

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
)	CIVIL ACTION
Plaintiff,)	No. 1:19-cv-01153-CLM
)	
)	
v.)	
)	
)	
MRC HOLDINGS, INC.,)	
)	
Defendant.)	
)	
_____)	

SECOND NOTICE OF LODGING OF PROPOSED CONSENT DECREE

(NO ACTION REQUIRED BY THE COURT AT THIS TIME)

This Second Notice of Lodging provides the Court with executed signature pages to the Consent Decree. The Consent Decree that was lodged with the Court on July 22, 2019 did not contain the signatures of the parties. Therefore, the United States is herewith providing the fully executed Consent Decree. No action is required by the Court at this time, since the Consent Decree is subject to public comment before it can be entered by the Court. After the public comment period expires thirty (30) days after publication in the Federal Register, in the absence of any comments which would require that the Consent Decree be withdrawn or modified, the Plaintiff will file a motion

seeking the Court's approval and entry of the Consent Decree.

Respectfully submitted,

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Northern District of Alabama

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

Civil Action No.

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)**

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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 Mulburry 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 UWDA's will not be constructed that could interfere with the RA; and

(5) Ensuring that any new structures on the UWDA's 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 UWDA's 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 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
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Re: DJ # 90-11-2-07135/1

As to EPA:

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and:

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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.

104. 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 _____ DAY OF _____, 2019.

SO ORDERED THIS _____ DAY OF _____, 2019.

KARON OWEN BOWDRE
United States District Judge

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

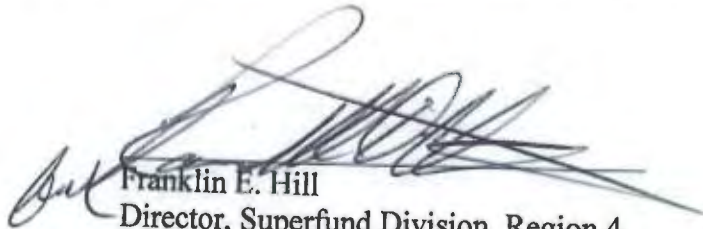
FOR THE UNITED STATES OF AMERICA:

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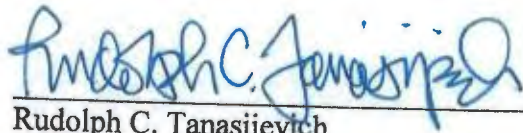


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Signature Page for RD/RA CD regarding the Anniston PCB Superfund Site



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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

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APPENDIX A

STATEMENT OF WORK (SOW)

**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

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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's 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's 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;

- (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).

- (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.

APPENDIX B

MAPS OF UWDAs



Anniston PCB Site: OU1/OU2
Anniston, Alabama
OU1/OU2 Record of Decistor

Unapproved Waste Disposal Areas

Solutia

Figure 5-6

- Notes**
1. Aerial imagery provided by Calhoun County.
 2. The landfill limits were estimated based on the existing topography at the site, sample borings, and hand augurs.
 3. Delineation of impacted areas follows the Stipulation and Appendix A of the Record of Decision between the USEPA and PIS for the Anniston PCB Site.
 4. Conditions in Parcels 30706 and 30706G represent post-delineation sampling areas.

Legend

Residential Areas Not Targeted	Locations with Maximum PCB Results ≥ 500 mg/kg	Subsurface Soil Sample Location
Railroad Right-of-Way Not Targeted	Anniston Sewer Manhole/Lift Station/Clean Out/Junction Box	Maximum PCB (mg/kg)
Inform Measure Location	Anniston Sewer Line	ND or < 1
Estimated Landfill Limits	Creek	≥ 1 or < 5
Unapproved Waste Disposal Area	Principle Threat Waste Area	≥ 5 to < 10
Parcel Boundaries	OU-3 Boundary	≥ 10 to < 50
Unapproved Waste Disposal Area	Exposure Unit	≥ 50 to < 500
	OU-1 and OU-2 Downspout	≥ 500
	Floodplain	

OU1/OU2 Record of Decision
Anniston PCB Site
Anniston, Alabama
Solutia



Ammission PCB Site: OU-1/OU-2
Anniston, Alabama
OU-1/OU-2 Feasibility Study Report

Candidate Remedial Area
For Wilborn I UWDA

Solutia **Figure 4-16**

Notes:

1. Aerial imagery provided by Calhoun County.
2. The landfill is shown with estimated based on the existing topography at the site, sample borings, and hand logs.
3. Denotation of proposed areas follows the Stipulation and Appendix A of the Consent Decree between the USEPA and PCB for the Anniston PCB Site.
4. Conditions in Panels 3070F and 3070G represent post-demolition sampling areas.

5. Removal in Calhoun Ave. ROW north of properties not proposed due to constraints on the southern railroad ROW.

6. mg/kg; milligrams per kilogram

OU: Operable Unit
 PCB: polychlorinated biphenyl
 PCD: Partial Consent Decree
 PPS: Property Parcel Identification Number
 ROW: right-of-way
 USEPA: United States Environmental Protection Agency

0 100 200 Feet
 Graphic Scale

Legend

Surface Soil Sample Location	Subsurface Soil Sample Location
Maximum PCB (mg/kg)	Maximum PCB (mg/kg)
ND to < 1	ND to < 1
≥ 1 to < 5	≥ 1 to < 5
≥ 5 to < 10	≥ 5 to < 10
≥ 10 to < 50	≥ 10 to < 50
≥ 50 to < 500	≥ 50 to < 500
≥ 500	≥ 500

Snow Creek
 Sewer Manhole/Lit. Station/
 Clean Out/Junction Box
 Anniston Sewer Line
 OU-1 and OU-2 Downgradient
 Floodplain
 Unapproved Waste Disposal Area -
 UWDA-2, UWDA-3, and UWDA-4
 Locations with Maximum
 PCB Results ≥ 500 mg/kg