the UWDAs. SD must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that SD (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.

91. At the conclusion of this record retention period, SD shall notify the United States at least 90 days prior to the destruction of any such Records, and, upon request by the United States or the State, and except as provided in ¶ 86 (Privileged and Protected Claims), SD shall deliver any such Records to EPA or the State.

92. SD certifies individually 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 UWDAs since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the UWDAs pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XX. NOTICES AND SUBMISSIONS

93. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this CD must be in writing unless otherwise specified. Whenever, under this CD, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the persons specified below at the addresses specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to

EPA, and not to the United States, should not be sent to the DOJ. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the CD regarding such Party.

As to the United States:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
eescdcopy.enrd@usdoj.gov
Re: DJ # 90-11-2-07135/1

As to EPA:

Franklin E. Hill
Director, Superfund Division
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30062
hill.franklin@epa.gov

and:

Pamela J. Langston Scully
EPA Project Coordinator
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30062
scully.pam@epa.gov
404-562-8935

**As to the Regional Financial
Management Officer:**

Paula V. Painter
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, GA 30062
painter.paula@epa.gov

**At to EPA Cincinnati Finance
Center:**

EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

As to SD:

Joel Balmat
HSW Engineering, Inc.
605 E. Robinson St., Suite 308
Orlando, FL 32801
jbalmat@hsweng.com
407-872-6893

Scott I. Steady
Burr Forman,
201 North Franklin Street, Suite 3200,
Tampa, FL 33602
ssteady@burr.com
813-221-2626

XXI. RETENTION OF JURISDICTION

94. This Court retains jurisdiction over both the subject matter of this CD and SD for the duration of the performance of the terms and provisions of this CD for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this CD, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIII (Dispute Resolution).

XXII. APPENDICES

95. The following appendices are attached to and incorporated into this CD:

"Appendix A" is the SOW.

"Appendix B" contains maps of the UWDAs.

XXIII. MODIFICATION

96. Except as provided in ¶ 13 (Modification of SOW or Related Deliverables), material modifications to this CD, including the SOW, shall be in writing, signed by the United States and SD, and shall be effective upon approval by the Court. Except as provided in ¶ 13, non-material modifications to this CD, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and SD. A modification to the SOW shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

97. Nothing in this CD shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this CD.

XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

98. This CD shall be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the CD disclose facts or considerations that indicate that the CD is inappropriate, improper, or inadequate. SD consents to the entry of this CD without further notice.

99. If for any reason the Court should decline to approve this CD in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXV. SIGNATORIES/SERVICE

100. Each undersigned representative of SD to this CD and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this CD and to execute and legally bind such Party to this document.

101. SD agrees not to oppose entry of this CD by this Court or to challenge any provision of this CD unless the United States has notified SD in writing that it no longer supports entry of the CD.

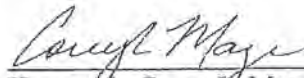
102. SD shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this CD. SD agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. SD need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this CD.

XXVI. FINAL JUDGMENT

103. This CD and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the CD. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this CD.

Upon entry of this CD by the Court, this CD shall constitute a final judgment between and among the United States and SD. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 18th DAY OF December, 2019.



Honorable Corey L. Maze
United States District Judge

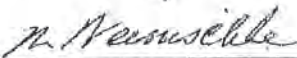
Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 42 of 79

Signature Page for RD/RA CD regarding the Anniston PCB Superfund Site

FOR THE UNITED STATES OF AMERICA:

Jay E. Town
United States Attorney
Northern District of Alabama
1801 Fourth Avenue
Birmingham, Alabama 35203

Date: 12/17/2018

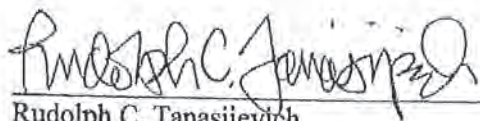


William A. Weinischke
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Signature Page for RD/RA CD regarding the Anniston PCB Superfund Site



Franklin E. Hill
Director, Superfund Division, Region 4
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, GA 30062



Rudolph C. Tanasijevich
Associate Regional Counsel
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Atlanta, GA 30062

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 45 of 79

Signature Page for RD/RA CD regarding the Anniston PCB Superfund Site

FOR MRC HOLDINGS, INC.

By: MRC Holdings, Inc.



5/7/2019
Dated

Richard J. Carroll
Name (print):

Title: President, Secretary, Treasurer

Address: 1000 North West Street
5th Floor
Wilmington, DE 19801

Agent Authorized to Accept Service Name (print): Scott I. Steady, Esq.

on Behalf of Above-signed Party: Title: Partner

Company: Burr & Forman LLP

Address: 201 N. Franklin Street, Suite 3200
Tampa, FL 33602

Phone: 813-367-5719

email: ssteady@burr.com

Appendix A

Appendix B

**REMEDIAL DESIGN/REMEDIAL ACTION
STATEMENT OF WORK**

**FOR OPERABLE UNITS 1 AND 2
UNAPPROVED WASTE DISPOSAL AREAS
ANNISTON PCB SUPERFUND SITE**

MAY 2019

Anniston, Calhoun County, Alabama

EPA Region 4

TABLE OF CONTENTS

1.	INTRODUCTION	1
2.	COMMUNITY INVOLVEMENT	2
3.	REMEDIAL DESIGN	3
4.	REMEDIAL ACTION	5
5.	REPORTING	9
6.	DELIVERABLES	10
7.	SCHEDULES	16
8.	STATE PARTICIPATION	17
9.	REFERENCES	18

1. INTRODUCTION

1.1 Purpose of the SOW. This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work.

1.2 Structure of the SOW

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

1.3 The Scope of the Remedy includes the actions described in Section 12.2 of the ROD. This Scope of Work (SOW) includes actions for the Unapproved Waste Disposal Areas (UWDAs) at the Ashley-LeGrande and Wilborn properties in Anniston, Alabama.

The components of the selected remedy are as follows:

- Clear and prepare the surface for cover.
- Consolidate waste into a smaller footprint or dispose of a portion of the waste offsite as determined appropriate during remedial design.
- Install a RCRA Subtitle D multi-layer cap consisting of at a minimum:
 - 40-mil geomembrane liner,
 - geocomposite drainage layer, and
 - 18-inch-thick protective soil cover.

- Vegetate surface or provide other erosion protection for cap.
 - Execute environmental covenants to restrict future use of these areas and to protect the cap.
 - Conduct O&M and monitoring of the cap.
- 1.4 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Consent Decree (CD), have the meanings assigned to them in CERCLA, in such regulations, or in the CD, except that the term "Paragraph" or "¶" means a paragraph of the CD, and the term "Section" means a section of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

2.1 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. Previously, during the RI/FS phase, EPA developed a Community Involvement Plan (CIP) for the Site. Pursuant to 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP.
- (b) If requested by EPA, SD shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the UWDAs at the Site. SD's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any Community Advisory Groups, (2) any Technical Assistance Plan recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP SD's responsibilities for community involvement activities. All community involvement activities conducted by SD at EPA's request are subject to EPA's oversight.
- (c) **SD's CI Coordinator.** If requested by EPA, SD shall, designate and notify EPA of SD's Community Involvement Coordinator (SD's CI Coordinator). SD's CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the UWDAs at the Site.

2.2 SD's Responsibilities for Technical Assistance

- (a) If requested by EPA, SD shall provide funding for a qualified community group to receive the services of a technical advisor(s) who can: (i) help group members understand UWDA Site cleanup issues (specifically, to interpret and comment on UWDA Site-related documents developed under this SOW); and (ii) share this

information with others in the community. The technical advisor(s) will be independent from SD. SD's TAP assistance will be limited to \$30,000 during the RD/RA, and will end when EPA issues the Certification of Work Completion under Section 4.8. SD shall implement this requirement under the existing Technical Assistance Plan (TAP) for the Anniston PCB Site. Incremental funding will be based on a reasonable budget request based on the work anticipated.

3. REMEDIAL DESIGN

3.1 RD Work Plan. SD shall submit a Remedial Design (RD) Work Plan (RDWP) for EPA approval. The RDWP must include:

- (a) Plans for implementing all RD activities identified in this SOW, in the RDWP, or required by EPA to be conducted to develop the RD;
- (b) A description of the overall management strategy for performing the RD, including a proposal for phasing of design and construction, if applicable;
- (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the Remedial Action (RA) as necessary to implement the Work;
- (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;
- (e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);
- (f) Description of any proposed pre-design investigation;
- (g) Descriptions of any applicable permitting requirements and other regulatory requirements;
- (h) Description of plans for obtaining access in connection with the Work, such as property acquisition, property leases, and/or easements; and
- (i) The following supporting deliverables described in Section 6.7 (Supporting Deliverables): Health and Safety Plan; and Emergency Response Plan.

3.2 SD shall meet regularly with EPA to discuss design issues as necessary, as directed or determined by EPA.

3.3 Pre-Design Investigation. The purpose of the Pre-Design Investigation (PDI) is to address data gaps by conducting additional field investigations.

- (a) **PDI Work Plan.** SD shall submit a PDI Work Plan (PDIWP) for EPA approval. The PDIWP must include:

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 56 of 79

- (1) An evaluation and summary of existing data and description of data gaps;
 - (2) A sampling plan including media to be sampled, contaminants or parameters for which sampling will be conducted, location (areal extent and depths), and number of samples; and
 - (3) Cross references to quality assurance/quality control (QA/QC) requirements set forth in the Quality Assurance Project Plan (QAPP) as described in Section 6.7(d).
- (b) Following the PDI, SD shall submit a PDI Evaluation Report. This report must include:
- (1) Summary of the investigations performed;
 - (2) Summary of investigation results;
 - (3) Summary of validated data (i.e., tables and graphics);
 - (4) Data validation reports and laboratory data reports;
 - (5) Narrative interpretation of data and results;
 - (6) Results of statistical and modeling analyses;
 - (7) Photographs documenting the work conducted; and
 - (8) Conclusions and recommendations for RD, including design parameters and criteria.
- (c) EPA may require SD to supplement the PDI Evaluation Report and/or to perform additional pre-design studies.

3.4 Intermediate (50%) RD. SD shall submit an Intermediate (50%) RD for EPA's comment. The Intermediate RD must include:

- (a) Preliminary drawings and specifications;
- (b) Descriptions of permit requirements, if applicable;
- (c) Preliminary Operation and Maintenance (O&M) Plan and O&M Manual;
- (d) A description of how the RA will be implemented in a manner that minimizes environmental impacts in accordance with EPA's *Principles for Greener Cleanups* (Aug. 2009);
- (e) A description of monitoring and control measures to protect human health and the environment, such as air monitoring and dust suppression, during the RA;

- (f) Any proposed revisions to the RA Schedule that is set forth in Section 7.3 (RA Schedule); and
- (g) Updates of all supporting deliverables required to accompany the RDWP and the following additional supporting deliverables described in Section 6.7 (Supporting Deliverables): Field Sampling Plan; Quality Assurance Project Plan; Site Wide Monitoring Plan; Construction Quality Assurance/Quality Control Plan; Transportation and Off-Site Disposal Plan; and Institutional Controls Implementation and Assurance Plan.

3.5 Pre-Final (95%) RD. SD shall submit the Pre-final (95%) RD for EPA's comment. The Pre-final RD must be a continuation and expansion of the previous design submittal and must address EPA's comments regarding the Intermediate RD. The Pre-final RD will serve as the approved Final (100%) RD if EPA approves the Pre-final RD without comments. The Pre-final RD must include:

- (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's Master Format 2012;
- (b) A survey and engineering drawings showing existing Site features, such as elements, property borders, easements, and Site conditions;
- (c) Pre-Final versions of the same elements and deliverables as are required for the Intermediate RD;
- (d) A specification for photographic documentation of the RA; and
- (e) Updates of all supporting deliverables required to accompany the Intermediate (50%) RD.

3.6 Final (100%) RD. If the EPA approves the Pre-Final 95% RD with no comments, it will be the Final (100%) RD. Otherwise, SD shall submit the Final (100%) RD for EPA approval. The Final RD must address EPA's comments on the Pre-final RD and must include final versions of all Pre-final RD deliverables.

4. REMEDIAL ACTION

4.1 RA Work Plan. SD shall submit a RA Work Plan (RAWP) for EPA approval that includes:

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

4.2 **Independent Quality Assurance Team.** SD shall notify EPA of SD's designated Independent Quality Assurance Team (IQAT). The IQAT will be independent of the Supervising Contractor. SD may hire a third party for this purpose. SD's notice must include the names, titles, contact information, and qualifications of the members of the IQAT. The IQAT will have the responsibility to determine whether Work is of expected quality and conforms to applicable plans and specifications. The IQAT will have the responsibilities as described in Section 2.1.3 of the *Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties*, EPA/540/G-90/001 (Apr. 1990).

4.3 **Meetings and Inspections**

- (a) **Preconstruction Conference.** SD shall hold a preconstruction conference with EPA and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). SD shall prepare minutes of the conference and shall distribute the minutes to all Parties.
- (b) **Periodic Meetings.** During the construction portion of the RA (RA Construction), SD shall meet monthly with EPA, and others as directed or determined by EPA, to discuss construction issues. SD shall distribute an agenda to all Parties prior to each meeting. SD shall prepare minutes of the meetings and shall distribute the minutes to all Parties.
- (c) **Inspections**
 - (1) EPA or its representative shall conduct periodic inspections of (or have an on-Site presence during) the Work. At EPA's request, the Supervising Contractor or other designee shall accompany EPA or its representative during inspections.
 - (2) SD shall provide office space for EPA personnel to perform their oversight duties including access to office equipment available to SD's on-Site Contractor.
 - (3) Upon notification by EPA of any deficiencies in the RA Construction, SD shall take all necessary steps to correct the deficiencies and/or bring the RA Construction into compliance with the approved Final RD, any approved design changes, and/or the approved RAWP. If applicable, SD shall comply with any schedule provided by EPA in its notice of deficiency.

4.4 **Emergency Response and Reporting**

- (a) **Emergency Response and Reporting.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, SD shall: (1) immediately take all appropriate action to prevent, abate, or minimize

such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in Section 4.4(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.

- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that SD are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, SD shall immediately notify the authorized EPA officer orally.
- (c) The "authorized EPA officer" for purposes of immediate oral notifications and consultations under Section 4.4(a) and Section 4.4(b) is the EPA Project Coordinator, the EPA Alternate Project Coordinator (if the EPA Project Coordinator is unavailable), or the EPA [Emergency Response Unit], Region 4 (if neither EPA Project Coordinator is available).
- (d) For any event covered by Section 4.4(a) and Section 4.4(b), SD shall: (1) within 14 days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under Section 4.4 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

4.5 Off-Site Shipments

- (a) SD may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. SD will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if SD obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
- (b) SD may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. SD also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a

decision to ship the Waste Material to a different out-of-state facility. SD shall provide the notice after the award of the contract for RA construction and before the Waste Material is shipped.

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

4.6 Certification of RA Completion

- (a) **RA Completion Inspection.** The RA is "Complete" for purposes of this Section 4.6 when it has been fully performed and the Performance Standards have been achieved. SD shall schedule an inspection for the purpose of obtaining EPA's Certification of RA Completion. The inspection must be attended by SD and EPA and/or their representatives.
- (b) **RA Report/Monitoring Report.** Following the inspection, SD shall submit a RA Report/Monitoring Report to EPA requesting EPA's Certification of RA Completion. The report must: (1) include certifications by a registered professional engineer and by SD's Project Coordinator that the RA is complete; (2) include as-built drawings signed and stamped by a registered professional engineer; (3) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); (4) contain monitoring data to demonstrate that Performance Standards have been achieved; and (5) be certified in accordance with Section 6.5 (Certification).
- (c) If EPA concludes that the RA is not Complete, EPA shall so notify SD. EPA's notice must include a description of any deficiencies. EPA's notice may include a schedule for addressing such deficiencies or may require SD to submit a schedule for EPA approval. SD shall perform all activities described in the notice in accordance with the schedule.
- (d) If EPA concludes, based on the initial or any subsequent RA Report/Monitoring Report requesting Certification of RA Completion, that the RA is Complete, EPA shall so certify to SD. This certification will constitute the Certification of RA Completion for purposes of the CD, including Section XV of the CD (Covenants by Plaintiff[s]). Certification of RA Completion will not affect SD's remaining obligations under the CD.

4.7 Periodic Review Support Plan (PRSP). SD shall submit the PRSP for EPA approval. The PRSP addresses the studies and investigations that SD shall conduct to support EPA's reviews of whether the RA is protective of human health and the environment in accordance with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c) (also known as "Five-year Reviews"). SD shall develop the plan in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidance.

4.8 Certification of Work Completion

- (a) **Work Completion Inspection.** SD shall schedule an inspection for the purpose of obtaining EPA's Certification of Work Completion. The inspection must be attended by SD and EPA and/or their representatives.
- (b) **Work Completion Report.** Following the inspection, SD shall submit a report to EPA requesting EPA's Certification of Work Completion. The report must:
 - (1) include certifications by a registered professional engineer and by SD's Project Coordinator that the Work, including all O&M activities, is complete; and
 - (2) be certified in accordance with Section 6.5 (Certification). If the RA Report/Monitoring Report submitted under Section 4.6(b) includes all elements required under this Section 4.8(b), then the RA Report/Monitoring Report suffices to satisfy all requirements under this Section 4.8(b).
- (c) If EPA concludes that the Work is not complete, EPA shall so notify SD. EPA's notice must include a description of the activities that SD must perform to complete the Work. EPA's notice must include specifications and a schedule for such activities or must require SD to submit specifications and a schedule for EPA approval. SD shall perform all activities described in the notice or in the EPA-approved specifications and schedule.
- (d) If EPA concludes, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, EPA shall so certify in writing to SD. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) activities under the Periodic Review Support Plan; (2) obligations under Sections VIII (Property Requirements), XIX (Retention of Records), and XVIII (Access to Information) of the CD;
 - (3) Institutional Controls obligations as provided in the ICIAP;
 - (4) reimbursement of EPA's Future Response Costs under Section X (Payments for Response Costs) of the CD.

5. REPORTING

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

- (a) The actions that have been taken toward achieving compliance with the CD;

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 62 of 79

- (b) A summary of all results of sampling, tests, and all other data received or generated by SD;
- (c) A description of all deliverables that SD submitted to EPA;
- (d) A description of all activities relating to RA Construction that are scheduled for the next month;
- (e) An updated RA Construction Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) A description of any modifications to the work plans or other schedules that SD have proposed or that have been approved by EPA; and
- (g) A description of all activities undertaken in support of the Community Involvement Plan (CIP) during the reporting period and those to be undertaken in the next month.

5.2 Notice of Progress Report Schedule Changes. If the schedule for any activity described in the Progress Reports, including activities required to be described under Section 5.1(d), changes, SD shall notify EPA of such change at least 7 days before performance of the activity.

6. DELIVERABLES

- 6.1 Applicability.** SD shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 6.2 (In Writing) through 6.4 (Technical Specifications) apply to all deliverables. Paragraph 6.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 6.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.
- 6.2 In Writing.** As provided in ¶ 93 of the CD, all deliverables under this SOW must be in writing unless otherwise specified.
- 6.3 General Requirements for Deliverables.** All deliverables must be submitted by the deadlines in the RD Schedule or RA Schedule, as applicable. SD shall submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Section 6.4. All other deliverables shall be submitted to EPA in the electronic form specified by the EPA Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", SD shall also provide EPA with paper copies of such exhibits.
- 6.4 Technical Specifications**

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 63 of 79

- (a) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. All required information, instructions and guidance are available via the EPA web site www.epa.gov/region4/waste/sf/edd/edd.html free of charge. This web site contains links to obtain the required software, as well as the most recent versions of the Environmental Data Submission Guidance, the Region 4 EDD Reference Guide, and the Region 4 EDP Reference Manual. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- (b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
- (c) Each file must include an attribute name for each Site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (d) Spatial data submitted by SD does not, and is not intended to, define the boundaries of the Site.

6.5 Certification. All deliverables that require compliance with this Section 6.5 must be signed by SD's Project Coordinator, or other responsible official of SD, 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.

6.6 Approval of Deliverables

- (a) **Initial Submissions**

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 64 of 79

- (1) After review of any deliverable that is required to be submitted for EPA approval under the CD or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
 - (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.
- (b) **Resubmissions.** Upon receipt of a notice of disapproval under Section 6.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under Section 6.6(a), SD shall, within 60 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 SD to correct the deficiencies; or (5) any combination of the foregoing.
- (c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under Section 6.6(a) (Initial Submissions) or Section 6.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the CD; and (2) SD shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under Section 6.6(a) or Section 6.6(b) does not relieve SD of any liability for stipulated penalties under Section XIV (Stipulated Penalties) of the CD.
- 6.7 **Supporting Deliverables.** SD shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. SD shall develop the deliverables in accordance with all applicable regulations, guidance, and policies (see Section 9 [References]). SD shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.
- (a) **Health and Safety Plan.** The Health and Safety Plan (HASP) describes all activities to be performed to protect on-Site personnel and area residents from physical, chemical, and all other hazards posed by the Work. SD 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 RD activities and should be, as appropriate, updated to cover activities during the RA and updated to cover activities after RA completion. EPA does not approve the HASP, but will review

it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.

- (b) **Emergency Response Plan.** The Emergency Response Plan (ERP) must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:
- (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for, spills and discharges;
 - (4) Notification activities in accordance with Section 4.4(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004; and
 - (5) A description of all necessary actions to ensure compliance with Paragraph 11 (Emergencies and Releases) of the CD in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (c) **Field Sampling Plan.** The Field Sampling Plan (FSP) and addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. SD shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).
- (d) **Quality Assurance Project Plan.** The Quality Assurance Project Plan (QAPP) augments the FSP and addresses sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of SD's quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. SD 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). The QAPP also must include procedures:

- (1) To ensure that EPA and the State and their authorized representatives have reasonable access to laboratories used by SD in implementing the CD (SD's Labs);
 - (2) To ensure that SD's Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
 - (3) To ensure that SD's Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)) or other methods acceptable to EPA;
 - (4) To ensure that SD's Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;
 - (5) For SD to provide EPA and the State with notice at least 28 days prior to any sample collection activity;
 - (6) For SD to provide split samples and/or duplicate samples to EPA and the State upon request;
 - (7) For EPA and the State to take any additional samples that they deem necessary;
 - (8) For EPA and the State to provide to SD, upon request, split samples and/or duplicate samples in connection with EPA's and the State's oversight sampling; and
 - (9) For SD to submit to EPA and the State all sampling and tests results and other data in connection with the implementation of the CD.
- (e) **Construction Quality Assurance/Quality Control Plan (CQA/QCP).** The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQA/QCP must:

- (1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/QCP;
 - (2) Describe the PS required to be met to achieve Completion of the RA;
 - (3) Describe the activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;
 - (5) Describe industry standards and technical specifications used in implementing the CQA/QCP;
 - (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
 - (7) Describe procedures for documenting all CQA/QCP activities; and
 - (8) Describe procedures for retention of documents and for final storage of documents.
- (f) **Transportation and Off-Site Disposal Plan.** The Transportation and Off-Site Disposal Plan (TODP) describes plans to ensure compliance with Section 4.5 (Off-Site Shipments). The TODP must include:
- (1) Proposed routes for off-Site shipment of Waste Material;
 - (2) Identification of communities affected by shipment of Waste Material; and
 - (3) Description of plans to minimize impacts on affected communities.
- (g) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the RA. SD shall develop the O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:
- (1) Description of PS required to be met to implement the ROD;
 - (2) Description of activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (3) **O&M Reporting.** Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;

- (4) Description of corrective action in case of systems failure, including:
 - (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve PS; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and
 - (5) Description of corrective action to be implemented in the event that PS are not achieved; and a schedule for implementing these corrective actions.
- (h) **O&M Manual.** The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy. SD shall develop the O&M Manual in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017).
- (i) **Institutional Controls Implementation and Assurance Plan.** The Institutional Controls Implementation and Assurance Plan (ICIAP) describes plans to implement, maintain, and enforce the Institutional Controls (ICs) at the Site. SD shall develop the ICIAP in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). The ICIAP must include the following additional requirements:
- (1) Locations of recorded real property interests (e.g., easements, liens) and resource interests in the property that may affect ICs (e.g., surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and
 - (2) Legal descriptions and survey maps that are prepared according to current American Land Title Association (ALTA) Survey guidelines and certified by a licensed surveyor.

7. SCHEDULES

- 7.1 **Applicability and Revisions.** All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the RD and RA Schedules set forth below. SD may submit proposed revised RD Schedules or RA Schedules for EPA approval. Upon EPA's approval, the revised RD and/or RA Schedules supersede the RD and RA Schedules set forth below, and any previously-approved RD and/or RA Schedules.

7.2 RD Schedule

	Description of Deliverable, Task	Section Ref.	Deadline
1	RDWP	3.1	60 days following receipt of EPA Authorization to Proceed regarding Supervising Contractor under CD ¶ 9.c
2	PDIWP	3.3(a)	30 days following EPA approval of RDWP
3	PDI Evaluation Report	3.3(b)	60 days following receipt of validated PDI data
4	Intermediate (50%) RD	3.4	120 days following EPA approval of PDI Evaluation Report
5	Pre-final (95%) RD	3.5	120 days following receipt of EPA comments on Intermediate RD
6	Final (100%) RD	3.6	30 days following receipt of EPA comments on Pre-final RD

7.3 RA Schedule

	Description of Deliverable / Task	Section Ref.	Deadline
1	RAWP	4.1	60 days after EPA Notice of Authorization to Proceed with RA
2	Pre-Construction Conference	4.3(a)	30 days following EPA approval of RAWP
3	Start of Construction		30 days following pre-construction conference
4	Completion of Construction		TBD
5	RA Completion Inspection	4.6(a)	30 days following completion of construction
6	RA Report	4.6(b)	60 days following completion of RA Completion Inspection
7	Work Completion Inspection	4.8(a)	TBD
8	Work Completion Report	4.8(b)	60 days following Work Completion Inspection
9	Periodic Review Support Plan	4.7	Five-Year Reviews, triggered by start of first RA

8. STATE PARTICIPATION

- 8.1 Copies.** SD shall, at any time they send a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to SD, send a copy of such document to the State.
- 8.2 Review and Comment.** The State will have a reasonable opportunity for review and comment prior to:

- (a) Any EPA approval or disapproval under Section 6.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
- (b) Any approval or disapproval of the Construction Phase under Section 4.6 (RA Construction Completion), any disapproval of, or Certification of RA Completion under Section 4.6 (Certification of RA Completion), and any disapproval of, or Certification of Work Completion under Section 4.8 (Certification of Work Completion).

9. REFERENCES

- 9.1 The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in Section 9.2:
- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
 - (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
 - (c) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
 - (d) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr. 1990).
 - (e) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
 - (f) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
 - (g) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
 - (h) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).
 - (i) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).
 - (j) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
 - (k) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 71 of 79

- (l) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (m) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, 540-R-01-007 (June 2001).
- (n) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).
- (o) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).
- (p) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).
- (q) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (r) Superfund Community Involvement Handbook, SEMS 100000070 (January 2016), <https://www.epa.gov/superfund/community-involvement-tools-and-resources>.
- (s) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (t) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (u) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (v) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).
- (w) USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2 (amended Apr. 2007).
- (x) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), <https://www.epa.gov/geospatial/geospatial-policies-and-standards> and <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (y) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (z) Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements, Interim (Sep. 2009).

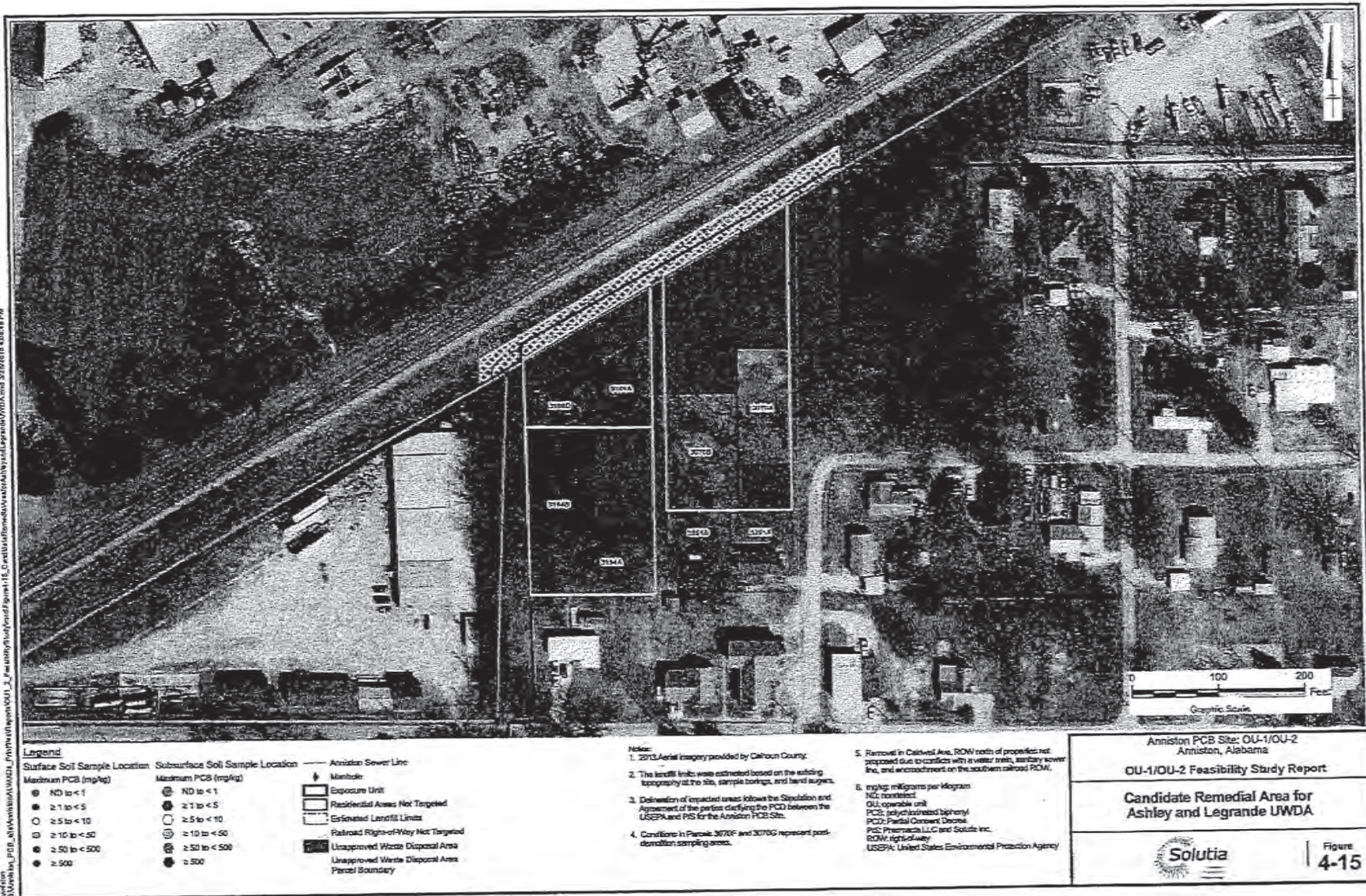
Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 72 of 79

- (aa) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010)
 - (bb) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
 - (cc) Recommended Evaluation of Institutional Controls: Supplement to the "Comprehensive Five-Year Review Guidance," OSWER 9355.7-18 (Sep. 2011).
 - (dd) Construction Specifications Institute's Master Format 2012, available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
 - (ee) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach, OSWER 9200.2-125 (Sep. 2012)
 - (ff) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).
 - (gg) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).
 - (hh) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), https://www.epaossc.org/_HealthSafetyManual/manual-index.htm.
 - (ii) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
 - (jj) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.
- 9.2 A more complete list may be found on the following EPA Web pages:
- Laws, Policy, and Guidance: <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>
- Test Methods Collections: <https://www.epa.gov/measurements/collection-methods>
- 9.3 For any regulation or guidance referenced in the CD or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after SD receive notification from EPA of the modification, amendment, or replacement.

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 73 of 79

Appendix C







Recorded Wilborn Notice

DEED 3278 360
Recorded In Above Book and Page
03/24/2021 12:29:01 PM
Alice K. Martin
Judge of Probate
Calhoun County, Alabama

Mental Health Fee \$ 4.00
Recording Fee \$ 258.00
TOTAL \$ 262.00

***This Instrument Prepared By, And
After Recording Return To:***

Scott I. Steady, Esq.
Burr & Forman LLP
201 N Franklin Street, Suite 3200
Tampa, Florida 33602

Cross Reference:

Deed Book 1583, Page 752
Calhoun County Records

STATE OF ALABAMA)
CALHOUN COUNTY)

NOTICE TO SUCCESSORS-IN-TITLE

KNOW ALL MEN BY THESE PRESENTS, That the undersigned **GARY WILBORN**, as **Personal Representative of the Estate of WALDEN J. WILBORN, DECEASED** (Case No. 31082, Probate Court Of Calhoun County, Alabama), as owner of all of that certain tract or parcel of real property more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"), does hereby give notice to all successors-in-title to the Property that the Property is subject to environmental restrictions.

The Property is part of the Anniston PCB Superfund Site ("Site"). The United States Environmental Protection Agency ("EPA") utilized the "Superfund Alternative Approach" to designate the Site.

In order to resolve claims brought by the United States in *United States of America v. MRC Holdings, Inc.*, the United States and MRC Holdings, Inc. ("MRC") have entered into a Consent Decree (the "Decree") requiring MRC to implement the Remedial Design/Remedial Action ("RD/RA") on the Property for specified activities relating to the Unapproved Waste Disposal Areas ("UWDAs") in accordance with the OU1/OU2 Record of Decision ("ROD"). The Decree was lodged on July 23, 2019 with the United States District Court for the Northern District of Alabama, in the case of the *United States of America v. MRC Holdings Inc.*, Civil Action No. 1:19-CV-01153-CLM. Under Section VI of the Decree, MRC is required to perform the "UWDA" remedy as defined by the Decree (the "Work"), which includes the placement of a RCRA Subtitle D multi-layer cap on a portion of the Property. Under Paragraphs 13 and 17 of the Decree, EPA

has reserved the right to modify the Work and has retained the authority to select and require performance of further actions at the Property. The Decree is attached as Exhibit "B".

Based upon the results of a remedial investigation to determine the nature and extent of contamination and a feasibility study to identify and evaluate remedial alternatives, the ROD and for the OU1/OU2 portion of the Site was issued by EPA in November, 2017.

As documented in the ROD, the UWDAs contain auto fluff that was deposited over time. Low levels of PCBs were detected in soils. No PCBs were detected in groundwater. The selected RA provides for:

- Installation of a RCRA Subtitle D multi-layer cap consisting of a minimum:
 - 40-mil geomembrane liner,
 - Geocomposite drainage layer, and
 - 18-inch-thick protective soil cover.
 - Vegetate surface or provide other erosion protection for cap.
 - Environmental covenants shall be recorded to restrict future use of these areas and to protect the cap.

[No further text on this page. Signature page follows.]

IN WITNESS WHEREOF, the undersigned has caused this Notice to be properly executed and delivered as of the day and year first set forth above.

WITNESSES:

Lesara A. Ervin

Name: Lesara A. Ervin
(Print/Type Name)

Gary Wilborn

GARY WILBORN, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
WALDEN J. WILBORN, DECEASED
(CASE NO. 31082, PROBATE COURT OF
CALHOUN COUNTY, ALABAMA)

Name: Liz Moore
(Print/Type Name) Liz Moore

STATE OF ALABAMA)

COUNTY OF Calhoun)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that GARY WILBORN, whose name as Personal Representative of the Estate of WALDEN J. WILBORN, Deceased, is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, in such capacity and with full authority, executed the same voluntarily.

Given under my hand and seal, this 22 day of March, 2021.

Tasha S. Allen
NOTARY PUBLIC
Printed Name: Tasha S. Allen

My Commission Expires: June 13, 2022

[SEAL]

EXHIBIT A – PROPERTY

All that tract or parcel of land lying and being in Section 7, Township 16 South, Range 8 East, as described in Deed Book 1583, page 752, in the Probate Office of Calhoun County, Alabama and being more particularly described as follows:

Commencing at a point at the intersection of southerly right-of-way of W 10th Street (apparent 60-foot R/W) with the eastern right-of-way of Legarde Avenue (apparent 50-foot R/W); thence, South 89° 10' 31" East, along the aforesaid right-of-way of W 10th Street 415.11 feet to a point and the Point of Beginning; thence, from said Point of Beginning continue along W 10th Street

South 89° 10' 31" East, 212.32 feet to a point on the northwestern right-of-way of the Norfolk Southern Railroad (100-foot R/W); thence, leaving W 10th Street and continue along the aforesaid Norfolk Southern Railroad right-of way the following two calls;

217.80 feet along the arc of a curve to the right, having a radius of 2,878.73 feet and a chord bearing and distance of South 52° 43' 27" East, 217.75 feet to the point of intersection with the western line of the NE 1/4 of the NW 1/4, Sect 07, T16S, R8E; thence,

218.83 feet along the arc of a curve to the right, having a radius of 2,878.73 feet and a chord bearing and distance of South 48° 22' 44" East, 218.78 feet to the point of intersection of with the westerly right-of-way of Mulberry Avenue (apparent 50-foot R/W); thence, continue along aforesaid right-of-way of Mulberry Avenue

South 00° 30' 04" East, 81.56 feet to a point of the northerly right-of-way of W 9th Street (apparent 50-foot R/W); thence, continue along W 9th Street the following six calls;

South 85° 55' 28" West, 22.54 feet; thence,

86.79 feet along the arc of a curve to the left having a radius of 501.30 feet and a chord bearing and distance of South 79° 56' 05" West, 86.68 feet; thence,

54.79 feet along the arc of a curve to the right having a radius of 181.71 feet and a chord bearing and distance of South 83° 36' 48" West, 54.59 feet to the point of intersection with the western line of the NE 1/4 of the NW 1/4, Sect 07, T16S, R8E; thence,

74.58 feet along the arc of a curve to the right, having a radius of 181.71 feet and a chord bearing and distance of North 75° 59' 25" West, 74.06 feet; thence,

North 64° 13' 57" West, 197.07 feet; thence,

160.36 feet along the arc of a curve to the left, having a radius of 389.46 feet and a chord bearing and distance of North 76° 01' 42" West, 159.23 feet; thence, leaving the aforesaid right-of-way of W 9th Street

North 03° 47' 45" East, 243.12 feet to the Point of Beginning, containing 136,912 square feet or 3.1431 acres of land, more or less.

EXHIBIT B – THE DECREE

[See Attached]

FILED

2019 Dec-18 PM 03:09
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

Civil Action No. 1:19-cv-01153-CLM

v.

MRC HOLDINGS, INC.

Defendant.

REMEDIAL DESIGN/REMEDIAL ACTION

CONSENT DECREE

**(For Operable Unit 1/Operable Unit 2
Concerning the Record of Decision for the "Unapproved Waste Disposal Areas"
Section 5.6.1.2.4)**

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	JURISDICTION	2
III.	PARTIES BOUND	2
IV.	DEFINITIONS	3
V.	GENERAL PROVISIONS	7
VI.	PERFORMANCE OF THE WORK	7
VII.	REMEDY REVIEW	10
VIII.	PROPERTY REQUIREMENTS	11
IX.	FINANCIAL ASSURANCE	13
X.	PAYMENTS FOR RESPONSE COSTS	18
XI.	INDEMNIFICATION AND INSURANCE	21
XII.	FORCE MAJEURE	22
XIII.	DISPUTE RESOLUTION	24
XIV.	STIPULATED PENALTIES	26
XV.	COVENANTS BY PLAINTIFF	28
XVI.	COVENANTS BY SD	31
XVII.	EFFECT OF SETTLEMENT; CONTRIBUTION	33
XVIII.	ACCESS TO INFORMATION	34
XIX.	RETENTION OF RECORDS	35
XX.	NOTICES AND SUBMISSIONS	35
XXI.	RETENTION OF JURISDICTION	37
XXII.	APPENDICES	37
XXIII.	MODIFICATION	37
XXIV.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	38
XXV.	SIGNATORIES/SERVICE	38
XXVI.	FINAL JUDGMENT	38

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency (EPA), filed a complaint in this matter pursuant to Sections 106, 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9606, 9607 and 9613(g)(2) (the "Complaint").

B. The United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice ("DOJ") for response actions at the Anniston PCB Superfund Site in Anniston, Alabama ("Site"), together with accrued interest; (2) performance of response actions by the defendants at the Site consistent with CERCLA and the National Contingency Plan, 40 C.F.R. Part 300 ("NCP"); and (3) a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Alabama (the "State") on June 6, 2018, of negotiations with potentially responsible parties ("PRPs") regarding the implementation of the remedial design and remedial action ("RD/RA") for OU1/OU2, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree ("CD").

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior and the National Oceanic and Atmospheric Administration on June 6, 2018, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this CD.

E. The defendant that has entered into this CD ("Settling Defendant" or "SD") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

F. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced on August 4, 2003, a Remedial Investigation and Feasibility Study ("RI/FS") for the OU1/OU2 pursuant to 40 C.F.R. § 300.430.

G. EPA approved the OU1/OU2 Remedial Investigation (RI) Report on January 21, 2015, and EPA approved the OU1/OU2 Feasibility Study (FS) Report on March 7, 2017.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on March 12, 2017, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator, EPA Region 4, based the selection of the response action.

I. The decision by EPA on the OU1/OU2 remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), attached as Appendix A, executed on November 9, 2017, on which the State had a reasonable opportunity to review and comment and on which the State has given its concurrence. The OU1/OU2 ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

J. In order to resolve the claims brought by the United States in its Complaint, the United States and the Settling Defendant have entered into this Consent Decree ("Consent Decree"), which requires the Settling Defendant to implement the Remedial Design/Remedial Action ("RD/RA") for specific activities related to the Unapproved Waste Disposal Areas in accordance with the OU1/OU2 ROD and to fulfill the requirements of this Consent Decree.

K. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by SD if conducted in accordance with this CD and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the Work to be performed by SD shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

M. The Parties recognize, and the Court by entering this CD finds, that this CD has been negotiated by the Parties in good faith and implementation of this CD will expedite the cleanup of the Unapproved Waste Disposal Areas and will avoid prolonged and complicated litigation between the Parties, and that this CD is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over SD. Solely for the purposes of this CD and the underlying complaint, SD waives all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. SD shall not challenge the terms of this CD or this Court's jurisdiction to enter and enforce this CD.

III. PARTIES BOUND

2. This CD is binding upon the United States and upon SD and its successors, and assigns. Any change in ownership or corporate or other legal status of SD including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such SD's responsibilities under this CD.

3. SD shall provide a copy of this CD to each contractor hired to perform the Work and to each person representing SD with respect to the Unapproved Waste Disposal Areas or the

Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this CD. SD or its contractors shall provide written notice of the CD to all subcontractors hired to perform any portion of the Work. SD shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this CD. With regard to the activities undertaken pursuant to this CD, each contractor and subcontractor shall be deemed to be in a contractual relationship with SD within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

"ADEM" shall mean the Alabama Department of Environmental Management and any successor departments or agencies of the State.

"Anniston Community Advisory Group" or "Anniston CAG" shall mean the community advisory group created under the Revised Partial Consent Decree.

"Anniston PCB Site Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and established pursuant to the Revised Partial Consent Decree entered into between the United States, Solutia Inc., and Pharmacia Corp., Civil Action No. 1:02-cv-0749, entered by the Court on August 4, 2003.

"Affected Property" shall mean all real property at the Unapproved Waste Disposal Areas and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Action.

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

"Consent Decree" or "CD" shall mean this consent decree and all appendices attached hereto (listed in Section XXII). In the event of conflict between this CD and any appendix, this CD shall control.

"Day" or "day" shall mean a calendar day. In computing any period of time under this CD, 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.

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Effective Date" shall mean the date upon which the approval of this CD is recorded on the Court's docket.

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

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

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising SD's performance of the Work to determine whether such performance is consistent with the requirements of this CD, including costs incurred in reviewing deliverables submitted pursuant to this CD, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to ¶ 11 (Emergencies and Releases), Section VII (Remedy Review), Section VIII (Property Requirements), and ¶ 31 (Access to Financial Assurance), or the costs incurred by the United States in enforcing this CD, including all costs incurred pursuant to Section XIII (Dispute Resolution), and all litigation costs.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this CD, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this CD, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to ¶ 11 (Emergencies and Releases), ¶ 12 (Community Involvement) (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), ¶ 31 (Access to Financial Assurance), Section VII (Remedy Review), Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including the amount of just compensation), and Section XIII (Dispute Resolution), and all litigation costs. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs SD has agreed to pay under this CD that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from February 2, 2017, to the Effective Date, and Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Unapproved Waste Disposal Areas.

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

"Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with the Unapproved Waste Disposal Areas between February 2, 2017, and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

"Institutional Control Implementation and Assurance Plan" or "ICIAP" shall mean the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls set forth in the OU1/OU2 ROD, prepared in accordance with ¶ 6.7(i) of the SOW.

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

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

"Non-Settling Owner" shall mean any person, other than a SD, that owns or controls any Affected Property. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.

"Operable Unit 1/Operable Unit 2 (OU1/OU2)" shall mean the residential and non-residential properties around the Anniston Plant and downstream along Snow Creek to Highway 78.

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

"Paragraph" or "¶" shall mean a portion of this CD identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States and SD.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Unapproved Waste Disposal Areas through February 1, 2017, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" or "PS" shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the ROD.

"Plaintiff" shall mean the United States.

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

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

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to OU1/OU2 at the Site signed on November 9, 2017, by the Regional Administrator, EPA Region 4, or his/her delegate, and all attachments thereto. The ROD is accessible at <https://semspub.epa.gov/work/04/11094816.pdf>, EPA's offices in Atlanta, Georgia, and the Anniston PCB Site Information Repositories (Anniston Public Library and Carter Center).

"Remedial Action" or "RA" shall mean the remedial action selected in the Unauthorized Waste Disposal Areas of the ROD.

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

"Section" shall mean a portion of this CD identified by a Roman numeral.

"Settling Defendant" or "SD" shall mean MRC Holdings, Inc.

"State" shall mean the State of Alabama.

"Statement of Work" or "SOW" shall mean the document describing the activities SD must perform to implement the RD, the RA, and O&M regarding OU1/OU2, which is attached as Appendix A.

"Supervising Contractor" shall mean the principal contractor retained by SD to supervise and direct the implementation of the Work under this CD.

"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.

"Unapproved Waste Disposal Areas" or "UWDAs" shall mean the Unapproved Waste Disposal Areas identified in Part 2, Section 5.6.1.2.4 of the ROD, more particularly identified as 830 W. 10th Street (County PPIN# 18533, 0 9th and Mulberry Avenue (County PPIN# 18812), 510 LeGrande Avenue (County PPIN# 32324), 0 Ashely Street (County PPIN# 32325) and 505 Ashley Street (County PPIN# 32326).

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA, and any federal natural resource trustee.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities and obligations SD is required to perform under this CD, except the activities required under Section XIX (Retention of Records).

V. GENERAL PROVISIONS

5. **Objectives of the Parties.** The objectives of the Parties in entering into this CD are to protect public health or welfare or the environment by the design and implementation of response actions within the UWDAs for OU1/OU2 by SD, to pay response costs of Plaintiff, and to resolve the claims of Plaintiff against SD and the claims of the SD that have been or could have been asserted against the United States with regard to OU1/OU2 as provided in this CD.

6. Commitments by SD

a. SD shall finance and perform the Work in accordance with this CD and all deliverables developed by SD and approved or modified by EPA pursuant to this CD. SD shall pay the United States for its response costs as provided in this CD.

7. **Compliance with Applicable Law.** Nothing in this CD limits SD's obligations to comply with the requirements of all applicable federal and state laws and regulations. SD must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this CD, if approved by EPA, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, SD shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. SD may seek relief under the provisions of Section XII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 8.a and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. This CD is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK

9. Coordination and Supervision

a. Project Coordinators

(1) SD's Project Coordinator must have sufficient technical expertise to coordinate the Work. SD's Project Coordinator may not be an attorney

representing SD in this matter and may not act as the Supervising Contractor. SD's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA shall designate and notify the SD of EPA's Project Coordinator and Alternate Project Coordinator. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the UWDAs constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) The State shall designate and notify EPA and the SD of its Project Coordinator[s] and Alternate Project Coordinator[s]. The State may designate other representatives, including its employees, contractors and/or consultants to oversee the Work. For any meetings and inspections in which EPA's Project Coordinator participates, the State's Project Coordinator also may participate. SD shall notify the State reasonably in advance of any such meetings or inspections.

(4) SD's Project Coordinators shall meet with EPA's at least monthly.

b. **Supervising Contractor.** SD's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard).

c. **Procedures for Disapproval/Notice to Proceed**

(1) SD shall designate, and notify EPA, within 30 days after the Effective Date, of the name[s], title[s], contact information, and qualifications of the SD's proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

(2) EPA, after a reasonable opportunity for review and comment by the State, shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, SD shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. SD may select any

coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of SD's selection.

(3) SD may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 9.c(1) and 9.c(2).

(4) Notwithstanding the procedures of ¶¶ 9.c(1) through 9.c(3), SD have proposed, and EPA has authorized SD to proceed, regarding the following Project Coordinator and Supervising Contractor: HSW Engineering, Inc., c/o Joel Balmat, 605 E. Robinson Street, Suite 308, Orlando, Florida 32801.

(5) The UWDAs are owned by different Non-Settling Owners, not the SD. The UWDA located at 830 W. 10th Street and 0 W. 9th Street & Mulberry Avenue is geographically separated from the UWDA located at 510 LeGrand Avenue, 0 Ashley Street, and 505 Ashley Street. In the event agreements regarding access to the two geographically separated UWDAs are obtained at different times, in accordance with Section III, EPA shall issue separate Notices to Proceed for the two UWDAs. In response to each Notice to Proceed, SD shall prepare the RD and RA schedules for the applicable UWDA in accordance with Section 7 of the SOW. All other applicable provision of this CD and the SOW shall be implemented to reflect the separate schedules.

10. **Performance of Work in Accordance with SOW.** SD shall: (a) develop the RD; (b) perform the RA; and (c) operate, maintain, and monitor the effectiveness of the RA; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the CD or SOW shall be subject to approval by EPA in accordance with ¶ [6.6] (Approval of Deliverables) of the SOW.

11. **Emergencies and Releases.** SD shall comply with the emergency and release response and reporting requirements under ¶ [4.4] (Emergency Response and Reporting) of the SOW. Subject to Section XV (Covenants by Plaintiff), nothing in this CD, including ¶ [4.4] of the SOW, limits any authority of Plaintiff: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the UWDAs, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the UWDAs. If, due to SD's failure to take appropriate response action under ¶ [4.4] of the SOW, EPA takes such action instead, SD shall reimburse EPA under Section X (Payments for Response Costs) for all costs of the response action.

12. **Community Involvement.** If requested by EPA, SD shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section [2] (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator and attending Community Advisory Group (CAG) and Technical Assistance meetings. Costs incurred by the United States

under this Section constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

13. Modification of SOW or Related Deliverables

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy set forth in ¶ [1.3] of the SOW, then EPA may notify SD of such modification. If SD objects to the modification it may, within 30 days after EPA's notification, seek dispute resolution under Section XIII.

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if SD invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this CD, and SD shall implement all work required by such modification. SD shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this CD.

14. Nothing in this CD, the SOW, or any deliverable required under the SOW constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards.

VII. REMEDY REVIEW

15. **Periodic Review.** SD shall conduct, in accordance with ¶ [4.7] (Periodic Review Support Plan) of the SOW, studies and investigations to support EPA's reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the RA is protective of human health and the environment.

16. **EPA Selection of Further Response Actions.** If EPA determines, at any time, that the RA is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

17. **Opportunity to Comment.** SD and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

18. **SD's Obligation to Perform Further Response Actions.** If EPA selects further response actions relating to the UWDAs, EPA may require SD to perform such further response actions, but only to the extent that the reopener conditions in ¶ 67 or 68 (United States' Pre- and Post-Certification Reservations) are satisfied. SD may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of ¶ 67 or 68 are satisfied, (b) EPA's determination that the RA is not protective of human health and the

environment, or (c) EPA's selection of the further response actions. Disputes regarding EPA's determination that the RA is not protective or EPA's selection of further response actions shall be resolved pursuant to ¶ 51 (Record Review).

19. **Submission of Plans.** If SD is required to perform further response actions pursuant to ¶ 18, they shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work by SD). SD shall implement the approved plan in accordance with this CD.

VIII. PROPERTY REQUIREMENTS

20. **Agreements Regarding Access and Non-Interference.** SD shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by SD and by Plaintiff, providing that such Non-Settling Owner (i) provide Plaintiff and the SD, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the CD, including those listed in ¶ 20.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 20.b (Land, Water, or Other Resource Use Restrictions). SD shall provide a copy of such access and use restriction agreements to EPA and the State.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations regarding contamination at or near the UWDAs;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the UWDAs;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
- (7) Implementing the Work pursuant to the conditions set forth in ¶ 71 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by SD or its agents, consistent with Section XVIII (Access to Information);

(9) Assessing SD's compliance with the CD;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the CD; and

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

b. **Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

(1) Prohibiting activities that could interfere with the RA including anything that will disturb the caps and covers on segments of the Affected Properties as part of the RA is prohibited because such activities could result in direct and indirect exposure to contaminants in soil and groundwater;

(2) Prohibiting use of contaminated groundwater;

(3) Prohibiting the activities that could result in exposure to contaminants in soils and groundwater;

(4) Ensuring that any new structures on the UWDAs will not be constructed that could interfere with the RA; and

(5) Ensuring that any new structures on the UWDAs will be constructed to minimize potential risk of inhalation of contaminants.

21. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of SD would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If SD is unable to accomplish what is required through "best efforts" in a timely manner, they shall notify the United States and EPA, and include a description of the steps taken to comply with the requirements. If the United States deems it appropriate, it may assist SD, or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

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

23. Notice to Successors-in-Title

a. SD shall, within 45 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the UWDAs; (ii) that EPA has selected a remedy for the UWDAs; and (iii) that a potentially responsible party has entered into a CD requiring implementation of such remedy; and (3) identify the U.S. District Court in which the CD was filed, the name and civil action number of this case, and the date the CD was entered by the Court. SD shall recommend that the owner of the Affected Property record the notice within 30 days after EPA's approval of the notice and submit to EPA, within 30 days thereafter, a certified copy of the recorded notice.

b. SD shall recommend that the owner of the Affected Property, prior to entering into a contract to transfer the Affected Property, or 60 days prior to transferring the Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a remedy regarding the UWDAs, that potentially responsible parties have entered into a Consent Decree requiring implementation of such remedy, and that the United States District Court has entered the CD (identifying the name and civil action number of this case and the date the CD was entered by the Court); and

(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the notice that it provided to the proposed transferee.

24. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, SD shall continue to comply with their obligations under the CD, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property and to implement, maintain, monitor, and report on Institutional Controls.

25. Notwithstanding any provision of the CD, Plaintiff 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.

IX. FINANCIAL ASSURANCE

26. In order to ensure completion of the Work, SD shall secure financial assurance, initially in the amount of \$2,715,000.00 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to

EPA. SD may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by a SD that it meets the relevant test criteria of ¶ 28, accompanied by a standby funding commitment, which obligates the affected SD to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of SD or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a SD; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of ¶ 27.

27. SD has selected, and EPA has found satisfactory, a surety bond as an initial form of financial assurance. Within 10 days after the Effective Date, SD shall obtain EPA's approval of the form of SD's financial assurance. Within 30 days of such approval, SD shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to Paula V. Painter the "**Regional Financial Management Officer**", to the United States, and to EPA as specified in Section XX (Notices and Submissions).

28. SD seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 26.e or 26.f, must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) the SD or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total

- liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
 - ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
 - iii. Tangible net worth of at least \$10 million; and
 - iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or
- (2) The SD or guarantor has:
- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
 - ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
 - iii. Tangible net worth of at least \$10 million; and
 - iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the SD or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

29. SD providing financial assurance by means of a demonstration or guarantee under ¶ 26.e or 26.f must also:

a. Annually resubmit the documents described in ¶ 28.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

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

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 28.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

30. SD shall diligently monitor the adequacy of the financial assurance. If SD becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such SD shall notify EPA of such information within 10 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the SD of such determination. SD shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected SD, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. SD shall follow the procedures of ¶ 32 (Modification of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. SD's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

31. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 71.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 31.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the SD fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 31.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 71.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding

commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 26.e or 26.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. SD shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 31 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Anniston PCB Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the UWDAs, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 31 must be reimbursed as Future Response Costs under Section X (Payments for Response Costs).

32. Modification of Amount, Form, or Terms of Financial Assurance. SD may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 27, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify SD of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. SD may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution). SD may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, SD shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 27.

33. Release, Cancellation, or Discontinuation of Financial Assurance. SD may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ [4.8] (Certification of Work Completion) of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution).

X. PAYMENTS FOR RESPONSE COSTS

34. Payment by SD for United States Past Response Costs.

a. Within 30 days after the Effective Date, SD shall pay to EPA \$25,000.00 in payment for Past Response Costs. Payment shall be made in accordance with ¶ 36.a (instructions for past response cost payments).

b. **Deposit of Past Response Costs Payment.** The total amount to be paid by Setting Defendants pursuant to ¶ 34.a shall be deposited by EPA in the Anniston PCB Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

35. Payments by SD for Future Response Costs. SD shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills.** On a periodic basis, EPA will send SD a bill requiring payment that includes a SCORPIOS report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. SD shall make all payments within 30 days after SD's receipt of each bill requiring payment, except as otherwise provided in ¶ 37, in accordance with ¶ 36.b (instructions for future response cost payments).

b. **Deposit of Future Response Costs Payments.** The total amount to be paid by SD pursuant to ¶ 35.a (Periodic Bills) shall be deposited by EPA in the Anniston PCB Site Special Account to be retained and used to conduct or finance response actions at or in connection with the UWDAs, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Anniston PCB Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the UWDAs. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum.

c. **Unused Amount.** After EPA issues the Certification of RA Completion pursuant to ¶ [4.6] (Certification of RA Completion) of the SOW and a final accounting of the Anniston PCB Site Future Response Costs Special Account, EPA will offset the next Future Response Costs bill by the unused amount paid by SD, apply any unused amount paid by SD to any other unreimbursed response costs or response actions remaining at the UWDAs; or remit and return to SD any unused amount of the funds paid by SD. Any decision by EPA to apply unused amounts to unreimbursed response costs or response actions remaining at the Site shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum.

36. Payment Instructions for SD

a. **Past Response Costs Payments.**

(1) The Financial Litigation Unit (FLU) of the United States Attorney's Office for the Northern District of Alabama shall provide SD, in accordance with ¶ 93, with instructions regarding making payments to DOJ on behalf of EPA. The instructions must include a Consolidated Debt Collection System (CDCS) number to identify payments made under this CD.

(2) For all payments subject to this ¶ 36.a, SD shall make such payment by Fedwire Electronic Funds Transfer (EFT) / at <https://www.pay.gov> to the U.S. DOJ account, in accordance with the instructions provided under ¶ 36.a(1), and including references to the CDCS Number, Site/Spill ID Number 04S9, and DJ Number 90-11-2-07135(14).

(3) For each payment made under this ¶ 36.a, SD shall send notices, including references to the CDCS, Site/Spill ID, and DJ numbers, to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 93.

b. **Future Response Costs Payments and Stipulated Penalties**

(1) For all payments subject to this ¶ 36.b, SD shall make such payment by Fedwire EFT, referencing the Site/Spill ID and DJ numbers. The Fedwire EFT payment must be sent as follows:

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

(2) For all payments subject to this ¶ 36.b, SD shall make such payment by Automated Clearinghouse (ACH) payment as follows:

500 Rivertech Court
Riverdale, Maryland 20737
Contact – John Schmid 202 874 7027 or
REX, 1 866 234 5681
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

(3) For all payments subject to this ¶ 36.b, SD shall make such payment at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to SD by EPA following lodging of the CD.

(4) For all payments subject to this ¶ 36.b, SD shall make such payment by official bank check(s) made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment. SD shall send the check(s) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

(5) For all payments made under this ¶ 36.b, SD must include references to the Site/Spill ID and DJ numbers. At the time of any payment required to be made in accordance with ¶ 36.b, SD shall send notices that payment has been made to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 93. All notices must include references to the Site/Spill ID and DJ numbers.

37. **Contesting Future Response Costs.** SD may submit a Notice of Dispute, initiating the procedures of Section XIII (Dispute Resolution), regarding any Future Response Costs billed under ¶ 35 (Payments by SD for Future Response Costs) if they determine that EPA has made a mathematical or an accounting error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) pursuant to Section XX (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If SD submits a Notice of Dispute, SD shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to the United States, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. SD shall send to the United States, as provided in Section XX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If the United States prevails in the dispute, SD shall pay the sums due (with accrued interest) to the United States within 7 days after the resolution of the dispute. If SD prevails concerning any aspect of the contested costs, SD shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States within 7 days after the resolution of the dispute. SD shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with ¶¶ 36.b (instructions for future response cost payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII

(Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding SD's obligation to reimburse the United States for its Future Response Costs.

38. SD may contest the final accounting of the Anniston PCB Site Future Response Costs Special Account relating to the UWDAs issued under ¶ 35.c (Unused Amount) if they determine that the United States has made a mathematical error. Such objection shall be made in writing within 30 days after receipt of the final accounting and must be sent to the United States pursuant to Section XX (Notices and Submissions). Any such objection shall specifically identify the alleged final mathematical error and the basis for objection. EPA will review the alleged mathematical error and either affirm the initial accounting or issue a corrected final accounting within 30 days. If a corrected final accounting is issued, EPA will take such action as may be necessary to correct the final disposition of unused amounts paid in accordance with ¶ 35.c (Unused Amount). If SD disagree with EPA's decision, SD may, within 7 days after receipt of the decision, appeal the decision to the Director of the Waste Management Division, EPA Region 4. The Director of the Waste Management Division will issue a final administrative decision resolving the dispute, which shall be binding upon SD and shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum.

39. **Interest.** In the event that any payment for Past Response Costs or for Future Response Costs required under this Section is not made by the date required, SD shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of SD's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of SD's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XIV (Stipulated Penalties).

XI. INDEMNIFICATION AND INSURANCE

40. SD's Indemnification of the United States

a. The United States does not assume any liability by entering into this CD or by virtue of any designation of SD as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). SD shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of SD, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on SD's behalf or under their control, in carrying out activities pursuant to this CD, including, but not limited to, any claims arising from any designation of SD as EPA's authorized representatives under Section 104(e) of CERCLA. Further, SD agrees to pay the United States all costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of SD, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this CD. The United States shall not be held out as a party to any contract entered into by or on behalf of SD in carrying out activities

pursuant to this CD, Neither SD nor any such contractor shall be considered an agent of the United States.

b. The United States shall give SD notice of any claim for which the United States plans to seek indemnification pursuant to this ¶ 40, and shall consult with SD prior to settling such claim.

41. SD covenants not to sue and 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 SD and any person for performance of Work on or relating to the UWDAs, including, but not limited to, claims on account of construction delays. In addition, SD shall indemnify, save 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 SD and any person for performance of Work on or relating to the UWDAs, including, but not limited to, claims on account of construction delays.

42. **Insurance.** No later than 15 days before commencing any on-site Work, SD shall secure, and shall maintain until the first anniversary after the RA has been performed in accordance with this CD and the Performance Standards have been achieved, commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$3 million in excess of the required commercial general liability and automobile liability limits, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of SD pursuant to this CD. In addition, for the duration of this CD, SD shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of SD in furtherance of this CD. Prior to commencement of the Work, SD shall provide to EPA certificates of such insurance and a copy of each insurance policy. SD shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If SD demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, SD need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. SD shall ensure that all submittals to EPA under this Paragraph identify the Anniston PCB Site, Anniston, Alabama and the civil action number of this case.

XII. FORCE MAJEURE

43. "Force majeure," for purposes of this CD, is defined as any event arising from causes beyond the control of SD, of any entity controlled by SD, or of SD's contractors that delays or prevents the performance of any obligation under this CD despite SD's best efforts to fulfill the obligation. The requirement that SD exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential

force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

44. If any event occurs or has occurred that may delay the performance of any obligation under this CD for which SD intends or may intend to assert a claim of force majeure, SD shall notify EPA's Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region 4, within three business days of when SD first knew that the event might cause a delay. Within 10 days thereafter, SD shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; SD's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of SD, such event may cause or contribute to an endangerment to public health or welfare, or the environment. SD shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. SD shall be deemed to know of any circumstance of which SD, any entity controlled by SD, or SD's contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude SD 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 ¶ 43 and whether SD has exercised their best efforts under ¶ 43, EPA may, in its unreviewable discretion, excuse in writing SD's failure to submit timely or complete notices under this Paragraph.

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

46. If SD elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution) regarding EPA's decision, they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, SD 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 SD complied with the requirements of ¶¶ 43 and 44. If SD carries this burden, the delay at issue shall be deemed not to be a violation by SD of the affected obligation of this CD identified to EPA and the Court and schedules for the affected obligations shall be modified in accordance with Paragraph 13.b (Modification of the SOW and Related Deliverables).

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

XIII. DISPUTE RESOLUTION

48. Unless otherwise expressly provided for in this CD, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this CD. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of SD that have not been disputed in accordance with this Section.

49. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Any dispute regarding this CD shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

50. Statements of Position

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 28 days after the conclusion of the informal negotiation period, SD invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by SD. The Statement of Position shall specify SD's position as to whether formal dispute resolution should proceed under ¶ 51 (Record Review) or 52.

b. Within 28 days after receipt of SD's Statement of Position, EPA will serve on SD its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under ¶ 51 (Record Review) or 52. Within 20 days after receipt of EPA's Statement of Position, SD may submit a Reply.

c. If there is disagreement between EPA and SD as to whether dispute resolution should proceed under ¶ 51 (Record Review) or 52, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if SD ultimately appeals to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in ¶¶ 51 and 52.

51. **Record Review.** Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of

plans, procedures to implement plans, or any other items requiring approval by EPA under this CD, and the adequacy of the performance of response actions taken pursuant to this CD. Nothing in this CD shall be construed to allow any dispute by SD regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Waste Management Division, EPA Region 4, will issue a final administrative decision resolving the dispute based on the administrative record described in ¶ 51.a. This decision shall be binding upon SD, subject only to the right to seek judicial review pursuant to ¶¶ 51.c and 51.d.

c. Any administrative decision made by EPA pursuant to ¶ 51.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by SD with the Court and served on all Parties within 10 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this CD. The United States may file a response to SD's motion.

d. In proceedings on any dispute governed by this Paragraph, SD shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to ¶ 51.a.

52. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. The Director of the Waste Management Division, EPA Region 4, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under ¶ 50. The Waste Management Division Director's decision shall be binding on SD unless, within 20 days after receipt of the decision, SD files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the CD. The United States may file a response to SD's motion.

b. Notwithstanding ¶ M (CERCLA § 113(j) record review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

53. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of SD under this CD, except as

provided in ¶ 37 (Contesting Future Response Costs), as agreed by EPA, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in ¶ 61. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CD. In the event that SD does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

XIV. STIPULATED PENALTIES

54. SD shall be liable to the United States for stipulated penalties in the amounts set forth in ¶¶ 55.a and 56 for failure to comply with the obligations specified in ¶¶ 55.b and 56, unless excused under Section XII (Force Majeure). "Comply" as used in the previous sentence includes compliance by SD with all applicable requirements of this CD, within the deadlines established under this CD. If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under ¶ 6.6(a) (Initial Submissions) or 6.6(b) (Resubmissions) of the SOW due to such material defect, then the material defect shall constitute a lack of compliance for purposes of this Paragraph.

55. Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in ¶ 55.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$1,000
15th through 30th day	\$2,000
31st day and beyond	\$5,000

b. Obligations

(1) Payment of any amount due under Section X (Payments for Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section IX (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under ¶ 37 (Contesting Future Response Costs).

(4) Completion of any Deliverables listed in Section 6 of the SOW.

56. **Stipulated Penalty Amounts – Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to the CD other than those specified in Paragraph 55.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$1,000

15th through 30th day	\$2,000
31st day and beyond	\$5,000

57. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 71 (Work Takeover), SD shall be liable for a stipulated penalty in the amount of \$100,000. Stipulated penalties under this Paragraph are in addition to the remedies available under ¶¶ 31 (Access to Financial Assurance) and 71 (Work Takeover).

58. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ [6.6] (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies SD of any deficiency; (b) with respect to a decision by the Director of the Waste Management Division, EPA Region 4, under ¶ 51.b or 52.a of Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that SD's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this CD shall prevent the simultaneous accrual of separate penalties for separate violations of this CD.

59. Following EPA's determination that SD has failed to comply with a requirement of this CD, EPA may give SD written notification of the same and describe the noncompliance. EPA may send SD a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified SD of a violation.

60. All penalties accruing under this Section shall be due and payable to the United States within 30 days after SD's receipt from EPA of a demand for payment of the penalties, unless SD invokes the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 36.b (instructions for future response cost payments).

61. Penalties shall continue to accrue as provided in ¶ 58 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 15 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, SD shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in ¶ 61.c;

c. If the District Court's decision is appealed by any Party, SD shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to SD to the extent that they prevail.

62. If SD fails to pay stipulated penalties when due, SD shall pay Interest on the unpaid stipulated penalties as follows: (a) if SD has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 61 until the date of payment; and (b) if SD fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 60 until the date of payment. If SD fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

64. Nothing in this CD shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of SD's violation of this CD or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this CD, except in the case of a willful violation of this CD.

65. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CD.

XV. COVENANTS BY PLAINTIFF

66. Covenants for SD by United States

Except as provided in ¶ 70 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against SD pursuant to Sections 106 and 107(a) of CERCLA for the Work, Past Response Costs, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by SD of its obligations under this CD. These covenants extend only to SD and do not extend to any other person.

67. **United States' Pre-Certification Reservations.** Notwithstanding any other provision of this CD, the United States reserves, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel SD to perform further response actions relating to the UWDAs and/or to pay

the United States for additional costs of response if, (a) prior to Certification of RA Completion, (1) conditions at the UWDAs, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the RA is not protective of human health or the environment.

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

69. For purposes of ¶ 67 (United States' Pre-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the ROD for the UWDAs and the administrative record supporting the ROD. For purposes of ¶ 68 (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of RA Completion and set forth in the ROD, the administrative record supporting the ROD, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this CD prior to Certification of RA Completion.

70. **General Reservations of Rights.** The United States reserves, and this CD is without prejudice to, all rights against SD, with respect to all matters not expressly included within Plaintiff's covenants. Notwithstanding any other provision of this CD, the United States reserves all rights against SD, with respect to:

- a. liability for failure by SD to meet a requirement of this CD;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the UWDAs for OU1/OU2;
- c. liability based on the ownership or operation of the UWDAs for OU1/OU2 by SD when such ownership or operation commences after signature of this CD by SD;
- d. liability based on the operation of the UWDAs for OU1/OU2 by SD when such operation commences after signature of this CD by SD;
- e. liability based on SD's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the UWDAs for OU1/OU2, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this CD by SD;

- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. criminal liability;
- h. liability for violations of federal or state law that occur during or after implementation of the Work; and
- i. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to ¶ 13 (Modification of SOW or Related Deliverables);
- j. liability for additional operable units at the UWDA's or the final response action; and
- k. liability for costs that the United States will incur regarding the UWDA's for OUI/OU2 but that are not within the definition of Future Response Costs.

71. Work Takeover

a. In the event EPA determines that SD: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to SD. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide SD a period of 15 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 15-day notice period specified in ¶ 71.a, SD has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify SD in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 71.b. Funding of Work Takeover costs is addressed under ¶ 31 (Access to Financial Assurance).

c. SD may invoke the procedures set forth in ¶ 51 (Record Review), to dispute EPA's implementation of a Work Takeover under ¶ 71.b. However, notwithstanding SD's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 71.b until the earlier of (1) the date that SD remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with ¶ 51 (Record Review) requiring EPA to terminate such Work Takeover.

72. Notwithstanding any other provision of this CD, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XVI. COVENANTS BY SD

73. **Covenants by SD.** Subject to the reservations in ¶ 75, SD covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Work, past response actions regarding the UWDAs, Past Response Costs, Future Response Costs, and this CD, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or any other provision of law;
- b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, past response actions regarding the UWDAs, Past Response Costs, Future Response Costs, and this CD; or
- c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Alabama Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

74. Except as provided in ¶¶ 77 (Waiver of Claims by SD) and 84 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XV (Covenants by Plaintiff), other than in ¶¶ 70.a (claims for failure to meet a requirement of the CD), 70.g (criminal liability), and 70.h (violations of federal/state law during or after implementation of the Work), but only to the extent that SD's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

75. SD reserves, and this CD is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of SD's deliverables or activities.

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

77. **Waiver of Claims by SD**

a. SD agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have:

(1) **De Micromis Waiver.** For all matters relating to the UWDAs against any person where the person's liability to SD with respect to OU1/OU2 is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the UWDAs, or having accepted for transport for disposal or treatment of hazardous substances at the UWDAs, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

(2) **De Minimis Waiver.** For response costs relating to the UWDAs against any person that has entered or in the future enters into a final CERCLA § 122(g) *de minimis* settlement with EPA with respect to the UWDAs.

b. **Exceptions to Waiver**

(1) The waivers under this ¶ 77 shall not apply with respect to any defense, claim, or cause of action that SD may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the UWDAs against such SD.

(2) The waiver under ¶ 77.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the UWDAs by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the UWDAs; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the UWDAs; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

78. SD agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XVII. EFFECT OF SETTLEMENT; CONTRIBUTION

79. Except as provided in ¶ 77 (Waiver of Claims by SD), nothing in this CD shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this CD. Except as provided in Section XVI (Covenants by SD), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the UWDAs for OU1/OU2 against any person not a Party hereto, other than Solutia, Inc. and Pharmacia LLC pursuant to CERCLA, 42 U.S.C. § 9613(f)(1). Nothing in this CD diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

80. The Parties agree, and by entering this CD this Court finds, that this CD constitutes a judicially-approved settlement pursuant to which SD has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this CD. The "matters addressed" in this CD are the Work, Past Response Costs and Future Response Costs.

81. The Parties further agree, and by entering this CD this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this CD constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

82. SD shall, with respect to any suit or claim brought by it for matters related to this CD, notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

83. SD shall, with respect to any suit or claim brought against it for matters related to this CD, notify in writing the United States within 10 days after service of the complaint on such SD. In addition, SD shall notify the United States within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

84. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to OU1/OU2, SD 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 brought in the instant

case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XV (Covenants by Plaintiff).

XVIII. ACCESS TO INFORMATION

85. SD shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within SD's possession or control or that of their contractors or agents relating to activities at OU1/OU2 or to the implementation of this CD, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. SD shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

86. Privileged and Protected Claims

a. SD may assert that all or part of a Record requested by Plaintiff is privileged or protected as provided under federal law, in lieu of providing the Record, provided SD complies with ¶ 86.b, and except as provided in ¶ 86.c.

b. If SD asserts a claim of privilege or protection, it shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, SD shall provide the Record to Plaintiff in redacted form to mask the privileged or protected portion only. SD shall retain all Records that they claim to be privileged or protected until Plaintiff has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the SD's favor.

c. SD may make no claim of privilege or protection regarding: (1) any data regarding the UWDAs, 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 UWDAs; or (2) the portion of any Record that SD is required to create or generate pursuant to this CD.

87. **Business Confidential Claims.** SD may assert that all or part of a Record provided to Plaintiff under this Section or Section XIX (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). SD shall segregate and clearly identify all Records or parts thereof submitted under this CD for which SD asserts business confidentiality claims. Records that SD claims to be 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 SD that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to SD.

88. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this CD.

89. Notwithstanding any provision of this CD, Plaintiff retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIX. RETENTION OF RECORDS

90. Until 7 years after EPA's Certification of Work Completion under ¶ [4.8] (Certification of Work Completion) of the SOW, SD shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the UWDAs, provided, however, that SD who is potentially liable as owner or operator of the UWDAs must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the UWDAs. SD must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that SD (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.

91. At the conclusion of this record retention period, SD shall notify the United States at least 90 days prior to the destruction of any such Records, and, upon request by the United States or the State, and except as provided in ¶ 86 (Privileged and Protected Claims), SD shall deliver any such Records to EPA or the State.

92. SD certifies individually 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 UWDAs since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the UWDAs pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XX. NOTICES AND SUBMISSIONS

93. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this CD must be in writing unless otherwise specified. Whenever, under this CD, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the persons specified below at the addresses specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to

EPA, and not to the United States, should not be sent to the DOJ. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the CD regarding such Party.

As to the United States:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
eesdcopy.enrd@usdoj.gov
Re: DJ # 90-11-2-07135/1

As to EPA:

Franklin E. Hill
Director, Superfund Division
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30062
hill.franklin@epa.gov

and:

Pamela J. Langston Scully
EPA Project Coordinator
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30062
scully.pam@epa.gov
404-562-8935

**As to the Regional Financial
Management Officer:**

Paula V. Painter
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, GA 30062
painter.paula@epa.gov

**At to EPA Cincinnati Finance
Center:**

EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

As to SD:

Joel Balmat
HSW Engineering, Inc.
605 E. Robinson St., Suite 308
Orlando, FL 32801
jbalmat@hsweng.com
407-872-6893

Scott I. Steady
Burr Forman,
201 North Franklin Street, Suite 3200,
Tampa, FL 33602
ssteady@burr.com
813-221-2626

XXI. RETENTION OF JURISDICTION

94. This Court retains jurisdiction over both the subject matter of this CD and SD for the duration of the performance of the terms and provisions of this CD for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this CD, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIII (Dispute Resolution),

XXII. APPENDICES

95. The following appendices are attached to and incorporated into this CD:

"Appendix A" is the SOW.

"Appendix B" contains maps of the UWDAs.

XXIII. MODIFICATION

96. Except as provided in ¶ 13 (Modification of SOW or Related Deliverables), material modifications to this CD, including the SOW, shall be in writing, signed by the United States and SD, and shall be effective upon approval by the Court. Except as provided in ¶ 13, non-material modifications to this CD, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and SD. A modification to the SOW shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

97. Nothing in this CD shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this CD.

XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

98. This CD shall be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the CD disclose facts or considerations that indicate that the CD is inappropriate, improper, or inadequate. SD consents to the entry of this CD without further notice.

99. If for any reason the Court should decline to approve this CD in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXV. SIGNATORIES/SERVICE

100. Each undersigned representative of SD to this CD and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this CD and to execute and legally bind such Party to this document.

101. SD agrees not to oppose entry of this CD by this Court or to challenge any provision of this CD unless the United States has notified SD in writing that it no longer supports entry of the CD.

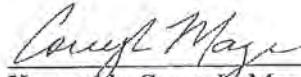
102. SD shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this CD. SD agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. SD need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this CD.

XXVI. FINAL JUDGMENT

103. This CD and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the CD. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this CD.

Upon entry of this CD by the Court, this CD shall constitute a final judgment between and among the United States and SD. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 18th DAY OF December, 2019.

A handwritten signature in cursive script, reading "Corey L. Maze", is written over a horizontal line.

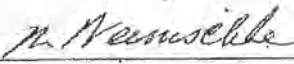
Honorable Corey L. Maze
United States District Judge

Signature Page for RD/RA CD regarding the Anniston PCB Superfund Site

FOR THE UNITED STATES OF AMERICA:


Jay E. Town
United States Attorney
Northern District of Alabama
1801 Fourth Avenue
Birmingham, Alabama 35203

Date: 12/17/2018

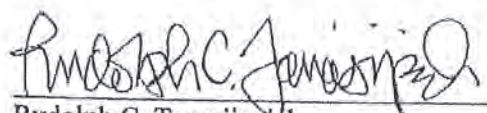


William A. Weinischke
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Signature Page for RD/RA CD regarding the Anniston PCB Superfund Site



Franklin E. Hill
Director, Superfund Division, Region 4
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, GA 30062



Rudolph C. Tanasijevich
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30062

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 45 of 79

Signature Page for RD/RA CD regarding the Anniston PCB Superfund Site

FOR MRC HOLDINGS, INC.
By: MRC Holdings, Inc.



5/7/2019
Dated

Richard J. Carroll
Name (print):

Title: President, Secretary, Treasurer

Address: 1000 North West Street
5th Floor
Wilmington, DE 19801

Agent Authorized to Accept Service Name (print): Scott I. Steady, Esq.

on Behalf of Above-signed Party: Title: Partner

Company: Burr & Forman LLP

Address: 201 N. Franklin Street, Suite 3200
Tampa, FL 33602

Phone: 813-367-5719

email: ssteady@burr.com

Appendix A

Appendix B

**REMEDIAL DESIGN/REMEDIAL ACTION
STATEMENT OF WORK**

**FOR OPERABLE UNITS 1 AND 2
UNAPPROVED WASTE DISPOSAL AREAS
ANNISTON PCB SUPERFUND SITE**

MAY 2019

Anniston, Calhoun County, Alabama

EPA Region 4

TABLE OF CONTENTS

1.	INTRODUCTION	1
2.	COMMUNITY INVOLVEMENT	2
3.	REMEDIAL DESIGN	3
4.	REMEDIAL ACTION.....	5
5.	REPORTING	9
6.	DELIVERABLES.....	10
7.	SCHEDULES	16
8.	STATE PARTICIPATION	17
9.	REFERENCES	18

1. INTRODUCTION

1.1 Purpose of the SOW. This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work.

1.2 Structure of the SOW

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

1.3 The Scope of the Remedy includes the actions described in Section 12.2 of the ROD. This Scope of Work (SOW) includes actions for the Unapproved Waste Disposal Areas (UWDAs) at the Ashley-LeGrande and Wilborn properties in Anniston, Alabama.

The components of the selected remedy are as follows:

- Clear and prepare the surface for cover.
- Consolidate waste into a smaller footprint or dispose of a portion of the waste offsite as determined appropriate during remedial design.
- Install a RCRA Subtitle D multi-layer cap consisting of at a minimum:
 - 40-mil geomembrane liner,
 - geocomposite drainage layer, and
 - 18-inch-thick protective soil cover.

- Vegetate surface or provide other erosion protection for cap.
 - Execute environmental covenants to restrict future use of these areas and to protect the cap.
 - Conduct O&M and monitoring of the cap.
- 1.4 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Consent Decree (CD), have the meanings assigned to them in CERCLA, in such regulations, or in the CD, except that the term "Paragraph" or "¶" means a paragraph of the CD, and the term "Section" means a section of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

2.1 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. Previously, during the RI/FS phase, EPA developed a Community Involvement Plan (CIP) for the Site. Pursuant to 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP.
- (b) If requested by EPA, SD shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the UWDAs at the Site. SD's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any Community Advisory Groups, (2) any Technical Assistance Plan recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP SD's responsibilities for community involvement activities. All community involvement activities conducted by SD at EPA's request are subject to EPA's oversight.
- (c) **SD's CI Coordinator.** If requested by EPA, SD shall, designate and notify EPA of SD's Community Involvement Coordinator (SD's CI Coordinator). SD's CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the UWDAs at the Site.

2.2 SD's Responsibilities for Technical Assistance

- (a) If requested by EPA, SD shall provide funding for a qualified community group to receive the services of a technical advisor(s) who can: (i) help group members understand UWDA Site cleanup issues (specifically, to interpret and comment on UWDA Site-related documents developed under this SOW); and (ii) share this

information with others in the community. The technical advisor(s) will be independent from SD. SD's TAP assistance will be limited to \$30,000 during the RD/RA, and will end when EPA issues the Certification of Work Completion under Section 4.8. SD shall implement this requirement under the existing Technical Assistance Plan (TAP) for the Anniston PCB Site. Incremental funding will be based on a reasonable budget request based on the work anticipated.

3. REMEDIAL DESIGN

3.1 RD Work Plan. SD shall submit a Remedial Design (RD) Work Plan (RDWP) for EPA approval. The RDWP must include:

- (a) Plans for implementing all RD activities identified in this SOW, in the RDWP, or required by EPA to be conducted to develop the RD;
- (b) A description of the overall management strategy for performing the RD, including a proposal for phasing of design and construction, if applicable;
- (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the Remedial Action (RA) as necessary to implement the Work;
- (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;
- (e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);
- (f) Description of any proposed pre-design investigation;
- (g) Descriptions of any applicable permitting requirements and other regulatory requirements;
- (h) Description of plans for obtaining access in connection with the Work, such as property acquisition, property leases, and/or easements; and
- (i) The following supporting deliverables described in Section 6.7 (Supporting Deliverables): Health and Safety Plan; and Emergency Response Plan.

3.2 SD shall meet regularly with EPA to discuss design issues as necessary, as directed or determined by EPA.

3.3 Pre-Design Investigation. The purpose of the Pre-Design Investigation (PDI) is to address data gaps by conducting additional field investigations.

- (a) **PDI Work Plan.** SD shall submit a PDI Work Plan (PDIWP) for EPA approval. The PDIWP must include:

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 56 of 79

- (1) An evaluation and summary of existing data and description of data gaps;
 - (2) A sampling plan including media to be sampled, contaminants or parameters for which sampling will be conducted, location (areal extent and depths), and number of samples; and
 - (3) Cross references to quality assurance/quality control (QA/QC) requirements set forth in the Quality Assurance Project Plan (QAPP) as described in Section 6.7(d).
- (b) Following the PDI, SD shall submit a PDI Evaluation Report. This report must include:
- (1) Summary of the investigations performed;
 - (2) Summary of investigation results;
 - (3) Summary of validated data (i.e., tables and graphics);
 - (4) Data validation reports and laboratory data reports;
 - (5) Narrative interpretation of data and results;
 - (6) Results of statistical and modeling analyses;
 - (7) Photographs documenting the work conducted; and
 - (8) Conclusions and recommendations for RD, including design parameters and criteria.
- (c) EPA may require SD to supplement the PDI Evaluation Report and/or to perform additional pre-design studies.

3.4 Intermediate (50%) RD. SD shall submit an Intermediate (50%) RD for EPA's comment. The Intermediate RD must include:

- (a) Preliminary drawings and specifications;
- (b) Descriptions of permit requirements, if applicable;
- (c) Preliminary Operation and Maintenance (O&M) Plan and O&M Manual;
- (d) A description of how the RA will be implemented in a manner that minimizes environmental impacts in accordance with EPA's *Principles for Greener Cleanups* (Aug. 2009);
- (e) A description of monitoring and control measures to protect human health and the environment, such as air monitoring and dust suppression, during the RA;

- (f) Any proposed revisions to the RA Schedule that is set forth in Section 7.3 (RA Schedule); and
 - (g) Updates of all supporting deliverables required to accompany the RDWP and the following additional supporting deliverables described in Section 6.7 (Supporting Deliverables): Field Sampling Plan; Quality Assurance Project Plan; Site Wide Monitoring Plan; Construction Quality Assurance/Quality Control Plan; Transportation and Off-Site Disposal Plan; and Institutional Controls Implementation and Assurance Plan.
- 3.5 Pre-Final (95%) RD.** SD shall submit the Pre-final (95%) RD for EPA's comment. The Pre-final RD must be a continuation and expansion of the previous design submittal and must address EPA's comments regarding the Intermediate RD. The Pre-final RD will serve as the approved Final (100%) RD if EPA approves the Pre-final RD without comments. The Pre-final RD must include:
- (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's Master Format 2012;
 - (b) A survey and engineering drawings showing existing Site features, such as elements, property borders, easements, and Site conditions;
 - (c) Pre-Final versions of the same elements and deliverables as are required for the Intermediate RD;
 - (d) A specification for photographic documentation of the RA; and
 - (e) Updates of all supporting deliverables required to accompany the Intermediate (50%) RD.
- 3.6 Final (100%) RD.** If the EPA approves the Pre-Final 95% RD with no comments, it will be the Final (100%) RD. Otherwise, SD shall submit the Final (100%) RD for EPA approval. The Final RD must address EPA's comments on the Pre-final RD and must include final versions of all Pre-final RD deliverables.

4. REMEDIAL ACTION

- 4.1 RA Work Plan.** SD shall submit a RA Work Plan (RAWP) for EPA approval that includes:
- (a) A proposed RA Construction Schedule;
 - (b) An updated health and safety plan that covers activities during the RA; and
 - (c) Plans for satisfying permitting requirements, including obtaining permits for off-Site activity and for satisfying substantive requirements of permits for on-Site activity.

4.2 **Independent Quality Assurance Team.** SD shall notify EPA of SD's designated Independent Quality Assurance Team (IQAT). The IQAT will be independent of the Supervising Contractor. SD may hire a third party for this purpose. SD's notice must include the names, titles, contact information, and qualifications of the members of the IQAT. The IQAT will have the responsibility to determine whether Work is of expected quality and conforms to applicable plans and specifications. The IQAT will have the responsibilities as described in Section 2.1.3 of the *Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties*, EPA/540/G-90/001 (Apr. 1990).

4.3 **Meetings and Inspections**

- (a) **Preconstruction Conference.** SD shall hold a preconstruction conference with EPA and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). SD shall prepare minutes of the conference and shall distribute the minutes to all Parties.
- (b) **Periodic Meetings.** During the construction portion of the RA (RA Construction), SD shall meet monthly with EPA, and others as directed or determined by EPA, to discuss construction issues. SD shall distribute an agenda to all Parties prior to each meeting. SD shall prepare minutes of the meetings and shall distribute the minutes to all Parties.
- (c) **Inspections**
 - (1) EPA or its representative shall conduct periodic inspections of (or have an on-Site presence during) the Work. At EPA's request, the Supervising Contractor or other designee shall accompany EPA or its representative during inspections.
 - (2) SD shall provide office space for EPA personnel to perform their oversight duties including access to office equipment available to SD's on-Site Contractor.
 - (3) Upon notification by EPA of any deficiencies in the RA Construction, SD shall take all necessary steps to correct the deficiencies and/or bring the RA Construction into compliance with the approved Final RD, any approved design changes, and/or the approved RAWP. If applicable, SD shall comply with any schedule provided by EPA in its notice of deficiency.

4.4 **Emergency Response and Reporting**

- (a) **Emergency Response and Reporting.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, SD shall: (1) immediately take all appropriate action to prevent, abate, or minimize

such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in Section 4.4(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.

- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that SD are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, SD shall immediately notify the authorized EPA officer orally.
- (c) The "authorized EPA officer" for purposes of immediate oral notifications and consultations under Section 4.4(a) and Section 4.4(b) is the EPA Project Coordinator, the EPA Alternate Project Coordinator (if the EPA Project Coordinator is unavailable), or the EPA [Emergency Response Unit], Region 4 (if neither EPA Project Coordinator is available).
- (d) For any event covered by Section 4.4(a) and Section 4.4(b), SD shall: (1) within 14 days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under Section 4.4 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

4.5 Off-Site Shipments

- (a) SD may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. SD will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if SD obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
- (b) SD may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. SD also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a

decision to ship the Waste Material to a different out-of-state facility. SD shall provide the notice after the award of the contract for RA construction and before the Waste Material is shipped.

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

4.6 Certification of RA Completion

- (a) **RA Completion Inspection.** The RA is "Complete" for purposes of this Section 4.6 when it has been fully performed and the Performance Standards have been achieved. SD shall schedule an inspection for the purpose of obtaining EPA's Certification of RA Completion. The inspection must be attended by SD and EPA and/or their representatives.
- (b) **RA Report/Monitoring Report.** Following the inspection, SD shall submit a RA Report/Monitoring Report to EPA requesting EPA's Certification of RA Completion. The report must: (1) include certifications by a registered professional engineer and by SD's Project Coordinator that the RA is complete; (2) include as-built drawings signed and stamped by a registered professional engineer; (3) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); (4) contain monitoring data to demonstrate that Performance Standards have been achieved; and (5) be certified in accordance with Section 6.5 (Certification).
- (c) If EPA concludes that the RA is not Complete, EPA shall so notify SD. EPA's notice must include a description of any deficiencies. EPA's notice may include a schedule for addressing such deficiencies or may require SD to submit a schedule for EPA approval. SD shall perform all activities described in the notice in accordance with the schedule.
- (d) If EPA concludes, based on the initial or any subsequent RA Report/Monitoring Report requesting Certification of RA Completion, that the RA is Complete, EPA shall so certify to SD. This certification will constitute the Certification of RA Completion for purposes of the CD, including Section XV of the CD (Covenants by Plaintiff[s]). Certification of RA Completion will not affect SD's remaining obligations under the CD.

4.7 Periodic Review Support Plan (PRSP). SD shall submit the PRSP for EPA approval. The PRSP addresses the studies and investigations that SD shall conduct to support EPA's reviews of whether the RA is protective of human health and the environment in accordance with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c) (also known as "Five-year Reviews"). SD shall develop the plan in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidance.

4.8 Certification of Work Completion

- (a) **Work Completion Inspection.** SD shall schedule an inspection for the purpose of obtaining EPA's Certification of Work Completion. The inspection must be attended by SD and EPA and/or their representatives.
- (b) **Work Completion Report.** Following the inspection, SD shall submit a report to EPA requesting EPA's Certification of Work Completion. The report must:
 - (1) include certifications by a registered professional engineer and by SD's Project Coordinator that the Work, including all O&M activities, is complete; and
 - (2) be certified in accordance with Section 6.5 (Certification). If the RA Report/Monitoring Report submitted under Section 4.6(b) includes all elements required under this Section 4.8(b), then the RA Report/Monitoring Report suffices to satisfy all requirements under this Section 4.8(b).
- (c) If EPA concludes that the Work is not complete, EPA shall so notify SD. EPA's notice must include a description of the activities that SD must perform to complete the Work. EPA's notice must include specifications and a schedule for such activities or must require SD to submit specifications and a schedule for EPA approval. SD shall perform all activities described in the notice or in the EPA-approved specifications and schedule.
- (d) If EPA concludes, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, EPA shall so certify in writing to SD. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) activities under the Periodic Review Support Plan; (2) obligations under Sections VIII (Property Requirements), XIX (Retention of Records), and XVIII (Access to Information) of the CD; (3) Institutional Controls obligations as provided in the ICIAP; (4) reimbursement of EPA's Future Response Costs under Section X (Payments for Response Costs) of the CD.

5. REPORTING

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

- (a) The actions that have been taken toward achieving compliance with the CD;

- (b) A summary of all results of sampling, tests, and all other data received or generated by SD;
- (c) A description of all deliverables that SD submitted to EPA;
- (d) A description of all activities relating to RA Construction that are scheduled for the next month;
- (e) An updated RA Construction Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) A description of any modifications to the work plans or other schedules that SD have proposed or that have been approved by EPA; and
- (g) A description of all activities undertaken in support of the Community Involvement Plan (CIP) during the reporting period and those to be undertaken in the next month.

5.2 Notice of Progress Report Schedule Changes. If the schedule for any activity described in the Progress Reports, including activities required to be described under Section 5.1(d), changes, SD shall notify EPA of such change at least 7 days before performance of the activity.

6. DELIVERABLES

6.1 Applicability. SD shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 6.2 (In Writing) through 6.4 (Technical Specifications) apply to all deliverables. Paragraph 6.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 6.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.

6.2 In Writing. As provided in ¶ 93 of the CD, all deliverables under this SOW must be in writing unless otherwise specified.

6.3 General Requirements for Deliverables. All deliverables must be submitted by the deadlines in the RD Schedule or RA Schedule, as applicable. SD shall submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Section 6.4. All other deliverables shall be submitted to EPA in the electronic form specified by the EPA Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", SD shall also provide EPA with paper copies of such exhibits.

6.4 Technical Specifications

- (a) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. All required information, instructions and guidance are available via the EPA web site www.epa.gov/region4/waste/sf/edd/edd.html free of charge. This web site contains links to obtain the required software, as well as the most recent versions of the Environmental Data Submission Guidance, the Region 4 EDD Reference Guide, and the Region 4 EDP Reference Manual. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
 - (b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
 - (c) Each file must include an attribute name for each Site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
 - (d) Spatial data submitted by SD does not, and is not intended to, define the boundaries of the Site.
- 6.5 **Certification.** All deliverables that require compliance with this Section 6.5 must be signed by SD's Project Coordinator, or other responsible official of SD, 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.

6.6 **Approval of Deliverables**

- (a) **Initial Submissions**

- (1) After review of any deliverable that is required to be submitted for EPA approval under the CD or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
 - (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.
- (b) **Resubmissions.** Upon receipt of a notice of disapproval under Section 6.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under Section 6.6(a), SD shall, within 60 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 SD to correct the deficiencies; or (5) any combination of the foregoing.
- (c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under Section 6.6(a) (Initial Submissions) or Section 6.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the CD; and (2) SD shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under Section 6.6(a) or Section 6.6(b) does not relieve SD of any liability for stipulated penalties under Section XIV (Stipulated Penalties) of the CD.
- 6.7 Supporting Deliverables.** SD shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. SD shall develop the deliverables in accordance with all applicable regulations, guidance, and policies (see Section 9 [References]). SD shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.
- (a) **Health and Safety Plan.** The Health and Safety Plan (HASP) describes all activities to be performed to protect on-Site personnel and area residents from physical, chemical, and all other hazards posed by the Work. SD 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 RD activities and should be, as appropriate, updated to cover activities during the RA and updated to cover activities after RA completion. EPA does not approve the HASP, but will review

it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.

- (b) **Emergency Response Plan.** The Emergency Response Plan (ERP) must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:
- (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for, spills and discharges;
 - (4) Notification activities in accordance with Section 4.4(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004; and
 - (5) A description of all necessary actions to ensure compliance with Paragraph 11 (Emergencies and Releases) of the CD in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (c) **Field Sampling Plan.** The Field Sampling Plan (FSP) and addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. SD shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).
- (d) **Quality Assurance Project Plan.** The Quality Assurance Project Plan (QAPP) augments the FSP and addresses sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of SD's quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. SD 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). The QAPP also must include procedures:

- (1) To ensure that EPA and the State and their authorized representatives have reasonable access to laboratories used by SD in implementing the CD (SD's Labs);
 - (2) To ensure that SD's Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
 - (3) To ensure that SD's Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)) or other methods acceptable to EPA;
 - (4) To ensure that SD's Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;
 - (5) For SD to provide EPA and the State with notice at least 28 days prior to any sample collection activity;
 - (6) For SD to provide split samples and/or duplicate samples to EPA and the State upon request;
 - (7) For EPA and the State to take any additional samples that they deem necessary;
 - (8) For EPA and the State to provide to SD, upon request, split samples and/or duplicate samples in connection with EPA's and the State's oversight sampling; and
 - (9) For SD to submit to EPA and the State all sampling and tests results and other data in connection with the implementation of the CD.
- (e) **Construction Quality Assurance/Quality Control Plan (CQA/QCP).** The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQA/QCP must:

- (1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/QCP;
 - (2) Describe the PS required to be met to achieve Completion of the RA;
 - (3) Describe the activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;
 - (5) Describe industry standards and technical specifications used in implementing the CQA/QCP;
 - (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
 - (7) Describe procedures for documenting all CQA/QCP activities; and
 - (8) Describe procedures for retention of documents and for final storage of documents.
- (f) **Transportation and Off-Site Disposal Plan.** The Transportation and Off-Site Disposal Plan (TODP) describes plans to ensure compliance with Section 4.5 (Off-Site Shipments). The TODP must include:
- (1) Proposed routes for off-Site shipment of Waste Material;
 - (2) Identification of communities affected by shipment of Waste Material; and
 - (3) Description of plans to minimize impacts on affected communities.
- (g) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the RA. SD shall develop the O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:
- (1) Description of PS required to be met to implement the ROD;
 - (2) Description of activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (3) **O&M Reporting.** Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;

- (4) Description of corrective action in case of systems failure, including:
 - (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve PS; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and
- (5) Description of corrective action to be implemented in the event that PS are not achieved; and a schedule for implementing these corrective actions.
- (h) **O&M Manual.** The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy. SD shall develop the O&M Manual in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017).
- (i) **Institutional Controls Implementation and Assurance Plan.** The Institutional Controls Implementation and Assurance Plan (ICIAP) describes plans to implement, maintain, and enforce the Institutional Controls (ICs) at the Site. SD shall develop the ICIAP in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). The ICIAP must include the following additional requirements:
 - (1) Locations of recorded real property interests (e.g., easements, liens) and resource interests in the property that may affect ICs (e.g., surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and
 - (2) Legal descriptions and survey maps that are prepared according to current American Land Title Association (ALTA) Survey guidelines and certified by a licensed surveyor.

7. SCHEDULES

- 7.1 **Applicability and Revisions.** All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the RD and RA Schedules set forth below. SD may submit proposed revised RD Schedules or RA Schedules for EPA approval. Upon EPA's approval, the revised RD and/or RA Schedules supersede the RD and RA Schedules set forth below, and any previously-approved RD and/or RA Schedules.

7.2 RD Schedule

	Description of Deliverable, Task	Section Ref.	Deadline
1	RDWP	3.1	60 days following receipt of EPA Authorization to Proceed regarding Supervising Contractor under CD ¶ 9.c
2	PDIWP	3.3(a)	30 days following EPA approval of RDWP
3	PDI Evaluation Report	3.3(b)	60 days following receipt of validated PDI data
4	Intermediate (50%) RD	3.4	120 days following EPA approval of PDI Evaluation Report
5	Pre-final (95%) RD	3.5	120 days following receipt of EPA comments on Intermediate RD
6	Final (100%) RD	3.6	30 days following receipt of EPA comments on Pre-final RD

7.3 RA Schedule

	Description of Deliverable / Task	Section Ref.	Deadline
1	RAWP	4.1	60 days after EPA Notice of Authorization to Proceed with RA
2	Pre-Construction Conference	4.3(a)	30 days following EPA approval of RAWP
3	Start of Construction		30 days following pre-construction conference
4	Completion of Construction		TBD
5	RA Completion Inspection	4.6(a)	30 days following completion of construction
6	RA Report	4.6(b)	60 days following completion of RA Completion Inspection
7	Work Completion Inspection	4.8(a)	TBD
8	Work Completion Report	4.8(b)	60 days following Work Completion Inspection
9	Periodic Review Support Plan	4.7	Five-Year Reviews, triggered by start of first RA

8. STATE PARTICIPATION

- 8.1 Copies.** SD shall, at any time they send a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to SD, send a copy of such document to the State.
- 8.2 Review and Comment.** The State will have a reasonable opportunity for review and comment prior to:

- (a) Any EPA approval or disapproval under Section 6.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
- (b) Any approval or disapproval of the Construction Phase under Section 4.6 (RA Construction Completion), any disapproval of, or Certification of RA Completion under Section 4.6 (Certification of RA Completion), and any disapproval of, or Certification of Work Completion under Section 4.8 (Certification of Work Completion).

9. REFERENCES

- 9.1 The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in Section 9.2:
- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
 - (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
 - (c) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
 - (d) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr. 1990).
 - (e) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
 - (f) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
 - (g) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
 - (h) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).
 - (i) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).
 - (j) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
 - (k) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).

- (l) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (m) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, 540-R-01-007 (June 2001).
- (n) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).
- (o) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).
- (p) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).
- (q) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (r) Superfund Community Involvement Handbook, SEMS 100000070 (January 2016), <https://www.epa.gov/superfund/community-involvement-tools-and-resources>.
- (s) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (t) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (u) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (v) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).
- (w) USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2 (amended Apr. 2007).
- (x) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), <https://www.epa.gov/geospatial/geospatial-policies-and-standards> and <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (y) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (z) Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements, Interim (Sep. 2009).

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 72 of 79

- (aa) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).
- (bb) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (cc) Recommended Evaluation of Institutional Controls: Supplement to the "Comprehensive Five-Year Review Guidance," OSWER 9355.7-18 (Sep. 2011).
- (dd) Construction Specifications Institute's Master Format 2012, available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
- (ee) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach, OSWER 9200.2-125 (Sep. 2012)
- (ff) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).
- (gg) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).
- (hh) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), https://www.epaossc.org/_HealthSafetyManual/manual-index.htm.
- (ii) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (jj) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.

9.2 A more complete list may be found on the following EPA Web pages:

Laws, Policy, and Guidance: <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>

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

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

Case 1:19-cv-01153-CLM Document 9 Filed 12/18/19 Page 73 of 79

Appendix C







Recorded Wilborn Easement

DEED 3278 354
Recorded In Above Book and Page
03/24/2021 12:08:25 PM
Alice K. Martin
Judge of Probate
Calhoun County, Alabama

Deed Tax \$ 1.00
Mental Health Fee \$ 4.00
Recording Fee \$ 24.00
TOTAL \$ 29.00

***This Instrument Prepared By, And
After Recording Return To:***

Scott I. Steady, Esq.
Burr & Forman LLP
201 N Franklin Street, Suite 3200
Tampa, Florida 33602

Cross Reference:

Deed Book 1583, Page 752
Calhoun County Records

STATE OF ALABAMA)
CALHOUN COUNTY)

GRANT OF EASEMENTS

THIS GRANT OF EASEMENTS (this "Easement") is made this 22nd day of March, 2021, by **GARY WILBORN, as Personal Representative of the Estate of WALDEN J. WILBORN, DECEASED** (Case No. 31082, Probate Court Of Calhoun County, Alabama) ("Grantor"), whose address is 820 Creek Trail, Anniston, Alabama, to and for the benefit of **MRC HOLDINGS INC.** ("Grantee"), whose address is 1000 North West Street, 5th Floor, Wilmington, Delaware 19801.

Recitals

1. Grantor is the titleholder of (i) the real property located in the City of Anniston, Alabama as described in the legal description attached hereto as Exhibit "A" (the "Easement Property"), and (ii) the real property located in the City of Anniston, Alabama as described in the legal description attached hereto as Exhibit "B" (the "Access Property").
2. The Easement Property comprises a portion of the Anniston PCB Superfund Site. The Easement Property is comprised of two parcels having (i) a street address of 830 W. 10th Street, being a portion of Calhoun County PID # 21-03-07-2-001-073.000 and (ii) and street address of 0 9th and Mulberry Avenue, Calhoun County PID # 21-03-07-1-002-011.00.

3. The Access Property is located adjacent to the Easement Property, also having a street address of 830 W. 10th Street, being a portion of Calhoun County PID # 21-03-07-2-001-073.000.
4. Concurrently with the execution of this Easement, the Grantor and Grantee entered into an Access Agreement, Use Restriction and Agreement to Record an Environmental Covenant dated March 22, 2021 ("Agreement") to permit the implementation of the Remedial Action ("RA") as provided for in the Agreement.
5. This Grant of Easement shall further implement the purpose and intent of the Agreement.

WITNESSETH:

THAT Grantor, in consideration of the sum of One and no/100s Dollars (\$1.00) to it in hand paid by Grantee, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell, assign, convey, declare and establish to and for the benefit of Grantee, and Grantee's successors and assigns:

- A. A perpetual exclusive easement on, in, over, under, across and through the Easement Property for the purpose of the design, construction, repair, operation and maintenance and monitoring of a RCRA Subtitle D multi-layer cap, including, without limitation, drainage lines, pipes, ditches, drainage ponds, related equipment and improvements, and appurtenances thereto (herein collectively referred to as the "Facilities"), together with full rights of ingress, egress and access to the Easement Property for the foregoing purposes; and
- B. A perpetual exclusive easement on, in, over, under, across and through the Access Property for the purpose of providing pedestrian and vehicular ingress, egress and access to and from the Easement Property to West 10th Street, including the right to construct all such roadway improvements, drainage structures and other appurtenances (herein collectively referred to as "Access Improvements"), within the Access Area as Grantee may deem necessary or desirable in connection therewith;

TO HAVE AND TO HOLD unto Grantee and its successors and assigns, forever.

THIS GRANT OF EASEMENTS is also made subject to the following terms, conditions, representations and warranties:

1. Grantor warrants and represents to Grantee that Grantor possesses marketable fee simple title to the Easement Property and the Access Property; and that this Easement does not violate, breach or create a default on the part of Grantor under any matter affecting title to the Easement Property or the Access Property.
2. Grantor represents and warrants to Grantee that this Easement has been duly authorized by Grantor; and that the person executing this Easement on behalf of the Grantor has the full right and authority to do so on behalf of the Grantor.
3. Grantor agrees that the terms and conditions of this Easement shall be deemed covenants and conditions running with title to the Easement Property and the Access Property, and

shall be binding upon Grantor and its successors and assigns. This Easement shall for all purposes be deemed a commercial easement, and the rights and benefits of Grantee hereunder shall be freely alienable by Grantee and shall vest fully in Grantee's successors and assigns.

4. Grantor covenants and agrees that it shall not at any time suffer, permit or commit any use or activity upon the Easement Property which would or could damage, disturb or interfere with the Facilities, or otherwise impede, hinder or prevent the Facilities from functioning for their intended purposes.
5. Grantor covenants and agrees that it shall not at any time suffer, permit or commit any use or activity upon the Access Property which would or could damage, disturb or interfere with the Access Improvements, or otherwise impede, hinder or prevent the Access Improvements from functioning for their intended purposes.

[No further text on this page. Signature page follows.]

IN WITNESS WHEREOF, the Grantor has caused this Easement to be properly executed and delivered as of the day and year first set forth above.

WITNESSES:

Sara A. Ervin

Name: Sara A. Ervin
(Print/Type Name)

Liz Moore

Name: Liz Moore
(Print/Type Name) Liz Moore

GRANTOR:

Gary Wilborn

GARY WILBORN, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
WALDEN J. WILBORN, DECEASED
(CASE NO. 31082, PROBATE COURT OF
CALHOUN COUNTY, ALABAMA)

STATE OF ALABAMA)

COUNTY OF Calhoun)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that GARY WILBORN, whose name as Personal Representative of the Estate of WALDEN J. WILBORN, Deceased, is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, in such capacity and with full authority, executed the same voluntarily.

Given under my hand and seal, this 22 day of March, 2021.

Tasha S. Allen

NOTARY PUBLIC

Printed Name: Tasha S. Allen

[SEAL]

My Commission Expires: June 13, 2022

EXHIBIT A – THE EASEMENT PROPERTY

All that tract or parcel of land lying and being in Section 7, Township 16 South, Range 8 East, as described in Deed Book 1583, page 752, in the Probate Office of Calhoun County, Alabama and being more particularly described as follows:

Commencing at a point at the intersection of southerly right-of-way of W 10th Street (apparent 60-foot R/W) with the eastern right-of-way of Legarde Avenue (apparent 50-foot R/W); thence, South 89° 10' 31" East, along the aforesaid right-of-way of W 10th Street 415.11 feet to a point and the Point of Beginning; thence, from said Point of Beginning continue along W 10th Street

South 89° 10' 31" East, 212.32 feet to a point on the northwestern right-of-way of the Norfolk Southern Railroad (100-foot R/W); thence, leaving W 10th Street and continue along the aforesaid Norfolk Southern Railroad right-of way the following two calls;

217.80 feet along the arc of a curve to the right, having a radius of 2,878.73 feet and a chord bearing and distance of South 52° 43' 27" East, 217.75 feet to the point of intersection with the western line of the NE 1/4 of the NW 1/4, Sect 07, T16S, R8E; thence,

218.83 feet along the arc of a curve to the right, having a radius of 2,878.73 feet and a chord bearing and distance of South 48° 22' 44" East, 218.78 feet to the point of intersection of with the westerly right-of-way of Mulberry Avenue (apparent 50-foot R/W); thence, continue along aforesaid right-of-way of Mulberry Avenue

South 00° 30' 04" East, 81.56 feet to a point of the northerly right-of-way of W 9th Street (apparent 50-foot R/W); thence, continue along W 9th Street the following six calls;

South 85° 55' 28" West, 22.54 feet; thence,

86.79 feet along the arc of a curve to the left having a radius of 501.30 feet and a chord bearing and distance of South 79° 56' 05" West, 86.68 feet; thence,

54.79 feet along the arc of a curve to the right having a radius of 181.71 feet and a chord bearing and distance of South 83° 36' 48" West, 54.59 feet to the point of intersection with the western line of the NE 1/4 of the NW 1/4, Sect 07, T16S, R8E; thence,

74.58 feet along the arc of a curve to the right, having a radius of 181.71 feet and a chord bearing and distance of North 75° 59' 25" West, 74.06 feet; thence,

North 64° 13' 57" West, 197.07 feet; thence,

160.36 feet along the arc of a curve to the left, having a radius of 389.46 feet and a chord bearing and distance of North 76° 01' 42" West, 159.23 feet; thence, leaving the aforesaid right-of-way of W 9th Street

North 03° 47' 45" East, 243.12 feet to the Point of Beginning, containing 136,912 square feet or 3.1431 acres of land, more or less.

EXHIBIT B – THE ACCESS PROPERTY

All that tract or parcel of land lying and being in Section 7, Township 16 South, Range 8 East, as described in Deed Book 1583, page 752, in the Probate Office of Calhoun County, Alabama and being more particularly described as follows:

Commencing at a point at the Intersection of the southerly right-of-way of W 10th Street (apparent 60-foot R/W) with the eastern right-of-way of Legarde Avenue (apparent 50-foot R/W); thence, South 89° 10' 31" East, along the aforesaid right-of-way of W 10th Street 363.81 feet to a point and the Point of Beginning; thence, from said Point of Beginning and leaving aforesaid right-of-way

1. South 00° 49' 29" West, 25.00 feet to a point on the north side of an existing fence; thence,
2. South 89° 10' 31" East, along the north side of aforesaid fence 50.00 feet; thence,
3. North 03° 47' 45" East, 25.03 feet; thence,
4. North 89° 10' 31" West, 51.30 feet to the Point of Beginning, containing 1,266 square feet or 0.0291 acres of land, more or less.

SUBAPPENDIX 2 – SITE INSPECTION CHECKLIST

I. SITE INFORMATION	
Site name: Anniston PCB Site (A-L and Wilborn UWDA)	Date of inspection: December 17, 2024
Location and Region: Anniston, AL, Region 4	EPA ID: ALD 000400123
Agency, office, or company leading the five-year review: EPA Region 4	Weather/temperature:
Remedy Includes: (Check all that apply) <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input checked="" type="checkbox"/> Landfill cover/containment <input checked="" type="checkbox"/> Access controls <input checked="" type="checkbox"/> Institutional controls <input type="checkbox"/> Groundwater pump and treatment <input type="checkbox"/> Surface water collection and treatment <input type="checkbox"/> Other _____ </div> <div style="width: 50%;"> <input type="checkbox"/> Monitored natural attenuation <input type="checkbox"/> Groundwater containment <input type="checkbox"/> Vertical barrier walls </div> </div>	
Attachments: <input type="checkbox"/> Inspection team roster attached <input type="checkbox"/> Site map attached	
II. INTERVIEWS (Check all that apply)	
<div style="display: flex; justify-content: space-between;"> <div> 1. O&M site manager <u>Andy Lawn</u> <div style="display: flex; justify-content: space-between; width: 80%;"> Name Title Date </div> </div> <div> <u>Supv. Contractor</u> <div style="display: flex; justify-content: space-between; width: 80%;"> Name Title Date </div> </div> </div> <div style="margin-top: 5px;"> Interviewed <input type="checkbox"/> at site <input type="checkbox"/> at office <input type="checkbox"/> by phone <input checked="" type="checkbox"/> by Email Problems, suggestions; <input type="checkbox"/> Report attached <u>See Sub appendix 4</u> </div>	
<div style="display: flex; justify-content: space-between;"> <div> 2. O&M staff <u>Darrin Wells</u> <div style="display: flex; justify-content: space-between; width: 80%;"> Name Title Date </div> </div> <div> <u>O&M Contractor</u> <div style="display: flex; justify-content: space-between; width: 80%;"> Name Title Date </div> </div> </div> <div style="margin-top: 5px;"> Interviewed <input type="checkbox"/> at site <input type="checkbox"/> at office <input type="checkbox"/> by phone <input checked="" type="checkbox"/> by Email Problems, suggestions; <input type="checkbox"/> Report attached <u>See Sub appendix 4</u> </div>	
3. Local regulatory authorities and response agencies (i.e., State and Tribal offices, emergency response office, police department, office of public health or environmental health, zoning office, recorder of deeds, or other city and county offices, etc.) Fill in all that apply. <div style="margin-top: 10px;"> Agency _____ Contact _____ <div style="display: flex; justify-content: space-between; width: 80%;"> Name Title Date Phone no. </div> Problems; suggestions; <input type="checkbox"/> Report attached _____ </div>	
4. Other interviews (optional) <input type="checkbox"/> Report attached.	

III. ON-SITE DOCUMENTS & RECORDS VERIFIED (Check all that apply)			
1.	O&M Documents <input checked="" type="checkbox"/> O&M manual <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A <input checked="" type="checkbox"/> As-built drawings <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A <input checked="" type="checkbox"/> Maintenance logs <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A Remarks. <u>No Site office. Documents sent in email and added to Site-files.</u>		
2.	Site-Specific Health and Safety Plan <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A <input type="checkbox"/> Contingency plan/emergency response plan <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks. <u>No activity other than mowing occurs at site.</u>		
3.	O&M and OSHA Training Records <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks_ <u>No activity other than mowing occurs at site.</u>		
4.	Permits and Service Agreements <input type="checkbox"/> Air discharge permit <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A <input type="checkbox"/> Effluent discharge <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A <input type="checkbox"/> Waste disposal, POTW <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input type="checkbox"/> N/A <input type="checkbox"/> Other permits <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks		
5.	Gas Generation Records <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks		
6.	Settlement Monument Records <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks		
7.	Groundwater Monitoring Records <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks		
8.	Leachate Extraction Records <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks		
9.	Discharge Compliance Records <input type="checkbox"/> Air <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A <input type="checkbox"/> Water (effluent) <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks		
10.	Daily Access/Security Logs <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks		

IV. O&M COSTS																																																																									
1.	O&M Organization <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> State in-house <input type="checkbox"/> PRP in-house <input type="checkbox"/> Federal Facility in-house <input type="checkbox"/> Other _____ </div> <div> <input type="checkbox"/> Contractor for State <input checked="" type="checkbox"/> Contractor for PRP <input type="checkbox"/> Contractor for Federal Facility </div> </div>																																																																								
2.	O&M Cost Records <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input type="checkbox"/> Funding mechanism/agreement in place Original O&M cost estimate _____ <input type="checkbox"/> Breakdown attached <div style="text-align: center;">Total annual cost by year for review period if available</div> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">From _____</td> <td style="width: 10%;">To _____</td> <td style="width: 20%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 20%;"></td> <td style="width: 10%; text-align: right;"><input type="checkbox"/> Breakdown attached</td> </tr> <tr> <td style="text-align: center;">Date</td> <td style="text-align: center;">Date</td> <td style="text-align: center;">Total cost</td> <td colspan="4"></td> </tr> <tr> <td>From _____</td> <td>To _____</td> <td></td> <td></td> <td></td> <td></td> <td style="text-align: right;"><input type="checkbox"/> Breakdown attached</td> </tr> <tr> <td style="text-align: center;">Date</td> <td style="text-align: center;">Date</td> <td style="text-align: center;">Total cost</td> <td colspan="4"></td> </tr> <tr> <td>From _____</td> <td>To _____</td> <td></td> <td></td> <td></td> <td></td> <td style="text-align: right;"><input type="checkbox"/> Breakdown attached</td> </tr> <tr> <td style="text-align: center;">Date</td> <td style="text-align: center;">Date</td> <td style="text-align: center;">Total cost</td> <td colspan="4"></td> </tr> <tr> <td>From _____</td> <td>To _____</td> <td></td> <td></td> <td></td> <td></td> <td style="text-align: right;"><input type="checkbox"/> Breakdown attached</td> </tr> <tr> <td style="text-align: center;">Date</td> <td style="text-align: center;">Date</td> <td style="text-align: center;">Total cost</td> <td colspan="4"></td> </tr> <tr> <td>From _____</td> <td>To _____</td> <td></td> <td></td> <td></td> <td></td> <td style="text-align: right;"><input type="checkbox"/> Breakdown attached</td> </tr> <tr> <td style="text-align: center;">Date</td> <td style="text-align: center;">Date</td> <td style="text-align: center;">Total cost</td> <td colspan="4"></td> </tr> </table>			From _____	To _____					<input type="checkbox"/> Breakdown attached	Date	Date	Total cost					From _____	To _____					<input type="checkbox"/> Breakdown attached	Date	Date	Total cost					From _____	To _____					<input type="checkbox"/> Breakdown attached	Date	Date	Total cost					From _____	To _____					<input type="checkbox"/> Breakdown attached	Date	Date	Total cost					From _____	To _____					<input type="checkbox"/> Breakdown attached	Date	Date	Total cost				
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3.	Unanticipated or Unusually High O&M Costs During Review Period Describe costs and reasons: _____ _____ _____ _____ _____ _____																																																																								
V. ACCESS AND INSTITUTIONAL CONTROLS <input type="checkbox"/> Applicable <input type="checkbox"/> N/A																																																																									
A. Fencing																																																																									
1.	Fencing damaged <input checked="" type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> Gates secured <input type="checkbox"/> N/A Remarks. <u>No Damage observed.</u> _____ _____																																																																								
B. Other Access Restrictions																																																																									
1.	Signs and other security measures <input type="checkbox"/> Location shown on site map <input type="checkbox"/> N/A Remarks. <u>Signs on fence.</u> _____ _____																																																																								

C. Institutional Controls (ICs)			
1.	Implementation and enforcement Site conditions imply ICs not properly implemented <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Site conditions imply ICs not being fully enforced <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Type of monitoring (<i>e.g.</i> , self-reporting, drive by) _____ Frequency <u>Annual</u> Responsible party/agency <u>PRP Supervisory Contractor</u> Contact <u>Andy Lawn</u> <u>Project Mgr.</u> <u>407-810-2949</u> <div style="display: flex; justify-content: space-between; font-size: small;"> Name Title Date Phone no. </div> Reporting is up-to-date <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Reports are verified by the lead agency <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A Specific requirements in deed or decision documents have been met <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Violations have been reported <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A Other problems or suggestions: <input type="checkbox"/> Report attached _____ _____ _____		
2.	Adequacy <input checked="" type="checkbox"/> ICs are adequate <input type="checkbox"/> ICs are inadequate <input type="checkbox"/> N/A Remarks _____ _____ _____		
D. General			
1.	Vandalism/trespassing <input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> No vandalism evident Remarks _____ _____		
2.	Land use changes on site <input type="checkbox"/> N/A Remarks. <u>No</u> _____		
3.	Land use changes off site <input type="checkbox"/> N/A Remarks. <u>No</u> _____		
VI. GENERAL SITE CONDITIONS			
A. Roads <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A			
1.	Roads damaged <input type="checkbox"/> Location shown on site map <input type="checkbox"/> Roads adequate <input type="checkbox"/> N/A Remarks _____ _____		

B. Other Site Conditions		
Remarks _____ _____ _____ _____ _____ _____		
VII. LANDFILL COVERS <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A		
A. Landfill Surface		
1.	Settlement (Low spots) Areal extent _____ Depth _____ Remarks _____ _____	<input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> Settlement not evident
2.	Cracks Lengths _____ Widths _____ Depths _____ Remarks _____ _____	<input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> Cracking not evident
3.	Erosion Areal extent _____ Depth _____ Remarks _____ _____	<input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> Erosion not evident
4.	Holes Areal extent _____ Depth _____ Remarks _____ _____	<input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> Holes not evident
5.	Vegetative Cover <input type="checkbox"/> Grass <input type="checkbox"/> Cover properly established <input type="checkbox"/> No signs of stress <input type="checkbox"/> Trees/Shrubs (indicate size and locations on a diagram) Remarks. <u>Vegetative cover under stress from drought conditions.</u> _____ _____	
6.	Alternative Cover (armored rock, concrete, etc.) <input checked="" type="checkbox"/> N/A Remarks _____ _____	
7.	Bulges Areal extent _____ Height _____ Remarks _____ _____	<input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> Bulges not evident
8.	Wet Areas/Water Damage <input checked="" type="checkbox"/> Wet areas/water damage not evident <div style="display: flex; justify-content: space-between;"> <div style="width: 33%;"> <input type="checkbox"/> Wet areas <input type="checkbox"/> Ponding <input type="checkbox"/> Seeps <input type="checkbox"/> Soft subgrade Remarks _____ _____ </div> <div style="width: 33%;"> <input type="checkbox"/> Location shown on site map <input type="checkbox"/> Location shown on site map <input type="checkbox"/> Location shown on site map <input type="checkbox"/> Location shown on site map </div> <div style="width: 33%;"> Areal extent _____ Areal extent _____ Areal extent _____ Areal extent _____ </div> </div>	

9.	Slope Instability	<input type="checkbox"/> Slides	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> No evidence of slope instability
	Areal extent _____			
	Remarks _____			
B. Benches <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A (Horizontally constructed mounds of earth placed across a steep landfill side slope to interrupt the slope in order to slow down the velocity of surface runoff and intercept and convey the runoff to a lined channel.)				
1.	Flows Bypass Bench	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> N/A or okay	
	Remarks _____			
2.	Bench Breached	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> N/A or okay	
	Remarks _____			
3.	Bench Overtopped	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> N/A or okay	
	Remarks _____			
C. Letdown Channels <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A (Channel lined with erosion control mats, riprap, grout bags, or gabions that descend down the steep side slope of the cover and will allow the runoff water collected by the benches to move off of the landfill cover without creating erosion gullies.)				
1.	Settlement	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> No evidence of settlement	
	Areal extent _____		Depth _____	
	Remarks _____			
2.	Material Degradation	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> No evidence of degradation	
	Material type _____		Areal extent _____	
	Remarks _____			
3.	Erosion	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> No evidence of erosion	
	Areal extent _____		Depth _____	
	Remarks _____			

4.	Undercutting Areal extent _____ Depth _____ Remarks _____	<input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> No evidence of undercutting
5.	Obstructions Type _____ <input type="checkbox"/> Location shown on site map Areal extent _____ Size _____ Remarks _____	<input checked="" type="checkbox"/> No obstructions
6.	Excessive Vegetative Growth Type _____ <input type="checkbox"/> No evidence of excessive growth <input type="checkbox"/> Vegetation in channels does not obstruct flow <input type="checkbox"/> Location shown on site map Areal extent _____ Remarks _____	
D. Cover Penetrations <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A		
1.	Gas Vents <input type="checkbox"/> Active <input type="checkbox"/> Passive <input type="checkbox"/> Properly secured/locked <input type="checkbox"/> Functioning <input type="checkbox"/> Routinely sampled <input type="checkbox"/> Good condition <input type="checkbox"/> Evidence of leakage at penetration <input type="checkbox"/> Needs Maintenance <input type="checkbox"/> N/A Remarks _____	
2.	Gas Monitoring Probes <input type="checkbox"/> Properly secured/locked <input type="checkbox"/> Functioning <input type="checkbox"/> Routinely sampled <input type="checkbox"/> Good condition <input type="checkbox"/> Evidence of leakage at penetration <input type="checkbox"/> Needs Maintenance <input type="checkbox"/> N/A Remarks _____	
3.	Monitoring Wells (within surface area of landfill) <input type="checkbox"/> Properly secured/locked <input type="checkbox"/> Functioning <input type="checkbox"/> Routinely sampled <input type="checkbox"/> Good condition <input type="checkbox"/> Evidence of leakage at penetration <input type="checkbox"/> Needs Maintenance <input type="checkbox"/> N/A Remarks _____	
4.	Leachate Extraction Wells <input type="checkbox"/> Properly secured/locked <input type="checkbox"/> Functioning <input type="checkbox"/> Routinely sampled <input type="checkbox"/> Good condition <input type="checkbox"/> Evidence of leakage at penetration <input type="checkbox"/> Needs Maintenance <input type="checkbox"/> N/A Remarks _____	
5.	Settlement Monuments <input type="checkbox"/> Located <input type="checkbox"/> Routinely surveyed <input type="checkbox"/> N/A Remarks _____	

E. Gas Collection and Treatment <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A		
1.	Gas Treatment Facilities <input type="checkbox"/> Flaring <input type="checkbox"/> Thermal destruction <input type="checkbox"/> Collection for reuse <input type="checkbox"/> Good condition <input type="checkbox"/> Needs Maintenance Remarks _____ _____	
2.	Gas Collection Wells, Manifolds and Piping <input type="checkbox"/> Good condition <input type="checkbox"/> Needs Maintenance Remarks _____ _____	
3.	Gas Monitoring Facilities (<i>e.g.</i> , gas monitoring of adjacent homes or buildings) <input type="checkbox"/> Good condition <input type="checkbox"/> Needs Maintenance <input type="checkbox"/> N/A Remarks _____ _____	
F. Cover Drainage Layer <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A		
1.	Outlet Pipes Inspected <input type="checkbox"/> Functioning <input type="checkbox"/> N/A Remarks _____ _____	
2.	Outlet Rock Inspected <input checked="" type="checkbox"/> Functioning <input type="checkbox"/> N/A Remarks _____ _____	
G. Detention/Sedimentation Ponds <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A		
1.	Siltation Areal extent _____ Depth _____ <input type="checkbox"/> N/A <input checked="" type="checkbox"/> Siltation not evident Remarks _____ _____	
2.	Erosion Areal extent _____ Depth _____ <input checked="" type="checkbox"/> Erosion not evident Remarks _____ _____	
3.	Outlet Works <input checked="" type="checkbox"/> Functioning <input type="checkbox"/> N/A Remarks _____ _____	
4.	Dam <input checked="" type="checkbox"/> Functioning <input type="checkbox"/> N/A Remarks _____ _____	

H. Retaining Walls		<input type="checkbox"/> Applicable	<input checked="" type="checkbox"/> N/A
1.	Deformations Horizontal displacement _____ Rotational displacement _____ Remarks _____	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> Deformation not evident
2.	Degradation Remarks _____	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> Degradation not evident
I. Perimeter Ditches/Off-Site Discharge			
		<input checked="" type="checkbox"/> Applicable	<input type="checkbox"/> N/A
1.	Siltation Areal extent _____ Depth _____ Remarks _____	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> Siltation not evident
2.	Vegetative Growth ■ Vegetation does not impede flow Areal extent _____ Type _____ Remarks _____	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> N/A
3.	Erosion Areal extent _____ Depth _____ Remarks _____	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> Erosion not evident
4.	Discharge Structure Remarks _____	<input checked="" type="checkbox"/> Functioning	<input type="checkbox"/> N/A
VIII. VERTICAL BARRIER WALLS			
		<input type="checkbox"/> Applicable	<input checked="" type="checkbox"/> N/A
1.	Settlement Areal extent _____ Depth _____ Remarks _____	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> Settlement not evident
2.	Performance Monitoring Type of monitoring _____ <input type="checkbox"/> Performance not monitored Frequency _____ <input type="checkbox"/> Evidence of breaching Head differential _____ Remarks _____		

IX. GROUNDWATER/SURFACE WATER REMEDIES <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A	
A. Groundwater Extraction Wells, Pumps, and Pipelines <input type="checkbox"/> Applicable <input type="checkbox"/> N/A	
1.	Pumps, Wellhead Plumbing, and Electrical <input type="checkbox"/> Good condition <input type="checkbox"/> All required wells properly operating <input type="checkbox"/> Needs Maintenance <input type="checkbox"/> N/A Remarks _____ _____ _____
2.	Extraction System Pipelines, Valves, Valve Boxes, and Other Appurtenances <input type="checkbox"/> Good condition <input type="checkbox"/> Needs Maintenance Remarks _____ _____ _____
3.	Spare Parts and Equipment <input type="checkbox"/> Readily available <input type="checkbox"/> Good condition <input type="checkbox"/> Requires upgrade <input type="checkbox"/> Needs to be provided Remarks _____ _____ _____
B. Surface Water Collection Structures, Pumps, and Pipelines <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A	
1.	Collection Structures, Pumps, and Electrical <input type="checkbox"/> Good condition <input type="checkbox"/> Needs Maintenance Remarks _____ _____ _____
2.	Surface Water Collection System Pipelines, Valves, Valve Boxes, and Other Appurtenances <input type="checkbox"/> Good condition <input type="checkbox"/> Needs Maintenance Remarks _____ _____ _____
3.	Spare Parts and Equipment <input type="checkbox"/> Readily available <input type="checkbox"/> Good condition <input type="checkbox"/> Requires upgrade <input type="checkbox"/> Needs to be provided Remarks _____ _____ _____

C. Treatment System		<input type="checkbox"/> Applicable	<input checked="" type="checkbox"/> N/A
1.	Treatment Train (Check components that apply) <input type="checkbox"/> Metals removal <input type="checkbox"/> Oil/water separation <input type="checkbox"/> Bioremediation <input type="checkbox"/> Air stripping <input type="checkbox"/> Carbon adsorbers <input type="checkbox"/> Filters _____ <input type="checkbox"/> Additive (e.g., chelation agent, flocculent) _____ <input type="checkbox"/> Others _____ <input type="checkbox"/> Good condition <input type="checkbox"/> Needs Maintenance <input type="checkbox"/> Sampling ports properly marked and functional <input type="checkbox"/> Sampling/maintenance log displayed and up to date <input type="checkbox"/> Equipment properly identified <input type="checkbox"/> Quantity of groundwater treated annually _____ <input type="checkbox"/> Quantity of surface water treated annually _____ Remarks _____ _____		
2.	Electrical Enclosures and Panels (properly rated and functional) <input type="checkbox"/> N/A <input type="checkbox"/> Good condition <input type="checkbox"/> Needs Maintenance Remarks _____ _____		
3.	Tanks, Vaults, Storage Vessels <input type="checkbox"/> N/A <input type="checkbox"/> Good condition <input type="checkbox"/> Proper secondary containment <input type="checkbox"/> Needs Maintenance Remarks _____ _____		
4.	Discharge Structure and Appurtenances <input type="checkbox"/> N/A <input type="checkbox"/> Good condition <input type="checkbox"/> Needs Maintenance Remarks _____ _____		
5.	Treatment Building(s) <input type="checkbox"/> N/A <input type="checkbox"/> Good condition (esp. roof and doorways) <input type="checkbox"/> Needs repair <input type="checkbox"/> Chemicals and equipment properly stored Remarks _____ _____		
6.	Monitoring Wells (pump and treatment remedy) <input type="checkbox"/> Properly secured/locked <input type="checkbox"/> Functioning <input type="checkbox"/> Routinely sampled <input type="checkbox"/> Good condition <input type="checkbox"/> All required wells located <input type="checkbox"/> Needs Maintenance <input type="checkbox"/> N/A Remarks _____ _____		
D. Monitoring Data <input checked="" type="checkbox"/> N/A			
1.	Monitoring Data <input type="checkbox"/> Is routinely submitted on time <input type="checkbox"/> Is of acceptable quality		
2.	Monitoring data suggests: <input type="checkbox"/> Groundwater plume is effectively contained <input type="checkbox"/> Contaminant concentrations are declining		

D. Monitored Natural Attenuation ■ N/A			
1.	Monitoring Wells (natural attenuation remedy) <input type="checkbox"/> Properly secured/locked <input type="checkbox"/> Functioning <input type="checkbox"/> Routinely sampled <input type="checkbox"/> Good condition <input type="checkbox"/> All required wells located <input type="checkbox"/> Needs Maintenance <input type="checkbox"/> N/A Remarks _____ _____		
X. OTHER REMEDIES			
If there are remedies applied at the site which are not covered above, attach an inspection sheet describing the physical nature and condition of any facility associated with the remedy. An example would be soil vapor extraction.			
XI. OVERALL OBSERVATIONS			
A. Implementation of the Remedy			
Describe issues and observations relating to whether the remedy is effective and functioning as designed. Begin with a brief statement of what the remedy is to accomplish (i.e., to contain contaminant plume, minimize infiltration and gas emission, etc.). _____ <p>The remedy is designed to contain autofluff in two locations. The containment is effective. The caps constructed over the auto fluff have not been in place for five years yet. The vegetative cover has struggled to be established due to drought conditions.</p> _____ _____ _____ _____ _____			
B. Adequacy of O&M			
Describe issues and observations related to the implementation and scope of O&M procedures. In particular, discuss their relationship to the current and long-term protectiveness of the remedy. Mowing frequency should be increased and watering by truck may need to be considered to get good stand of vegetation. _____ _____ _____ _____ _____ _____ _____			

C. Early Indicators of Potential Remedy Problems
<p>Describe issues and observations such as unexpected changes in the cost or scope of O&M or a high frequency of unscheduled repairs, that suggest that the protectiveness of the remedy may be compromised in the future.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
D. Opportunities for Optimization
<p>Describe possible opportunities for optimization in monitoring tasks or the operation of the remedy.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

SUBAPPENDIX 3 - PHOTOGRAPHS



Photo 1: Main gate signage at Willborn Street UWDA



Photo 2: Gate leading into Willborn UWDA



Photo 3: Perimeter fence signage, facing East, at Willborn Street UWDA



Photo 4: Lack of grass cover at Willborn UWDA



Photo 5: Facing West at top of UWDA, note lack of grass cover



Photo 6: Eastern perimeter signage



Photo 7: Retention Pond at Willborn UWDA



Photo 8: Facing SW from top of UWDA; note lack of grass cover



Photo 9: Main gate signate at A/L UWDA



Photo 10: Facing East at A/L UWDA, along perimeter. Note standing water



Photo 11: Facing East along perimeter



Photo 12: Perimeter Signage, facing East



Photo 12: Perimeter signage, facing North



Photo 13: Top of A/L UWDA, facing South



Photo 14: Top of A/L UWDA, facing North



Photo 15: View of Willborn UWDA from bridge

SUBAPPENDIX 4 – INTERVIEW FORMS

FIVE-YEAR REVIEW INTERVIEW FORM	
Site Name: Anniston PCB Superfund Alternative Approach Site	
EPA ID: ALD000400123	
Interviewer name: Pam Scully	Interviewer affiliation: USEPA
Subject name: Andrew Lawn	Subject affiliation: Verdantas/Supervisory Contractor/Project Manager
Subject contact information: Verdantas, 2916 East Park Ave. Tallahassee, FL 32301 alawn@verdantas.com	
Interview date: February 10, 2025	Interview time: Not applicable
Interview location: office	
Interview format (select one): In Person Phone Mail <u>Email</u> Other:	
Interview category: Potentially Responsible Party (PRP) Supervisory Contractor (Project Manager)	

8. What is your overall impression of the remedial activities at the Site?

My overall impression of the remedial activities at the Site is very positive for all involved stakeholders, local residents and small businesses, the City of Anniston, the County of Calhoun, the Alabama Department of Environmental Management (ADEM), and the EPA. Project completion and ongoing maintenance efforts put forth have been effective and well-managed, ensuring both safety and improvement for the surrounding community.

9. What have been the effects of this Site on the surrounding community, if any?

Local neighbors are appreciative of Site cleanups and contaminant containment. Additionally, project completion has enhanced local aesthetics and reduced railroad noise for nearby residents.

10. What is your assessment of the current performance of the remedy in place at the Site?

The remedy is performing as expected, meeting stakeholder expectations. Currently O&M inspections and cover-grass mowing are not intrusive.

11. Are you aware of any complaints or inquiries regarding environmental issues or the remedial action from residents since implementation of the cleanup?

Only one minor complaint was voiced one time by a neighbor south of the Ashley-Legrande Unauthorized Waste Disposal Area (UWDA), expressing concern about nominal yard flooding; however, this was found to be unrelated to remedial efforts.

12. Do you feel well-informed regarding the Site's activities and remedial progress? If not, how might the EPA convey site-related information in the future?

Yes, we have enjoyed frequent communications with EPA and feel well-informed regarding the Site's activities and remedial progress. Communication has been clear and comprehensive, keeping interested parties and stakeholders updated effectively.

13. Do you have any comments, suggestions or recommendations regarding the management or operation of the Site's remedy?

No, the project has been completed and ongoing O&M has been successful.

14. Do you consent to have your name included along with your responses to this questionnaire in the FYR report?

Yes.

FIVE-YEAR REVIEW INTERVIEW FORM	
Site Name: Anniston PCB Superfund Alternative Approach Site	
EPA ID: ALD000400123	
Interviewer name: Pam Scully	Interviewer affiliation: USEPA
Subject name: Darrin Wells	Subject affiliation: Remedial Contractor
Subject contact information: PO Box 800 Alexandria, AL 36250, d@earthservices.net	
Interview date: Feb 13, 2025	Interview time: Not applicable
Interview location: Office	
Interview format (select one): In Person Phone Mail <u>Email</u> Other:	
Interview category: O&M Subcontractor	

10. What is your overall impression of the project, including cleanup, maintenance and reuse activities (as appropriate)?

The extent of material turned out to be larger than was initially thought, but the overall results were the same. Maintenance is going well, and there are no major issues to report.

11. What is your assessment of the current performance of the remedy in place at the Site?

Remedy is performing as intended.

12. What are the findings from the monitoring data? What are the key trends in contaminant levels that are being documented over time at the Site?

N/A; RCRA cap installed

13. Is there a continuous on-site O&M presence? If so, please describe staff responsibilities and activities. Alternatively, please describe staff responsibilities and the frequency of site inspections and activities if there is not a continuous on-site O&M presence.

Inspections are conducted quarterly with site visits occurring at least once a month. These visits include mowing, identifying potential concerns, re-seeding as necessary, filling in erosion rills, checking for animal burrows, and assessing overall site conditions and security.

14. Have there been any significant changes in site O&M requirements, maintenance schedules or sampling routines since start-up or in the last five years? If so, do they affect the protectiveness or effectiveness of the remedy? Please describe changes and impacts.

No changes. Remedy is performing as intended.

15. Have there been unexpected O&M difficulties or costs at the Site since start-up or in the last five years? If so, please provide details.

No.

16. Have there been opportunities to optimize O&M activities or sampling efforts? Please describe changes and any resulting or desired cost savings or improved efficiencies.

No.

17. Do you have any comments, suggestions or recommendations regarding O&M activities and schedules at the Site?

No.

18. Do you consent to have your name included along with your responses to this questionnaire in the FYR report?

Yes.