

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF)

Polychem Services, Inc.)
374 E. Joe Orr Road)
Chicago Heights, Illinois 60411)

And)

Polychem Holdings, Inc.)
374 E. Joe Orr Road)
Chicago Heights, Illinois 60411)

And)

Heartland Polymers, Inc.)
c/o Registered Agent)

And)

Heartland Polymers Realty, Inc.)
1215 NE Jefferson Avenue)
Peoria, Illinois 61603)

Respondents)

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

RECEIVED

SEP 27 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

UNILATERAL
ADMINISTRATIVE
ORDER

EPA DOCKET NO. RCRA-05-2012-0014

I. INTRODUCTION

1. This Unilateral Administrative Order ("UAO" or "Order") is issued by the United States Environmental Protection Agency, Region 5 ("EPA") to Polychem Services, Inc. ("Polychem Services"), Polychem Holdings, Inc. ("Polychem Holdings"), Heartland Polymers, Inc. ("Heartland Polymers"), and Heartland Polymers Realty, Inc. ("Heartland Realty"). This Order provides for the performance of response actions including waste characterization, waste removal and remediation of any releases of Solid Waste or Hazardous Waste from the Site as described in greater detail below in Section VIII (Work to be Performed), including any Additional Work that may be required by Section XXII (Additional Work) of this Order, by

Respondents in connection with the property located at 374 E. Joe Orr Road in Chicago Heights, Illinois ("Site"). In issuing this Order, EPA intends for Respondents to identify, investigate, remedy, remove, and/or prevent the potential endangerment to health and/or the environment from Solid Waste and Hazardous Waste present at the Site, and to insure that the Work ordered by EPA is designed and implemented to protect health or the environment. These objectives are described below in Section VIII (Work to be Performed). Respondents shall finance and perform the Work in accordance with this Order, plans, standards, specifications and schedules set forth in this Order or developed by Respondents and approved by EPA pursuant to this Order.

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

3. EPA has notified the State of Illinois of this action pursuant to Section 7003(a) of the Solid Waste Disposal Act, as amended ("RCRA" or "the Act"), 42 U.S.C. § 6973(a), on July 11, 2012.

II. JURISDICTION

4. This Order is issued under the authority vested in the Administrator of EPA by Section 7003 of RCRA, which authority has been delegated to the Regional Administrators of EPA by Delegation Nos. 8-22-A and 8-22-B, dated May 11, 1994, and No. 8-23, dated March 6, 1986, and further delegated to the Director, Land and Chemicals Division, of EPA Region 5 by Delegation Nos. 8-22-A, 8-22-B and 8-23, dated October 22, 2007.

III. PARTIES BOUND

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

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

laboratories and/or consultants in connection with this Order, on compliance with the terms of this Order. Respondents shall ensure that its contractors, subcontractors, laboratories, and consultants comply with this Order.

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

IV. DEFINITIONS

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

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

"Data Quality Objectives" shall mean those qualitative and quantitative statements derived from the outputs of a scientific and legally defensible data collection planning process.

"Day" shall mean a calendar day unless expressly stated otherwise.

"Effective Date" shall be the effective date of this Order pursuant to Section XXV.

"Facility" shall mean the buildings and other improvements on the Site located at 374 E. Joe Orr Road in Chicago Heights, Illinois.

"Hazardous Waste" shall have the meaning given at Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

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

"Site" shall mean the real property and improvements, including the Facility, located at 374 E. Joe Orr Road in Chicago Heights, Illinois, and which is situated approximately one and one-half miles west of I-394 (Bishop Ford Freeway) and one mile north of Route 30 (Lincoln Highway), a map of which is attached hereto as Exhibit 1.

"Solid Waste" shall have the meaning given at Section 1004(27) of RCRA, 42 U.S.C. §6903(27).

"START" shall mean Superfund Technical Assessment and Response Team.

"TCLP" shall mean Toxicity Characteristic Leaching Procedure, and refers, in the context of this Order, to the regulatory threshold values established for 40 organic and inorganic constituents. See 35 IAC 721.124 (40 CFR 261.24).

"Work" shall mean all the activities and requirements specified in this Order including, but not limited to Section VIII (Work to be Performed) of this Order.

V. FINDINGS OF FACT

9. The Site is located at 374 E. Joe Orr Road in Chicago Heights, Illinois.
10. Polychem Services Inc. was incorporated and registered to conduct business in Illinois. Polychem Holdings, Inc. was incorporated and registered to conduct business in Illinois. Polychem Services, Inc. and Polychem Holdings, Inc. (collectively "Polychem") are Respondents in this matter.
11. Polychem Holdings, Inc. is the present owner of the Site.
12. Polychem Services, Inc. is the present operator of the Site.
13. Heartland Polymers, Inc. was incorporated and registered to conduct business in Illinois. Heartland Polymers Realty, Inc. was incorporated and registered to conduct business in Illinois. Heartland Polymers, Inc., and Heartland Polymers Realty, Inc., (collectively "Heartland") are Respondents in this matter.
14. Heartland Polymers Realty, Inc., is the past owner of the Site.
15. Heartland Polymers, Inc. is the past operator of the Site.
16. Heartland Polymers Realty, Inc. conveyed the Site to Polychem Holdings, Inc. by a Corporation Warranty Deed dated December 12, 2008.
17. Heartland Polymers, Inc. sold the Facility's usable inventory and facility property to Polychem Services, Inc. by a Bill of Sale dated December 12, 2008.
18. Heartland Polymers, Inc., and Polychem Services, Inc. entered into a Removal and Disposal Agreement dated November 3, 2008, for the removal and off-site disposal of waste materials left at the Site from Heartland Polymers' operations (described in the agreement as the "Unusable Inventory"). Under the Removal and Disposal Agreement, Heartland Polymers, Inc., and Polychem Services, Inc., agreed to establish an escrow account at Harris Bank at the time of

closing in the name of Heartland Polymers Realty, Inc., for the sole purpose of coordinating and ensuring payment for the removal and disposal of the Unusable Inventory. An escrow account was established at Harris Bank in the name of Heartland Polymers Realty, Inc. with an initial account balance of \$300,000.00. Heartland Polymers, Inc. hired JAS Environmental, Inc. (JAS), to perform all of the tasks set forth in a Waste Management Plan developed by JAS and dated February 20, 2009 to carry out the requirements of the Removal and Disposal Agreement. Funds from the escrow account were used to remove and dispose of some or all of the Unusable Inventory pursuant to the Waste Management Plan, and as of September 30, 2010, \$97,902.26 remained in the escrow account at Harris Bank. Solid and/or Hazardous Waste remained at the Facility following the removal and disposal of some or all of the Unusable Inventory pursuant to the Removal and Disposal Agreement and Waste Management Plan.

19. Heartland Polymers Inc., operated, and Polychem Services Inc., now operates, a chemical processing plant at the Site that occupies a single building housed under approximately 25,000 square feet of roof and resting on approximately four acres of property in an industrial area of Chicago Heights, Illinois. The Site is located approximately one and one-half miles west of Interstate-394 (Bishop Ford Freeway) and one mile north of Illinois Route 30 (Lincoln Highway). The Site's geographical coordinates are 41° 30' 56.34" North latitude and 87° 37' 26.56" West longitude. See Exhibit 1.

20. The Site is bordered to the north by an Esmark Steel Group manufacturing facility; to the east by a railroad track and undeveloped land; to the south by a railroad track, undeveloped land, a vacant lot, and an industrial facility; and to the west by an unnamed access road, an Ace Hardware paint manufacturing facility, a railroad, and Joe Orr Woods (a Cook County forest preserve).

21. Residences are located approximately 0.36 mile southwest of the Site. The closest waterway is Thorn Creek approximately 0.35 mile west of the Site. The Thorn Creek Basin Sanitary District wastewater treatment plant (WWTP) is located approximately 0.18 mile northwest of the Site. A drainage ditch borders the Site to the west and runs north-south along the access road and a storm sewer is located adjacent to the northwest corner of the Site along the access road. The Dr. Charles E. Gavin Elementary School is located approximately 0.8 mile south of the Site. Jefferson Elementary School is located approximately one mile south of the Site. Bloom High School and Marion Catholic High School are located approximately 1.4 miles and two miles west of the Site, respectively. Prairie State College is located approximately one mile northwest of the Site.

22. The Site has been used for processing and chemical conversion of polyesters, alkyd resins, acrylic resins and thermal-pressure addition resins.

23. Polychem's current operations at the Facility include the recovery of dimethylethylamine (DMEA) from spent amine sulfate solutions from foundry operations.

24. As of January 2012, Polychem's only active process at the Facility was recovery of DMEA, as well as recovery of triethyleamine (TEA) and dimethylisopropylamine (DMIPA).

DMEA, TEA and DMIPA are received in totes and processed first by introducing a strong acid (typically 30% - 40% sulfuric acid (H_2SO_4) in solution) in a continuous stirred tank reactor (CSTR). From the CSTR the DMEA vapors are condensed and sent to a recovery tank where they are subsequently packaged and sold to Chemtech Services, Inc. (Chemtech), under a Multiple Release Purchase Order on a converted per-pound basis. TEA and DMIPA are sent to a holding vessel for an additional drying step prior to being packaged and sold to Chemtech.

25. DMEA, TEA and DMIPA are used in foundry operations to cure phenolic urethane cold box binders (PUCB). The amine – in any of the above three forms – is vaporized in the PUCB sand cores and subsequently captured in a scrubber which utilizes an aqueous solution of a strong acid, typically H_2SO_4 . The spent amines are recovered in an amine sulfate solution, recycled at Polychem for amine recovery, and subsequently resold to Chemtech, which then resells the recovered amines to the foundries.

26. On July 12, 2007, the Illinois Environmental Protection Agency (IEPA) conducted a RCRA compliance evaluation inspection of the Site, then owned and operated by Heartland. At that time, IEPA inspectors observed hundreds of 55-gallon steel drums marked with the words "Dirty Plant Solvent" or "Waste Solvent Resin." These drums were mingled among other drums designated as re-work materials. Most of these drums were staged inside the production building, although many were also staged outside in what IEPA designated as the "outdoor drum storage/courtyard area" in its July 12, 2007 inspection report. See Exhibit 2.

27. The findings of IEPA's inspection led to a Violation Notice (VN) being issued to Heartland Polymer and Heartland Realty on August 17, 2007. See Exhibit 3.

28. On May 16, 2008, IEPA re-inspected the Site, at which time Polychem Services, Inc. was the operator of the Site while ownership of the property was held by Heartland Realty, Inc. IEPA observed between 500 and 1000 containers consisting of 55-gallon drums and totes located outside on the north and east sides of the Site. IEPA also observed approximately 500 55-gallon drums of reusable solvent inside of the building. At the inspection, it was confirmed that Hazardous Waste shipments to the Lonestar Greencastle Waste Disposal Facility in Greencastle, Indiana were sent off-site from draw-down of Tank 241. See Exhibit 4.

29. On December 3, 2008, IEPA referred the matter over to EPA for formal enforcement.

30. On November 17, 2009, EPA, Land and Chemicals Division (LCD), and IEPA inspected the Site. Situated outside, along the western, northern and eastern sides of the Site were approximately 500 containers consisting of 55-gallon steel drums, totes and poly bags. Site conditions were poor because the containers were staged in such a way that access was difficult and aisle space was insufficient to allow for ease of movement or for emergency equipment to be easily moved in and out. Those drums and totes to which Hazardous Waste labels were affixed were either left undated or dated May 12, 2009. See Exhibit 5, Attachment No. 2, Photo Nos. 2-8, 10, 12-27, 29, 30, 32-37, 39, 40, 42-49.

31. On July 15, 2010, IEPA inspectors observed liquid run-off from the Site releasing off-site to the street that borders the Facility on the west. IEPA observed standing liquids which had pooled in the northwest corner of the Site. IEPA also observed liquids running off-site to the storm sewer in the street, as well as leaking poly bags, open containers and evidence of historical spillage onto the Site's blacktop. See Exhibit 6, Attachment No. 1, Photo Nos. 3-6.

32. On August 5, 2010, EPA, LCD, inspected the Site. There were approximately 550 to 600 55-gallon steel drums staged on the blacktop on the northwest and west sides of the Site. Numerous drums were either unlabeled, found to have illegible labels or were inaccessible. At least 110 drums were verified to have Hazardous Waste labels that were either dated May 12, 2009, or left undated. EPA observed several areas where liquid had pooled on the blacktop. Liquids from the Site flowed to the storm sewer in the street bordering the Site on the west, approximately 20 feet northwest of the shipping and receiving gate in the northwest corner of the Site. EPA observed stains on the ground evidencing historical releases. See Exhibit 6, Attachment No. 2, Photo Nos. 14-17, 19, 23, 24, 28, 32-35, 38-42, 44-49, 51, 53-56, 58, 59, 69.

33. On January 18, 2012, EPA, Superfund Division (SFD), and LCD re-inspected the Site. The EPA SFD On-Scene Coordinator (OSC) was accompanied by EPA's START contractor Weston Solutions. On the day of the inspection, EPA observed at least 130 labeled drums of Hazardous Waste on the west side of the Site, just north of the product tank farm. EPA observed liquids on the ground in this area, but they were frozen at the time of the inspection. See Exhibit 7, Photo Nos. 1-4, 6-8.

34. During the November 17, 2009, July 10, 2010, August 5, 2010 and January 18, 2012 inspections, EPA and/or IEPA inspectors observed liquids on the ground, staining of pavement from past liquids on the ground, evidence of off-site releases along the western property boundary and damaged drums and totes. See Exhibit 5, Attachment No. 2, Photo Nos. 10, 12-37, 40, 42-49; Exhibit 6, Attachment No. 1, Photo Nos. 1-12; Exhibit 6, Attachment No. 2, Photo Nos. 5-9, 11, 12, 14-17, 19, 21, 23, 25-36, 38, 41-60, 64, 69-74, 80-82; Exhibit 7, Photo Nos. 1-20; Exhibit 9.

35. At the time of the November 17, 2009, July 15, 2010, August 5, 2010, and January 18, 2012 inspections, EPA and/or IEPA inspectors observed and photographed scores of Hazardous Waste containers holding ignitable waste situated within 50 feet of the Facility's western and northern property lines. See Exhibit 5, Attachment No. 2, Photo Nos. 2-6, 8, 10, 12-37, 40, 42-47; Exhibit 6, Attachment No. 1, Photo Nos. 1, 3-6; Exhibit 6, Attachment No. 2, Photo Nos. 1, 9, 14-17, 19, 23, 28, 33-35, 38, 41, 51, 54-56, 58-60, 62-64, 66, 69; Exhibit 7, Photo Nos. 1-4, 6-8.

36. Owners and operators of storage facilities must ensure that containers holding ignitable or reactive Hazardous Waste must be located at least 15 meters (50 feet) from the facility's property line. See 35 IAC § 725.276 (40 CFR § 265.176). Polychem Services, Inc. was operating the Facility in violation of 35 IAC § 725.276 (40 CFR § 265.176), and the proximity of flammable wastes near its property line placed Polychem employees and individuals working off-site and adjacent to the Facility in potential danger.

37. On January 25-27, 2012, the EPA OSC and START contractor Weston Solutions conducted a Site Assessment under CERCLA.

38. At the time of the January 25-27, 2012 Site Assessment, EPA documented the presence of approximately 592 drums, 53 totes, and 26 cubic-yard containers in the west and northwest regions of the Site. See Exhibit 8, pg. 2 and Figure 3; Exhibit 9, pg. 4.

39. Of the approximately 671 containers referred to in ¶ 38, above, 59 were leaking and 46 were open. Of these containers, 207 were labeled, "Hazardous," "Flammable," or "Corrosive," while 313 containers were either unlabeled or had illegible labels. See Exhibit 8, pg. 2.

40. At the time of the January 25-27, 2012 Site Assessment, EPA observed surface water containing oily product and sheen flowing from an area where the drums were staged in the northwest corner of the Site to an adjacent off-site storm sewer. See Exhibit 8, pg. 2. A surface water sample collected by EPA confirmed the presence of volatile and semi-volatile organic compounds in the surface water flowing off-site. See Exhibit 8, pg. 3 and Table 1, Field Sample ID PS-W01-012512.

41. At the time of the January 25-27, 2012 Site Assessment, EPA collected waste liquid samples from three leaking drums. These samples confirmed that three of the leaking drums had a flash point below 140 °F: (i) Field Sample ID PS-WL11-012612 had a flash point of 84 °F; (ii) Field Sample ID PS-WL12-012612 had a flash point of 108 °F; and (iii) Field Sample ID PS-WL13-012612 had a flash point of 120 °F. A Solid Waste exhibits the characteristic of ignitability if a representative sample of the waste is a liquid and has a flash point of less than 140 °F. Therefore, on the basis of the above results, three of the leaking drums contained a characteristic Hazardous Waste, having the characteristic of ignitability. Solid Wastes exhibiting the characteristic of ignitability are designated the EPA Hazardous Waste Number of D001. See 35 IAC 721.121 (40 CFR 261.21). See Exhibit 5, pg. 3 and Table 1, Field Sample ID PS-WL11-012612, Field Sample ID PS-WL12-012612; and Field Sample ID PS-WL13-012612.

42. At the time of the January 25-27, 2012 Site Assessment, one of the samples collected from the three leaking drums referred to in ¶ 41, above, exceeded the TCLP regulatory threshold for 2-Butanone (methyl ethyl ketone, or MEK) and benzene. Field Sample ID PS-WL11-012612 was analyzed for TCLP volatiles. The laboratory results show TCLP concentrations of 800 milligrams per liter (mg/L) for MEK and 700 mg/L for benzene. These results exceed the TCLP regulatory threshold values of 200 mg/L and 0.5 mg/L, respectively. The drum from which Field Sample ID PS-WL11-012612 was taken contains a RCRA characteristic Hazardous Waste on the basis of the toxicity characteristic with waste codes D035 (MEK) and D018 (benzene). See Exhibit 8, pg. 3 and Table 1, Field Sample ID PS-WL11-012612.

43. At the time of the January 25-27, 2012 Site Assessment, EPA documented the presence of approximately 356 drums and 662 totes in the northeast, east and southeast regions

of the Site. See Exhibit 9, pg. 5.

44. Of the 1018 containers referred to in ¶ 43, above, seven were leaking contents onto the ground and two were open. Approximately three-fourths of the containers observed were labeled, "DMEA Sulfate Solution." Other containers were labeled, "DMIPA Sulfate Solution," "Corrosive," "Liquid Isocyanate Resin," "Xylene," or "Spent Scrubber Solution." EPA observed many totes and drums to be in poor condition due to cracking, bulging and solar damage. See Exhibit 9, pg. 5 and Appendix A, Photo No. 8.

45. At the time of the January 25-27, 2012 Site Assessment, EPA collected waste samples from two totes. Field Sample ID PS-WL07-012612 and Field Sample ID PS-WS02-012612, taken from the northwest and southeast regions of the Site, respectively, had pH values of 13.1 and 13.6 standard units, respectively. Therefore, the wastes associated with these two samples are Hazardous Waste for the characteristic of corrosivity (waste code D002). See 35 IAC 721.122 (40 CFR 261.22). See Exhibit 9, pg. 12 and Table 3-2.

46. Owners and operators of storage facilities must design, construct, maintain and operate their facilities in such a way as to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of Hazardous Waste to air, soil or surface water which could pose a threat to health or the environment. See 35 IAC § 724.131 (40 CFR § 264.31). Polychem Services Inc. was operating the Facility in violation of 35 IAC § 724.131 (40 CFR § 264.31), and the leaking and open drums and containers posed a threat of fire, explosion or release of Hazardous Waste and posed a threat to health or the environment.

47. On January 30, 2012, EPA SFD issued Polychem Services, Inc. a verbal notice informing it that EPA planned to conduct an emergency removal ("ER") action pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and giving Polychem Services, Inc. the opportunity to hire a contractor to perform the ER under EPA SFD oversight. Polychem Services, Inc. agreed to hire a contractor to perform the ER under EPA SFD oversight, and on February 3 and 6, 2012, Polychem Services, Inc. contractors EMCO Chemical Distributors, Inc. and R3 Environmental over-packed sixty (60) leaking drums, secured lids on 17 other drums, secured eight (8) open totes and stopped off-site releases of hazardous substances or pollutants in the northwest region of the Site by placing absorbent booms along the western fence line and near the area where drums were observed to be leaking in the northwest region of the Site. These ER actions were conducted under the supervision of the EPA OSC and START contractor Weston Solutions. See Exhibit 8, Photographs 2 and 11; Exhibit 9, pg. 12.

48. While the ER stabilized the Site temporarily, large quantities of waste remain at the Site in steel drums and plastic totes, many of which contain ignitable and corrosive liquids and solids. Many of these drums and totes are deteriorating and in poor condition. The drums contain ignitable resins, spent non-halogenated solvents, corrosives, lime sludges, and numerous unknown liquids and solids. Weston Solution's March 2012 Final Letter Report summarizes the analytical results of the leaking containers and surface water at the Site. That report concludes that over 900 drums and 700 totes remain at the Site, hundreds of which are suspected to contain thousands of gallons of Hazardous Waste. Numerous containers and drums were found to be in

poor condition and found to be cracking, bulging, or to have solar damage. The Final Letter Report concludes that "[t]here is a possibility that these containers will fail in the next few months. The threat of release from these containers and threat to public health and the environment remain high at the Site and additional response actions are necessary." See Exhibit 8, page 5 and Table 1 of Attachment C.

49. Many of the drums, totes and other containers contain material that is either listed or characteristic Hazardous Waste for toxicity, corrosivity, or ignitability. These substances include, but are not limited to, 2-Butanone (methyl ethyl ketone, or MEK) and benzene, which are volatile organic compounds (VOCs) found in leaking drums at the Site and that exceed the Hazardous Waste regulatory limits in 40 C.F.R. Part 261, Subpart C, using the TCLP. In addition, EPA documented VOCs in water flowing off-site into the adjacent storm sewer. See Exhibit 8, page 3.

50. According to the Agency for Toxic Substances and Disease Registry, the U.S. Department of Health and Human Services, the International Agency for Research on Cancer (IARC) and EPA, human health studies indicate that benzene is a known carcinogen. Breathing high levels of benzene can cause dizziness, rapid heartbeat, headaches, confusion and unconsciousness, and long-term exposure to benzene can have harmful effects on bone marrow and can cause a decrease in red blood cells leading to anemia. MEK is highly flammable and has a high vapor pressure. Acute human exposure to high concentrations of MEK vapor can result in irritation to the eyes, nose and throat. There is insufficient data to link MEK as a human or animal carcinogen. DMEA is extremely flammable and is corrosive to the eyes, skin and digestive tract. Inhalation of DMEA vapors can result in irritation to the eyes and respiratory system. TEA and DMIPA are also extremely flammable and corrosive compounds which can cause burns to the eyes, skin or respiratory tract.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

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

- a. Each Respondent is a "person" within the meaning of Section 1004(15) of the Act, 42 U.S.C. § 6903(15).
- b. The Site is a "facility" as defined by 40 C.F.R. § 260.10.
- c. Respondent Polychem Services, Inc. is the present operator of the Facility.
- d. Respondent Polychem Holdings, Inc. is the present owner of the Facility.
- e. Respondent Heartland Polymers, Inc. is the past operator of the Facility.

f. Respondent Heartland Polymers Realty, Inc. is the past owner of the Facility.

g. Spent solvents (MEK, benzene, xylene, solvent mixtures), flammable wastes and caustic solutions (having the characteristic of corrosivity) at the Facility are discarded material and thus "solid waste" as defined in Section 1004(27) of the Act, 42 U.S.C. § 6903(27). Each of these Solid Wastes is also a "hazardous waste" as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), because it may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or pose a substantial present or potential hazard to health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. In addition, each of these Solid Wastes is also a "hazardous waste" under 40 C.F.R. Part 261, as either a listed or characteristic Hazardous Waste or Hazardous Waste constituent.

h. The Respondents have contributed and/or are contributing to the past and/or present handling, storage, treatment, transportation or disposal of Solid Waste and/or Hazardous Waste at the Facility that may present an imminent and substantial endangerment to health and/or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

i. The Respondents' handling, storage, treatment, transportation or disposal of Solid and/or Hazardous Waste at the Facility has resulted in releases of Solid and/or Hazardous Waste to the environment that may present an imminent and substantial endangerment to health and/or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a). Specifically, liquid from leaking drums containing volatile and semi-volatile compounds, including MEK and benzene, was released at the Facility. Some of the released liquid waste from drums flowed beyond the Facility boundaries to an adjacent off-site storm sewer. In addition, large quantities of Solid and Hazardous Waste that is ignitable, toxic or corrosive remain stored at the Facility in metal drums and plastic totes, which are deteriorating and in poor condition, are a fire hazard, or pose a threat of additional release. The Facility is located near other industrial properties and Interstate-394 (Bishop Form Freeway) and Illinois Route 30 (Lincoln Highway); residential properties and Thorn Creek are located less than half a mile from the Facility, and two elementary schools are located within approximately one mile of the Facility.

j. Imminent and Substantial Endangerment. The past and present handling, storage, treatment, transportation or disposal of Solid and/or Hazardous Waste, including ignitable waste solvents, caustic amine sulfate solution, and VOCs such as MEK and benzene, at the Site may present an imminent and substantial endangerment to health and/or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

k. The actions required by this Order are necessary to protect health or the environment because Hazardous Waste has been released at the Facility and has flowed beyond the Facility's boundaries, and large quantities of Solid and/or Hazardous Waste remains stored at the Facility in drums and totes, which are deteriorating and in poor condition, are a fire hazard, or pose a threat of additional release, potentially endangering health and the environment.

VII. ORDER

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

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

VIII. WORK TO BE PERFORMED

54. Project Coordinator. On or before the Effective Date of this Order, Respondents shall designate their respective Project Coordinator(s). Respondents shall notify EPA in writing within five (5) days of the Effective Date of this Order of the name, address, phone number, electronic mail address and qualifications of their Project Coordinator(s). The EPA Project Coordinator will be: Michael Valentino, Mail Code: LR-8J, RCRA Branch, Land and Chemicals Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590, phone: (312) 886-4582; Email: valentino.michael@epa.gov. EPA may also designate an Alternate Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Order. EPA and Respondents have the right to change their respective Project Coordinators. The other party must be notified in writing at least ten (10) days prior to the change.

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

56. The EPA Project Coordinator shall be EPA's designated representative for the Site. Unless otherwise provided in this Order, all reports, correspondence, notices, or other submittals relating to or required under this Order shall be in writing and shall be sent to the EPA Project Coordinator at the address specified in ¶ 54, above, unless notice is given in writing to Respondents of a change in address. Reports, correspondence, notices or other submittals shall be delivered by U.S. Postal Service, private courier service or electronic mail. All correspondence shall include a reference to the case caption EPA Docket No. RCRA 7003 RCRA-05-2012-0014

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

58. Respondents' obligation to perform the Work will begin on the Effective Date of this Order.

59. Work to be performed under this Order shall include, but not be limited to, the following:

- (i) Respondents shall take a current inventory of each and every tank at the Site, which shall include tank level measurements (including the amount of the tanks' contents, expressed as gallons and/or pounds) and description of tank contents, and Respondents shall characterize the contents of each tank at the Site found to contain materials (liquid, solid or a mixture of each) to determine if the Solid Wastes in those tanks are characteristic Hazardous Wastes pursuant to 35 IAC 721 Subpart C (40 CFR 261 Subpart C) or listed Hazardous Wastes pursuant to 35 IAC 721 Subpart D (40 CFR 261 Subpart D).
- (ii) Respondents shall dispose off-site at a RCRA permitted treatment, storage and disposal facility all Solid Wastes from those tanks which are determined under ¶ 59(i) of this Order to contain RCRA characteristic and/or listed Hazardous Waste.
- (iii) Respondents shall determine for any drum, tote, barrel, bucket or any other container storing non-usable materials at the Site for which a Hazardous Waste determination has not been made as of the Effective Date of this Order, if the Solid Wastes in any such containers are characteristic or listed Hazardous Wastes pursuant to 35 IAC 721 Subpart C (40 CFR 261 Subpart C) and 35 IAC 721 Subpart D (40 CFR 261 Subpart D), respectively.

- (iv) Respondents shall dispose off-site at a RCRA Subtitle C permitted treatment, storage and disposal facility all Hazardous Waste in any drum, tote, barrel, bucket or any other container at the Site which were determined under ¶ 59(iii) of this Order to be RCRA characteristic and/or listed Hazardous Waste.
- (v) Respondents shall dispose off-site at a RCRA Subtitle C permitted treatment, storage and disposal facility all non-usable materials in tanks, drums, totes or other containers at the Site for which Hazardous Waste determinations have been completed prior to the Effective Date of this Order and said contents are determined to be a characteristic Hazardous Waste pursuant to 35 IAC 721 Subpart C (40 CFR 261 Subpart C) and/or a listed Hazardous Waste pursuant to 35 IAC 721 Subpart D (40 CFR 261 Subpart D).
- (vi) Respondents shall identify any on-site and off-site releases of Solid or Hazardous Waste from the Site.
- (vii) Where on-site and/or off-site releases of Solid or Hazardous Waste from the Site have been identified by Respondents in accordance with ¶ 59(vi) of this Order, Respondents shall disclose, in writing, all such releases within forty-eight (48) hours to the EPA Project Coordinator.
- (viii) Where Respondents have identified an on-site and/or off-site release of Solid or Hazardous Waste from the Site in accordance with ¶ 59(vi) of this Order, or where EPA has identified an on-site and/or off-site release of Solid or Hazardous Waste from the Site, Respondents shall submit to EPA within ten (10) calendar days of discovering the release a written plan to obtain soil, sediment, groundwater and/or surface water samples in order to delineate the extent of the release, and Respondents shall present remedial action alternatives to respond to any such release and to address any imminent risks posed to health and the environment resulting from the release.
- (ix) Within five (5) days of EPA's approval of Respondents' proposed remedial actions, or within five (5) days of EPA's presentation of its recommended remedial action for any such release identified and addressed according to ¶ 59(vi), (vii), (viii) of this Order, Respondents shall initiate response measures to address any such release.
- (x) Respondents shall conduct air monitoring during all phases of the Work required under this Order in order to ensure the health and safety of all on-site workers employed by or contracted by Respondents, EPA and IEPA oversight personnel and their contractors, employees of the Facility and the general populace in proximity to the Site.

- (xi) Respondents shall ensure that all totes containing DMEA, TEA or DMIPA are in good condition, free of cracks or any structural damage and free of oxidation and/or solar damage of the plastic which may constitute a short-term or long-term risk of release of the contents.
- (xii) Respondents shall immediately identify and over-pack any containers found to be damaged, and dispose of the contents of any such containers accordingly, after waste determinations under ¶ 59(iii) of this Order are completed, or if the container holds DMEA, TEA or DMIPA awaiting processing, Respondents shall transfer the contents to a secure container in good condition.
- (xiii) Respondents shall identify the contents of any container on the attached container inventory (See Exhibit 10) for which the contents were unknown as of the date of the inventory, and for any such container, Respondents shall ensure that waste characterization in accordance with ¶ 59(iii) of this Order is completed.
- (xiv) Respondents shall package and transport all Hazardous Waste and Solid Waste identified for disposal in accordance with applicable Department of Transportation requirements.
- (xv) Respondents shall promptly post notice visible at the entrance to the Site that EPA has determined that Hazardous Waste at the Site presents an imminent and substantial endangerment to public health and the environment.
- (xvi) For each tank identified in accordance with ¶ 59(i) of this Order that is found to contain Hazardous Waste, and for any tank previously known to have stored Hazardous Waste, Respondents shall close each tank in accordance with applicable RCRA tank closure requirements if Respondents do not intend on using the tank to store Hazardous Waste in the future, or Respondents must obtain a written tank assessment by a qualified professional engineer, install secondary containment, and manage these tanks according to applicable Hazardous Waste tank requirements if Respondents intend on using the tank to continue to store Hazardous Waste. See 35 IAC Subpart J (40 CFR 264 Subpart J).

60. In addition to the above Work outlined in ¶ 59 of this Order, Polychem shall, for as long as it continues to recover DMEA, TEA and/or DMIPA from spent amine solutions, implement and maintain an internal tracking system by which each container of DMEA, TEA and/or DMIPA received at the Site is logged into a database and tracked until processed at the Site or transferred off-site for recycling, and Polychem shall ensure that for each calendar year, beginning on January 1, DMEA, TEA and/or DMIPA does not remain on-site or is left unprocessed in such a way as to constitute speculative accumulation, as that term is defined by

regulation. See 35 IAC 721.101(c)(8) and 35 IAC 721.102(c)(4)[40 CFR 261.1(c)(8) and 40 CFR 261.2(c)(4)].

61. The Work undertaken pursuant to this Order shall be conducted in compliance with all applicable EPA guidance, policies and procedures, and with this Order, and is subject to EPA approval.

62. Within thirty (30) days of the Effective Date of this Order, Respondents shall submit to EPA a Work Plan describing the Work to be completed at the Site and as identified in ¶ 59, above.

63. The Work Plan shall include a schedule of the Work to be performed. The Work Plan shall be submitted to EPA for approval. Following EPA's approval or modification of the Work Plan pursuant to ¶ 67, below, Respondents shall implement the Work Plan in accordance with the schedule and provisions approved by EPA.

64. Health and Safety Plan. Respondents shall develop a Health and Safety Plan, including an Air Monitoring Plan, Site Emergency Contingency Plan and Site Security Plan, and said plans shall be implemented during the Work performed under this Order. The Health and Safety plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations pursuant to 29 CFR 1910.120.

65. The Health and Safety Plan, Air Monitoring Plan, Site Emergency Contingency Plan and Site Security Plan shall be submitted to EPA within thirty (30) days of the Effective Date of this Order.

IX. EPA APPROVAL OF DELIVERABLES

66. Deliverables required by this Order shall be submitted to EPA for approval or modification pursuant to ¶ 67, below. All deliverables must be received at EPA by the due date specified in this Order or by schedules developed pursuant to this Order.

67. After review of any deliverable that is required pursuant to this Order, EPA will: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) modify the submission to cure the deficiencies; (iv) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (v) any combination of the above. However, EPA will not modify a submission without first providing Respondents at least one notice of deficiency and an opportunity to cure within ten (10) days, except where EPA determines that to do so would cause serious disruption to the Work or where EPA has disapproved previous submission(s) due to material defects and EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

68. In the event of approval, approval upon conditions, or modification by EPA, pursuant to ¶ 67(i), (ii) or (iii), above, Respondents shall proceed to take any action required by the deliverable, as approved or modified by EPA.

69. Resubmission of Deliverable. Upon receipt of a notice of disapproval, in whole or in part, pursuant to ¶ 67(iv), Respondents shall, within ten (10) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval.

70. Notwithstanding the receipt of a notice of disapproval pursuant to ¶ 67(iv), Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for penalties for non-compliance regarding the deficient portion of the deliverable.

71. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondents to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Respondents shall implement any action as required in a deliverable that has been modified or developed by EPA.

72. If upon resubmission, a deliverable is disapproved or modified by EPA due to a material defect, Respondents shall be deemed to have failed to submit such deliverable timely and adequately.

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

X. MODIFICATION OF THE WORK PLAN

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

75. Emergency Response. In the event of any action or occurrence during the performance of the Work that constitutes an emergency situation or may present an immediate

threat to health or the environment, Respondents shall immediately take all appropriate action to minimize such emergency or threat, and shall immediately notify the EPA's Project Coordinator. Respondents shall take such immediate and appropriate actions in consultation with EPA's Project Coordinator. Respondents shall then submit to EPA written notification of such emergency or threat at the Site within three (3) calendar days of such discovery. Respondents shall thereafter submit to EPA for approval, within twenty (20) days, a plan to mitigate this threat. EPA will approve or modify this plan, and Respondents shall implement this plan as approved or modified by EPA. In the case of an extreme emergency, Respondents may act as they deem appropriate, at their own risk, to protect human health or the environment.

XI. QUALITY ASSURANCE

76. As part of the Work Plan, Respondents shall include a Quality Assurance Project Plan (QAPP), for EPA review and approval. The QAPP shall address quality assurance, quality control, and chain of custody procedures for all sampling, monitoring and analytical activities. Respondents shall follow "EPA Requirements for Quality Assurance Project Plans" (QA/R5)" (EPA/240/B-01/003, March 2001, (reissued May 2006)), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/b-01/002, March 2001) as well as other applicable documents identified by EPA. The QAPP shall be incorporated into this Order by reference.

77. As part of the Work Plan, Respondents shall include Data Quality Objectives for any data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use as required by this Order.

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

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

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

81. Respondents shall allow split or duplicate samples to be taken by EPA or its authorized representatives, of any samples collected by Respondents. Respondents shall notify EPA no less than seven (7) days in advance of any sample collection activity conducted pursuant to the Order.

XII. ADMINISTRATIVE DOCUMENTATION

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

83. If a decision document for the Site is developed, EPA will provide Respondents with a copy.

84. Submission of Documentation. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA, documents developed during the course of performing the Work upon which selection of the response action may be based. EPA will maintain an administrative record file. The administrative record supporting this Order and the Work to be performed shall be available for public review at the Metcalfe Federal Building, 77 West Jackson Boulevard, 7th Floor Records Center, Chicago, Illinois, 60604. The records contained in the administrative record supporting this Order are listed in the Administrative Record Index at Exhibit 11.

XIII. DOCUMENT CERTIFICATION

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

86. The certification required by ¶ 85 above, shall be in the following form:

I certify under penalty of law that this document and all attachments were

prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____
Date: _____

XIV. SAMPLING, ACCESS AND DATA AVAILABILITY

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

88. Respondents shall orally notify EPA at least seven (7) days prior to conducting field sampling. At EPA's request, Respondents shall allow split or duplicate samples to be taken by EPA or EPA's representative.

89. Site Access. Pursuant to RCRA § 3007(a), 42 U.S.C. § 6927(a), Respondents shall provide access to the Site at reasonable times to EPA, EPA's contractors and oversight officials. Respondents shall also provide access at reasonable times to EPA, EPA's contractors and oversight officials to all records and documentation in its possession or control, including those records and documents in the possession or control of Respondents' contractors and employees, related to the conditions at the Site and the actions conducted pursuant to this Order. Respondents shall use their best efforts to gain access to areas owned by or in the possession of someone other than Respondents, as necessary to implement this Order, as described in ¶ 91, below. Such access shall be provided to EPA, its contractors and oversight officials. These individuals shall be permitted to move freely about the Site and appropriate off-site areas in order to conduct actions that EPA determines to be necessary. EPA, its contractors, and oversight officials shall notify Respondents of their presence on the Site by presenting their credentials. All parties with access to the Site under this paragraph shall comply with all approved health and safety plans and regulations.

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

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

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

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

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

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

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

XV. COMPLIANCE WITH OTHER LAWS

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

XVI. RECORD RETENTION

98. Respondents shall preserve and make available to EPA all records and information, including raw data, relating to the Work performed under this Order, or relating to any Solid Waste or Hazardous Waste found at the Site, for five (5) years following completion of the Work required by this Order.

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

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

101. After the five (5) year retention period and ninety (90) days before any document or information is destroyed, Respondents shall notify EPA and the State of Illinois that such documents and information are available for inspection, and upon request, shall provide the originals or copies (at no extra cost) of such documents and information to EPA or the State of Illinois. Notification shall be in writing and shall reference the Effective Date, caption, and

docket number of this Order and shall be addressed to EPA's Director, Land and Chemicals Division. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the 5 year retention period at the written request of EPA.

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

XVII. PENALTIES

103. Civil Penalties. Violation of this Order may subject Respondents to civil penalties of up to seven thousand five hundred dollars (\$7,500.00) per violation per day. The assessment of penalties are provided for in Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461 note. Should Respondents violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to any applicable authorities, and/or may seek judicial enforcement of this Order.

XVIII. RESERVATION OF RIGHTS

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

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

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

107. This Order is not intended to be nor shall it be construed to be a permit. EPA's approval of the Work and/or Work Plan does not constitute a warranty or representation that the Work and/or Work Plans will achieve the required cleanup or performance standards. Compliance by Respondents with the terms of this Order shall not relieve Respondents of their

obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

XIX. OTHER CLAIMS

108. 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. The United States or EPA will not be deemed a party to any contract, agreement or other arrangement entered into by Respondents or their officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this Order.

XX. INSURANCE

109. Prior to commencing the on-site Work under this Order, Respondents shall secure, and shall maintain in force for the duration of this Order, and for two (2) years after the completion of all activities required by this Order, comprehensive general liability insurance and automobile insurance with limits of two million dollars (\$2,000,000.00), combined single limit, naming EPA as an additional insured. Prior to commencement of the Work under this Order, and annually thereafter on the anniversary of the Effective Date of this Order, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondents demonstrate by evidence satisfactory to EPA that their contractors and subcontractors maintain insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by the contractors and subcontractors.

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

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

XXI. COST ESTIMATES AND FINANCIAL ASSURANCE

112. Cost Estimates. Within thirty (30) days after the Effective Date of this Order Respondents shall submit to EPA a detailed written initial estimate, in current dollars, of the cost of hiring a third party to perform the Work described in Section VIII (Work to be Performed). A third party is a party who: (i) is neither a parent nor a subsidiary of any of the Respondents and (ii) does not share a common parent or subsidiary with any of the Respondents. The initial cost

estimate must account for the total costs of the work activities described in Section VIII (Work to be Performed) for the entire period of this Order, including any necessary long term costs, such as operation and maintenance costs, monitoring costs, and institutional controls. The cost estimate must not incorporate any salvage value that may be realized from the sale of wastes, facility structures or equipment, land or other assets associated with the Site. The cost estimate shall include a schedule to complete the Work described in Section VIII (Work to be Performed).

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

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

115. Assurances of Financial Responsibility for Completing the Work. If the Work is expected to exceed six (6) months as detailed in the schedule to be submitted as part of the cost estimate under ¶ 112, in order to secure the completion of the Work in accordance with this Order, Respondents shall establish financial assurance in the form of a trust fund administered by a trustee who has the authority to act as a trustee under federal or state law and whose trust operations are regulated and examined by a U.S. federal or state agency and that is acceptable in all respects to the EPA. The trust agreement shall provide that the trustee shall make payments from the fund only for the costs of performing the Work required under this Order, and only after EPA has advised the trustee that the Work has been performed in accordance with the requirements of the approved Work Plans. The trust agreement shall further provide that the trustee shall not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the Work under this Order has been successfully completed.

116. If financial assurance is required under ¶ 115, Respondents shall submit a draft trust agreement to EPA for review pursuant to Section IX (EPA Approval of Deliverables) within thirty (30) days after the Effective Date of this Order, concurrently with Respondents' submission of the initial cost estimate required by ¶ 112. The trust agreement shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion.

117. Within thirty (30) days after EPA's approval of both the initial cost estimate and the draft trust agreement, whichever date is later, Respondents shall establish a trust fund in an amount at least equal to the initial cost estimate approved by EPA.

118. If financial assurance is required, Respondents shall submit an original copy of the trust agreement to: Craig Melodia, Associate Regional Counsel, Office of Regional Counsel, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590.

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

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

121. Release of Financial Assurance. Respondents may submit a written request to the Director, Land and Chemicals Division, EPA Region 5, that EPA release Respondents from the requirement to maintain financial assurance under this Section at such time as EPA has provided written notice, pursuant to Section XXIV (Termination and Satisfaction) that Respondents have demonstrated that all the terms of this Order have been addressed to the satisfaction of EPA. The Director, Land and Chemicals Division, shall notify Respondents and the Trustee in writing that Respondents are released from all financial assurance obligations under this Order.

XXII. ADDITIONAL WORK

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

XXIII. TERMINATION AND SATISFACTION

123. The provisions of this Order shall be deemed terminated and satisfied by Respondents upon written notice from EPA that Respondents have demonstrated that all of the terms of this Order, including any additional work as may be performed pursuant to Section XXII (Additional Work), have been addressed to the satisfaction of EPA. Termination of this Order shall not terminate Respondents' obligation to comply with: Sections XIV (Sampling, Access and Data Availability); XVI (Record Retention); and XVIII (Reservation of Rights) of this Order.

XXIV. SEVERABILITY

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

XXV. EFFECTIVE DATE

125. This Order shall be effective fourteen (14) days after the date on which it is signed by the Director, Land and Chemicals Division, EPA, Region 5 (the "Effective Date"), unless EPA agrees to modify the Effective Date.

XXVI. OPPORTUNITY TO CONFER

126. Respondents have the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for this Order, the terms of this Order, and the applicability of this Order to each Respondent. Prior to the Effective Date of this Order, Respondents may request a conference regarding this Order with EPA. If requested, the conference shall occur within ten (10) days of the request, unless extended by EPA, and shall take place at EPA's offices, 77 W. Jackson Boulevard, Chicago, Illinois. EPA shall deem a failure to request a conference as a waiver of the opportunity to confer.

127. At any conference held pursuant to this section, Respondents may appear in person, or be represented by an attorney or other representative. Respondents may request a conference with EPA as a group, or separately. Respondents shall contact Craig Melodia, EPA Attorney, at (312) 353-8870, to request a conference.

128. If such a conference is held, Respondents may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations on which the Order is based, the appropriateness of any action that the Respondents are ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to

writing and submitted to EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to enforce this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no formal transcript of the conference will be made.

129. Whether or not Respondents request a conference, Respondents may submit evidence, arguments or comments on the validity and necessity of this Order, and the applicability of this Order to Respondents in writing prior to the Effective Date of this Order. EPA will add to the administrative record any relevant and material information that Respondents provide prior to the Effective Date of this Order. Any such writing should be directed to Craig Melodia, at the following address:

U.S. Environmental Protection Agency, Region 5
Office of Regional Counsel (C-14J)
77 W. Jackson Blvd.
Chicago, IL 60604-3590

130. If after a conference is held and/or relevant and material information is submitted EPA determines that any element of this Order warrants modification or revocation, EPA will modify or revoke this Order in whole or in part in writing and issue a copy to the Respondents.

131. Except as otherwise provided in this Order, no modification to or revocation of this Order shall be effective unless and until it is issued in writing by EPA.

132. Respondents are hereby placed on notice that EPA will take any action that may be necessary in the opinion of EPA for the protection of public health and welfare and the environment, and that any information submitted pursuant to this section may be used in any subsequent civil or criminal proceeding.

XXVII. MODIFICATION OF THIS ORDER

133. Except for Modification of the Work Plan as provided in Section X, this Order may only be modified by EPA. Any modification shall: be in writing; have as their effective date the date on which they are signed by EPA; and be incorporated into this Order.

134. 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 unless it is formally modified. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this Order are, upon approval by EPA, incorporated into and enforceable under this Order.

XXVIII. NOTICE OF INTENT TO COMPLY

135. Each Respondent shall, prior to the Effective Date of this Order, provide written notice to EPA of Respondent's irrevocable intent to comply with this Order. Failure to respond, or failure to agree to fully and completely comply with this Order, shall be deemed a refusal to comply with this Order.

IT IS SO ORDERED this 26th day of September, 2012

By:



Margaret M. Guerriero
Director
Land and Chemicals Division
EPA Region 5

RECEIVED

SEP 27 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY