

US EPA ARCHIVE DOCUMENT

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF: )

Western Environmental, LLC )  
dba Western Environmental Inc. )

and )

WRT Indio, LLC, )

RESPONDENTS )

Proceeding under Section 7003 of )  
the Resource Conservation and )  
Recovery Act, 42 U.S.C. Section )  
6900, et seq., as amended. )

ADMINISTRATIVE ORDER ON  
CONSENT

EPA DOCKET NO.  
RCRA 7003-09-2011-0002

## I. INTRODUCTION

1. This Administrative Order on Consent (“AOC”) is entered into voluntarily by the United States Environmental Protection Agency, Region IX (“EPA”) and Western Environmental, LLC., dba Western Environmental Inc. and WRT Indio, LLC (“WEI” and “WRT” respectively, and collectively “Respondents”). This AOC provides for the performance of response actions to address offsite impacts, including any Additional Work that may be required by Section XXVI (Additional Work) of this AOC, by Respondents in connection with the property located at 62-150 Gene Welmas Drive, in Mecca, California (the “Site”). In entering into this AOC, the mutual objectives of EPA and Respondents are to identify, investigate, remedy, and/or prevent the potential endangerment to human health or the environment from activities involving solid waste, and to insure that the Work ordered by EPA be designed and implemented to protect human health and/or the environment. These mutual objectives are described in Section VIII (Work to be Performed). Respondents shall finance and perform the Work in accordance with this AOC, plans, standards, specifications and schedules set forth in this AOC or developed by Respondents and approved by EPA pursuant to this AOC. This AOC shall supersede the Unilateral Administrative Order issued to Respondents on May 9, 2011, EPA Docket No. RCRA 7003-09-2011-0002.

2. EPA has determined that Respondents have contributed or are contributing to the past or present handling, storage, treatment, transportation or disposal of solid waste that may present an imminent and substantial endangerment to health or the environment.

3. EPA has notified the State of California and the Cabazon Band of Mission Indians of the issuance of a Unilateral Administrative Order to Respondents on May 9, 2011. EPA and Respondents will provide notice of this AOC to the State of California and the Cabazon Band of Mission Indians upon execution.

4. Respondents’ participation in this AOC shall not constitute or be construed as an admission of liability. Respondents neither admit nor deny the factual allegations and legal conclusions set forth in this AOC (Sections V and VI, Findings of Fact and Conclusions of Law and Determinations).

5. EPA and Respondents acknowledge that this AOC has been negotiated by the parties in good faith and that this AOC is fair, reasonable, and in the public interest.

## II. JURISDICTION

6. This AOC is issued under the authority vested in the Administrator of EPA by Section 7003 of RCRA, which authority has been delegated to the Regional Administrators of EPA by Delegations 8-22-A and 8-22-C (April 20, 1994), and redelegated to the Director of the Waste Management Division of EPA Region IX by Delegation 1280.20 (April 6, 1998).

7. Respondents agree to undertake and complete all actions required by the terms and conditions of this AOC. In any action by EPA or the United States to enforce

the terms of this AOC, Respondents consent to and agree not to contest the authority or jurisdiction of the Waste Management Division of EPA Region IX to issue or enforce this AOC, and agrees not to contest the validity of this AOC or its terms or conditions.

### III. PARTIES BOUND

8. This AOC shall apply to and be binding upon EPA, and on Respondents and Respondents' officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and on all persons, including but not limited to contractors and consultants, acting on behalf of Respondents, as well as on subsequent purchasers of the Site. Respondents are jointly and severally responsible for carrying out all actions required of them by this AOC. Any change in the ownership or corporate status of any Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter that Respondent's responsibilities under this AOC.

9. Respondents shall provide a copy of this AOC to any subsequent owners or successors before a controlling interest in ownership rights, stock, assets or the Site is transferred. Respondents shall be responsible for and liable for completing all of the activities required pursuant to this AOC, regardless of whether there has been a transfer of ownership or control of the Site or whether said activities are to be performed by employees, agents, contractors, subcontractors, laboratories, or consultants of Respondents. Respondents shall provide a copy of this AOC within seven (7) days of the Effective Date, or the date that such services are retained, to all contractors, subcontractors, laboratories, and consultants that are retained to conduct or monitor any portion of the Work performed pursuant to this AOC. Respondents shall condition all contracts or agreements with contractors, subcontractors, laboratories or consultants in connection with this AOC, on compliance with the terms of this AOC. Respondents shall ensure that their respective contractors, subcontractors, laboratories, and consultants comply with this AOC.

10. Not later than sixty (60) days prior to any voluntary transfer by any Respondent of any interest in the Site or the operation of the facility, such Respondent shall notify EPA of the proposed transfer. In the case of a voluntary transfer through a bankruptcy, such Respondent shall notify EPA within 24 hours of the decision to transfer property. Each Respondent shall notify EPA of any involuntary transfers immediately on such Respondents' initial receipt of notice of any involuntary transfer. Not later than three (3) days after any transfer, such Respondent shall submit copies of the transfer documents to EPA.

### IV. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this AOC that are defined in RCRA shall have the meaning assigned to them in that statute. Whenever the terms listed below are used in this AOC the following definitions apply:

"AOC" shall mean this Administrative Order on Consent, any amendments thereto, and any documents incorporated by reference into this AOC.

“Category 1” wastes shall mean soils with TPH levels lower than 500 ppm, and recyclable materials including cardboard, scrap steel, agricultural plastics, and construction and demolition debris such as scrap metal.

“Category 2” wastes shall mean contaminated soils that may result in noxious emissions from the Site as further defined in accordance with the SCREENING PROTOCOL FOR MATERIALS RECEIVED AT WESTERN ENVIRONMENTAL, INC. FACILITY MECCA, CALIFORNIA, attached and incorporated into this AOC, and further identified as Appendix B to the Work Plan.

“Category 3” wastes shall mean soy-whey and biosolids with the potential to result in noxious emissions.

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

“Day” shall mean a calendar day unless expressly stated otherwise.

“Effective Date” shall be the effective date of this AOC pursuant to Section XXIX.

“RCRA” shall mean the Resource Conservation and Recovery Act (also known as the Solid Waste Disposal Act), as amended, 42 U.S.C. § 6901, *et seq.*

“Site” shall mean the facility located at 62-150 Gene Welmas Drive, in Mecca, California (92254).

“Work” shall mean all the activities and requirements specified in Section VIII (Work To Be Performed) of this AOC and the Work Plan.

“Work Plan” shall mean the WESTERN ENVIRONMENTAL INC. AND WRT INDIO, LLC ADMINISTRATIVE ORDER ON CONSENT WORK PLAN, attached and incorporated into this AOC.

## V. FINDINGS OF FACT

12. WEI is registered as a limited liability company with the State of Utah, with its principal place of business at 62-150 Welmas Drive, Mecca, CA 92254.

13. WEI leases the Site pursuant to a lease approved by the United States Bureau of Indian Affairs, acting on behalf of the Cabazon Band of Mission Indians. The Site is located on Cabazon Indian Reservation lands.

14. WEI operates a waste handling facility pursuant to a “Permit to Operate a Solid Waste Handling and Remediation Facility” (“Permit”) issued by the Cabazon Band of Mission Indians Environment Department. The Facility is permitted to carry out remediation of solid, semi-solid and liquid wastes not subject to regulation as hazardous waste under RCRA. The Permit contains numerous limitations, including a requirement

that “[n]o emission, process or material shall cause injury, detriment, nuisance, annoyance or endanger the comfort, repose, health or safety of any persons (employees or persons in the Mecca Community) or have a natural tendency to cause injury or damage to business or property.”

15. WEI receives contaminated soils that frequently contain, among other contaminants, measurable levels of volatile organic compounds (“VOCs”) and semi-VOCs. Currently, WEI does not intend to receive federal or California hazardous wastes. WEI has received more than 165,000 tons of such disposed, contaminated soil since January 2009, and certain mounds of untreated contaminated soils at the Site had been at least forty feet high.

16. WEI also receives un-contaminated soils and other forms of non-hazardous waste and recyclable materials including cardboard, scrap steel, agricultural plastics, and construction and demolition debris.

17. WRT is the parent of WEI. WRT operates the WRT Mecca Recycling Center on the same property as the WEI Facility, and separately manages at the Site a co-composting operation. The composting operation includes a variety of source materials, including building materials, green/agricultural wastes, and biosolids from sewage treatment facilities. The composting operation also has included soy whey products, although WRT is not currently accepting soy whey products.

18. Certain soy-whey and other biosolids and/or composting materials are currently stored at the Site in mounds covered by treated or uncontaminated top soil. Improper or uncontrolled agitation of these mounds may result in noxious emissions from the Site.

19. On December 15, 2010, the South Coast Air Quality Management District (“SCAQMD”) received a complaint from the Riverside County Environmental Health Hazardous Materials Branch and from the California Fire Hazardous Materials Team. The complaint reported that odors from an unknown source caused students and staff at the Saul Martinez Elementary School to shelter indoors and some to become ill. Air quality readings obtained by the California Fire Hazardous Materials team were all within normal ranges and did not indicate the presence of harmful levels of contaminants. SCAQMD investigated the complaint and initially traced the source of the odors to the Site, approximately 1.5 miles from the Saul Martinez Elementary School.

20. Since the December 15, 2010 complaint, SCAQMD conducted investigations into the source of the odors in the vicinity of the Site, including responses to subsequent incidents of significant odor complaints. Between December 15, 2010, and April 15, 2011, SCAQMD received approximately 202 complaints of odors in the vicinity of the Site, and on 25 separate days SCAQMD staff confirmed operations at the Site to be the cause of the odors. This confirmation includes “fingerprint” sampling using comparisons of the identified constituents of emissions at the point of a complaint to the emissions directly from the Site.

21. To date, SCAQMD has conducted the following three types of ambient air monitoring and sampling:

a. Long-Term Ambient Air Monitoring: Samples collected over a 24-hour period over multiple days or weeks to assess long-term (chronic) toxic risk.

b. Grab Samples: Instantaneous samples collected at either the alleged odor source or in nearby communities during odor events to assess short-term (acute) toxic risk.

c. Source Samples: Samples collected at the alleged source(s) of odors to characterize the chemical composition and establish a "fingerprint" of emissions for comparison with ambient emissions at off-site locations when and where odors are detected.

22. SCAQMD conducted grab sampling in the community of Mecca from January 14<sup>th</sup> through April 28<sup>th</sup>, 2011. Bag and canister sampling devices were provided to Saul Martinez Elementary School site staff for deployment when odors were detected on the school campus.

23. In order to approximate long-term exposure to toxic pollutants in the Mecca area, samplers were deployed at four (4) sites for the collection of twenty-four (24) hour samples. These daily samples were taken for up to two weeks at each site. SCAQMD deployed samplers at four (4) locations: the College of the Desert campus, the Head Start pre-school facility on Lincoln Street, Mecca Elementary School and Saul Martinez Elementary School. Additional samples were taken at a fifth location thirteen (13) miles to the northwest in Indio, in order to determine background levels of pollution for the larger area.

24. Regarding SCAQMD's sampling activities at Western Environmental, Inc., source samples were collected on January 11, February 9 and February 25, 2011. During these instantaneous grab sampling events, canisters and a portable analyzer were used. EPA also obtained samples from operations occurring at the Site on February 9, 2010.

25. SCAQMD sampling confirmed elevated levels of certain Non-Methane Organic Contaminants consistent with emissions from the Site at the Saul Martinez Elementary School approximately 1.5 miles southeast from the Site, the Mecca College of the Desert approximately one-half mile north of the Site, and Mecca Elementary School approximately one mile southeast of the Site.

26. On at least three occasions, paramedics have been called to Saul Martinez Elementary School to treat students and staff made ill after exposure to the fumes. On days the smell is reported as particularly strong, students stay indoors.

27. On March 31, 2011, SCAQMD released a Status Report on Investigations and Air Sampling in Mecca, CA ("Status Report"). According to the Report, SCAQMD "has identified WEI and its co-owned adjacent facility, WRT, as the primary source of the odors."

28. The SCAQMD initially determined the specific sources of the foul odors to be two specific activities – an oil/water separation pond located at WEI, and a soy-whey/biosolids open air mixing operation at WRT. After consultation with the Cabazon Band of Mission Indians Environment Department, WRT suspended accepting additional soy-whey products and biosolids in late January 2011, and WEI completed the closure of the oil/water separation pond on February 25, 2011. As stated in the Status Report, other contributing odor sources identified by SCAQMD include “an elevated, in ground pond where drilling muds are processed, and an open storage/treatment area consisting of 55 gallon drums of waste materials received from cosmetics and pharmaceutical manufacturers.”

29. The Status Report further stated “[t]o date, there have been no elevated levels of toxic pollutants detected in the community. However, there are still known health impacts resulting from exposure to strong and objectionable odors, and the AQMD takes these health impacts seriously.”

30. The Status Report summarized that “[t]he most objectionable foul odors have been described as a petroleum-type odor, rotten egg odor, burnt motor oil, raw sewage/human waste-type odor, and a woody-type odor.”

31. SCAQMD investigated a subsequent complaint of significant noxious emissions from the Site on April 15, 2011, and obtained additional fingerprinting data to indicate that the Site was the source of the noxious emissions. On April 27, 2011, SCAQMD advised EPA of the fingerprinting data. EPA personnel attended a community meeting with the SCAQMD on April 28, 2011. In addition to hearing continuing community concerns at this meeting, EPA personnel directly observed the continued presence of strong petroleum and organic decaying odors from the Site.

32. On May 9, 2011, EPA issued an Unilateral Administrative Order, EPA Docket No. RCRA 7003-09-2011-0002, to Respondents. During the negotiation of this AOC, Respondents were operating under and in substantial compliance with the Unilateral Administrative Order. Since the effective date of the Unilateral Administrative Order, Respondents have not received any contaminated soil, soy-whey or biosolids and have begun efforts to reduce the size of and cover on-site soil and composting piles. Additionally, Respondents have begun to treat or dispose of the on-site materials that may cause noxious emissions.

33. Through the implementation of the waste identification and analytical protocol identified in the Work Plan, Respondents can characterize all wastes that they receive, process, and store at the Site as either Category 1, Category 2, or Category 3, as defined in this AOC.

34. The actions required by this AOC, including financial assurances, may be necessary to protect human health or the environment by mitigating the noxious emissions from the Site where such emissions from the handling, storage or treatment of materials at the Site could cause serious harm to health or the environment.



## VI. CONCLUSIONS OF LAW AND DETERMINATIONS

35. Based on the Findings of Fact set forth above, and an administrative record supporting this AOC, EPA has determined that:

a. Respondents are each a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

b. Contaminated soils, organic materials and other materials accepted for treatment at the Site are each discarded material, and therefore are each a “solid waste” as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

c. Imminent and Substantial Endangerment. The past and present handling, storage and treatment of certain defined categories of contaminated soils and the co-composted organic wastes may present an imminent and substantial endangerment to human health or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a). Emissions from the Site may have led to complaints by students and staff at the Saul Martinez Elementary School and others within the community in Mecca, California, and affected individuals have sought medical treatment following exposure.

d. Respondents, as the operators of the Site, have contributed and are contributing to the handling, storage and treatment of solid wastes from which emissions may cause a potential endangerment.

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

## VII. ORDER ON CONSENT

36. Based on the administrative record for the Site and the Findings of Fact (Section V) and Conclusions of Law and Determinations (Section VI) set forth above, and in consideration of the promises set forth herein, the following is hereby agreed to and ordered. Respondents shall comply with all provisions of this AOC, including, but not limited to, any appendices to this AOC and all documents incorporated by reference into this AOC.

37. Respondents shall finance and perform the Work in accordance with this AOC, plans, standards, specifications and schedules set forth in this AOC or developed by Respondents and approved by EPA pursuant to this AOC.

## VIII. WORK TO BE PERFORMED

38. Project Coordinator. On or before the Effective Date of this AOC, Respondents shall designate a Project Coordinator. Respondents shall notify EPA in writing within three (3) days of the Effective Date of this AOC of the name, address, phone number, electronic mail address and qualifications of the Project Coordinator. The EPA Project Coordinator will be:

Barry Cofer  
U.S. Environmental Protection Agency, Region IX  
Waste Management Division (WST-3)  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 972-3303  
[cofer.barry@epa.gov](mailto:cofer.barry@epa.gov)

EPA may also designate an Alternate Project Coordinator. Project Coordinators shall be responsible for overseeing the implementation of this AOC. Respondents may change their Project Coordinator after notification to EPA in writing at least ten (10) days prior to the change.

39. EPA will approve/disapprove of Respondents' Project Coordinator (original or replacement) based upon the person's qualifications and ability to effectively perform this role. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. All persons under the direction and supervision of Respondents' Project Coordinator must possess all necessary professional licenses required by federal and state law.

40. The EPA Project Coordinator shall be EPA's designated representative for the Site. Unless otherwise provided in this AOC, all reports, correspondence, notices, or other submittals relating to or required under this AOC shall be in writing and shall be sent to the EPA Project Coordinator at the address specified in Paragraph 38, unless EPA otherwise directs. Reports, correspondence, notices or other submittals shall be delivered by U.S. Postal Service, private courier service or electronic mail. All correspondence shall include a reference to the case caption EPA Docket No. RCRA 7003-09-2011-0002.

41. Respondents shall undertake and complete all of the Work to the satisfaction of EPA, pursuant to RCRA § 7003, 42 U.S.C. § 6973. All of the Work performed under this AOC shall be under the direction and supervision of Respondents' Project Coordinator and shall be in accordance with the terms of this AOC.

42. Respondents' obligations to perform the Work will begin on the Effective Date of this AOC.

43. Response Action. Respondents shall perform, at a minimum, all actions necessary to implement the Work required in this AOC, and the Work Plan. The required actions to be implemented include, but are not limited to, the following:

a. Respondents shall refuse receipt of any soils with TPH levels of 500 ppm or higher, all biosolids, or soy-whey material and Category 2 or Category 3 wastes at the Facility unless accepted in accordance with the protocols provided in the Work Plan or otherwise approved by EPA.

b. By the Effective Date, Respondents shall have begun application to all stockpiled and treated material of a chemical stabilizing agent or cover, or Respondents shall implement an alternative approved action capable of reducing fugitive dust emissions. Respondents shall continue such application in accordance with the Work Plan.

c. By the Effective Date, Respondents shall have begun application to all stockpiled or untreated soils, soy-whey, and biosolids of a chemical stabilizing agent or cover, or Respondents shall implement an alternative approved action capable of reducing noxious emissions from the Site. Respondents shall continue such application in accordance with the Work Plan.

d. By the Effective Date, Respondents shall have begun the process of ensuring that composting material at the Site is not aggregated in a volume that would prevent the proper aeration of the material and that will not allow anaerobic decomposition. In accordance with a protocol indentified in the Work Plan, Respondents shall address those existing mounds at Site that are not properly aerated and that do not allow for anaerobic decomposition on the Site in a manner and time frame that reduces the potential for the release of noxious emissions.

e. By the Effective Date, Respondents shall have begun implementing the Work Plan and schedule for the identification, treatment and disposal of the materials within the Site that may cause noxious emissions from the Site. The Work Plan provides for the Respondents to treat or dispose of such on-Site materials prior to the Effective Date, and describes the methods of material identification, treatment and disposal, including off-Site transportation. The workplan also provides for the materials to be either treated or disposed of in a lawful manner. By way of example, Respondents will maintain soil piles in sufficiently small piles to promote increased aeration and separate from any soils that come into the Site after the Effective Date, treat petroleum contaminated soils by aerobic bacteria working in twelve-inch lifts, and remove "clean" treated soil from the Site. The parties anticipate that the process of treating contaminated soils at the Site may take up to eighteen (18) months, but Respondents may submit documentation to EPA at any time to seek approval to conclude treatment earlier on showing, within the sole determination of EPA, that remaining materials are not likely to produce noxious odors.

f. Respondents shall continue to ensure that untreated gases are not escaping from any used oil and oily water storage tanks and/or containers that contain used oil or oily water. On request by EPA, Respondents shall provide appropriate documentation confirming compliance with this requirement, which may include information to confirm that all pressure valves for the used oil and oily water storage tanks and containers are property installed and set. Further documentation may include documentation that the tanks are clean and empty, that containers are kept securely closed, or that properly engineered charcoal filter devices are installed and operational on all vents.

g. Respondents shall implement vapor monitoring of any used oil and oily water tanks and/or containers that contain used oil or oily water as provided in the Work Plan.

44. The Work undertaken pursuant to this AOC shall be conducted in compliance with all applicable EPA guidances, policies and procedures, and with this AOC, and is subject to EPA approval. Respondents shall not implement the Work Plan except in conformance with the terms of this AOC. Respondents shall not commence implementation of any modification to the Work Plan developed pursuant to this AOC until Respondents receive written EPA approval in accordance with this AOC. Following EPA's approval, Respondents shall implement the modifications in accordance with the schedule and provisions approved by EPA.

45. Health and Safety Plan. Respondents have developed a Health and Safety Plan, attached and incorporated into the Work Plan, which Respondents shall implement during the Work performed under this AOC. Any modification of this plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92- 963414, June 1992). In addition, the plan must comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations to the extent that they apply and OSHA has regulatory authority regarding the sufficiency of the Health and Safety Plan and its implementation.

#### IX. EPA APPROVAL OF DELIVERABLES

46. Deliverables required by this AOC, including modifications of the Work Plan, shall be submitted to EPA for approval or modification. All deliverables must be received at EPA by the due date specified in this AOC or by schedules developed pursuant to or incorporated into this AOC. Deliverables shall be provided to the EPA Project Coordinator at:

Barry Cofer  
U.S. Environmental Protection Agency, Region IX  
Waste Management Division (WST-3)  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 972-3303  
[cofer.barry@epa.gov](mailto:cofer.barry@epa.gov)

Additionally, Respondents shall send a copy of all deliverables to:

Becky Ross, Compliance Manager  
Cabazon Band of Mission Indians  
84-245 Indio Springs Pkwy  
Indio, CA 92203  
[bross@cabazonindians-nsn.gov](mailto:bross@cabazonindians-nsn.gov)

47. After review of any deliverable that is required pursuant to this AOC, EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission on

specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, EPA will not modify a submission without first providing Respondents at least one notice of deficiency and an opportunity to cure within five (5) days, except where EPA determines that to do so would cause serious disruption to the Work or where EPA has disapproved previous submission(s) due to material defects and EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

48. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 47(a), (b), or (c), Respondents shall proceed to take any action required by the deliverable, as approved or modified by EPA subject only to Respondents' right to invoke the Dispute Resolution procedures set forth in Section XVII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 47(c) and EPA determines the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XVIII (Penalties).

49. Resubmission of Deliverables. On receipt of a notice of disapproval, in whole or in part, pursuant to this Section, Respondents shall, within ten (10) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVIII (Penalties), shall accrue during the 10-day opportunity to cure period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 47 and 48.

50. Notwithstanding the receipt of a notice of disapproval pursuant to this Section, Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties for non-compliance regarding the deficient portion of the deliverable.

51. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondents to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Respondents shall implement any action as required in a deliverable that has been modified or developed by EPA, subject only to Respondents' right to invoke the procedures set forth in Section XVII (Dispute Resolution).

52. If on resubmission, a deliverable is disapproved or modified by EPA due to a material defect, Respondents shall be deemed to have failed to submit such deliverable timely and adequately unless Respondents invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution) and EPA's action to disapprove or modify a deliverable is overturned pursuant to that Section. The provisions of Section XVII (Dispute Resolution) and Section XVIII (Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during

Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVIII (Penalties).

53. All deliverables required to be submitted to EPA under this AOC shall, on approval or modification by EPA, be incorporated into and be enforceable under this AOC. In the event that EPA approves or modifies a portion of a deliverable required to be submitted to EPA under this AOC, the approved or modified portion shall be enforceable under this AOC.

## X. MODIFICATION OF THE WORK

54. If at any time during the implementation of the Work, Respondents identify a need for a compliance date modification or revision of the Work Plan or other appendix, Respondents shall submit a memorandum documenting the need for the modification or revision to the EPA Project Coordinator. EPA in its discretion will determine if the modification or revision is warranted and may provide written approval or disapproval. Any approved modified compliance date or Work Plan modification is incorporated by reference into this AOC.

55. Emergency Response. In the event of any action or occurrence during the performance of the Work that constitutes an emergency situation or may present an immediate threat to human health and the environment, Respondents shall immediately take all appropriate action to minimize such emergency or threat, and shall immediately notify the EPA's Project Coordinator. Respondents shall take such immediate and appropriate actions in consultation with EPA's Project Coordinator. Respondents shall then submit to EPA written notification of such emergency or threat at the Site within three (3) calendar days of such discovery. Respondents shall thereafter submit to EPA for approval a plan to mitigate this threat. EPA will approve or modify this plan in accordance with the provisions of Section IX, and Respondents shall implement this plan as approved or modified by EPA. In the case of an extreme emergency, Respondents may act as they deem appropriate, at their own risk, to protect human health or the environment.

## XI. QUALITY ASSURANCE

56. As part of the Work Plan, Respondents have developed and incorporated therein a Quality Assurance Project Plan ("QAPP"). The QAPP and any modifications shall address quality assurance, quality control, and chain of custody procedures for any sampling, monitoring and analytical activities. Respondents shall follow "EPA Requirements for Quality Assurance Project Plans" (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/b-01/002, March 2001) as well as other applicable documents identified by EPA.

57. As part of the Work Plan, Respondents have developed and incorporated therein Data Quality Objectives for any data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use as required by this AOC.

58. Respondents shall ensure that laboratories used by Respondents for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)" or other methods approved by EPA. If methods other than EPA methods are to be used, Respondents shall specify all such protocols in the Work Plan. EPA may reject any data that does not meet the requirements of the Work Plan and EPA analytical methods and may require resampling and additional analysis.

59. Respondents shall ensure that all laboratories employed for analyses participate in a quality assurance/quality control ("QA/QC") program equivalent to the program that EPA follows. Respondents shall, on EPA's request, make arrangements for EPA to conduct a performance and QA/QC audit of the laboratories chosen by Respondents, whether before, during, or after sample analyses. On EPA's request, Respondents shall have the laboratories perform analyses of samples provided by EPA to demonstrate laboratory QA/QC and performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, Respondents shall submit a plan to address the deficiencies and EPA may require resampling and additional analysis.

60. EPA reserves the right to require a change in laboratories for reasons which may include, but shall not be limited to, QA/QC, performance, conflict of interest, or confidential agency audit information. In the event EPA requires a laboratory change, Respondents shall propose two alternative laboratories within thirty (30) calendar days. Once EPA approves of the laboratory change, Respondents shall ensure that laboratory service shall be made available within fifteen (15) calendar days.

## XII. ADMINISTRATIVE DOCUMENTATION

61. EPA retains the responsibility for the issuance of any decision documents related to the Site.

62. EPA will provide Respondents with copies of all decision documents for the Site.

63. Submission of Documentation. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of performing the Work on which selection of the response action may be based. EPA will maintain an administrative record file. The administrative record supporting this AOC and the Work to be performed shall be available for public review in EPA's offices at 75 Hawthorne Street, San Francisco, California (94105).

**XIII. DOCUMENT CERTIFICATION**

64. Any report or other document submitted by Respondents pursuant to this AOC that makes recommendations as to whether or not further actions are necessary, or makes any representation concerning Respondents' compliance or noncompliance with any requirement of this AOC shall be certified by a responsible corporate officer for the Respondents. A responsible corporate officer means: a president, secretary, treasurer, or vice-president in charge of a principal business function, or any other person who performs similar policy or decision-making functions.

65. The certification required by Paragraph 64 above shall be in the following form:

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 be the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

**XIV. SAMPLING, ACCESS AND DATA AVAILABILITY**

66. All results of sampling, testing, modeling or other data generated (including raw data if requested) by Respondents, or on Respondents' behalf, during implementation of this AOC shall be validated by Respondents and submitted to EPA within thirty (30) days of Respondents' receipt of the data. Respondents shall tabulate data chronologically by media. EPA will make available to Respondents data generated by EPA for the purposes of oversight of the Work unless it is exempt from disclosure by any federal or state law or regulation.

67. Respondents shall orally notify EPA at least twenty (20) days prior to conducting field sampling or in accordance with notification procedures outlined in the Work Plan. At EPA's request, Respondents shall allow split or duplicate samples to be taken by EPA or EPA's representative.

68. Site Access. Pursuant to RCRA § 3007(a), 42 U.S.C. § 6927(a), Respondents shall provide access to the Site at reasonable times to EPA, EPA's contractors and oversight officials. Respondents shall also provide access at reasonable times to EPA, EPA's contractors and oversight officials to all records and documentation in their possession or control, including those records and documents in the possession or



control of Respondents' contractors and employees, related to the conditions at the Site and the actions conducted pursuant to this AOC. Respondents shall use their best efforts to gain access to areas owned by or in the possession of someone other than Respondents, as necessary to implement this AOC, as described in Paragraph 70. Such access shall be provided to EPA, its contractors and oversight officials. These individuals shall be permitted to move freely about the Site and appropriate off-site areas in order to conduct actions that EPA determines to be necessary. EPA, its contractors and oversight officials shall notify Respondents of their presence on the Site by presenting their credentials.

69. Pursuant to this Section, any denial of access at reasonable times to any portion of the Site property where a request for access was made for the purposes of enforcing the requirements of RCRA or this AOC shall be construed as a violation of the terms of this AOC subject to the penalty provisions outlined in Section XVIII (Penalties) of this AOC.

70. Access Agreements. Where action under this AOC is to be performed in areas owned by, or in possession of, someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within forty-five (45) days of the Effective Date for any Work for which access is necessary or as otherwise specified, in writing, by the EPA Project Coordinator. Any such access agreement shall provide for access by EPA and its representatives to move freely in order to conduct actions that EPA determines to be necessary. The access agreement shall specify that Respondents are not EPA's representative with respect to any liabilities associated with activities to be performed. Respondents shall provide EPA's Project Coordinator with copies of any access agreements. Respondents shall immediately notify EPA if after using Respondents' best efforts they are unable to obtain such agreements within the time required. Best efforts as used in this Paragraph shall include, at a minimum, a certified letter from Respondents to the present owner of such property requesting access agreements to permit Respondents, EPA, and EPA's authorized representatives to enter such property, and the offer of payment of reasonable sums of money in consideration of granting access. Respondents shall, within ten (10) days of their receipt of a denial of access, submit in writing, a description of their efforts to obtain access. EPA may, at its discretion, assist Respondents in obtaining access. In the event EPA obtains access, Respondents shall undertake the Work on such property and Respondents shall reimburse EPA for all costs and attorney fees incurred by the United States in obtaining such access.

71. Confidential Business Information. Respondents may assert a claim of business confidentiality covering part or all of any information submitted to EPA pursuant to the terms of this AOC under 40 C.F.R. § 2.203 in the manner described at 40 C.F.R. § 2.203(b) and substantiated with the information described at 40 C.F.R. § 2.204(e)(4). Information EPA determines is confidential will be given the protection specified in 40 C.F.R. Part 2. If no such claim or substantiation accompanies the information when it is submitted to EPA, it may be made available to the public or state or tribal officials by EPA without further notice to Respondents.

72. Privileged Documents. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any

other privilege recognized by federal law. If Respondents assert such a privilege in lieu of providing documents, Respondents shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the author's name and title; (4) the name and title of each addressee and recipient; (5) a description of the contents; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this AOC shall be withheld from EPA on the grounds that they are privileged.

73. All data, information, and records created or maintained relating to any Solid or Hazardous Waste found at the Site shall be made available to EPA on request unless Respondents assert a claim that such documents are legally privileged from disclosure. Respondents shall have the burden of demonstrating to EPA by clear and convincing evidence that such privilege exists.

74. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

75. Nothing in this AOC shall be construed to limit EPA's right of access, entry, inspection, and information gathering pursuant to applicable law, including but not limited to RCRA and CERCLA.

#### **XV. COMPLIANCE WITH OTHER LAWS**

76. Respondents shall perform all actions required pursuant to this AOC in accordance with all applicable local, state, and federal laws and regulations. Respondents shall obtain or cause their representatives to obtain all permits and approvals necessary under such laws and regulations in a timely manner so as not to delay the Work required by this AOC.

#### **XVI. RECORD RETENTION**

77. Respondents shall preserve all documents and information, including raw data, relating to the Work performed under this AOC, or relating to any solid waste or hazardous waste found at the Site, for five (5) years following completion of the Work required by this AOC.

78. Respondents shall acquire and retain copies of all documents that relate to the Site that are in the possession of their employees, agents, accountants, contractors or attorneys.

79. Respondents shall make available to EPA all employees and persons, including contractors, who engage in activities under this AOC, and ensure their cooperation with EPA with respect to this AOC.

80. After the five (5) year retention period and ninety (90) days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and on request, shall provide the originals or copies (at no extra cost) of such documents and information to EPA. Notification shall be in writing and shall reference the Effective Date, caption, and docket number of this AOC, and shall be addressed to EPA's Waste Management Division Director. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the 5 year retention period at the written request of EPA.

81. All documents pertaining to this AOC shall be stored by Respondents in a centralized location at the Site, or an alternative approved by Respondents to promote easy access by EPA or its representatives.

## **XVII. DISPUTE RESOLUTION**

82. Respondents shall raise any disputes concerning the Work required under this AOC to EPA (excluding any decision document(s) issued by EPA), in writing, within 15 days after receiving written notice from EPA regarding any aspect of the Work required under this AOC that Respondents dispute. EPA and Respondents shall expeditiously and informally attempt to resolve any disagreements. EPA's and Respondents' Project Coordinators shall first confer in an effort to resolve the dispute. If the Project Coordinators are unable to informally resolve the dispute within three (3) days of the first conference, Respondents shall notify EPA, within five (5) days, in writing of their objections. Written objections shall identify Respondents' objections, state the basis for those objections, and provide all data, analyses and information relied upon by Respondents. EPA and Respondents then have an additional fourteen (14) days from EPA's receipt of the objections to reach agreement (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of the EPA. If an agreement is not reached within the Negotiation Period, Respondents may request in writing, within five (5) days, a determination resolving the dispute by the Director of the Waste Management Division of EPA Region IX. The request should provide all information that Respondents believe is relevant to the dispute. If such request is submitted within five (5) days, the Division Director shall issue a determination in writing. EPA's final decision shall be incorporated into and become an enforceable part of this AOC and shall no longer be subject to dispute pursuant to this AOC. Respondents shall proceed in accordance with the Division Director's decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If Respondents do not agree to perform or do not actually perform the Work in accordance with EPA's decision, EPA reserves the right in its sole discretion to conduct the Work itself, seek reimbursement from Respondents, seek enforcement of this AOC, seek stipulated penalties, and/or any other appropriate relief. Any disputes arising under this AOC are not subject to judicial review until such time as EPA seeks to enforce this AOC.

83. If EPA and Respondents reach agreement on the dispute at any stage, the agreement shall be set forth in writing and shall, upon signature of both parties, be incorporated into and become an enforceable part of this AOC.

84. The existence of a dispute and EPA's consideration of matters placed in dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this AOC during the pendency of the dispute resolution process except as agreed by EPA in writing. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this AOC, except as provided in Paragraph 89.

**XVIII. PENALTIES**

85. Civil Penalties. Violation of this AOC may subject Respondents to civil penalties. The assessment of penalties are provided for in Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461 note. Should Respondents violate this AOC or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to any applicable authorities, and may seek judicial enforcement of this AOC.

86. Stipulated Penalties. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 87 and 88 for failure to comply with the requirements of this AOC specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Respondents shall include completion of the activities under this AOC, the Work Plan, or any other plan approved under this AOC identified below in accordance with all applicable requirements of law, this AOC, the Work Plan, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by, and approved under, this Settlement Agreement.

87. Stipulated Penalty Amounts - Work (Including Payments and Excluding Plans, Reports, and Other Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 87.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$3,500	15th through 30th day
\$7,000	31st day and beyond

b. Compliance Milestones.

1. Failure to refuse receipt of any soils with TPH levels of 500 TPH or higher and all biosolids, or soy-whey material at the Facility without EPA approval.

2. Commencement of actions related to stockpiled and treated materials as described in Paragraph 43.b.

3. Commencement of actions related to stockpiled and untreated soils, soy-whey, and biosolids as described in Paragraph 43.c.

4. Commencement of actions related to the aggregation of composting material as described in Paragraph 43.d.

5. Commencement of vapor monitoring, as applicable, as described in Paragraph 43.g.

88. Stipulated Penalty Amounts - Plans, Reports, and other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other plans or deliverables as otherwise required in this AOC and the Work Plan, or to comply with requirements of this AOC not identified in the Paragraph 87.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$3,000	31st day and beyond

89. 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. Stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official designated under Paragraph 82 of Section XVII (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

90. If payment is not made within forty-five (45) days of the date of Respondents' receipt from EPA of a written demand for payment of the penalties or of the date of agreement or decision resolving the dispute, interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the first day after Respondents' receipt of EPA's demand letter, or the date of the agreement or decision resolving the dispute, and will accrue until such penalties and interest have been paid in full. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. An additional penalty of six percent (6 %) per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for ninety (90) days or more. The applicable rate of interest shall be the rate in effect at the time the interest accrues [pursuant to 31 U.S.C. § 3717].

91. Respondents shall make payments by money order, certified check, company check, electronic funds transfer, or cashier's check payable to the Treasurer of the United States within forty-five (45) days of Respondents' receipt of EPA's request, and shall be submitted to the following address:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

92. Docket No. RCRA 7003-09-2011-0002 should be clearly typed on the check to ensure proper credit. Respondents shall send simultaneous notices of such payments, including copies of the money order, certified check, company check, electronic funds transfer, or cashier's check to the following:

Barry Cofer  
U.S. Environmental Protection Agency, Region IX  
Waste Management Division (WST-3)  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 972-3303  
[cofer.barry@epa.gov](mailto:cofer.barry@epa.gov)

93. Respondents may dispute an EPA determination that they failed to comply with this AOC by invoking the dispute resolution procedures under XVII (Dispute Resolution) unless the matter has already been in or is the subject of dispute resolution. Penalties shall accrue as provided in Paragraph 89 but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondents prevail upon resolution, no penalties shall be paid. In the event that Respondents prevail in part, penalties shall be due on those matters in which Respondents did not prevail.

94. Following EPA's determination that Respondents have failed to comply with a requirement of this AOC, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation. Respondents shall pay EPA all penalties accruing under this Section within 45 days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVII (Dispute Resolution).

95. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement. The stipulated penalties set forth in this Section do not preclude EPA from

pursuing any other remedies or sanctions which may be available to EPA by reason of Respondents' failure to comply with any of the terms and conditions of this AOC.

96. No payments under this Section shall be deducted for federal tax purposes.

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

#### XIX. FORCE MAJEURE

98. Respondents agree to perform all requirements under this AOC within the time limits established under this AOC, unless the performance is delayed by a force majeure. For purposes of this AOC, a force majeure is defined as any event arising from causes beyond the control of Respondents, or any entity controlled by Respondents or Respondents' contractors, which delays or prevents performance of any obligation under this AOC despite Respondents' best efforts to fulfill the obligation. The requirement that the Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (1) as it is occurring, and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Force majeure does not include financial inability to complete the Work, increased cost of performance, changes in Respondents' business or economic circumstances, or inability to attain media cleanup standards.

99. If any event occurs or has occurred that may delay the performance of any obligation under this AOC, whether or not caused by a force majeure event, Respondents shall orally notify EPA within 48 hours of when Respondents knew or should have known that the event might cause a delay. Such notice shall: (1) identify the event causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; (2) provide Respondents' rationale for attributing such delay to a force majeure event; (3) state the measures taken or to be taken to prevent or minimize the delay; (4) estimate the timetable for implementation of those measures; and (5) state whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or the environment. Respondents shall undertake best efforts to avoid and minimize the delay. Failure to comply with the notice provision of this Paragraph and to undertake best efforts to avoid and minimize the delay shall waive any claim of force majeure by Respondents. Respondents shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

100. If EPA determines that a delay in performance or anticipated delay in fulfilling a requirement of this AOC is or was attributable to a force majeure, then the time period for performance of that requirement will be extended as deemed necessary by EPA. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure, then EPA will notify Respondents, in writing, of the length of the extension, if any, for performance of such obligations affected by the force majeure. Any

such extensions shall not alter Respondents' obligations to perform or complete other tasks required by this AOC which are not directly affected by the force majeure.

101. If EPA disagrees with Respondents' assertion of a force majeure, then Respondents may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in Section XVII (Dispute Resolution). In any such proceeding, Respondents 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 Respondents' best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of this Section. If Respondents satisfy this burden, then EPA will extend the time for performance as EPA determines is necessary.

## XX. RESERVATION OF RIGHTS

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

103. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements of this AOC, including without limitation the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. § 6973.

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

105. This AOC is not intended to be nor shall it be construed to be a permit. Respondents acknowledge and agrees that EPA's approval of the Work and/or Work Plan does not constitute a warranty or representation that the Work and/or Work Plan will achieve the required cleanup or performance standards. Compliance by Respondents with the terms of this AOC shall not relieve Respondents of their obligations to comply with RCRA or any other applicable local, state, tribal or federal laws and regulations.

106. Notwithstanding any other provision of this AOC, no action or decision by EPA pursuant to this AOC, including without limitation, any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this AOC, including an action for penalties or an action to compel Respondents' compliance with the terms and conditions of this AOC.



## XXI. OTHER CLAIMS

107. By issuance of this AOC, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA will not be deemed a party to any contract, agreement or other arrangement entered into by Respondents or their officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this AOC.

108. Respondents waive all claims against the United States relating to or arising out of conduct of this AOC, including, but not limited to, contribution and counterclaims.

109. Respondents shall bear their own litigation costs and attorney fees.

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

## XXII. INSURANCE

111. Prior to commencing the on-site Work under this AOC, Respondents shall secure, and shall maintain in force for the duration of this AOC and for two (2) years after the completion of all activities required by this AOC, comprehensive general liability insurance and automobile insurance with limits of two million dollars (\$2,000,000), combined single limit, naming EPA as an additional insured. Prior to commencement of the Work under this AOC, and annually thereafter on the anniversary of the Effective Date of this AOC, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondents demonstrate by evidence satisfactory to EPA that their contractors and subcontractors maintain insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by the contractors and subcontractors.

112. For the duration of this AOC, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and worker's compensation insurance for all persons performing the Work on behalf of Respondents, in furtherance of this AOC.

113. Prior to commencing the Work under this AOC, Respondents shall certify to EPA that their contractors and subcontractors have obtained the required insurance.

### XXIII. COST ESTIMATES AND FINANCIAL ASSURANCE

114. Cost Estimates. Within thirty (30) days after the Effective Date of this AOC Respondents shall submit to EPA a detailed written initial estimate, in current dollars, of the cost of hiring a third party to maintain a chemical stabilizing agent or cover and appropriate petroleum vapor controls, or another alternative approved action capable of preventing noxious emissions from the Site. A third party is a party who: (i) is neither a parent nor a subsidiary of Respondents and (ii) does not share a common parent or subsidiary with Respondents. The initial cost estimate must account for the total costs of the work described in this paragraph, including any necessary long term costs, such as operation and maintenance costs, monitoring costs, and institutional controls. The cost estimate must not incorporate any salvage value that may be realized from the sale of wastes, facility structures or equipment, land or other assets associated with the Site.

115. Concurrent with the submission of any work plan(s) for additional work required under Section XXVI (Additional Work), Respondents shall submit revised detailed written estimate(s), in current dollars, of the cost of hiring a third party to perform such additional work.

116. Respondents must annually adjust the cost estimate(s) for inflation within thirty (30) days after the close of Respondents' fiscal year until the Work required by this AOC is completed. In addition, Respondents must adjust the cost estimate if EPA determines that any additional work is required, pursuant to Section XXVI (Additional Work), or if any other conditions increase the cost of the Work to be performed under this Consent Order.

117. Respondents shall submit each cost estimate to EPA for review, pursuant to Section IX (EPA Approval of Deliverables).

118. Assurances of Financial Responsibility for Completing the Work. In order to secure the completion of the Work in accordance with this AOC, Respondents shall establish and maintain financial security for the benefit of EPA in one or more of the following forms, to secure the full and final completion of Work by Respondents:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

e. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of Respondents, or by one or more unrelated corporations that have a substantial business relationship with at least one of Respondents; including a demonstration that any such company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. a corporate guarantee to perform the Work by one or more of Respondents, including a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f). If any Respondent that seeks to make a demonstration pursuant to 40 C.F.R. Part 264.143(f) in order to satisfy the financial assurance requirements of this Section has provided a similar demonstration at other CERCLA or RCRA sites, such Respondent must provide EPA with documentation of the prior demonstration(s) so that EPA can account for the amount of financial assurance already being provided at other sites.

119. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 118, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this AOC.

120. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 118(e) or 118(f) of this AOC, Respondents shall: (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date, to EPA. For the purposes of this AOC, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," Respondents shall use the cost estimates required in Paragraphs 114 and 115.

121. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of financial assurance required hereunder only in accordance with a final decision resolving such dispute pursuant to Section XVII (Dispute Resolution).

122. Within thirty (30) days after EPA's approval of the initial cost estimate, Respondents shall establish and provide EPA the selected financial assurance(s) in an amount at least equal to the initial cost estimate approved by EPA.

123. Respondents shall submit a copy of the financial assurance(s) to:

Andrew Helmlinger  
Office of Regional Counsel (ORC-3)  
U.S. Environmental Protection Agency, Region IX  
San Francisco, California 94105  
(415) 972-3904

124. Respondents' inability to post financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this AOC, including, without limitation, Respondents' obligation to complete the Work in strict accordance with the terms of this AOC.

125. Reduction of Amount of Financial Assurance. If Respondents believe that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this AOC, Respondents may, on any anniversary date of the Effective Date of this AOC, or at any other time agreed by EPA, submit a written proposal to EPA to reduce the amount of the financial assurance provided under this Section to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. The decision whether to approve a proposal to reduce the amount of financial assurance shall be within EPA's sole discretion and EPA shall notify Respondents of its decision regarding such a proposal in writing. Respondents may reduce the amount of the financial assurance only after receiving EPA's written decision and only in accordance with and to the extent permitted by such written decision. In the event of a dispute, Respondents may reduce the amount of the financial assurance required by this Section only in accordance with a final administrative decision resolving such dispute under Section XVII (Dispute Resolution) of this AOC.

126. Release of Financial Assurance. Respondents may submit a written request to the Director, Waste Management Division, EPA Region IX, that EPA release Respondents from the requirement to maintain financial assurance under this Section at such time as EPA has provided written notice, pursuant to Section XXVII (Termination and Satisfaction) that Respondents have demonstrated that all the terms of this AOC have been addressed to the satisfaction of EPA. The Director shall notify both Respondents and any Trustee, financial institution, insurer or guarantor in writing that Respondents are released from all financial assurance obligations under this AOC.

#### XXIV. INDEMNIFICATION

127. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, employees, and representatives from any and all claims or

causes of action: (a) arising from, or on account of, acts or omissions of Respondents, Respondents' directors, officers, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this AOC; and (b) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any persons for performance of the Work on or relating to the Site, including claims on account of construction delays. In addition, Respondents agree to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in the preceding sentence.

## **XXV. MODIFICATION OF THIS AOC**

128. Except for Modification of the Work Plan and/or any other Appendix as provided in Section X (Modification of the Work), this AOC may only be modified by the mutual agreement of EPA and Respondents. Any agreed modifications shall: be in writing; be signed by both parties; have as their effective date the date on which they are signed by EPA; and be incorporated into this AOC.

129. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain such formal approval as may be required by this AOC, and to comply with all requirements of this AOC unless it is formally modified. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this AOC are, upon approval by EPA, incorporated into and enforceable under this AOC.

## **XXVI. ADDITIONAL WORK**

130. EPA may determine or Respondents may propose that certain tasks are necessary in addition to or in lieu of the tasks included in the Work Plan when such additional work is necessary to meet the objectives set forth in this AOC. EPA may determine that Respondents shall perform any additional work and EPA will specify, in writing, the basis for its determination that any additional work is necessary. Within five (5) days after the receipt of such determination, Respondents shall have the opportunity to meet or confer with EPA to discuss any additional work. Respondents shall submit for EPA approval a work plan for any additional work. Such work plan shall be submitted within ten (10) days of Respondents' receipt of EPA's determination that any additional work is necessary, or according to an alternative schedule established by EPA. On approval of work plan for any additional work, Respondents shall implement the work plan for any additional work in accordance with the schedule and provisions contained therein. The work plan for any additional work shall be incorporated by reference into this AOC.

## **XXVII. TERMINATION AND SATISFACTION**

131. The provisions of this AOC shall be deemed terminated and satisfied by Respondents on written notice from EPA that Respondents have demonstrated that all of

the terms of this AOC, including any additional work as may be performed pursuant to Section XXVI (Additional Work), have been addressed to the satisfaction of EPA. Termination of this AOC shall not terminate Respondents' obligation to comply with: Sections XIV (Sampling, Access and Data Availability); XVI (Record Retention); XX (Reservation of Rights); and XXIV (Indemnification) of this AOC.

**XXVIII. SEVERABILITY**

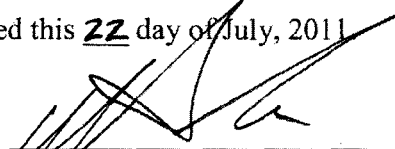
132. If a court issues an order that invalidates any provision of this AOC or finds that Respondents have sufficient cause not to comply with one or more provisions of this AOC, Respondents shall remain bound to comply with all provisions of this AOC not invalidated or determined to be subject to a sufficient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

**XXIX. EFFECTIVE DATE**

133. This AOC shall be effective two (2) days after the day that EPA signs this AOC. Within one (1) business day of signing this AOC, EPA will provide Respondents with a copy of the signature page of this AOC signed by the Director of the Waste Management Division of EPA Region IX. The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this AOC and to bind the party it represents to this document. Respondents agree not to contest the validity or terms of this AOC, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms or seek penalties for its violation. Respondents retain their right to assert claims against any third parties with respect to this Site.

Agreed this 22 day of July, 2011

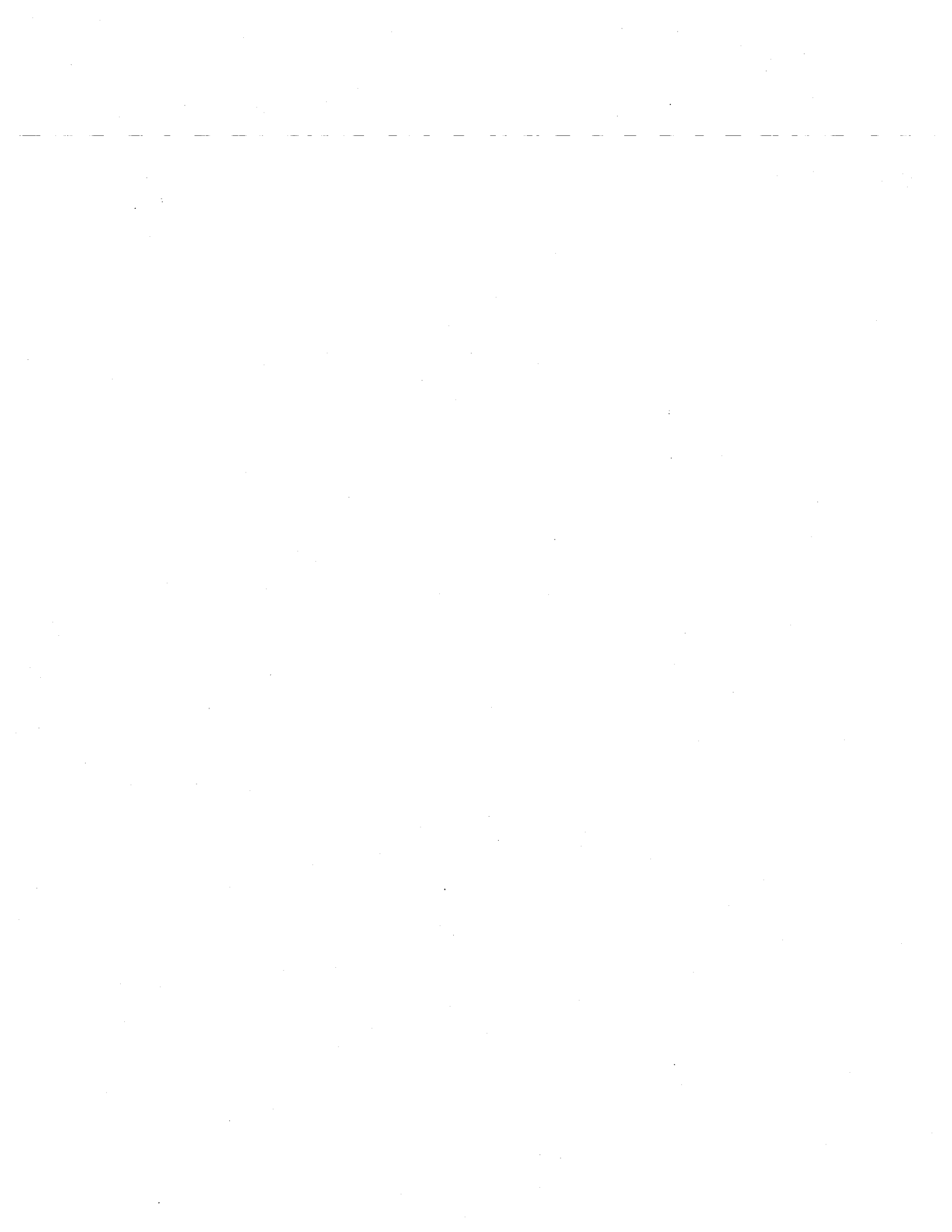
By:

  
\_\_\_\_\_  
Signature

William Carr  
\_\_\_\_\_  
Print Name

Managing Member  
\_\_\_\_\_  
Title

62-150 Gene Welmes Dr - Mecca, ca. 92254  
\_\_\_\_\_  
Company Address



the terms of this AOC, including any additional work as may be performed pursuant to Section XXVI (Additional Work), have been addressed to the satisfaction of EPA. Termination of this AOC shall not terminate Respondents' obligation to comply with Sections XIV (Sampling, Access and Data Availability); XVI (Record Retention); XX (Reservation of Rights); and XXIV (Indemnification) of this AOC.

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Agreed this 25 day of July, 2014.

By: 

Signature

MARK WARD

Print Name

Member

Title


WRT LLC

Company Address





It is ORDERED and Agreed this 10th day of August, 2011.

By:   
Jeff Scott, Director  
Waste Management Division  
EPA Region IX

EFFECTIVE DATE: 8/12/11

