



## I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order (“Order”) is issued to the above-captioned Respondents by the United States Environmental Protection Agency, Region 2 (“EPA”) and requires Respondents to undertake a Remedial Design (“RD”), including various pre-RD investigations and analyses, to produce a set of biddable plans and specifications for the implementation of the remedy selected in EPA’s September 27, 2013 Record of Decision (“ROD”) for the Gowanus Canal Superfund Site (“Site”), other than the CSO controls and the cleanup and restoration of the former 1<sup>st</sup> Street turning basin, which EPA expects to be conducted by New York City.

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 November 23, 2004.

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. Respondents are jointly and severally responsible for carrying out all Work required by this Order.

5. Until EPA notifies Respondents under Paragraph 94 that the Work has been completed, Respondents shall provide a copy of this Order to any prospective purchaser or successor before a controlling interest in Respondents’ assets or property rights are transferred to any successor.

## III. DEFINITIONS

6. 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. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

- b. “Day” shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next working day.
- c. “Effective Date” shall be the date this Order goes into effect as provided in Subsection T (Opportunity to Confer, Effective Date).
- d. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- e. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, including any amendments thereto.
- f. “NYSDEC” shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.
- g. “Order” shall mean this Administrative Order and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.
- h. “Paragraph” shall mean a portion of this Order identified by an Arabic numeral.
- i. “Performance Standards” shall mean the cleanup standards and Remedial Action Objectives and other measures of achievement of the goals of the remedy set forth in the ROD and Section II of the Remedial Design Statement of Work (“RD SOW”) attached hereto as Appendix A.
- j. “Pre-Remedial Design Work Plan” or “Pre-RD Work Plan” shall mean the document describing the preliminary fieldwork activities to be undertaken by Respondents to gather the information necessary to fully develop the Remedial Design. A draft Pre-RD Work Plan was prepared by Respondent Brooklyn Union Gas Co. d/b/a National Grid New York (“National Grid”) pursuant to a January 24, 2014 Amendment to Administrative Order and Settlement Agreement, Index Number CERCLA-02-2010-2009 (“National Grid Amended Settlement Agreement”), attached hereto as Appendix B, and which, following approval by EPA, shall be incorporated into and made an enforceable part of this Order, as well as any amendments thereto.
- k. “Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site signed on September 27, 2013 by the Director of the Emergency Remedial Response Division, EPA Region 2, including all attachments thereto, attached hereto as Appendix C.

- l. “Remedial Design” or “RD” shall mean those activities to be undertaken by Respondents to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.
- m. “Remedial Design Statement of Work” or “RD SOW” shall mean the Statement of Work attached hereto as Appendix A.
- n. “Remedial Design Work Plan” or “RD Work Plan” shall mean the document developed by Respondent National Grid pursuant to the National Grid Amended Settlement Agreement, a draft of which is attached hereto as Appendix D and which, following approval by EPA, shall be incorporated into and made an enforceable part of this Order, as well as any amendments thereto.
- o. “Respondents” shall mean:
  1. Beam, Inc.
  2. Beazer East, Inc.
  3. Brink’s Inc.
  4. National Grid
  5. CBS Corp.
  6. Citigroup, Inc.
  7. Consolidated Edison Co. of New York, Inc.
  8. Dun and Bradstreet Corp.
  9. ExxonMobil Oil Corp.
  10. Hauck Manufacturing Co.
  11. Hess Corp.
  12. Honeywell International Inc.
  13. Kraft Foods Global, Inc.
  14. MCIZ Corp. and affiliated entities:
    - a. Fifteen Second Avenue LLC
    - b. 36-2nd-J Corp.
    - c. 107 Sixth Street LLC
  15. MRC Holdings, Inc.
  16. National Grid
  17. NL Industries, Inc.
  18. Northville Industries Corp.
  19. Patterson Fuel Oil Co., Inc.
  20. Phillips 66 Co.
  21. Puget Sound Commerce Center, Inc.
  22. Rexam Beverage Can Co.
  23. SPX Corp.
  24. Stauffer Management Company, LLC
  25. TDA Industries, Inc.
  26. The Brooklyn Improvement Co.
  27. The Union Oil Company of California

28. Verizon New York Inc.

- p. “Section” shall mean a portion of this Order identified by an upper-case Roman numeral and includes one or more Paragraphs.
- q. “Site” shall mean the Gowanus Canal Superfund Site, an approximately 100-foot wide, 1.8-mile-long canal located in the New York City borough of Brooklyn, Kings County, New York, and also includes any areas which are sources of contamination to the Canal, areas where contamination has migrated from the Canal, and/or suitable areas in very close proximity to the contamination which are necessary for implementation of the Work. The Site is depicted generally on the map attached as Appendix E.
- r. “State” shall mean the State of New York.
- s. “United States” shall mean the United States of America.
- t. “Waste Material” shall mean (i) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any “pollutant or contaminant” under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (iii) any “solid waste” under Section 1004(27) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6903(27).
- u. “Work” means all activities Respondents are required to perform pursuant to this Order, except those required by Paragraph 69, below.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Gowanus Canal (“Canal”) is a brackish, tidal arm of the New York–New Jersey Harbor Estuary, extending for approximately 1.8 miles through Brooklyn, New York. The approximately 100–foot–wide Canal runs southwest from Butler Street to Gowanus Bay and Upper New York Bay. The adjacent waterfront is primarily commercial and industrial, currently including concrete plants, warehouses and parking lots, and the Site is near several residential neighborhoods.

8. In 1849, the State authorized construction of the Canal to open the area to barge traffic, flush away sewage, receive storm water and fill the adjacent lowlands for development.

9. The Canal was constructed by bulkheading and dredging a tidal creek and wetland. Additional fill was utilized to raise the grade of the surrounding land. The authorizing legislation and the initial canal designs had recognized the likelihood that the Canal would be stagnant, creating pollution problems. As a result, various flushing solutions were contemplated. However, these were not implemented as part of its initial construction.

10. Following the construction of the Canal, infrastructure was added at various times, including combined sanitary and storm sewers and direct discharge pipes, all of which deposited into the Canal from the surrounding watershed, which is approximately 1,758 acres in size.

11. After completion of construction in the 1860s, the Canal quickly became one of the nation's busiest industrial waterways, home to heavy industry including gas works (*i.e.*, manufactured gas plants), coal yards, cement makers, soap makers, tanneries, paint and ink factories, machine shops, chemical plants and oil refineries.

12. As a result of decades of direct and indirect discharges of hazardous substances generated by industrial and other activity, the Canal is a repository for untreated industrial wastes, raw sewage, and runoff causing it to be one of New York's most polluted waterways.

13. The Canal was first declared a public nuisance in 1877 due to discharge of sanitary and industrial waste, in combination with stagnant water conditions. Subsequent studies and commissions have repeatedly examined methods of addressing the contamination. A series of unsuccessful solutions were implemented between 1891 and 1904, including directing additional sewage discharges to the Canal in order to improve flow.

14. A "Flushing Tunnel" began operating in 1911 as the next attempt to address the Canal's pollution problems. Designed to improve circulation and flush pollutants from the Canal, the Flushing Tunnel consists of a one mile long, 12-foot diameter tunnel stretching from New York Bay near Governors Island to the head of the Canal. Originally using a large ship propeller-type pump system, it could pump water in either direction. It operated with mixed results until the mid-1960s when it fell into disrepair.

15. Periodic infrastructure improvements have gradually reduced direct and indirect discharges to the Canal. The Owl's Head Waste Water Treatment Works ("WWTW") was completed in 1952, serving portions of the Park Slope area. The Red Hook WWTW was completed in 1987. The Second Avenue pump station was completed in 1990, eliminating the last area of dry weather discharges along the Canal. However, Combined Sewer Overflow ("CSO") discharges continue to the present date at an estimated volume of 377 million gallons per year. CSO discharges contain CERCLA hazardous substances from a range of sources, including but not limited to household and industrial discharges to the sanitary sewers and contaminated stormwater captured by storm drains.

16. Throughout the period described in Paragraph 15, above, depending on location relative to infrastructure improvements, facilities located directly adjacent to the Canal discharged untreated industrial and sanitary waste directly into the Canal in both dry weather and wet weather conditions due to the lack of infrastructure necessary to divert discharges from the Canal to upgradient sewer lines that discharged into New York Harbor. During this era, facilities not directly adjacent to the Canal but downgradient of main sewer lines also discharged untreated industrial and sanitary waste indirectly into the Canal in both dry weather and wet weather conditions. Facilities upgradient of the main sewer lines also discharged untreated industrial and sanitary waste indirectly into the Canal in wet weather conditions.

17. Hazardous substances, pollutants and contaminants have entered and continue to enter the Canal via several transport pathways or mechanisms, including spillage during product shipping and handling, direct disposal or discharge, contaminated groundwater discharge, surface water runoff, storm water discharge (including CSO events) and contaminated soil erosion.

18. Much of the heavy industrial activity along the Canal has ceased, although many upland areas adjacent to the Canal remain zoned as manufacturing districts. Land uses along and near certain portions of the Canal are in the process of transitioning from heavy industrial to light industrial, commercial, and residential uses. The Canal is currently used by some for recreational purposes such as boating, diving, and catching fish for consumption. The Canal and New York City harbor are subject to New York State fishing advisories for various ingestion risks, including polychlorinated biphenyls (“PCBs”).

19. The Site was placed on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on March 2, 2010.

20. A Remedial Investigation (“RI”) report was completed by EPA in January 2011 and a Feasibility Study (“FS”) report was completed by EPA in December 2011. An FS addendum report was issued by EPA in December 2012, together with a Proposed Plan. The Proposed Plan described the remedial alternatives considered to address the contamination in the Canal and identified the preferred remedy with the rationale for this preference.

21. Sampling results from the RI/FS document the presence of a wide range of hazardous substances in the groundwater, soil, and Canal sediments at the Site. These include polycyclic aromatic hydrocarbons (“PAHs”), PCBs, pesticides (such as methoxychlor and DDT), metals (such as barium, cadmium, copper, lead, mercury, nickel and silver), as well as volatile organic compounds (“VOCs”) (such as benzene, toluene, ethylbenzene and xylene). The contamination in the sediments extends the entire length of the Canal. The contamination is present in both the sediment which has accumulated above the native sediments (referred to as “soft sediments”), and in the native sediment below the original bed of the Canal. Some of the hazardous substances are present at high levels. The soft sediment layer ranges in thickness from approximately 1 foot to greater than 20 feet, with an average thickness of about 10 feet. For example, total PAH concentrations in surface sediment (defined as the top 6 inches of the soft sediments, where potential exposure is more likely to occur) range up to 8,001,000 ug/kg. PCBs in surface sediment were detected up to 3,400 ug/kg. In the subsurface (i.e., deeper than 6 inches), total PAH concentrations in the soft sediment ranged up to 45,000,000 ug/kg. Total PAH concentrations in the native sediment were detected up to 47,500,000 ug/kg. In the subsurface, total PCB concentrations in the soft sediment were detected up to 50,700 ug/kg. In the native sediments, total PCBs were detected up to 2,610 ug/kg.

22. Based on the results of the RI/FS, chemical contamination in the Canal sediments presents an unacceptable ecological and human health risk, primarily due to exposure to PAHs, PCBs, and metals (barium, cadmium, copper, lead, mercury, nickel and silver) in surface water and sediment, and from ingesting fish and crabs from the Canal.

23. PCBs and PAHs have been demonstrated to cause a variety of adverse health effects. PCBs have been shown to cause cancer in test animals. PCBs have also been shown to cause a number of serious non-cancer health effects in animals, including effects on the immune system, reproductive system, nervous system, endocrine system and other health effects. Studies in humans provide supportive evidence for potential carcinogenic and non-carcinogenic effects of PCBs. The toxicity of PAHs can vary from being nontoxic to extremely toxic. EPA has classified seven PAH compounds as probable human carcinogens: benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, chrysene, dibenz(a,h)anthracene, and indeno(1,2,3-cd)pyrene. PAHs known for their carcinogenic, mutagenic, and teratogenic properties are benz[a]anthracene and chrysene, benzo[b]fluoranthene, benzo[j]fluoranthene, benzo[k]fluoranthene, benzo[a]pyrene, benzo[ghi]perylene, coronene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, and ovalene. High prenatal exposure to PAHs is associated with lower IQ and childhood asthma. The Center for Children's Environmental Health reports studies that demonstrate that exposure to PAH pollution during pregnancy is related to adverse birth outcomes including low birth weight, premature delivery, and heart malformations. Cord blood in cases of prenatal exposure shows DNA damage that has been linked to cancer. Follow-up studies show increased developmental delays at age three, and lower scores on IQ tests and increased behavioral problems at ages six and eight.

24. EPA's ecological risk assessment of the Site determined that PAHs, PCBs and metals in the sediment are toxic to benthic organisms. PAHs were detected in sediment at the highest concentrations relative to their ecological screening benchmarks and represent the greatest site-related risk to the benthic community. PCBs and seven metals (barium, cadmium, copper, lead, mercury, nickel and silver) were also detected at concentrations above their ecological screening benchmarks and at concentrations significantly higher than those detected in reference area sediments and also represent a potential site-related risk to the benthic community. PAHs were found to be a potential risk to aquatic herbivores (represented by the black duck) and mercury was found to be a potential risk to avian omnivores (represented by the heron).

25. On September 27, 2013, EPA issued a ROD for the Site which includes the following response actions: 1) Dredging of the entire column of hazardous substance-contaminated soft sediments in the upper and mid-reaches of the canal; 2) in-situ stabilization of those native sediments in select areas in the upper and mid-reaches of the canal contaminated with high levels of nonaqueous phase liquid ("NAPL"); 3) construction of a multilayered cap in the upper and mid-reaches of the canal to isolate and prevent the migration of PAHs and residual NAPL from native sediments; 4) dredging of the entire soft sediment column in the lower reach of the canal; 5) construction of a multilayer cap to isolate and prevent the migration of PAHs from native sediments in the lower reach of the canal; 6) off-Site treatment with thermal desorption of the NAPL-impacted sediments dredged from the upper and mid-reaches of the canal, followed by beneficial reuse off-Site (*e.g.*, landfill daily cover) if possible; 7) off-Site stabilization of the less contaminated sediments dredged from the lower reach of the canal and the sediments in the other reaches not impacted by NAPL, followed by beneficial reuse off-Site; 8) excavation and restoration of approximately 475 feet of the filled-in former 1st Street turning basin; 9) excavation and restoration of the portion of the 5<sup>th</sup> Street turning basin beginning underneath the

3<sup>rd</sup> Avenue bridge and extending approximately 25 feet to the east and the installation of a barrier or interception system at the eastern boundary of the excavation; 10) implementation of institutional controls incorporating the existing fish consumption advisories (modified as needed), as well as other controls to protect the integrity of the cap; 11) periodic maintenance of the cap and long-term monitoring to insure that the remedy continues to function effectively; and 12) CSO controls to significantly reduce overall contaminated solid discharges to the canal, which shall include a) construction of in-line sewage/stormwater retention tanks to retain stormwater which currently discharges through outfalls RH-034 and OH-007; and b) implementation of appropriate engineering controls to ensure that hazardous substances and solids from separated stormwater, including from future upland development projects, are not discharged to the canal.

26. In 2009, EPA began the investigation of potentially responsible parties (“PRPs”) for the Site. EPA began issuing letters notifying parties of their potential liability, and thus their status as PRPs, in August 2009.

27. In March 2012, EPA convened a meeting of all of the PRPs that had received a notice letter as of that date for the purpose of providing a technical and enforcement briefing regarding the Site, and to encourage the PRPs to begin preparations for future settlement negotiations.

28. On September 30, 2013, EPA issued a Notice for the Commencement of Remedial Design Negotiations and Demand for Past Costs (“Notice and Demand”) to each of the Respondents named herein. The Notice and Demand sought \$5 million in partial reimbursement of EPA’s outstanding past costs for the Site, and execution of an RD consent order, a draft of which was included therein, by December 13, 2013, which deadline was determined by EPA to be necessary in order to ensure RD fieldwork could begin in spring 2014.

29. To facilitate settlement discussions between and among the Agency and the PRPs, EPA convened a meeting of the PRPs on November 7, 2013. To provide further time for negotiations, EPA extended the time for Respondents to enter into the RD consent order from December 13, 2013 to January 31, 2014 and then later to February 14, 2014.

30. To prevent a delay in implementing the RD during the negotiation extension period, on January 24, 2014, National Grid and EPA entered into the National Grid Amended Settlement Agreement. Pursuant to the National Grid Amended Settlement Agreement, National Grid developed and submitted for EPA approval the Pre-RD and RD Work Plans, on January 29, 2014 and February 27, 2014, respectively, attached hereto as Appendices B and D. On February 3, 2014, National Grid also paid EPA \$1 million in partial reimbursement of EPA’s outstanding past response costs.

31. EPA is currently conducting separate consent order negotiations with New York City for that portion of the RD that involves the siting and design of the CSO retention tanks and the design for the cleanup and restoration of the former 1<sup>st</sup> Street turning basin. EPA is also negotiating an administrative order for a removal action with Bayside Fuel Oil Corp. and its affiliates, Bayside Fuel Oil Depot Corp., Sackett Street Properties, LLC, Smith Street Properties

LLC, OAA Realty LLC, LAA Realty LLC and Victor Allegretti Credit Shelter Trust, which requires, under EPA supervision, implementation of bulkhead upgrades on Bayside's property to EPA's remedial standards, as well as the coordination and cooperation with Respondents regarding the RD.

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

33. The contamination found at the Site, as identified in the Findings of Fact above, includes hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

34. Each Respondent is a responsible party with respect to the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for reasons including but not limited to, each Respondent's status as the current owner/operator of a Facility at the Site and/or the owner/operator of a Facility at the Site at a time of disposal of one or more hazardous substances, and/or a successor in interest thereto.

35. Each Respondent is a corporation and/or a limited liability company, and therefore is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

36. The conditions described in these Findings of Fact constitute an actual or threatened "release" of one or more a hazardous substances from a facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). Such actual or threatened releases include, but are not limited to, the discharge of high levels of PAHs, PCBs, pesticides, metals, and VOCs into the Canal, and/or the indirect discharge of such hazardous substances into the Canal through sewer or other pipes and/or the soil and/or groundwater at the Site, as well as the potential for future migration of hazardous substances at and from the Site.

37. Each Respondent was given an opportunity to enter into a settlement agreement, either individually or collectively, for the Work required by this Order. No party consented to perform the Work.

## V. DETERMINATIONS

38. Based on the Findings of Fact and Conclusions of Law set forth above and the entirety of the administrative record, EPA has determined that the release or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

39. 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

40. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the administrative record supporting the Record of Decision for this Site, it is hereby ordered that Respondents comply with all requirements of this Order including, but not limited to, performance of the Remedial Design at the Site in accordance with Subsection A herein (Description of Work), the RD SOW, and following approval by EPA, the Pre-RD and RD Work Plans.

41. Respondents are jointly and severally responsible for carrying out all activities required by this Order, the RD SOW, and following approval by EPA, the Pre-RD and RD Work Plans. Any failure to perform, in whole or in part, any requirement of this Order by any Respondent hereto shall not relieve Respondents of their obligation to perform each and every requirement of this Order. No Respondent shall interfere in any way with the performance of Work in accordance with this Order by any other Respondent.

### A. Description of Work

42. Respondents shall perform the following:

a. Obligation to Cooperate and Coordinate: Respondents shall make best efforts to coordinate in the performance of the Work required by this Order with any person not a party to this Order who is directed by EPA and who makes good-faith offers to perform or, in lieu of performance to pay for, in whole or in part, the Work required by this Order. Best efforts to coordinate shall include, at a minimum:

- i. replying in writing within a reasonable period of time to good-faith offers to perform or pay for the Work required by this Order;
- ii. engaging in good-faith negotiations with any person not a party to this Order who makes good-faith offers to perform or pay for the Work required by this Order; and
- iii. good-faith consideration of good-faith offers to perform or pay for the Work required by this Order.

Upon request of EPA and subject to any claims of applicable privileges(s), Respondents shall submit to EPA (1) any offer to perform or pay for, or (2) all documentation relating to the performance of or payment for, the Work required by this Order by any non--respondent to this Order.

Nothing in this Paragraph shall be construed to require or permit Respondents to delay implementing the Pre-RD and/or RD Work Plan, following EPA approval, or for otherwise complying with the terms of this Order.

b. Work: Respondents shall conduct the Work required hereunder in accordance with CERCLA, the NCP, the ROD, the Performance Standards, the RD SOW, and, following EPA approval, the Pre-RD Work Plan, and RD Work Plan, as well as applicable provisions of the following guidance documents, (and of other guidance documents referenced therein) as they may be amended or modified by EPA: *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, *EPA Region 2's "Clean and Green Policy"* which may be found at <http://epa.gov/region2/superfund/greenremediation/policy.html>, *Guidance for Scoping the Remedial Design* (EPA 540/R-95/025, March 1995), and *Guide to Management of Investigation-Derived Wastes* (OSWER Publication 9345.3-03FS, January 1992). The tasks that Respondents must perform (including future deliverables) and the scope of such Work are identified in this Order and the RD SOW which is incorporated into and is an enforceable part of this Order. Each deliverable submitted pursuant to this Settlement Agreement shall be deemed incorporated into and an enforceable part of this Settlement Agreement upon its approval by EPA.

43. Respondents shall assure that all field personnel used by Respondents are properly trained in the use of field equipment and in chain-of-custody procedures.

B. Designation Of Contractor and Designated  
Project Coordinator

44. Within twenty-one (21) days after the Effective Date, Respondents shall select a coordinator to be known as the Project Coordinator and shall submit the name, address, qualifications, and telephone number of the Project Coordinator to EPA. The Project Coordinator shall be responsible on behalf of Respondents for oversight of the implementation of the Work to be carried out under this Order. The 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 Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Order.

45. Selection of the Project Coordinator shall be subject to approval by EPA in writing. If EPA disapproves a proposed Project Coordinator, Respondents shall propose a different person and notify EPA of that person's name, address, telephone number and qualifications within seven (7) days following EPA's disapproval. Respondents may change their Project Coordinator provided that EPA has received written notice at least seven (7) days prior to the desired change. All changes of the Project Coordinator shall be subject to EPA approval.

46. EPA correspondence related to this Order will be sent to the Project Coordinator. Notice by EPA in writing to the Project Coordinator shall be deemed notice to Respondents for all matters relating to the Work under this Order and shall be effective upon receipt. To the extent possible, the 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 termination of this Order upon the completion of the Work in accordance with Paragraph 94.

47. Within twenty-one (21) days after the Effective Date, Respondents shall select a Supervising Contractor and shall submit the name, address, qualifications, and telephone number of the Supervising Contractor to EPA. The Supervising Contractor may be the same person as the Project Coordinator. 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 ten (10) days prior to commencement of such Work.

48. 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, 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. All plans and specifications shall be prepared under the supervision of, and signed/certified by, a licensed New York professional engineer.

49. EPA retains the right to disapprove 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.

50. 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 their contractors and subcontractors perform the Work contemplated herein in accordance with this Order.

C. EPA Remedial Project Manager, Other Personnel and Modification  
to EPA-Approved Pre-RD and RD Work Plans

51. EPA has designated Christos Tsiamis of the New York Remediation Branch, Emergency and Remedial Response Division, EPA Region 2, as its Remedial Project Manager ("RPM") for the Site. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the RPM via e-mail at [tsiamis.christos@epa.gov](mailto:tsiamis.christos@epa.gov) and by regular mail, at U.S. EPA, Region 2, 290 Broadway, 20<sup>th</sup> Floor, New York, NY 10007.

52. EPA, including the RPM, or his authorized representative, will conduct oversight of the implementation of this Order. The RPM shall have the authority vested in an RPM by the NCP, including 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 RPM from the Site shall not be cause for stoppage of Work unless specifically directed by the RPM.

53. 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 of this Order, the Project Coordinator may request in writing EPA approval of modification(s) to the EPA-approved Pre-RD Work Plan and RD Work Plan. In addition, Respondents may propose other additional investigations, studies, and response actions and, upon EPA approval of the same, Respondents shall conduct such actions pursuant to this Order. Only modifications approved by EPA in writing shall be deemed effective.

#### D. EPA Review of Submissions

54. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondents to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in subparagraphs (a) or (b) of this Paragraph.

55. In the event of approval or approval with modifications by EPA, Respondents shall proceed to take any action required by the plan, report or other item, as approved or modified by EPA.

56. Upon receipt of a notice of disapproval or a direction for a modification, Respondents shall correct the deficiencies and resubmit the plan, report or other item for approval within thirty (30) days or such other time as may be specified by EPA in its notice of disapproval or request for modification. Notwithstanding the notice of disapproval or approval with modifications, Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

57. 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.

58. EPA shall be the final arbiter 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.

59. All plans, reports and other submittals required to be submitted to EPA under this Order shall, upon approval by EPA, be deemed to be incorporated in and an enforceable part of this Order. In the event EPA approves a portion of a plan, report or other item required to be submitted to EPA under this Order, the approved portion shall be deemed to be incorporated in and an enforceable part of this Order.

#### E. Reporting Requirements

##### 60. Reporting

a. Respondents shall submit written progress reports to EPA concerning actions undertaken pursuant to this Order every thirtieth (30<sup>th</sup>) day after the date of receipt of EPA's approval of the RD Work Plan until termination of this Order, unless otherwise directed in writing by EPA. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems and planned resolutions of past or anticipated problems.

b. Respondents shall submit copies of all plans, reports or other submissions required by this Order, the RD SOW or any approved work plan as set forth below. Any electronic submissions must be in a format that is compatible with EPA software and in database files and sizes to be specified by EPA. Reports should be submitted to the following:

4 copies: Remedial Project Manager – Gowanus Canal Site  
(2 bound, Emergency and Remedial Response Division  
1 unbound, United States Environmental Protection Agency, Region 2  
1 electronic) 290 Broadway, 20<sup>th</sup> Floor  
New York, New York 10007-1866

1 copy: Chief, New York/Caribbean Superfund Branch  
Office of Regional Counsel  
United States Environmental Protection Agency, Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, New York 10007-1866  
Attn: Gowanus Canal Superfund Site Attorney

3 copies: Director, Division of Environmental Remediation  
(2 unbound, New York State Department of Environmental Conservation  
1 electronic) 625 Broadway, 12<sup>th</sup> Floor  
Albany, New York 12233-7011

Attn: Gowanus Canal Superfund Site

F. Oversight

61. During the implementation of the requirements of this Order, Respondents and their contractor(s) and subcontractors 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.

62. 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

63. Respondents shall cooperate with EPA in providing information relating to the Work required hereunder to the public. As requested by EPA, 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

64. 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 reasonably related to EPA oversight of the implementation of this Order.

65. In the event that action under this Order is to be performed in areas owned by or in possession of a person other than Respondents, Respondents shall use their best efforts to obtain access agreements from such persons within forty-five (45) working days of the Effective Date of this Order 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 representative 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.

66. Upon request, Respondents shall provide EPA with access to all records and documentation related to the conditions at the Site, 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. Nothing herein shall preclude Respondents from asserting a business confidentiality claim pursuant to 40 CFR Part 2, Subpart B. 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 the Respondents' behalf, in connection with the implementation of this Order.

67. Upon request by EPA, Respondents shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Order.

68. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C §6901, *et seq.* and any other applicable statutes or regulations.

#### I. Record Retention, Documentation, Availability of Information

69. Respondents shall preserve all documents and information relating to Work performed under this Order, or relating to Waste Materials found on or released from the Site, for ten (10) years after completion of the Work required by this Order. At the end of the ten (10) 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.

70. All documents submitted by Respondents to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondents pursuant to 40 CFR Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all non-confidential documents to NYSDEC, and NYSDEC may make those documents available to

the public unless Respondents conform with applicable New York State law and regulations regarding confidentiality. Respondents shall not assert a claim of confidentiality regarding any monitoring or hydrogeological 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

71. 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 New York State requirements.

72. If hazardous substances from the Site are to be shipped outside of the State of New York, Respondents shall provide prior notification of such Waste Material shipments to the RPM at the address set forth in Paragraph 60 and 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 Material 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 Waste Materials are to be shipped; (b) the type and quantity of Waste Material to be shipped; (c) the expected schedule for the Waste Material shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste Material streams.

73. Certificates of destruction must be provided to EPA upon Respondents' receipt of such. These certificates must be included in the monthly progress reports and in the Final Report.

#### K. Compliance With Other Laws

74. Respondents shall undertake all action that this Order requires in accordance with the requirements of all applicable local, state and federal laws and regulations, unless an exemption from such requirements is specifically provided by law or in this Order.

75. 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, Respondent 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

76. 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 (800) 424-8802, Respondents shall then immediately orally notify the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA, Region 2, at (732) 321-6658, of the incident or Site conditions. Respondent 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.

77. 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 required to be submitted pursuant to Section IV.E. of the RD SOW. 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.

78. 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

79. 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 Order and to comply with all requirements of this Order.

#### N. Delay in Performance

80. 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 Paragraph 81 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.

81. 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 RPM 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

82. Notwithstanding any other provision of this Order, failure of any Respondent to comply with any provision of this Order may subject such Respondent to civil penalties of up to thirty-seven thousand five hundred dollars (\$37,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75340 (December 11, 2008) and 40 CFR Part 19. 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.

83. 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 Respondent 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

84. 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 Respondent or

Respondent's 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.

85. 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 parties with respect to the release and threatened release of hazardous substances at and from the Site.

86. Nothing in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

87. 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).

#### Q. Insurance

88. At least five (5) days prior to commencing any on-Site Work under this Order, Respondents shall secure and shall maintain for the duration of this Order comprehensive general liability insurance and automobile insurance with limits of \$5 million dollars, combined single limit, naming the EPA as an additional insured. Within the same period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Order. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains 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 that is not maintained by such contractor or subcontractor.

#### R. Financial Assurance

89. Within thirty (30) days of the Effective Date of this Order, Respondents shall demonstrate their financial ability to complete the Work by submitting to EPA copies of one or more of Respondents' most recent Annual Reports. Such Annual Reports shall demonstrate that Respondents have sufficient assets to perform the Work, which is valued by EPA at \$35,000,000. Each year thereafter, until the completion of the work, Respondents shall submit one or more

Respondents' most recent Annual Reports to EPA within thirty (30) days of publication of such reports. In the event that EPA determines at any time that the financial assurances provided by the Annual Reports do not demonstrate Respondents' ability to complete the Work, then Respondents shall establish and maintain financial security in the amount needed to complete the Work, in one or more of the following forms:

- a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;
- c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;
- d. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;
- e. A demonstration by one or more Respondents that such Respondent(s) meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; and
- f. A written guarantee to fund or perform the Work executed in favor of EPA by one or both of the following: (i) a direct or indirect parent company of a Respondent or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Respondent; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

90. 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 89, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within thirty (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.

91. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 89(e) or 89(f) of this Order, 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 Order, 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," the current EPA cost estimate of \$35,000,000 for the Work at the Site shall be used in relevant financial test calculations.

92. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 89 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by EPA and Respondents, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA.

93. 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.

#### S. Termination and Satisfaction

94. Upon a determination by EPA 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

95. This Order shall be effective ten (10) days after receipt by Respondents, unless a conference is timely requested pursuant to Paragraph 96 below. If such a conference is timely requested, this Order shall become effective three (3) days 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 this Effective Date.

96. Respondents may, within ten (10) days after receipt of this Order, request a conference with EPA to discuss this Order. If requested, the conference shall occur within seven (7) days of Respondents' request for a conference. The conference may occur in person or telephonically.

97. The purpose and scope of the conference is to discuss issues involving the implementation of the Work required by this Order and the extent to which Respondents intend

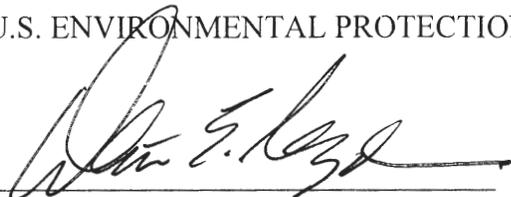
to comply with this Order. The conference is not intended to be a forum for discussing liability issues or whether the Order should have been issued. This conference is not an evidentiary hearing and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek 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.

98. A request for a conference must be made by telephone to Brian E. Carr, Assistant Regional Counsel, Office of Regional Counsel, EPA Region II, telephone (212) 637-3170, followed by written confirmation emailed that day to Mr. Carr at [carr.brian@epa.gov](mailto:carr.brian@epa.gov).

U. Notice of Intent to Comply

99. Each Respondent shall provide, not later than five (5) days after the Effective Date, written notice to EPA stating whether it will comply with the terms of this Order. The notice should state the manner in which the Respondent intends to comply. If a Respondent does not unequivocally commit to perform the work required by this Order, it shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Each Respondent's written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA. Each Respondent's written notice shall be sent to the EPA addressees listed in Paragraph 60 above. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be an acceptance of a Respondent's assertions.

U.S. ENVIRONMENTAL PROTECTION AGENCY



Walter E. Mugdan  
Director  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
Region 2

March 20, 2014  
Date of Issuance

## **APPENDICES**

Available Electronically on EPA's Gowanus Webpage:

<http://www.epa.gov/region02/superfund/npl/gowanus/additionaldocs.html>

Appendix A – Statement of Work

Appendix B – Draft Pre-Design Work Plan

Appendix C – Record of Decision

Appendix D - Draft Remedial Design Work Plan

Appendix E – Site Map