

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY DIRECTOR'S JOURNAL

In the Matter of:

City of Mansfield  
30 North Diamond Street  
Mansfield, Ohio 44902

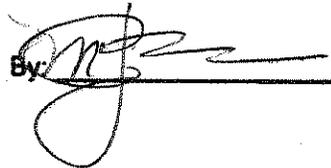
Respondent

Director's Final  
Findings and Orders  
Interim Action and  
Cost Recovery  
Settlement Agreement

For the Site Known As:

Mansfield City Dump  
Cairns Road  
Mansfield, Ohio 44902

I certify this to be a true and accurate copy of the  
official documents as filed in the records of the Ohio  
Environmental Protection Agency.

By: 

Date: 9-13-13

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## **PREAMBLE**

It is hereby agreed to by the Parties as follows:

### **I. JURISDICTION**

1. These agreed Director's Final Findings and Orders (Orders) are issued to the City of Mansfield (Respondent) pursuant to the authority vested in the Director of Ohio EPA under Ohio Revised Code (ORC) §§ 3734.13, 3734.20, 6111.03, and 3745.01. This Cost Recovery Settlement Agreement ("Agreement") is entered into by the Parties (hereinafter defined) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607 and ORC § 3745.01.

### **II. PARTIES BOUND**

2. These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law.

3. These Orders shall apply to and be binding upon the City and its officers, directors, agents, servants, employees, assigns, and successors in interest liable under Ohio law. No change in ownership of the Facility, as hereinafter defined, shall in any way alter the City's obligations under these Orders.

4. Respondent shall provide a copy of these Orders to all contractors, subcontractors, laboratories and consultants retained to conduct any substantial portion of the Work performed pursuant to these Orders. Respondent shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform the Work pursuant to these Orders also comply with the applicable provisions of these Orders.

### **III. DEFINITIONS**

5. Unless otherwise expressly provided herein, all terms used in these Orders or in any appendices shall have the same meaning as defined in ORC Chapters 3734 and 6111 and the rules promulgated thereunder. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

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

- b. "Contaminant" or "contamination" means: (1) any "hazardous waste" under ORC § 3734.01(J); (2) any "industrial waste" under ORC § 6111.01(C); and (3) any "other wastes" under ORC § 6111.01(D).
- c. "Day" means a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or state holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or state holiday, the period shall run until the close of the next business day.
- d. "Facility" means the solid waste facility property located at Cairns Road in Mansfield, Ohio, owned by the City of Mansfield and operated from the early 1950s to June 1970.
- e. "Interim Action" (IA) means those actions taken at the Site in accordance with the SOW to eliminate or control immediate threats to public health and safety and the environment through Work activities to be performed by Respondent pursuant to the Interim Action Work Plan.
- f. "Interim Action Work Plan" (IA Work Plan) means the work plan prepared by Respondent pursuant to the Performance of Work Section of these Orders designed to eliminate or control immediate threats (i.e., IAs) in addition to those implemented pursuant to the OMP Plan.
- g. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
- h. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- i. "Operation, Maintenance, and Performance Monitoring Plan" (OMP Plan) means the IA Work Plan prepared by Respondent pursuant to the Performance of Work Section of these Orders designed to provide for the operation and maintenance of carbon filtration units at neighboring residences adjacent to the Facility.
- j. "Orders" means these Director's Final Findings and Orders and the Statement of Work (Appendix A), and Environmental Covenant (Appendix B) attached hereto and incorporated by reference herein.
- k. "Paragraph" means a portion of these Orders identified by an arabic numeral or an uppercase or lowercase letter.
- l. "Parties" means Respondent and Ohio EPA.

- m. "Respondent" means the City of Mansfield.
- n. "Response Costs" means all costs incurred by Ohio EPA with respect to these Orders that are not inconsistent with the NCP, including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs, oversight costs, legal and enforcement-related costs, laboratory costs, and the costs of reviewing plans, reports, and other items pursuant to these Orders, verifying the Work, or otherwise implementing or enforcing these Orders.
- o. "Section" means a portion of these Orders identified by a Roman numeral.
- p. "Site" means the Facility where the treatment, storage, and/or disposal of hazardous waste, and/or the placement or discharge into waters of the state of industrial waste or other waste has occurred, including any other area where such hazardous wastes, industrial wastes and/or other wastes have migrated or threaten to migrate.
- q. "Source Areas" mean any contaminated media, which, after applying the procedures identified in the attached Statement of Work, demonstrate the potential to elevate contaminant concentrations above soil or groundwater remediation goals.
- r. "Statement of Work" (SOW) means the statement of work for the implementation of the Interim Action at the Site, as set forth in Appendix A to these Orders.
- s. "Work" means all activities Respondent is required to perform under the Performance of Work and Additional Work sections these Orders including but not limited to the installation of, and connection to, the City of Mansfield's public water lines at specified residences.

#### **IV. FINDINGS**

- 6. The Director of Ohio EPA has determined the following:
  - a. The Mansfield City Dump facility is located on Cairns Road in Mansfield, Richland County, Ohio, on approximately twenty-five (25) acres of land that encompass all or a portion of Richland County parcel 028-90-500-92-000. The Mansfield City Dump facility is approximately 750 feet south of the Richland County Landfill.
  - b. The Facility property parcels are all owned by Respondent City of Mansfield. The Facility property includes the Facility as well as a ten (10)-acre buffer zone, Richland County parcel 028-90-500-91-000, south of the

Facility used for leachate management.

- c. The Facility was owned and operated by Respondent City of Mansfield from the early 1950s until when it ceased acceptance of waste around June 1970. It was licensed as a sanitary landfill and inspected by the Richland County Department of Health from 1968 until June 1970. It is believed the Facility accepted municipal and industrial wastes during that time.
- d. From 1968 until June 1970, the Richland County Department of Health inspections revealed several violations, including open dumping, inadequate daily cover, and leachate and surface water runoff. The Facility was not covered when it ceased operations and acceptance of waste.
- e. On June 9, 1981, Browning-Ferris Industries (BFI), predecessor in interest to Republic Services Inc., submitted a CERCLA Section 103(c) notification to US EPA that BFI selected the Mansfield City Dump facility for disposal of hazardous waste. BFI or Republic Services Inc. has never owned or operated the Facility. BFI reported it possibly transported acids, sanitary sewage sludge with small quantities of unknown hazardous waste, and small quantities of unknown hazardous wastes mixed with industrial, commercial, municipal, and household wastes as well as paint sludges from construction, paper/printing, iron/steel foundry, plating/polishing, utility company, sanitary/refuse, photofinish, and laboratory/hospital sources.
- f. On February 6, 1991, Ohio EPA inspected the Facility and found waste exposed, primarily metal waste such as appliances and factory equipment, and at least fifty (50) fifty-five-gallon barrels. Most of the barrels were rusted and some contained a semi-solid, powdery substance and others were seen leaching a blackish liquid. Other leachate runoff was observed.
- g. In July of 1993, an explosive gas monitoring plan was submitted to Ohio EPA by Respondent City of Mansfield and that plan was approved in January of 1996. There are four (4) deep monitoring probes and eight (8) shallow permanent punch bar locations monitored at the Facility and an explosive gas interception trench was installed east of the Facility that is 300 feet long and twelve (12) feet deep.
- h. On May 13, 1996, Ohio EPA inspected the Facility and observed illegal open dumping facilitated by inadequate fencing security around the Facility, several leachate seeps, and at least fifty (50) fifty-five-gallon drums, most of which were rusted out that were noted in the previous Finding 6f.

- i. In October of 1996, Ohio EPA conducted an Integrated Assessment at the Facility and neighboring residences on Twin Lakes Drive and Schulties Drive that consisted of soil, surface water, and sediment sampling at the Facility, and neighboring private drinking water well sampling. The results of the sampling showed: low levels of trichloroethene (TCE), tetrachloroethene aka perchloroethelene (PCE), polycyclic aromatic hydrocarbons (PAHs), pesticides, and polychlorinated biphenyls (PCBs) and elevated metals in soil; elevated levels of pesticides, PCBs, and metals in sediment from drainage ditches at the Facility; and elevated levels of some metals not exceeding the maximum contaminant levels (MCLs) at private residential drinking water wells.
- j. In September of 2004, Ohio EPA conducted an Expanded Site Investigation that consisted of soil, ground water, surface water, and sediment sampling at the Facility and sampling of private residential drinking water wells on Twin Lakes Drive, Schulties Drive, and Old Bowman Road. The results of the sampling showed: high levels of pesticides (i.e., DDE and DDT), PCBs, and metals in soil; elevated levels of cis-1,2-dichloroethene (DCE) and metals and levels exceeding the MCL for TCE in ground water at the Facility; elevated levels of metals in surface water; elevated levels of pesticides, PCBs, and metals in sediment; and elevated levels of metals in private residential drinking water wells but not exceeding the MCLs.
- k. On May 22, 2006, ground water sampling at the Facility as well as sampling at one residential drinking water well located on 1566 Twin Lakes Drive indicated levels above the MCL for TCE. This was the first exceedance shown in sampling of any volatile organic chemicals (VOCs) in private drinking water wells at neighboring residences adjacent to the Facility that have been sampled. In 2006, upon Ohio EPA's request, Respondent began carbon filtration of well water for nine residences to remove contaminants on a temporary basis. This has since been increased to eleven. The residence located at 1566 Twin Lakes has two carbon filtration units. Respondent has proposed that it connect designated residences to the city water supply.
- l. In 2011, pursuant to an OAC 3745-27-13 authorization, Respondent City of Mansfield completed improvements at the Facility designed to minimize surface water infiltration and provide security. Improvements included drum and other waste removal, surface drainage improvements, final cover, seeding, clearing of overgrown vegetation, slope and slope stability, and security and access control (i.e., fencing).
- m. However, ground water at the Facility and neighboring private residential

drinking water well sampling at 1566 and 1555 Twin Lakes Drive have shown steady increases of TCE and DCE since 2006. The two private residential drinking water wells at 1566 and 1555 Twin Lakes Drive have consistently shown levels above the MCL for TCE and DCE and TCE, respectively, since 2009. For example, on November 22, 2010, the 1566 Twin Lakes Drive well sampling indicated 100 µg/L for DCE (MCL = 70 µg/L) and 45 µg/L for TCE (MCL = 5 µg/L), and the 1555 Twin Lakes Drive well sampling indicated 8.9 µg/L for TCE.

On June 21, 2011, the 1566 Twin Lakes Drive well sampling indicated 110 µg/L for DCE and 65 µg/L for TCE, and the 1555 Twin Lakes Drive well sampling indicated 10 µg/L for TCE. On September 12, 2011, the 1566 Twin Lakes Drive well sampling indicated 110 µg/L for DCE and 60 µg/L for TCE, and the 1555 Twin Lakes Drive well sampling indicated 10 µg/L for TCE. On November 21, 2011, the 1566 Twin Lakes Drive well sampling indicated 100 µg/L for DCE and 62 µg/L for TCE, and the 1555 Twin Lakes Drive well sampling indicated 10 µg/L for TCE.

The above noted sampling data was obtained from samples taken upgradient of the installed carbon filtration units.

- n. Respondent is a "person" as defined in ORC §§ 3734.01(G) and 6111.01(I).
- o. TCE and DCE are "hazardous wastes" as that term is defined in rules 3745-50-10, 3745-51-03 and 3745-51-24 of the Ohio Administrative Code (OAC). In addition, because of their quantity, concentration, physical or chemical characteristics, some contaminants of concern found at the Site constitute "hazardous wastes" as defined in ORC § 3734.01(J).
- p. The Site is a hazardous waste facility, solid waste facility, or other location where hazardous waste was treated, stored or disposed, within the meaning of ORC § 3734.01(N). Respondent generated contaminants at the Site, and/or directly or indirectly allowed and/or directed the placement and/or disposal of contaminants at the Site.
- q. Conditions at the Site constitute a substantial threat to public health or safety or are causing or contributing to or threatening to cause or contribute to water pollution or soil contamination within the meaning of ORC § 3734.20(B).
- r. Contaminants found at the Site, including TCE and DCE, are "industrial wastes" or "other wastes," as defined in ORC § 6111.01 (C) and (D), respectively.

- s. The migration and threatened migration of these contaminants to surface water at or from the Site constitutes the discharge of industrial wastes or other wastes into "waters of the state," as that term is defined in ORC § 6111.01(H).
- t. The Work required pursuant to these Orders will contribute to the elimination of human exposure due to the discharge of contaminants to waters of the state.
- u. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders, and to evidence relating to conditions calculated to result from compliance with these Orders, and their relation to the benefits to the people of the State to be derived from such compliance.
- v. Ohio EPA has incurred and continues to incur Response Costs associated with the Site.
- w. It is Ohio EPA's position that actions to be taken pursuant to these Orders are reasonable and necessary to protect the public health or safety or the environment as provided in ORC § 3734.20.
- x. Upon completion of the Work required in these Orders, future investigations, feasibility studies and/or remedial activities may be necessary.

## **V. GENERAL PROVISIONS**

### **7. Objectives of the Parties**

The objectives of the Parties in entering into these Orders are to comply with federal and state law to protect public health and safety and the environment from the disposal, discharge, or release of Contaminants through performance of Work required under these Orders by Respondent and more specifically described as follows:

- a. Develop and evaluate potential remedial alternatives designed to eliminate or minimize human exposure to contaminants in ground water by performing the Work.
- b. Implement the chosen remedial alternative(s) by performing the Work in order to eliminate or otherwise control immediate threats to public health and safety and the environment.
- c. In the course of performing the Work, if Respondent should discover an immediate threat to public health and safety and the environment, it will

implement any additional work as necessary and approved by Ohio EPA to abate, eliminate or otherwise control such threats.

8. Commitment of Respondent

Respondent agrees to perform the Work in accordance with these Orders including but not limited to the SOW (Appendix A), the Operation, Maintenance and Performance Monitoring Plan approved by Ohio EPA, any Interim Action Work Plans approved by Ohio EPA, and all standards, specifications, and schedules as approved by Ohio EPA pursuant to these Orders. Respondent also agrees to reimburse Ohio EPA for future Response Costs in the manner provided in paragraph 44 where incurred in a manner not inconsistent with the National Contingency Plan, 40 CFR Part 300 and perform all other obligations of these Orders.

9. Compliance with Law

- a. All activities undertaken by Respondent pursuant to these Orders shall be performed in accordance with the requirements of all applicable federal, state and local laws and regulations, and in a manner consistent with the NCP.
- b. Ohio EPA expects that activities conducted pursuant to these Orders, if approved by Ohio EPA, would be considered necessary and consistent with the NCP.
- c. Where any portion of the Work requires a permit, license or other authorization from Ohio EPA or any other state, federal or local government agency, Respondent shall submit applications in a timely manner and take all other actions necessary to obtain such permit, license or other authorization. These Orders are not, and shall not be construed to be, a permit, license or other authorization issued pursuant to any statute or regulation.

**VI. PERFORMANCE OF THE WORK BY RESPONDENT**

10. Supervising Contractor

All Work performed pursuant to these Orders shall be under the direction and supervision of a contractor with expertise in hazardous waste site investigation and remediation. Prior to the initiation of the Work, Respondent shall notify Ohio EPA in writing of the name of the supervising contractor to be used in performing the Work under these Orders.

11. Operation, Maintenance, and Performance Monitoring Plan and the Interim Action Work Plan

- a. Project Initiation Meeting. Within fourteen (14) days of the effective date of these Orders, unless otherwise mutually agreed to by the Parties, Respondent shall meet with Ohio EPA to discuss the requirements of the Operation, Maintenance, and Performance Monitoring (OMP) Plan and the IA Work Plan.
- b. Submission of Draft OMP Plan. Within seventy-four (74) days after the effective date of these Orders, unless otherwise specified in writing by Ohio EPA, Respondent shall submit to Ohio EPA the draft OMP Plan and schedule for performance of the Work required under this Section of these Orders. The OMP Plan shall provide for the operation and maintenance of existing Point-of-Entry (POE) carbon filtration units at neighboring residences (specifying addresses), criteria for installing, operating, and maintaining additional POE carbon filtration units at additional residences, as appropriate, and periodic ground water monitoring to demonstrate the effectiveness of the POE carbon filtration units. The OMP Plan shall also provide for the operation and maintenance of secondary POE carbon filtration units at 1555 and 1566 Twin Lakes Drive and for the maintenance of fencing or other security at or around the Facility.
- c. Submission of Draft IA Work Plan. Within seventy-four (74) days after the submittal of the draft OMP Plan, unless otherwise specified in writing by Ohio EPA, Respondent shall submit to Ohio EPA the draft IA Work Plan and schedule for performance of the Work required under this Section of these Orders. The IA Work Plan shall provide for the development, evaluation, design and implementation of Interim Actions for providing alternative drinking water to neighboring residences for the life of the structures in order to address potential exposure to contaminated ground water and institutional controls. If Respondent's city drinking water is provided, it shall be at reasonable cost of usage and with no hook-up fee or start-up fee, as applicable, charged to the user. If a resident refuses city drinking water, another alternative drinking water source, such as hauled water, shall be provided and Respondent may charge the user reasonable costs for hauled water or the other alternative drinking water source.
- d. Criteria for OMP Plan Development or IA Work Plan Development. The OMP Plan or IA Work Plan shall be developed in conformance with the SOW contained in Appendix A of these Orders, and attached hereto and incorporated herein. The OMP Plan or IA Work Plan shall include a proposed schedule for the completion for each task. The SOW is specific to this Site, and shall be used to develop appropriate work plans. Respondent shall present the justification for the proposed omission of any of the tasks of the SOW in the OMP Plan or IA Work Plan. Any omission proposed by Respondent is subject to review and approval by

Ohio EPA. Respondent may rely on existing data and/or information to the extent that Respondent can demonstrate that field or laboratory quality assurance/quality control ("QA/QC") procedures acceptable to Ohio EPA were followed in the generation of the data and/or information. Respondent shall include all supporting documentation in the OMP Plan or IA Work Plan for existing data and/or information and clearly identify the intended use(s) and data quality objectives for such data and/or information. Ohio EPA will evaluate the adequacy of supporting QA/QC documentation and determine the acceptability of all existing data and/or information during review of the draft OMP Plan or draft IA Work Plan in accordance with Appendix C Guidance List of these Orders.

- e. Handling Inconsistencies. Should Respondent identify any inconsistency between any of the laws and regulations that Respondent is required to follow by these Orders, Respondent shall notify Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Respondent shall also recommend, along with a supportable rationale justifying each recommendation, the requirement that Respondent believes should be followed. Respondent shall implement the affected Work as directed in writing by Ohio EPA, subject to the provisions of Section XIV, Dispute Resolution.
- f. Review of OMP Plan and IA Work Plan. Ohio EPA will review the OMP Plan and IA Work Plan pursuant to the procedures set forth in the Review of Submittals Section of these Orders.
- g. Implementation of the OMP Plan and IA Work Plan. Upon Ohio EPA's approval of the OMP Plan or IA Work Plan, Respondent shall implement the OMP Plan or IA Work Plan, as approved, in accordance with the schedules contained therein. Respondent shall submit all plans, reports, or other deliverables required under the approved OMP Plan or IA Work Plan, in accordance with the approved schedule, for Ohio EPA's review and approval pursuant to the Review of Submittals Section of these Orders.

12. Health and Safety Plan

Within sixty (60) days after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and comment a health and safety plan developed in conformance with the SOW in Appendix A.

**VII. LAND USE AND CONVEYANCE OF TITLE**

13. Environmental Covenant

- a. Within thirty (30) days after the effective date of these Orders, Respondent shall record with the County Recorder's Office for Richland County, Ohio, an environmental covenant for the real property owned by Respondent constituting the Site. The environmental covenant shall be consistent with the template attached in Appendix B and shall be approved by Ohio EPA. The environmental covenant shall reference the existence of these Orders and the need to contact the Respondent before any construction or excavation is undertaken at the Property. A copy of the recorded environmental covenant shall be submitted to Ohio EPA within thirty (30) days of recording the environmental covenant. Thereafter, if Respondent conveys any interest in the property included in the Site, each deed, title, or other instrument shall contain a notice stating that the Property is subject to these Orders and shall reference the potential for any security, monitoring, treatment, or containment systems present on the Property as a result of these Orders. Respondent shall record a new environmental covenant for the Property to reflect the subsequent construction of any security, monitoring, treatment or containment systems at the Property.
- b. To the extent that the Site, or any portion of the Site, is owned or controlled by persons other than Respondent, Respondent shall use its best effort to secure the filing of environmental covenants by said property owners for all the properties affected by the Contamination at the Site. The environmental covenant shall be consistent with the template attached as Appendix B and shall be approved by Ohio EPA. Copies of all environmental covenants filed for properties affected by the Contamination on, underlying or emanating from the Site shall be obtained by Respondent and provided to Ohio EPA upon request.

14. Land Use Self-Reporting Requirement

Respondent shall ensure that no portion of the Site will be used in any manner that would adversely affect the integrity of any security, containment, treatment, or monitoring systems at the Site. Respondent shall submit on an annual basis, written documentation verifying, to the extent possible, that any security, containment, treatment, or monitoring systems are in place and operational.

15. Notice of Transfer of Property

Prior to each conveyance by Respondent of an interest in any portion of the Site, including but not limited to easements, deeds, leases and mortgages, Respondent, as applicable, shall notify Transferee of the existence of the security, containment, treatment, or monitoring systems and/or activity and use limitations and shall provide a copy of these Orders to Transferee. Respondent shall notify Ohio EPA at least thirty (30) days in advance of each conveyance of an interest in any portion of the Site that is owned by Respondent. Respondent's notice shall include the name and address of the

Transferee and a description of the provisions made for the continued access to and maintenance of the security, containment, treatment, and monitoring systems.

16. Confirmation of Conveyance

Within thirty (30) days after each conveyance of an interest in any portion of the Site that is owned by Respondent, Respondent shall submit to Ohio EPA, via certified mail, the following information:

- a. A copy of the deed or other documentation evidencing the conveyance.
- b. The name, address, and telephone number of the new property owner and the name, address, and telephone number of the contact person for the property owner.
- c. A legal description of the Property, or the portion of the Property, being transferred.
- d. A survey map of the Property, or the portion of the Property, being transferred.
- e. The closing date of the transfer of ownership of the Property, or portion of the Property.

**VIII. ADDITIONAL WORK**

17. Ohio EPA or Respondent may determine that in addition to the tasks defined in the OMP Plan and IA Work Plan, additional Work may be necessary to accomplish the Objectives of the Parties as set forth in the General Provisions Section of these Orders and the SOW provided the additional work is consistent with the scope of these Orders and the SOW. Additional Work includes, but is not limited to, ground water monitoring of private wells at future residences and additional connections to city water of those that are impacted by contaminated ground water.

18. Within ninety (90) days of receipt of written notice from Ohio EPA that additional Work is necessary, unless otherwise specified in writing by Ohio EPA, Respondent shall submit a Work Plan and schedule the performance of the additional Work ("Additional Work Work Plan"). In addition, Respondent shall submit revisions to any other schedules impacted by the additional Work. To the extent Respondent disputes that additional Work is necessary, Respondent shall initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of these Orders within fourteen (14) days after receipt of Ohio EPA's notification of the need for additional Work. The Additional Work Work Plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendix A (SOW). Upon approval of the Additional Work Work Plan and schedule by Ohio EPA pursuant to the Review of

Submittals Section of these Orders, Respondent shall implement the approved Additional Work Work Plan in accordance with the revised schedules contained therein.

19. In the event that Respondent determines that additional Work is necessary, Respondent shall submit an initial letter to Ohio EPA to explain why the additional Work is necessary, what the additional Work is, and what impact, if any, the additional Work will have on the overall Work schedule. If Ohio EPA concurs with the request for additional Work, Respondent shall submit an Additional Work Work plan and schedule for the performance of additional Work. The Additional Work Work Plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendix A. Upon approval of the Additional Work Work Plan and schedule by Ohio EPA pursuant to the Review of Submittals Section of these Orders, Respondent shall implement the approved Additional Work Work Plan in accordance with the schedules contained therein.

#### **IX. SAMPLING AND DATA AVAILABILITY**

20. Respondent shall notify Ohio EPA not less than fifteen (15) days in advance of all sample collection activity. Upon request, Respondent shall allow split and/or duplicate samples to be taken by Ohio EPA. Ohio EPA shall also have the right to take any additional samples it deems necessary. Upon request, Ohio EPA shall allow Respondent to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Respondent's implementation of the Work. Unless such samples are taken on an emergency basis, Ohio EPA shall provide three working days notice of such sampling to allow Respondent to participate as indicated.

21. Within seven (7) days of a request by Ohio EPA, but no earlier than three days after completion of sampling and analysis, Respondent shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Respondent with respect to the Site and/or the implementation of these Orders. Respondent may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should Respondent subsequently discover an error in any report or raw data, Respondent shall promptly notify Ohio EPA of such discovery and provide the correct information.

#### **X. ACCESS**

22. Ohio EPA shall have access at all times to the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by the Respondent. The Ohio EPA representative shall present proper agency credentials to obtain such access and shall provide prior notice to Respondent, via the site coordinator or alternate, if time permits. Access under these

Orders shall be for the purposes of conducting any activity related to these Orders including, but not limited to the following:

- a. Monitoring the Work;
- b. Conducting sampling;
- c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;
- d. Conducting investigations and tests related to the implementation of these Orders; and
- e. Verifying any data and/or other information submitted to Ohio EPA.

23. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondent, Respondent shall use their best efforts to secure from such persons access for Respondent and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided promptly to Ohio EPA. If any access required to effectuate these Orders is not obtained within thirty (30) days of the effective date of these Orders, or within thirty (30) days of the date Ohio EPA notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access.

24. Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulations.

#### **XI. DESIGNATED SITE COORDINATORS**

25. Within five (5) days of the effective date of these Orders, Respondent shall notify Ohio EPA, in writing, of the name, address and telephone number of its designated Site Coordinator and Alternate Site Coordinator. If a designated Site Coordinator or Alternate Site Coordinator is changed, the identity of the successor will be given to the other Party at least five (5) days before the change occurs, unless impracticable, but in no event later than the actual day the change is made.

26. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondent and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Respondent's Site Coordinator shall be available for communication with Ohio EPA

regarding the implementation of these Orders for the duration of these Orders. Each Site Coordinator shall be responsible for ensuring that all communications from the other Party is appropriately disseminated and processed. Respondent's Site Coordinator or alternate shall be present on the Site or on call during all reasonable hours of work at the Site.

27. Without limitation of any authority conferred on Ohio EPA by statute or regulation, the Ohio EPA Site Coordinator's authority includes, but is not limited to the following:

- a. Taking samples and directing the type, quantity and location of samples to be taken by Respondent pursuant to an approved work plan;
- b. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device;
- c. Directing that the Work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;
- d. Conducting investigations and tests related to the implementation of these Orders;
- e. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of these Orders; and
- f. Assessing Respondent's compliance with these Orders.

## **XII. PROGRESS REPORTS AND NOTICE**

28. Unless otherwise directed by Ohio EPA, Respondent shall submit a written progress report to the Ohio EPA by the tenth (10th) day of every month covering activities for the preceding month. At a minimum, the progress reports shall:

- a. Describe the status of the Work and actions taken toward achieving compliance with the Orders during the reporting period;
- b. Describe difficulties encountered during the reporting period and actions taken to rectify any difficulties;

- c. Describe activities planned for the next month;
- d. Identify changes in key personnel;
- e. List target and actual completion dates for each element of activity, including project completion; and
- f. Provide an explanation for any deviation from any applicable schedules.

29. Progress reports and all other documents required to be submitted pursuant to these Orders shall be sent by certified mail return receipt requested (the postmark date shall be deemed the date of submission for evaluating timeliness of submissions), or equivalent, such as email, to the following addresses:

As to Ohio EPA:

Ghassan Tafla, or his successor  
Ohio EPA  
Division of Environmental Response and Revitalization  
347 North Dunbridge Road  
Bowling Green, Ohio 43402  
(419) 352-8461 Main Office Number

E-mail address: [ghassan.tafla@epa.state.oh.us](mailto:ghassan.tafla@epa.state.oh.us)

As to Respondent City of Mansfield:

Robert Bianchi, Site Coordinator or his successor  
City of Mansfield Engineer  
30 N. Diamond Street  
Mansfield, Ohio 44902  
(419) 755-9702

Email address: [rbianchi@ci.mansfield.oh.us](mailto:rbianchi@ci.mansfield.oh.us)

and

Joe Barry, Alternate Site Coordinator  
City of Mansfield Project Planner  
30 N. Diamond Street  
Mansfield, Ohio 44902  
(419) 755-9702

Email address: [jbarry@ci.mansfield.oh.us](mailto:jbarry@ci.mansfield.oh.us)

A Party may designate an alternative contact name or address upon written notification to the other Party and in accordance with the Designated Site Coordinators Section of these Orders, as applicable.

### **XIII. REVIEW OF SUBMISSIONS**

30. Ohio EPA shall promptly review any work plan, report, or other item required to be submitted pursuant to these Orders. Upon review, Ohio EPA may in its sole discretion: (a) approve the submission in whole or in part; (b) approve the submission upon specified conditions; (c) modify the submission; (d) disapprove the submission in whole or in part, notifying Respondent of deficiencies; or (e) any combination of the above.

31. In the event of approval, approval upon condition, or modification of any submission by the Ohio EPA, Respondent shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA. Other than approval of submissions, these actions shall be subject to the Dispute Resolution Section of these Orders.

32. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Respondent of the deficiencies, Respondent shall, within thirty (30) days or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and resubmit the revised submission to Ohio EPA for approval. The revised submission shall incorporate all of the uncontested changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. To the extent that Respondent contests any changes, additions, and/or deletions specified by the Ohio EPA, Respondent shall initiate the procedures for dispute resolution set forth in Section XIV, Dispute Resolution, within thirty days (30) after receipt of Ohio EPA's notification of disapproval of a submission. Notwithstanding the notice of deficiency, Respondent shall proceed to take any action required by a non-deficient portion of the submission.

33. In the event that Ohio EPA disapproves a revised submission, in whole or in part, and notifies Respondent in writing of the deficiencies, Respondent shall within thirty (30) days, or such longer period of time as specified by Ohio EPA in writing, either (a) correct the deficiencies and incorporate all changes, additions, and/or deletions, and submit the revised submission to Ohio EPA for approval or (b) initiate the dispute resolution process pursuant to Section XIV, Dispute Resolution, of these Orders. If Respondent fails to submit a revised submission incorporating all changes, additions, and/or deletions within thirty (30) days, or such period of time as specified by Ohio EPA in writing, or alternatively, fails to initiate the dispute resolution process pursuant to Section XIV, Respondent shall be considered in breach and/or violation of these Orders.

34. All work plans, reports, or other items required to be submitted to Ohio EPA under these Orders shall, upon approval by Ohio EPA, be deemed to be incorporated in

and made an enforceable part of these Orders. In the event that Ohio EPA approves a portion of a work plan, report, or other item, the approved portion shall be deemed to be incorporated in and made an enforceable part of these Orders.

#### **XIV. DISPUTE RESOLUTION**

35. The Site Coordinators shall, whenever possible, operate by consensus.

36. In the event Respondent disagrees with a disapproval, an approval with condition(s), or modification(s) by Ohio EPA of a submission by Respondent, or a disagreement regarding the Work performed under these Orders, Respondent's Site Coordinator shall notify Ohio EPA's Site Coordinator in writing that Respondent wishes to invoke an informal dispute pursuant to this Section. The notification to invoke an informal dispute shall occur prior to the submission deadline and may be submitted via hand delivery. Ohio EPA agrees to provide written receipt via e-mail of such notification.

37. The Parties shall have thirty (30) business days from the date written notice of the informal dispute is received by Ohio EPA's Site Coordinator to negotiate in good faith to resolve the dispute. This informal dispute resolution period may be extended by agreement of the Site Coordinators for up to twenty (20) additional days.

38. In the event that the dispute is not resolved during the informal dispute resolution period, Respondent's Site Coordinator shall notify Ohio EPA's Site Coordinator in writing by the end of the informal dispute resolution period that Respondent wishes to invoke a formal dispute pursuant to this Section. The notice may be submitted via hand delivery. Ohio EPA agrees to provide written receipt via e-mail of such notice. This notice shall include a brief description of the item(s) in dispute. Within thirty (30) days of receipt of the written notice invoking the formal dispute resolution procedure, the Site Coordinators shall exchange written positions, including technical rationale supporting their positions. The Site Coordinators shall have ten (10) days from the date they have exchanged written positions to negotiate in good faith to resolve the formal dispute. This formal dispute period may be extended by agreement of the Site Coordinators for up to twenty (20) additional days.

39. In the event the dispute is not resolved in the formal dispute resolution period, Respondent's Site Coordinator shall notify Ohio EPA's Site Coordinator in writing by the end of the formal dispute resolution period whether Respondent wishes to submit final written positions to the DERR Manager for review and resolution. This notification may be submitted via hand delivery. Ohio EPA agrees to provide written receipt via e-mail of such notification. The Site Coordinators shall have ten (10) days from the end of the formal dispute resolution period to submit their written positions. Respondent shall submit its written position to the DERR Manager either by regular or certified mail. The

DERR Manager will resolve the dispute based upon and consistent with these Orders, and other applicable federal and state laws and regulations. The decision of the DERR Manager is considered final for the purposes of these Orders.

40. The pendency of a dispute under this Section shall extend only the time period for completion of the item(s) in dispute, except that upon mutual agreement of the Site Coordinators, any time period may be extended as is deemed appropriate under the circumstances. Such agreement shall not be unreasonably withheld by Ohio EPA. Elements of the Work not affected by the dispute shall be completed in accordance with the applicable schedules and time frames.

#### **XV. UNAVOIDABLE DELAYS**

41. Respondent shall cause all Work to be performed in accordance with applicable schedules and time frames set forth in these Orders or any approved work plan unless any such performance is prevented or delayed by an event that constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondent that prevents or delays performance of any obligation required by these Orders and that could not be overcome by due diligence on the part of Respondent. Increased cost of compliance, among other circumstances, shall not be considered an event beyond the control of Respondent for the purposes of these Orders.

42. Respondent's Site Coordinator shall notify Ohio EPA's Site Coordinator in writing within ten (10) days after the occurrence of an event that Respondent contends is an unavoidable delay. This notification may be submitted via hand delivery. Ohio EPA agrees to provide written receipt via e-mail of such notification. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable under which these measures will be implemented. Respondent shall have the burden of demonstrating that the event constitutes an unavoidable delay.

43. If Ohio EPA's Site Coordinator does not agree that the delay has been caused by an unavoidable delay, Ohio EPA's Site Coordinator will notify Respondent's Site Coordinator in writing of that finding and of the noncompliance with these Orders at which point Respondent may invoke the formal dispute resolution procedures in the Dispute Resolution Section of these Orders. If Ohio EPA's Site Coordinator agrees that the delay is attributable to an unavoidable delay, Ohio EPA's Site Coordinator will notify Respondent's Site Coordinator in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

#### **XVI. REIMBURSEMENT OF COSTS**

44. Ohio EPA has incurred and continues to incur Response Costs in connection with the Site. Respondent shall reimburse Ohio EPA for all future Response Costs that are incurred after the effective date of these Orders to the extent such costs were incurred in a manner not inconsistent with the NCP, 40 CFR Part 300.

45. For Response Costs incurred after the effective date of these Orders, Ohio EPA will submit to Respondent on a quarterly basis an itemized invoice of its Response Costs for the previous quarterly period. Within sixty (60) days of receipt of such itemized invoice, Respondent shall remit payment for all of Ohio EPA's Response Costs for the previous quarterly period, unless Respondent invokes the Dispute Resolution Section of these Orders. To the extent Respondent disputes the accuracy of the State of Ohio's request for reimbursement or whether costs are inconsistent with the NCP, Respondent shall initiate the formal dispute provisions of the Dispute Resolution Section within fourteen (14) days after receipt of Ohio EPA's request for reimbursement of costs. Should Respondent dispute a portion of the response costs set forth in an itemized statement, but not all of the costs, Respondent shall timely pay the uncontested portion pursuant to the provisions of the Reimbursement of Costs Section. In the event that Respondent does not remit payment of Response Costs within sixty (60) days after receipt of such invoice, Respondent shall remit payment for the unpaid balance and the interest accrued on the unpaid balance. Interest shall accrue beginning thirty (30) days from the date of the invoice until the date payment is remitted, and shall be calculated at the rate specified by ORC § 5703.47(B) or any subsequent rate adjustments.

46. Respondent shall remit payments to Ohio EPA pursuant to this Section as follows:

- a. Payment shall be made by bank check payable to "Treasurer, State of Ohio / Hazardous Waste Special Cleanup Account" and shall be forwarded to Office of Fiscal Administration, Attn: Carol Butler, Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049.
- b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, and to the Site Coordinator.
- c. Each payment shall identify the name and address of the party making payment, the Site name, and Ohio EPA's revenue number, which shall be identified on the associated invoice.

## **XVII. ACCESS TO INFORMATION**

47. Upon request, Respondent shall provide to Ohio EPA within twenty-one (21) days of receipt of a request, copies of all documents and information relating to Work being performed under these Orders within its possession or control or that of its contractors or agents requested by Ohio EPA. This provision shall not be a limitation on any request for information to Respondent by Ohio EPA made under state or federal law for information relating to events or conditions at the Site.

48. Respondent may assert a claim that documents or other information submitted to Ohio EPA pursuant to these Orders are confidential under the provisions of OAC 3745-49-03 or ORC § 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when it is submitted to Ohio EPA, it may be made available to the public without notice to Respondent.

49. Respondent may assert that certain documents or other information are privileged under the attorney-client privilege, attorney work product, or any other privilege recognized by state law. If Respondent makes such an assertion, it shall provide Ohio EPA with the following: (1) the title of the document or information; (2) the date of the document or information; (3) the name and title of the author of the document or information; (4) the name and title of each addressee and recipient; (5) a general description of the contents of the document or information; and (6) the privilege being asserted by Respondent.

50. No claim of confidentiality shall be made with respect to any data or reports, including but not limited to laboratory or interpretive reports, and all sampling, analytical, and monitoring data. Interpretative reports are not expert reports. Claims of confidentiality by Respondent may be asserted for expert reports in accordance with paragraph 49.

51. Respondent shall preserve for the duration of these Orders and for a minimum of five (5) years after termination of these Orders, all documents and other information within its possession or control, or within the possession or control of its contractors or agents, which in any way relate to the Work notwithstanding any document retention policy to the contrary. Respondent may preserve such documents by microfiche or other electronic or photographic device. At the conclusion of this document retention period, Respondent shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA.

### **XVIII. MODIFICATIONS**

52. These Orders may be modified by agreement of the Parties. Modifications shall be in writing, signed by the authorized representative of Respondent and by the Director, and shall be effective on the date entered in the Journal of the Director of Ohio

EPA.

**XIX. LIABILITY FOR WORK AND OHIO EPA NOT A PARTY TO MANSFIELD CONTRACTS**

53. Work required under these Orders shall be the sole responsibility of Respondent. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondent in carrying out the activities pursuant to these Orders. Ohio EPA agrees to provide notice to Respondent within twenty-one (21) days after receipt of any claim that may involve the Mansfield City Dump, and to cooperate with Respondent in the defense of any such claim or action.

**XX. OTHER CLAIMS**

54. Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not a Party to these Orders, for any liability arising from, or related to, events or conditions at the Site.

**XXI. RESERVATION OF RIGHTS**

55. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondent for noncompliance with these Orders. Except as provided herein, Respondent reserves any rights they may have to raise any legal or equitable defense in any action brought by Ohio EPA to enforce the terms and conditions of these Orders.

56. Ohio EPA reserves the right to terminate these Orders and/or perform all or any portion of the Work or any other measures in the event that the requirements of these Orders are not wholly complied with within the time frames required by these Orders provided the Work at issue is not being disputed pursuant to the Dispute Resolution Section of these Orders.

57. Ohio EPA reserves the right to take any action, including but not limited to any enforcement action, action to recover costs, or action to recover damages to natural resources, pursuant to any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Site. Respondent reserves its rights to defend any such enforcement action, action to recover costs, or action to recover damages to natural resources and to raise any counterclaim, affirmative defense, third-party claim or cross claim which it may have with respect to these actions.

58. Respondent reserves all rights, claims, demands and causes of action they may have against any and all persons and entities who are not parties to these Orders, including rights of contribution against any other parties who may be liable for actual or threatened releases of contaminants at the Site.

## **XXII. TERMINATION**

59. Respondent's obligations under these Orders shall terminate upon approval in writing from the Ohio EPA Site Coordinator of Respondent's written certification to Ohio EPA that all Work required to be performed under these Orders including payment of Response Costs has been completed. Respondent's certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. The termination of Respondent's obligations under these Orders shall not terminate the Respondent's obligations under the Reservation of Rights, Access to Information, Liability for Work and Ohio EPA Not a Party to Mansfield Contracts, and Other Claims Sections of these Orders. Once submitted, the Ohio EPA Site Coordinator will promptly review Respondent's written certification for approval or disapproval and approve or disapprove such certification within forty-five (45) days.

## **XXIII. WAIVER AND AGREEMENT**

60. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent consents to the issuance of these Orders, and agrees to comply with these Orders and this Agreement.

61. Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders and Respondent hereby waives any and all rights that they may have to seek administrative or judicial review of these Orders and this Agreement either in law or equity.

62. Notwithstanding the limitations herein on Respondent's right to appeal or seek administrative or judicial review, Ohio EPA and Respondent agree if these Orders and this Agreement are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with these Orders and this Agreement notwithstanding such appeal and intervention unless these Orders and this Agreement are stayed, vacated or modified. In the event that Ohio EPA takes any position in the appeal of these Orders and this Agreement which changes the obligations of Respondent hereunder, Respondent reserves the right to challenge any such position, or any change of obligations hereunder.

**XXIV. EFFECTIVE DATE**

63. The effective date of these Orders shall be the date these Orders are entered in the Journal of the Director of Ohio EPA.

**XXV. SIGNATORY AUTHORITY**

64. Each undersigned representative of a Party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these Orders.

**IT IS SO ORDERED AND AGREED:**

OHIO ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Scott J. Nally, Director  
Ohio Environmental Protection Agency

9/12/13  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**

City of Mansfield

BY:  
  
\_\_\_\_\_  
Lori A. Cope  
Safety Service Director  
\_\_\_\_\_

8-23-13  
\_\_\_\_\_  
Date

**LIST OF APPENDICES**

**APPENDIX A**  
IA SOW

**APPENDIX B**  
Environmental Covenant

**APPENDIX C**  
Guidance List



## APPENDIX A

### STATEMENT OF WORK (SOW) FOR CONDUCTING INTERIM ACTION(S) AT THE RESPONDENT(S) SITE

#### **PURPOSE:**

The purpose of conducting the work described herein is to comply with federal and state law to protect public health and safety and the environment and minimize human exposure that has resulted from the disposal of industrial wastes, pollutants, other wastes, and/or hazardous wastes, constituents, and substances (contaminants) at the site by performing the Work as identified in the Director's Final Findings and Orders (Orders) that this SOW is attached to (the Site).

Respondent(s) shall develop a plan that describes the rationale for the existing Point-of-Entry (POE) carbon filtration units; diagrams the location and provides the address of existing POE carbon filtration units; provides technical and manufacturing specifications for the existing POE carbon filtration units; establishes the criteria under which the Respondent(s) will be responsible for installing additional POE units; establishes operation and maintenance of the POE carbon filtration units; and, establishes periodic groundwater monitoring required to demonstrate the effectiveness of the POE carbon filtration units. The plan shall also provide for the operation and maintenance of secondary POE carbon filtration units at 1555 and 1566 Twin Lakes Drive and for the maintenance of fencing or other security measures at and around the Facility. The aforementioned plan shall be referred to as the Operation, Maintenance, and Performance Monitoring Plan.

Following Ohio EPA approval of the Operation, Maintenance, and Performance Monitoring Plan, Respondent(s) shall evaluate potential interim actions (IA(s)), propose appropriate IA(s) for the Site for approval, and prepare a conceptual design of the proposed IA(s) which shall protect against exposure to contaminated ground water. Following Ohio EPA approval of the conceptual design of the proposed IA(s), the Respondent shall design and implement the approved IA(s), and operate, maintain and monitor the constructed system(s). Successful completion of the required work will result in the mitigation of human exposure to contaminants in ground water.

Respondent(s) shall conduct all required activities and provide all required deliverables in accordance with the Orders and this SOW. Respondent(s) shall furnish all necessary personnel, materials, and services needed, or incidental to, performing the activities described in this SOW.

Respondent(s) shall obtain all site access agreements required to perform the work outlined in this SOW. Site access shall extend for the duration of the project and shall include allowances for all operation, maintenance, and monitoring considerations.

At the completion of the conceptual design phase, the Ohio EPA will approve or modify as appropriate Respondent(s) proposed IA(s). To obtain Ohio EPA approval, proposed IA(s) must at a minimum protect human health and the environment with respect to exposure to contaminants in ground water, comply with all applicable requirements of federal, state and local laws and regulations, minimize cross-media transfer of contaminants and utilize permanent solutions to the maximum extent practicable.

**TASKS:**

1. Develop POE Operation and Performance Maintenance Plan
2. Evaluate and select IA(s)
3. Design, implement, and monitor IA(s)

**DELIVERABLES:**

1. POE Operation, Maintenance and Performance Monitoring Plan
2. Implementation Certification Report (as necessary)
3. Conceptual Design Report
4. Detailed Plans and Specifications
5. Operation, Maintenance and Monitoring Plans
6. Construction Certification Report
7. Monthly Progress Reports

**1.0 DEVELOP WORK PLANS**

Respondent(s) shall submit a POE Operation, Maintenance and Performance Monitoring Plan and an IA Workplan (Workplan). The POE Operation, Maintenance and Performance Monitoring Plan and the IA Workplan must be approved by Ohio EPA prior to the initiation of field activities.

**1.1 POE Operation, Maintenance and Performance Monitoring Plan**

The Plan shall state the objectives of the POE Operation, Maintenance and Performance Monitoring including the schedules for accomplishing the required work. Respondent(s) shall develop a plan that, at a minimum, accomplishes the following:

- A. Describe the rationale for the existing Point-of-Entry (POE) carbon filtration units.
- B. Diagram the location of existing POE carbon filtration units, provides addresses of the residences that have existing POE carbon filtration units or will be receiving such, and provide technical and manufacturing specifications for the existing POE carbon filtration units.
- C. Design and install secondary POE carbon filtration units for residences at 1555 and 1566 Twin Lakes Drive in order to provide additional protection.
- D. Develop criteria establishing the conditions required under which the respondent(s) will be responsible for installing additional POE units notwithstanding the secondary POE carbon filtration units at 1555 and 1566 Twin Lakes Drive. If the monitoring results prior to carbon filtration units at other residences show results greater than 50% of the MCL, a secondary POE carbon filtration unit will be added at those residences.
- E. Establish a schedule for operation and maintenance of the POE carbon filtration units, including periodic groundwater monitoring to demonstrate the effectiveness of the POE carbon filtration units and protection of human health and the environment from actual or potential threats posed by the Site as well as establish a schedule for maintenance of fencing or other security at or around the Facility.

## 1.2 IA Work Plan

The Workplan shall include the supporting rationale for performing each task in the manner described. The Workplan shall describe in detail all tasks necessary to perform the work required by this SOW, including materials and procedures required for each task, and work products to be submitted to the Ohio EPA. This includes deliverables as required by the Orders and this SOW, and meetings with Ohio EPA. The Workplan shall provide fixed date schedules for accomplishing the required work.

The Workplan shall clearly state the objectives and identify and qualitatively assess actual or potential threats to human health and the environment posed by ground water contamination from the Site.

Based on review of existing information, Respondent(s) shall include in the Workplan a summary of the Site background including the historical use, storage and disposal of contaminants. The Workplan shall, in general terms, describe previous response actions conducted by local, state, federal, or private parties; provide a summary of the existing data including chemical contaminants and impacted environmental media; and demonstrate compliance with federal, state and local laws and regulations which apply to the work to be performed.

The Workplan shall identify potential IA(s) which address human exposure to contaminants in ground water, and shall identify and evaluate alternative drinking water supply options for neighboring residences to the Facility in order to satisfy the objectives of this SOW. The Workplan shall also contain specific addresses of the residences to be provided with alternative drinking water supply. Following Ohio EPA approval of the Workplan and supporting documents, Respondent(s) shall implement the work in accordance with the schedules described therein and provide alternative drinking water to the neighboring residences at a reasonable rate of usage and without undue or excessive financial burden to the recipient. Alternate drinking water supply shall be provided to occupied residences for the life of the structures.

## **2.0 CONCEPTUAL DESIGN**

Respondent(s) shall summarize existing data on the physical and chemical characteristics of the Site to the extent necessary to define the pathways of ground water contaminant migration and provide sufficient engineering data for screening and selecting the proposed IA(s). Respondent(s) shall screen the potential IA(s) identified in the Workplan concurrent with the Site characterization tasks.

### **2.1 Conceptual Design Report**

Using the existing physical and chemical data, Respondent(s) shall evaluate the potential IA(s) identified in the Workplan for applicability to Site conditions and recommend proposed IA(s) for implementation at the Site. Respondent(s) shall include a technical description of each component of the proposed IA(s) outlining the strategy involved and identifying all applicable regulatory requirements.

Factors considered by Ohio EPA in approval of proposed IA(s) include but are not limited to the following:

- A. Time required for implementation;
- B. Time required to achieve protection of human health and the environment;
- C. Compliance with federal, state and local laws and regulations;
- D. Performance efficiencies;
- E. Use of treatment technologies which significantly reduce toxicity, mobility, and volume of contaminants;
- F. Ability to minimize or eliminate cross-media transfer of contaminants;
- G. Ability to verify IA(s) effectiveness;

- H. Frequency of routine maintenance and component replacement;
- I. Degree of permanence; and
- J. Degree of contribution to the efficient performance of any anticipated long-term remedial action(s).

The Conceptual Design Report shall include but not be limited to the following:

- A. A comparative evaluation of potential IA(s) considering the factors identified above;
- B. A narrative description of the proposed IA(s);
- C. Schematic drawings of the alternative drinking water supply(ies), as appropriate;
- D. Supporting data and documentation defining the functional aspects of the IA(s);
- E. A Site map and cross sections showing the location of all IA components and significant Site features;
- F. A schedule for submittal of detailed plans and specifications including: any required permit applications, initiation and completion of construction, attainment of operational level; and initiation of operation, maintenance, and monitoring;
- G. Identification and assessment of all applicable regulatory requirements pertaining to the proposed IA(s) including:
  - 1. Identification of permitting authorities,
  - 2. Required construction/operation permits,
  - 3. Time required by permitting authorities to process applications,
  - 4. Monitoring and/or compliance testing requirements, and
  - 5. Reporting requirements.
- H. Monitoring requirements to verify system effectiveness.

### **3.0 DESIGN/IMPLEMENTATION (D/I)**

The purpose of D/I is to design and implement the approved IA(s) in order to protect human health and the environment.

### 3.1 Detailed Plans and Specifications

The Detailed Plans and Specifications (DPS) for the approved IA(s) shall be submitted in accordance with the timetable contained in the Ohio EPA-approved Conceptual Design. The DPS shall include, but not be limited to, final construction drawings, specifications, plans, and design analyses with supporting calculations. Applications for any required permits shall be submitted simultaneously with the DPS. Following Ohio EPA approval of the DPS and receipt of any necessary construction permits, Respondent(s) shall initiate construction of the approved IA(s) in accordance with the schedule contained in the Conceptual Design.

### 3.2 Operation and Maintenance (O&M) Plan

An O&M plan, distinct and separate from the POE Operation, Maintenance and Performance Monitoring Plan, shall be submitted to Ohio EPA prior to the completion of construction. Appropriate elements are listed in Exhibit 1. Plan elements listed in Exhibit 1 are for illustrative purposes and should not limit the content of the O&M plan.

### 3.3 Design Changes during Construction

During construction, unforeseen Site conditions, changes in estimated quantities, and other problems associated with the project may require either major or minor changes to the approved design. Design changes require prior approval of Ohio EPA and may require modification of permit(s) to install to ensure that the intent and scope of the approved IA(s) is maintained. Changes to the IA(s) design which require Ohio EPA approval prior to implementation include:

- A. Those which involve the deletion or addition of a major component of the approved IA(s) (e.g. changing one alternative drinking water supply for another);
- B. Those which result in a less effective protection against exposure to contaminants in ground water at the Site;
- C. Any changes which may result in an increased exposure to Site contaminants and/or risk to human health or the environment;
- D. Those which result in a significant delay in the completion of the IA(s); and
- E. Any other changes which alter the scope or objectives of the approved IA(s).

### 3.4 Construction Completion

As the construction of the IA(s) nears completion, the following activities shall be completed by Respondent(s) to ensure proper construction completion and transition to the O&M phase.

A. IA(s) Construction Certification Report

An IA(s) Construction Certification Report (CCR) shall be prepared and submitted by Respondent(s) within 30 days after completion of construction and in accordance with the schedule contained in the Conceptual Design. The CCR report shall include the following:

1. A synopsis of the construction work defined in the detailed plans and specifications and certification that this work was performed;
2. An explanation of any modifications to the work defined in the detailed plans and specifications and why they were necessary for the project; and
3. Certification that the constructed IA(s) are operational and functional and constructed according to the approved plans and specifications.

## EXHIBIT 1

### Basic Elements of an Operation and Maintenance (O&M) Plan

- A. Normal O&M
  - 1. Description of tasks for operation
  - 2. Description of tasks for maintenance
  - 3. Description of prescribed treatment or operating conditions
  - 4. Schedules showing the frequency of each O&M task
  
- B. Potential Operating Problems
  - 1. Description and analysis of potential operating problems
  - 2. Sources of information regarding potential operating problems
  - 3. Description of means of detecting problems in the operating systems
  - 4. Common remedies for operating problems
  
- C. Routine Monitoring and Laboratory Testing
  - 1. Description of monitoring tasks
  - 2. Description of required laboratory tests and interpretation of test results
  - 3. Required QA/QC procedures
  - 4. Monitoring schedule
  
- D. Alternative O&M
  - 1. Description of alternate procedures to prevent undue hazard, should systems fail
  - 2. Vulnerability analysis and additional resources requirements should a failure occur
  
- E. Safety Plan
  - 1. Description of safety procedures, necessary equipment, etc. for site personnel
  - 2. Description of safety tasks required in the event of systems failure
  
- F. Equipment
  - 1. Description of equipment necessary to the O&M Plan
  - 2. Description of installation of monitoring components
  - 3. Description of maintenance of site equipment
  - 4. Replacement schedule for equipment and installed components

G. Records and Reporting Mechanisms Required

1. Daily operating logs
2. Laboratory records
3. Mechanism for reporting emergencies
4. Personnel and maintenance records
5. Monthly reports to Ohio EPA



## APPENDIX B

To be recorded with Deed  
Records - ORC § 317.08

### ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by \_\_\_\_\_ ("Owner") [name all Owners of the Property and add other "Holders," if any] and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

*[Insert appropriate background information here, using available program-specific guidance. Identify the "site" or "facility." Describe the "environmental response project," see ORC § 5301.80(E), and identify the name and location of the administrative record for the project. See ORC § 5301.82(A)(8). See also ORC § 5301.82(B)(2) re: description of contamination on or underlying the property and its remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination.]*

Now therefore, Owner[s] [name all Owners of the Property and add other "Holders," if any] and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.
2. Property. This Environmental Covenant concerns [an approximately acre tract of real property; OR real property parcels numbered \_\_\_\_\_] owned by \_\_\_\_\_, located at \_\_\_\_\_, in \_\_\_\_\_ County, Ohio, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property").
3. Owner[s]. \_\_\_\_\_ ("Owner[s]") [who resides; OR which is located] at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ is the owner of the Property.
4. Holder[s]. Owner[s], whose address is listed above, [and \_\_\_\_\_ {who resides; OR which is located} at \_\_\_\_\_,

\_\_\_\_\_, \_\_\_\_\_] [is/are] the holder[s] of this Environmental Covenant.

5. Activity and Use Limitations. As part of the [closure of hazardous waste management units; corrective action at the Property; remedial action described in the Decision Document; etc.], Owner[s] hereby impose[s] and agree[s] to comply with the following activity and use limitations:

*[Insert the limitations appropriate for the Property. Several limitations may be appropriate as part of a remedial action or closure plan where cleanup to an unrestricted land use is not feasible. Each type of limitation must be considered on a Property-specific basis to determine which limitation or combination of limitations is suitable for the particular circumstances of the Property, based on the applicable program standards or cleanup goals, the nature of contamination, the affected media and the potential exposures. The types of limitations include:*

**ground water** limitations (e.g., to prevent exposure to contaminated ground water by prohibiting extraction or use of ground water, except for investigation or remediation thereof.)

*[add the following, if appropriate: If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property, identified in paragraph 11 below, constitutes a breach of the activity and use limitations, Owner or Transferee shall notify Ohio EPA within [thirty (30)] days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within [sixty (60)] days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.]*

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner[s] and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law.
  
8. Rights of Access. Owner[s] hereby grant[s] to Ohio EPA, its agents, contractors, and employees [and any "Holders;" the local government, etc.; see ORC §§ 5301.82(A)(6) and 5301.91(A)] the right of access to the Property for implementation or enforcement of this Environmental Covenant.
  
9. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 201\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE COUNTY RECORDER ON \_\_\_\_\_, 201\_, IN [DOCUMENT \_\_\_\_\_, or BOOK\_\_\_\_, PAGE \_\_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: *[Insert the language that describes the activity and use limitations exactly as it appears in the Environmental Covenant.]*

Owner[s] shall notify Ohio EPA [and any "Holders" other than the Owner] within [ten (10)] days after each conveyance of an interest in any portion of the Property. Owner's[s] notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

10. Representations and Warranties. Owner[s] hereby represent[s] and warrant[s] to the other signatories hereto:
- A. that the Owner[s] is [are] the sole owner[s] of the Property;
  - B. that the Owner[s] hold[s] fee simple title to the Property which is free, clear and unencumbered
  - C. that the Owner[s] has [have] the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
  - D. that the Owner[s] has [have] identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's[s] intention to enter into this Environmental Covenant;[and]
  - E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner[s] is [are] a party or by which Owner[s] may be bound or affected; [and] [add the following, if appropriate:]
11. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner[s] or a Transferee; [other "Holders," if any;] and the Ohio EPA,<sup>1</sup> pursuant to ORC § 5301.90 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the

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<sup>1</sup> See ORC § 5301.82 (B) (3), which allow for "limitations on amendment or termination."

Owner[s] or Transferee [and other "Holders," if any] of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner[s] or Transferee shall file such instrument for recording with the \_\_\_\_\_ County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA.

12. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
13. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.
14. Recordation. Within [thirty (30)] days after the date of the final required signature upon this Environmental Covenant, Owner[s] shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the \_\_\_\_\_ County Recorder's Office.
15. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the \_\_\_\_\_ County Recorder.
16. Distribution of Environmental Covenant. The Owner[s] shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the [City, County, Township, Village] of \_\_\_\_\_; [any "Holder," any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property; and any other person designated by Ohio EPA; see ORC § 5301.83].
17. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

[title or position]  
Division of [ \_\_\_\_\_ ]  
Ohio EPA  
P.O. Box 1049  
Columbus, Ohio 43216-1049



State of Ohio                    )  
  )  
County of Franklin            )        ss:

Before me, a notary public, in and for said county and state, personally appeared Scott J. Nally, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

[NAME OF HOLDER]

\_\_\_\_\_  
Signature of Holder

\_\_\_\_\_  
Printed Name and Title

State of \_\_\_\_\_ )  
  )  
County of \_\_\_\_\_ )        ss:

Before me, a notary public, in and for said county and state, personally appeared \_\_\_\_\_, a duly authorized representative of \_\_\_\_\_, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

This instrument prepared by:

[name, address]



## APPENDIX C

### LIST OF GUIDANCE DOCUMENTS AND REFERENCES FOR USE WITH THE MANSFIELD CITY DUMP INTERIM ACTION ORDERS

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#### **Statement of Purpose and Use of This Guidance Document List:**

The purpose of this list of Ohio EPA and U.S. EPA policies, directives and guidance documents is to provide a reference of the primary documents which provide direction and guidance for designing and implementing selected remedial actions at Remedial Response sites. The listed documents incorporate by reference any documents listed therein. Certain sites may have contaminants or conditions which are not fully addressed by the documents in this list. There is an evolving body of policy directives, guidance and research documentation which should be used, as needed, to address circumstances not encompassed by the documents in this list. For sites where activities are conducted in response to an administrative or judicial order, this list will be an attachment to the order and will govern the work conducted. When entering into or issuing an order for any site, Ohio EPA reserves the right to modify this list to fully address the site conditions.

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#### **Quality Assurance Guidance List**

*Data Quality Objectives Decision Error Feasibility Trials Software (DEFT) – Users Guide*, U.S. EPA, EPA QA/G-4D, EPA/240/B-01/007, September 2001.

*Data Quality Objectives Process for Hazardous Waste Site Investigations*, U.S. EPA, EPA/600/R-00/007 (EPA QA/G-4HW), January 2000.

*Data Quality Objectives Process for Superfund*, Interim Final Guidance, OSWER Directive 9355.9-01, EPA540-R-93-071, September 1993.

*Data Quality Objectives Process Summary*, DERR-00-DI-32 Ohio EPA DERR Remedial Response Program, January 2002.

*Guidance for Data Quality Assessment: Practical Methods for Data Analysis*, U.S. EPA, EPA/600/R-96/084 (EPA QA/G-9), QAOO Update, July 2000.

*Guidance on Systematic Planning Using the Data Quality Objectives Process*, U.S. EPA, EPA QA/G-4, EPA/240/B-06/001, February 2006.

*Data Quality Assessment: A Reviewer's Guide*, (QA/G-9R), U.S. EPA, EPA/240/B-06/002, February, 2006.

*Data Quality Assessment: Statistical Methods for Practitioners*, U.S. EPA, EPA/240/B-06/003 (EPA QA/G-9S), February 2006.

*Guidance for Preparing Standard Operating Procedures*, U.S. EPA, EPA QA/G-6, EPA/240/B-01/004, March 2001.

*Guidance for Quality Assurance Plans for Modeling*, U.S. EPA, EPA QA/G-5M, EPA/240-R02/007, December, 2002.

*Guidance for Quality Assurance Project Plans*, U.S. EPA, QA-G-5, EPA/240/R-02-009, December 2002.

*Guidance on Environmental Data Verification and Data Validation*, U.S. EPA, EPA/240/R-02/004, November 2002.

*Guidelines and Specifications for Preparing Quality Assurance Project Plans*, Ohio EPA, DERR-00-RR-008, September 1998.

*Laboratory and Field Data Screening for Preparing Quality Assurance Project Plans*, Ohio EPA DERR. DI-00-034, August 2005.

*Preparation Aids for the Development of Category 1 Quality Assurance Project Plans*, U.S. EPA, EPA/600-8-91-003, February 1991 (#600891003).

*Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures*, Interim Final, U.S. EPA, EPA/540/G-90/004, April 1990 (# 540G90004).

*Technical Guidance Document: Construction Quality Assurance and Quality Control for Waste Containment Facilities*, U.S. EPA, EPA/600/R-93/182, September 1993 (# 600R93182).