

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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IN THE MATTER OF THE	:
TECHCITY SUPERFUND SITE	:
	:
	:
TechCity Properties, Inc.,	:
AG Properties of Kingston, LLC,	:
Alan L. Ginsberg,	:
A2 Environmental Solutions, LLC,	:
Stephanie Laskin,	:
Jeffrey B. Laskin (individually and doing	:
business as Advanced Demolition	:
and Recycling),	:
	:
Respondents,	:
	:
Proceeding under Section 106(a) of	:
the Comprehensive Environmental	:
Response, Compensation, and Liability	:
Act of 1980, as amended, 42 U.S.C.	:
§ 9606(a).	:
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Index Number
CERCLA-02-2020-2038

ADMINISTRATIVE ORDER FOR A
REMOVAL ACTION

I. JURISDICTION AND GENERAL PROVISIONS

1. This administrative order (“Order”) is issued to TechCity Properties, Inc. (“TechCity Properties”), AG Properties of Kingston, LLC (“AG Properties”), Alan L. Ginsberg (“Mr. Ginsberg”), A2 Environmental Solutions, LLC (“A2ES”), Stephanie Laskin (“Ms. Laskin”), and Jeffrey B. Laskin (“Mr. Laskin”) (hereinafter collectively, “Respondents”) by the United States Environmental Protection Agency, Region 2 (“EPA”) and requires Respondents to perform a removal action in connection with the TechCity Superfund Site (“Site”) located at 300 Enterprise Drive, Town of Ulster, Ulster County, New York.

2. This Order is issued to Respondents by EPA pursuant to the authority vested in the President of the United States under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9606(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Federal Register 2926, January 29, 1987). This authority was further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B and to the Director of the Emergency and Remedial Response Division in Region 2 by Regional Delegation R-1200, dated January 19, 2017. Effective April 28, 2019, the Emergency and Remedial Response Division has been renamed the Superfund and Emergency Management Division (“SEMD”). All delegations to the Director of the Emergency and Remedial Response Division were conferred upon the Director of SEMD in a memorandum by the EPA Regional Administrator dated March 27, 2019.

3. EPA has notified the New York State Department of Environmental Conservation (“NYSDEC”) of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order shall apply to and be binding upon Respondents and their directors, officials, employees, agents, successors and assigns. No change in the status or control of Respondents shall alter Respondents’ responsibilities under this Order.

5. Respondents are jointly and severally liable for implementing all activities required by this Order. Compliance or noncompliance by any Respondent with any provision of this Order shall not excuse or justify noncompliance by the other Respondents. No Respondent shall interfere in any way with the performance of Work in accordance with this Order by any other Respondent. In the event of the insolvency or other failure of any Respondent to implement the requirements of this Order, the remaining Respondent(s) shall complete all such requirements.

6. Until EPA notifies Respondents under Paragraph 110 that the Work has been completed, Respondents shall provide a copy of this Order to any successors before a controlling interest in Respondents’ assets or property rights are transferred to the successor.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order or in an attachment to this Order, the following definitions shall apply:

- a. “Day” means a calendar day unless otherwise expressly stated. “Working Day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business on the next working day.
- b. “Effective Date” means the date specified in Paragraph 111.
- c. “Hazardous substance” shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- d. “Party” or “Parties” means EPA and/or Respondents.
- e. “Respondents” shall mean TechCity Properties, AG Properties, Mr. Ginsberg, A2ES, Ms. Laskin, and Mr. Laskin.
- f. “Site” shall mean the TechCity Superfund Site which includes approximately 258 acres and is located at 300 Enterprise Drive, Town of Ulster, Ulster County, New York. The Site contains over 20 tax parcels with numerous commercial/industrial buildings, support structures, and debris piles. A Site map is attached hereto as Appendix A.
- g. “Waste” means (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 the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2), or (3) above.
- h. “Work” shall mean all activities that Respondents are required to perform pursuant to this Order.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. The Site is bordered by Neighborhood Road to the north, Boices Lane, with both residential and business areas, to the south, and an active rail line to the east. Enterprise Drive is located to the west and three other commercial properties are located west of Enterprise Drive. The Site contains several buildings and support structures. Many of the buildings are currently vacant but a few are occupied by commercial tenants. A number of debris piles including three large piles containing regulated asbestos-containing material (“RACM”) are also located on-Site. A Site map is attached hereto as Appendix A.

9. The Site is the location of a former International Business Machines Corporation (“IBM”) computer manufacturing facility. IBM built its facility in 1955 and occupied the Site for over 30 years. IBM’s operations at the Site included performance of metal plating and electronic card etching, and involved the use of a powerhouse building, a sewage disposal facility, an engineering laboratory, and paint shops.
10. Contamination was discovered in the soils and groundwater at the Site in the late 1970s. Since that time, IBM has been undertaking various investigations, cleanup actions, and monitoring activities pursuant to certain permits and enforcement instruments under state law, with New York State Department of Environmental Conservation (“NYSDEC”) oversight.
11. Based on documents prepared by IBM, IBM documented the presence of asbestos in buildings 1 and 2, both constructed in 1955, and in other buildings at the Site prior to IBM’s sale of the Site.
12. In 1996, Mr. Ginsberg, a real estate developer in Westchester County, entered into discussions with IBM regarding the purchase of the Site property. In November 1996, ERM-Northeast, Inc. (“ERM”) prepared a report entitled, “Limited Asbestos and Lead Paint Survey” for Mr. Ginsberg (“ERM Report”). ERM reviewed IBM asbestos surveys and other records for the Site. ERM also inspected and surveyed fourteen (14) of the then twenty-five (25) on-Site buildings, including buildings 1 and 2. The ERM Report states that buildings 1 and 2 contained friable and non-friable asbestos-containing material (“ACM”) in floor tiles, mastic, insulation and on various fittings.
13. In February 1998, AG Properties and Ulster Business Complex, LLC (“UBC”), both New York limited liability companies established by Mr. Ginsburg in 1997, purchased the 258-acre Site from IBM for about \$3 million. The land to the east of Enterprise Drive was then owned by AG Properties; the land to the west of Enterprise Drive was then owned by UBC. Upon information and belief, Mr. Ginsburg is the Managing Member of AG Properties. The properties owned by AG Properties are managed by TechCity Properties, of which Mr. Ginsberg is the President. Mr. Ginsburg is also the Managing Member of UBC.
14. In 1998, Mr. Ginsberg changed the name of another company that he controlled, Ulster Business Complex Realty Corporation, to TechCity Properties. TechCity Properties operates and manages the TechCity campus. Mr. Ginsburg is the President and CEO of TechCity Properties and makes all financial and operational decisions on behalf of the entity. Upon information and belief, TechCity Properties has no other officers or employees.
15. Asbestos inspections and surveys conducted in 2009, 2010, and 2015 for TechCity Properties noted ACM in areas of building 1, including in floor tile, pipe insulation, floor adhesive or mastic, caulking, and roofing materials.
16. In early 2015, Mr. Ginsberg announced he was interested in selling the Site. In order to make the Site more attractive to potential buyers, he announced that he would be demolishing seven buildings (including buildings 1, 2, 3, 4, 25, 34 and 35) that he considered to be obsolete.

17. TechCity Properties hired Ms. Laskin and A2ES to undertake asbestos abatement work at buildings slated for demolition. Building 25 was not included in the asbestos abatement work. TechCity Properties also hired Ms. Laskin's brother, Mr. Laskin d/b/a Advanced Demolition and Recycling ("Advanced Demolition"), to demolish and remove the buildings in return for receiving the salvage rights to all materials. Mr. Laskin d/b/a Advanced Demolition resides in and operates out of North Carolina. Mr. Ginsberg authorized the former Vice President of Property Management for TechCity Properties to sign contracts for this work.

18. Based on the September 2015, Asbestos Project Notification submitted by TechCity Properties to the New York State Department of Labor ("NYSDOL"), the asbestos project consisted of four interconnected buildings (buildings 1-4) containing 400,000 square feet ("sq/ft") of friable asbestos and 8,000 sq/ft of non-friable asbestos. The Notification listed A2ES as the licensed asbestos contractor. Ms. Laskin is the President and CEO of A2ES, a small business, that operated out of Ms. Laskin's residence. A2ES was a licensed asbestos abatement company. Ms. Laskin held several asbestos licenses at the time of the asbestos project at the Site, including supervisor and inspector licenses. Ms. Laskin personally performed asbestos abatement work as part of the project at the Site.

19. On September 8, 2015, a demolition application for building 25 was submitted by TechCity Properties to the Town of Ulster Building Department on behalf of AG Properties. A2ES was listed as the general contractor on the application.

20. A September 2015 sample from building 25 collected by an asbestos monitoring company that was hired by TechCity showed that certain floor tiles tested positive for asbestos.

21. Also, in September 2015, the asbestos monitoring company for the project, on behalf of TechCity Properties, applied for and received a NYSDOL variance from certain requirements of Industrial Code Rule 56, 12 NYCRR Part 56, relating to the removal of ACM from buildings 1 through 4. The petition noted the need for friable and non-friable ACM removal from the interior and exterior of the buildings prior to demolition.

22. Demolition of buildings at the Site began in the Fall of 2015. Mr. Laskin was on-Site, undertaking demolition activities including demolishing building 25 and partially demolishing building 2, while Ms. Laskin and A2ES were undertaking asbestos abatement work there. NYSDOL issued nearly a dozen Notices of Violation ("NOVs") to A2ES during the course of its work on-Site. On August 1, 2016, NYSDOL inspected the asbestos abatement activities at building 1 and observed several individuals conducting dry removal of ACM, which was causing visible ACM emissions throughout the building. Inspectors noted a number of violations including failure to establish critical barriers to prevent the spread of asbestos. NYSDOL issued a stop work order to A2ES for violations of Code Rule 56.

23. In response to the NYSDOL stop work order, the asbestos monitor undertook an asbestos contamination assessment of building 1 for TechCity Properties. An August 2, 2016 report by the monitor noted that the asbestos abatement work had been undertaken without the use of engineering controls and that asbestos debris was scattered throughout the building. The

report estimated that approximately 300,000 sq/ft of ACM were disturbed during the improper abatement of thermal systems insulation.

24. In or about May of 2016, TechCity Properties hired an unrelated contractor to remove, among other things, building 2 debris and the piles from former building 25. Under the terms of the disposal contract in which Mr. Ginsberg was listed as the point of contact for TechCity Properties, Mr. Ginsberg and his attorney were to receive weekly photos and reports of the work as it progressed. Mr. Ginsberg controlled the finances at the Site and personally signed the TechCity checks used to pay this contractor. The contractor performed some of the work but was not being paid on a timely basis. The contractor estimated it would cost several million dollars to complete the job. In the fall of 2017, Mr. Ginsberg and his attorneys met with the contractor at the Site regarding the off-Site disposal cost estimate. After the contractor demonstrated to Ginsberg that the cost estimate was appropriate, Mr. Ginsberg/TechCity Properties stopped paying the contractor and all work to remove building 2 and the piles from building 25 ceased.

25. Ulster County became the owner of the parcels containing buildings 1 and 2 in March 2017 through tax foreclosure proceedings. The parcel containing former building 25 continues to be owned by AG Properties.

26. In May 2017, EPA was contacted by Ulster County officials requesting assistance in addressing potential public health and environmental threats associated with friable asbestos from buildings 1, 2 and 34 at the Site. EPA and Ulster County officials inspected the Site on May 4, 2017 and observed a 40-foot-long trailer containing hundreds of bags of friable asbestos left behind by A2ES; building 1 left with open and unsecured windows/doors and asbestos containment curtains in disrepair; and building 2 left partially demolished with openings in the roof where friable asbestos pipe covering was visible from the outside. Also observed during the inspection were three large debris piles, between 10 feet and 20 feet high, which had been generated from the demolition of building 25.

27. Starting in May 2017, TechCity Properties was encouraged by NYSDOL, EPA and the County to immediately, voluntarily address the asbestos concerns associated with buildings 1, 2, and 34. At this time, there were minor floor tile issues remaining from the demolition of building 34 and EPA was advised that the former building 25 debris piles were believed to contain only non-friable ACM in the form of vinyl flooring.

28. In a July 2017 assessment report prepared by the asbestos monitor for TechCity Properties concerning the building 25 debris piles, two bulk samples tested positive for asbestos.

29. In October 2017, under EPA oversight, TechCity Properties removed for off-Site disposal the bagged friable asbestos waste in the abandoned trailer, boarded up building windows and doors of building 1, and secured some containment curtains onto buildings 1 and 2.

30. In November 2017, EPA collected ten samples of suspected ACM from the exposed walls and the collapsing roof of building 2. Of the ten samples collected from the building, five samples were found to contain friable asbestos.

31. In December 2017, at the request of EPA and with the agency's oversight, a contractor for TechCity Properties sprayed areas of concern on building 2 with a temporary encapsulant to prevent the release of asbestos fibers. TechCity Properties also removed non-friable asbestos vinyl flooring adjacent to former building 34. EPA advised TechCity Properties that the encapsulant actions were interim measures designed to protect public health and the environment until the asbestos concerns were permanently addressed.
32. On February 14, 2018, Ulster County re-sealed the loading dock bay doors on building 1 after TechCity Properties' boarding of the same had deteriorated.
33. In April 2018, NYSDOL notified EPA that it considered the three building 25 debris piles as friable RACM. Thereafter, under EPA oversight, TechCity Properties covered the piles with tarps, installed hay bale barriers, and posted warning signs. The tarps lasted less than two months and had to be replaced by TechCity Properties again in June 2018. Since that time, the tarps have had to be replaced or the piles recovered over a half dozen times. The RACM piles are immediately adjacent to athletic fields that are used by, among others, a local children's soccer league.
34. In May of 2019, Mr. Ginsberg fired TechCity Properties' vice president of property management. At or about the same time, Mr. Ginsberg hired a property management and real estate company to market and manage the Site. Mr. Ginsberg was the only person in a position to direct the property management company to respond to EPA's directions to cover the RACM piles.
35. Between May 2017 and November of 2019, EPA attempted to have TechCity Properties voluntarily address the asbestos conditions concerning buildings 1, 2, and 25 through permanent measures given that the temporary measures noted above were no longer effective.
36. On December 11, 2019, EPA sent a letter to Respondents, except for Mr. Laskin, notifying them of their potential liability under CERCLA and requesting that they cooperate by consensually performing a CERCLA removal action. EPA's letter asked that such Respondents notify EPA if they were willing to voluntarily finance and/or perform a CERCLA removal action to permanently address the release or threat or release of friable asbestos at buildings 1, 2, and the three RACM piles from former building 25 at the Site.
37. Although AG Properties, TechCity Properties, and Mr. Ginsberg did undertake some temporary measures to re-cover the three RACM piles, none of the notified Respondents indicated a willingness to undertake all the work called for by EPA to permanently address the asbestos in buildings 1, 2, and former building 25.
38. On February 12, 2020, the delegated EPA official verbally authorized the use of federal funds to undertake a CERCLA removal action at the Site to address the most immediate threats to human health, welfare, or the environment including: 1) replacing and/or repairing critical barriers on building 1; and 2) demolishing building 2 and transporting the RACM and recyclable materials for off-Site disposal and recycling.

39. In order to address some of the most exigent threats posed by the Site, on March 16, 2020, EPA commenced work on building 2. By the end of March, EPA had demolished building 2 and removed approximately 200 tons of asbestos-contaminated debris for off-Site disposal. Approximately 150 tons of steel was decontaminated and shipped off-site for recycling. Additionally, EPA secured the exterior of building 1 by repairing barriers, installing temporary fencing and posting asbestos warning signs.

40. Exposure to asbestos can cause a variety of adverse human health effects. Breathing lower levels of asbestos can cause changes in the pleural membrane of a person's lungs through the introduction of blebs (small blisters) or plaques. Pleural plaques can occur in those working with asbestos products and in people living near areas with elevated levels of asbestos in the environment. Effects on breathing due to the presence of pleural plaques alone are not usually serious. However, prolonged exposure can lead to thickening of the pleural membrane, which may restrict breathing. Workers exposed to high concentrations of asbestos fibers have a greater risk of developing asbestosis or mesothelioma.

41. Respondents are each a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Respondent, Mr. Ginsberg, Ms. Laskin and Mr. Laskin are all individuals. A2ES, TechCity Properties, AG Properties, and Advanced Demolition are all corporations or commercial entities.

42. Respondents are responsible parties with respect to the Site within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), in that Respondents were the current or past owners or operators of the Site at a time of disposal.

43. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

44. Asbestos is a "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

45. The conditions at the Site, including the presence of unsecured and exposed friable asbestos, constitutes a "release" or threat of "release" of a hazardous substance into the environment within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

V. DETERMINATIONS

46. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). These factors include, but are not necessarily limited to, the following conditions:

- a. Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants; and

b. Weather conditions may cause hazardous substances or pollutants to migrate or to be released.

47. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

48. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, and are consistent with CERCLA and the NCP.

VI. ORDER

49. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and other information available to EPA, it is hereby ordered that Respondents shall undertake a removal action to address asbestos at the Site in accordance with this Order as described herein. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein. With regard to the Work contemplated by this Order, Respondents shall cease and desist from implementing any such Work until approved by EPA pursuant to this Order.

A. Designation of Contractor and Designated Project Coordinator

50. Within five (5) days after the Effective Date of this Order, Respondents shall select a coordinator, to be known as the Designated Project Coordinator, and submit the name, address, qualifications and telephone number of the Designated Project Coordinator to EPA. The Designated Project Coordinator shall be responsible on behalf of Respondents for oversight of the implementation of this Order. The Designated Project Coordinator shall not be an attorney engaged in the practice of law. He or she shall have the technical expertise sufficient to adequately oversee all aspects of the Work contemplated by this Order. The Designated Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Order.

51. Selection of the Designated Project Coordinator shall be subject to approval by EPA in writing. If EPA disapproves a proposed Designated Project Coordinator, Respondents shall propose a different person and notify EPA of that person's name, address, telephone number, and qualifications within five (5) days following EPA's disapproval. Respondents may change their Designated Project Coordinator provided that EPA has received written notice at least five (5) days prior to the desired change. All changes of the Designated Project Coordinator shall be subject to EPA approval.

52. EPA correspondence related to this Order will be sent to the Designated Project Coordinator on behalf of Respondents. To the extent possible, the Designated Project Coordinator shall be present on-Site or readily available for EPA to contact during all working days and be retained by Respondents at all times until EPA issues a notice of completion of the Work. Notice by EPA in writing to the Designated Project Coordinator shall be deemed notice to

Respondents for all matters relating to the Work under this Order and shall be deemed effective upon receipt.

53. All activities required of Respondents under the terms of this Order shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by Federal, New York State, and/or local governments consistent with Section 121 of CERCLA, 42 U.S.C. § 9621, and all Work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

54. Respondents shall retain at least one contractor to perform the Work. Respondents shall notify EPA of the name and qualifications of a proposed contractor within fourteen (14) days of the Effective Date. Respondents shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform Work under this Order at least five (5) days prior to commencement of such Work. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor demonstrates compliance with the Uniform Federal Policy for Implementing Quality Systems (UFP-QS), EPA-505-F-03-001, March 2005; Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP), Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 and March 2012 or newer, by submitting a copy of the proposed contractor's Quality Management Plan (QMP). 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.

55. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed by Respondents to conduct the Work. If EPA disapproves in writing of any of Respondents' proposed contractors to conduct the Work, Respondents shall propose a different contractor within seven (7) days of receipt of EPA's disapproval.

56. Respondents shall provide a copy of this Order to each contractor and subcontractor approved and retained to perform the Work required by this Order. Respondents shall include in all contracts or subcontracts entered into for Work required under this Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Order and all applicable laws and regulations. Respondents shall be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Order.

B. Description of Work

57. Respondents shall perform a removal action at the Site in accordance with this Order, CERCLA, the NCP, EPA relevant guidance documents, and other applicable Federal and New York State laws and regulations including DOL rules and regulations regarding Industrial Code Rule 56, 12 NYCRR Part 56. Respondents shall perform, at a minimum, all actions necessary to implement the Work herein. Specifically, Respondents shall abate asbestos in building 1 and the three RACM piles including, but not limited to, the following:

- a. Application of best management practices such as the use of water and/or a stabilizing agent to limit migration of asbestos during the removal action;
- b. Management of all temporary measures taken to address asbestos, including coordinating with Ulster County on maintaining critical barriers on building 1 and the covers on the RACM piles until off-site disposal has been completed;
- c. Removal of all asbestos-containing debris for off-Site disposal in compliance with the EPA Off-Site Rule, 40 C.F.R. § 300.440.
- d. Securing of the Site during the removal action to prevent access; and
- e. Provision of necessary air monitoring.

58. Within thirty (30) days of the Effective Date, Respondents shall submit to EPA for review and approval a detailed Site Operating Plan (“SOP”) for the Work. The SOP shall be submitted in accordance with this Order, CERCLA, the NCP, EPA’s relevant guidance documents, 12 NYCRR Part 56, the National Emissions Standards for Hazardous Air Pollutants (“NESHAPS”) regulations promulgated at 40 C.F.R. Part 61, Subpart M, and other applicable Federal and New York State laws and regulations. The SOP shall include the following:

- a. Site-specific Work Plan;
- b. Transportation and Disposal Plan (“T&D”);
- c. Site Health and Safety Plan (“HASP”);
- d. Quality Assurance Project Plan (“QAPP”);
- e. Air Monitoring Plan; and
- f. Green Strategy Plan. The Green Strategy Plan should follow EPA Region 2’s *Clean and Green Policy* which may be found at: <https://www.epa.gov/greenercleanups/epa-region-2-clean-and-green-policy> www.epa.gov/greenercleanups/epa-region-2-clean-and-green-policy.

59. The Site-specific Work Plan shall discuss the proper characterization, staging, handling, sampling and analysis, and disposal of all materials containing hazardous substances, pollutants or contaminants at the Site, and at a minimum, address the following:

- a. Proposed timeline for the completion of all work activities and all other requirements of this Order. The schedule shall provide for completion of all field work no later than two (2) months from the date of approval of the SOP.
- b. Procedures for preventing the release of hazardous substances to the environment during staging, handling, sampling, and disposal; and

- c. A plan for providing Site security including, but not limited to, measures to be taken to keep unauthorized personnel from entering restricted work areas and the Site for the duration of the cleanup.

60. The T&D Plan shall outline procedures for the proper transporting and disposing of all hazardous substances, pollutants and contaminants, hazardous waste, and any solid waste generated during the Work. This plan shall include the identification of the proposed disposal facilities for all waste streams and include waste profile information, facility acceptance documentation, and analytical characterization of each waste stream. In addition, this plan shall ensure compliance with the CERCLA Off-Site Rule, 40 CFR Section 300.440 and include the following information to be documented by Respondents:

- a. the transporter and disposal identification numbers for each proposed transporter and disposal company;
- b. documentation of the current permit status of proposed transporters and disposal facilities; and
- c. the date of the most recent New York State or EPA regulatory inspection of each proposed disposal company, and any special provisions or conditions attached to the disposal permits as a result of the most recent inspection.

After permitted disposal facilities have been finalized, all wastes shall be properly manifested and shipped off-Site via permitted transporters. All final signed manifests, bills of lading and certificates of destruction for such disposal shall be provided by Respondents to the OSC identified in Paragraph 82 and included in weekly and/or monthly progress reports.

61. The HASP shall ensure the protection of the public health and safety during performance of Work under this Order. This plan shall be prepared in accordance with “OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at www.epa.gov/nscep, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at www.epaossc.org/HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (“OSHA”) regulations found at 29 C.F.R. Part 1910. The plan shall also include contingency planning. The HASP should also reflect recent guidance and guidelines issued by the CDC and EPA regarding COVID-19; such guidance will be provided upon request. Respondents shall incorporate all changes to the plan required by EPA and shall implement the plan during the duration of the removal action. The HASP, at a minimum, shall address the following:

- a. Delineation of the work zones;
- b. Personnel monitoring requirements, paying attention to monitoring specific job functions in compliance with OSHA requirements;

- c. Personal protective equipment requirements and upgrade thresholds based on real-time air monitoring;
- d. Demonstration that all personnel, including subcontractor personnel, have current certifications as per applicable OSHA regulations;
- e. Decontamination procedures for personnel and equipment exiting any hot zone; and
- f. Compliance with OSHA requirements for Health and Safety Plans.

If any of the Work performed by Respondents pursuant to this Order requires alteration of the HASP, Respondents shall submit to EPA for review such amendments to the HASP prior to the performance of such work.

62. The QAPP shall provide for the following:

- a. The QAPP shall include detailed procedures, methods, and sampling parameters to be implemented to sample and analyze all Wastes handled pursuant to this Order.
- b. All sampling and analyses performed pursuant to this Order shall conform to EPA policy and guidance regarding sampling, quality assurance, quality control, data validation, and chain of custody procedures. Respondents shall ensure said procedures are consistent with and the UFP-QAPP, Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 and March 2012 or newer.
- c. If any of the Work performed by Respondents pursuant to this Order requires alteration of the QAPP, Respondents shall submit to EPA for review and approval proposed amendments to the QAPP.
- d. Respondents shall conduct the appropriate level of data verification/validation and provide the specified data deliverables as provided in the EPA-approved QAPP.
- e. The QAPP shall require that any laboratory utilized by Respondents is certified for the matrix/analyses which are to be conducted for any work performed pursuant to this Order, by one of the following accreditation/certification programs: USEPA Contract Laboratory Program, National Environmental Laboratory Accreditation Program ("NELAP"), American Association for Laboratory Accreditation, or a certification issued by a program conducted by a state, and acceptable to EPA, for the analytic services to be provided. The QAPP shall require Respondents to submit laboratory certificates from such accreditation programs that are valid at the time samples are analyzed. If a specific analytical service is unavailable from a certified laboratory, EPA may within its discretion, approve Respondents' utilization of a laboratory that is not certified. EPA approval shall be based on Respondents' submittal of a written request, submittal of the laboratory quality assurance plan, and the laboratory's demonstration of capability through the analysis of Performance Evaluation samples for the constituents of concern.

f. Respondents shall ensure that EPA and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents pursuant to this Order. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance the Agency's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) (www.epa.gov/irmpoli8/epa-qa-field-activities-procedures). Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Order meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" (www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements) and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (www.epa.gov/clp), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (www.epa.gov/hw-sw846), "Standard Methods for the Examination of Water and Wastewater" (www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (www3.epa.gov/ttnamti1/airtox.html)." However, upon approval by EPA, Respondents may use other appropriate analytical method(s), as long as (i) quality assurance/quality control criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, American Society for Testing and Materials, National Institute for Occupational Safety and Health, OSHA, etc. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Order have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network laboratories, laboratories accredited under NELAP, or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

g. The QAPP shall provide for electronic submittal of sampling data in accordance with EPA Region 2 policies, guidelines, and formats. The Region 2 Electronic Data Deliverable ("EDD") is a standardized format for all electronic submittals to EPA Region

2. The most recent EDD Guidance and Requirements can be found at:
www.epa.gov/superfund/region-2-superfund-electronic-data-submission.

63. The Air Monitoring Plan (“AMP”) shall provide for the following:

- a. Work zone air monitoring;
- b. Perimeter air monitoring;
- c. Community air monitoring;
- d. Particulate monitoring, response levels and actions;
- e. Monitoring as required by NYDOL rules and regulations (12 NYCRR Part 56); and
- f. Dust control.

64. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing Work under this Order. Respondents shall notify EPA not less than seven (7) Working Days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

65. EPA either will approve the SOP or will require modifications thereto pursuant to Section D (Plans and Reports Requiring EPA Approval), below.

66. Within ten (10) days after EPA’s approval of the SOP, Respondents shall commence the Work described in the EPA-approved SOP. Respondents shall fully implement the EPA-approved SOP in accordance with the terms and schedule therein and in accordance with this Order.

67. Respondents shall notify EPA of the names and addresses of all off-Site Waste treatment, storage, or disposal facilities selected by Respondents to receive Wastes from the Site. Respondents shall provide such notification to EPA for approval at least five (5) Working Days prior to off-Site shipment of such Wastes.

68. At the time of completion of all field activities required by this Order, demobilization shall include sampling if sampling related to the demobilization is deemed necessary by EPA, and proper disposal or decontamination of protective clothing, remaining laboratory samples taken pursuant to this Order, and any equipment or structures constructed to facilitate the cleanup.

69. Respondents shall conduct the Work required hereunder in accordance with CERCLA, the NCP, 12 NYCRR Part 56, NESHAPS regulations promulgated at 40 C.F.R. Part 61, Subpart M, as well as applicable provisions of the following guidance documents, and of other guidance documents referenced in the following guidance documents: EPA Region 2’s *Clean and Green*

Policy, cited above, and Guide to Management of Investigation-Derived Wastes (OSWER Publication 9345.3-03FS, January 1992), as they may be amended or modified by EPA.

C. On-Scene Coordinator, Other Personnel, and
Modifications to EPA-Approved Work Plan

70. All activities required of Respondents under the terms of this Order shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by the federal government, and New York State, and all work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

71. The EPA OSC for the Site is: Don Graham, Removal Action Branch, Superfund & Emergency Management Division, U.S. Environmental Protection Agency, Region 2, 2890 Woodbridge Avenue, Building 205, Edison, New Jersey 08837, telephone number 732-321-4345. EPA will notify Respondents' Project Coordinator if EPA designates a different OSC for this Site.

72. EPA, including the OSC, or his/her authorized representative, will conduct oversight of the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP. The OSC shall have the authority to halt, conduct, or direct any Work required by this Order, or to direct any other response action undertaken by EPA or Respondents at the Site consistent with this Order. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

73. As appropriate during the course of implementation of the actions required of Respondents pursuant to this Order, Respondents or their consultants or contractors, acting through the Designated Project Coordinator, may confer with EPA concerning the required actions. Based upon new circumstances or new information not in the possession of EPA on the Effective Date, the Designated Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved Work Plan. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated in this Order and shall be implemented by Respondents.

D. Plans and Reports Requiring EPA Approval

74. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Order, Respondents shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondents shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondents a written statement to that effect.

75. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order is disapproved by EPA, even after being resubmitted following Respondents' receipt of EPA's comments on the initial submittal, Respondents shall be deemed to be out of compliance with this Order. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondents to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs of doing so from Respondents. Respondents shall implement any such item(s) as amended or developed by EPA.

76. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may modify those documents and/or perform or require the performance of additional work unilaterally.

77. All plans, reports and other submittals required to be submitted to EPA pursuant to this Order, upon approval by EPA, shall be deemed to be incorporated in and an enforceable part of this Order.

E. Reporting

78. Commencing on the thirtieth (30th) day after the Effective Date, unless there is field work at the Site, Respondents shall provide monthly, or as otherwise requested by EPA, progress reports. Whenever, during the implementation of this Order, Respondents are engaged in active field work, Respondents shall provide EPA with daily oral progress reports, as well as written progress reports every seven (7) days during active field work. The first written progress report during active field work shall be submitted within seven (7) days of the commencement of field work. After active field work has been completed, Respondents shall resume monthly written progress reports, commencing 30 days after the submission of the last weekly written progress report. All progress reports shall fully describe all actions and activities undertaken pursuant to this Order. Such progress reports shall, among other things: (a) describe the actions taken toward achieving compliance with this Order during the previous week; (b) include all results of sampling and tests and all other data received by Respondents after the most recent progress report submitted to EPA; (c) describe all actions which are scheduled for the next week; (d) provide other information relating to the progress of Work as is customary in the industry; and (e) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

79. Within thirty (30) days after completion of the Work required by the SOP, Respondents shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Order. The Final Report shall include:

- a. A synopsis of all Work performed under this Order;
- b. A detailed description of all EPA-approved modifications to the SOP which occurred during Respondents' performance of the Work required under this Order;
- c. A listing of quantities and types of materials removed from the Site or

handled on-Site;

- d. A discussion of removal and disposal options considered for those materials;
- e. A listing of the ultimate destination of those materials;
- f. A presentation of the analytical results of all sampling and analyses performed, including QAPP data and chain of custody records;
- g. Accompanying appendices containing all relevant documentation generated during the Work (*e.g.* manifests, bills of lading, invoices, bills, contracts, certificates of destruction and permits);
- h. An accounting of expenses incurred by Respondents in performing the Work; and
- i. The following certification signed by a person who supervised or directed the preparation of the Final Report:

“I certify that the information contained in and accompanying this document is true, accurate, and complete.”

80. EPA either will approve the Final Report or will require modifications thereto pursuant to Section D., above.

81. The Final Report and other documents submitted by Respondents to EPA which purport to document Respondents’ compliance with the terms of this Order shall be signed by a responsible official of Respondents or by the Designated Project Coordinator. For purposes of this Paragraph, a responsible official is an official who is in charge of a principal business function.

82. The SOP, the Final Report, and other documents required to be submitted to EPA under this Order shall be sent to the following addresses:

1 paper copy and 1 electronic copy to:

U.S. Environmental Protection Agency, Region 2
Superfund and Emergency Response Division
Removal Action Branch
2890 Woodbridge Avenue
Building 205
Edison, New Jersey 08837
Attn: Don Graham
graham.don@epa.gov
732-321-4345

1 electronic copy to:

U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel, New York/Caribbean Superfund Branch
290 Broadway, 17th Floor
New York, NY 10007-1866
Attn: Marla Wieder
wieder.marla@epa.gov
212-637-3184

1 electronic copy to:

New York State Department of Environmental Conservation
Daniel R. Lanners, PE
Project Manager, Remedial Bureau C
Division of Environmental Remediation,
625 Broadway
Albany, NY 12233-7014
daniel.lanners@dec.ny.gov
518-402-9652.

F. Oversight

83. During the implementation of the requirements of this Order, Respondents and their contractor(s) and subcontractor(s) shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondents, including inspections at the Site and at laboratories where analytical work is being done hereunder.

84. Respondents and their employees, agents, contractor(s) and consultant(s) shall cooperate with EPA in its efforts to oversee Respondents' implementation of this Order.

G. Community Relations

85. Respondents shall cooperate with EPA in providing information relating to the Work required hereunder to the public. As requested by EPA, the Respondents shall participate in the preparation of all appropriate information disseminated to the public; participate in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site; and provide a suitable location for public meetings, as needed.

H. Access to Property and Information

86. EPA, NYSDEC, and their designated representatives, including, but not limited to, employees, agents, contractor(s) and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Order. Respondents shall at all times permit EPA, NYSDEC,

and their designated representatives full access to and freedom of movement at the Site and any other premises where Work under this Order is to be performed for purposes of inspecting or observing Respondents' progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondents, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be related to EPA oversight of the implementation of this Order.

87. In the event that action under this Order is to be performed on property that is owned by persons other than Respondents, Respondents shall use their best efforts to obtain access agreements from such persons within ten (10) Working Days of the Effective Date for purposes of implementing the requirements of this Order. Such agreements shall provide access not only for Respondents, but also for EPA and its designated representatives or agents, as well as NYSDEC and its designated representatives or agents. Such agreements shall specify that Respondents are not EPA's representatives with respect to liability associated with Site activities. If such access agreements are not obtained by Respondents within the time period specified herein, Respondents shall immediately notify EPA of their failure to obtain access and shall include in that notification a summary of the steps Respondents have taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondents, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondents cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

88. Upon request, Respondents shall provide EPA with access to all records and documentation related to the conditions at the Site, including hazardous substances found at or released from the Site, and the actions conducted pursuant to this Order except for those items, if any, subject to the attorney-client or work product privilege. All data, information and records created, maintained, or received by Respondents or their contractor(s) or consultant(s) in connection with implementation of the Work under this Order, including, but not limited to, contractual documents, invoices, receipts, work orders and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this Paragraph. EPA shall be permitted to copy all such documents. Respondents shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondents or their contractor(s), or on Respondents' behalf, in connection with the implementation of this Order.

89. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statutes or regulations.

I. Record Retention, Documentation, Availability
of Information

90. Respondents shall preserve all documents and information relating to Work performed under this Order, or relating to Waste materials found on or released at or from the Site, for six (6) years after completion of the Work required by this Order. At the end of the six-year period, Respondents shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondents shall provide EPA with the originals or copies of such documents and information.

91. All documents submitted by Respondents to EPA in the course of implementing this Order shall be available to the public unless claimed as privileged or confidential pursuant to applicable law. In addition, EPA may release all such documents to NYSDEC, and NYSDEC may make those documents available to the public unless Respondents conforms to applicable New York State law and regulations regarding confidentiality. Respondents shall not assert a claim of privilege or confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific or engineering data relating to the Work performed hereunder.

J. Off-Site Shipments

92. All hazardous substances, pollutants, or contaminants removed from the Site pursuant to this Order for off-Site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with: (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); (b) Section 300.440 of the NCP; (c) RCRA; (d) the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; and (e) all other applicable federal and state requirements.

93. If hazardous substances from the Site are to be shipped outside of New York State, Respondents shall provide prior notification of such Waste shipments in accordance with the EPA Memorandum entitled “Notification of Out-of-State Shipments of Superfund Site Wastes” (OSWER Directive 9330.2-07, September 14, 1989). At least five (5) Working Days prior to such Waste shipments, Respondents shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the Wastes are to be shipped; (b) the type and quantity of Waste to be shipped; (c) the expected schedule for the Waste shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste streams.

94. Certificates of disposal must be provided to EPA upon Respondents’ receipt of such. These certificates must be included in the weekly or monthly progress reports and in the Final Report.

K. Compliance with Other Laws

95. All actions required pursuant to this Order shall be performed in accordance with all applicable New York State and federal laws and regulations except as provided in CERCLA § 121(e)(1), 42 U.S.C. §9621(e)(1), and 40 CFR § 300.415(j). In accordance with 40 CFR

§300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (“ARARs”) under federal environmental or New York State environmental or facility siting laws. See "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," (OSWER Directive No. 9360.3-02, August 1991).

96. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. §9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work requires a federal or New York State permit or approval, Respondents shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, nor shall it be construed to be, a permit issued pursuant to any federal or New York State statute or regulation.

L. Emergency Response and Notification of Releases

97. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. §9603, requires reporting to the National Response Center (telephone number (800) 424-8802), Respondents shall also immediately orally notify the Chief of the Removal Action Branch of the Superfund & Emergency Management Division of EPA, Region 2, at (732) 321-6658, or the EPA Region 2 Emergency 24-hour Hot Line at (732) 548-8730, and the OSC of the incident or Site conditions. Respondents shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this Paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §11004.

98. In the event of any action or occurrence during Respondents’ performance of the requirements of this Order which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding Paragraph. Respondents shall take such action in accordance with applicable provisions of this Order including, but not limited to, the Health and Safety Plan. In the event that EPA determines that (a) the activities performed pursuant to this Order, (b) significant changes in conditions at the Site, or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondents to stop further implementation of any actions pursuant to this Order or to take other and further actions reasonably necessary to abate the threat.

99. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

M. Modifications

100. 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 obligations to obtain such formal approval as may be required by this Order and to comply with all requirements of this Order.

N. Delay in Performance

101. Any delay in performance of the Work under this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of the Paragraph below, shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to perform all obligations fully under the terms and conditions of this Order.

102. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's OSC as soon as Respondents know that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within two (2) days after notifying EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, any justification for the delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that have been or will be taken to mitigate the effect of the delay. Increased cost or expense associated with the implementation of the activities called for in this Order is not a justification for any delay in performance.

O. Enforcement and Reservation of Rights

103. a. Notwithstanding any other provision of this Order, failure of Respondents to comply with any provision of this Order may give rise to an allegation by EPA that Respondents may be subject to civil penalties of up to fifty-eight thousand three hundred twenty-eight dollars (\$58,328) per violation per day, as provided in Sections 109 and 122(l) of CERCLA, 42 U.S.C. §§ 9609 and 9622(l), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 85 Fed. Reg. 1751 (January 13, 2020)), and 40 C.F.R. Part 19.4. EPA may also allege that Respondents also may be subject to punitive damages in an amount at least equal to but not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Order, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

b. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, 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 on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site.

P. Other Claims

104. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents or Respondents' employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Order. The United States or EPA shall not be held out as or deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

105. Nothing in this Order constitutes or shall be construed as a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order for any liability that Respondents or other persons may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for injunctive relief, costs, damages, and interest under Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§ 9606(a) and 9607. Nothing herein shall constitute a finding that Respondents are the only responsible party with respect to the release and threatened release of hazardous substances at and from the Site. Nothing in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

106. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2), and 40 CFR § 300.700(d).

107. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

Q. Insurance

108. At least two (2) days prior to commencing any Work at the Site, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have commercial general liability insurance with limits of \$10 million, for any one occurrence, and automobile insurance with limits of \$5 million, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

R. Financial Assurance

109. Respondents shall demonstrate their ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within fourteen (14) days of the Effective Date one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondents have sufficient assets to perform the Work. Respondents shall demonstrate financial assurance in an amount no less than \$4 million, which is EPA's current estimated cost of the Work to be performed by Respondents under this Order. If EPA determines that the financial assurances submitted by Respondents pursuant to this Paragraph are inadequate, Respondents shall, within fourteen (14) days after receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this Paragraph. 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 Order.

S. Termination and Satisfaction

110. Upon a determination by EPA (following its receipt of the Final Report referred to in Paragraph 79 above) that the Work required pursuant to this Order has been fully carried out in accordance with this Order, EPA will so notify Respondents in writing.

T. Opportunity to Confer, Effective Date

111. This Order shall be effective five (5) days after receipt by Respondents, unless a conference is timely requested pursuant to the Paragraph below. If such a conference is timely requested, this Order shall become effective one (1) day following the date the conference is held, unless the Effective Date is modified by EPA. All times for performance of ordered activities shall be calculated from the Effective Date.

112. Respondents may, within five (5) days after receipt of this Order, request a conference with EPA to discuss this Order. If requested, the conference shall occur within fourteen (14) days of Respondents' receipt of this Order. The conference may be held by telephone or videoconference.

113. If a conference is held, Respondents may present any information, arguments, or comments regarding this Order. This conference is not an evidentiary hearing and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or by an attorney or other representative.

114. A request for a conference must be made by telephone to Marla E. Wieder, Assistant Regional Counsel, Office of Regional Counsel, EPA Region 2, telephone (212) 637-3184, followed by written confirmation emailed that day to Ms. Wieder at wieder.marla@epa.gov.

U. Notice of Intent to Comply

115. Respondents shall provide, not later than three (3) days after the Effective Date, written notice to EPA stating whether they will comply with the terms of this Order. If Respondents do not unequivocally commit to perform the Work required by this Order, Respondents shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondents' written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defenses asserted by Respondents under Sections 106(b) and 107(c)(3) of CERCLA. Respondents' written notice shall be sent to Marla E. Wieder, Assistant Regional Counsel via email at wieder.marla@epa.gov, with a copy to her attention at Office of Regional Counsel, EPA Region 2, 290 Broadway, 17th floor, New York, New York 10007-1866. The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be an acceptance of Respondents' assertions.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Evangelista, Pat

Digitally signed by Evangelista, Pat
Date: 2020.09.16 14:04:19 -04'00'

Pat Evangelista, Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency, Region 2

9/16/20

Date of Issuance

TechCity Site

Town of Ulster

Ulster County, NY

EPA, 2018, Created from Google Maps

