



207481

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Pines Site  
Town of Pines, IN

RESPONDENTS

Northern Indiana  
Public Service Company,  
Brown, Inc., Ddalt Corp.,  
and Bulk Transport Corp.

)  
) , Docket No. **V-W 04 C 34**  
)  
) ADMINISTRATIVE ORDER  
) ON CONSENT PURSUANT TO  
) SECTIONS 104, 107 & 122 OF  
) THE COMPREHENSIVE  
) ENVIRONMENTAL RESPONSE,  
) COMPENSATION, AND LIABILITY  
) ACT, AS AMENDED,  
) 42 U.S.C. §§ 9604, 9607 AND  
) 9622

ADMINISTRATIVE ORDER ON CONSENT  
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and Northern Indiana Public Service Company ("NIPSCO"), Brown, Inc., Ddalt Corp., and Bulk Transport Corp. ("Respondents"). This Consent Order provides for the performance of a Remedial Investigation ("RI") and Feasibility Study ("FS") at or in connection with the property located in and near the Town of Pines, Indiana in Porter County, Indiana as outlined in Exhibit A (hereafter the "Pines Site").

2. This Consent Order is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9604, 9607, 9622 ("CERCLA"). This authority was delegated to the Administrator of U.S. EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to Regional Administrators by U.S. EPA Delegations Nos. 14-14-A, 14-14-C and 14-14-D. The U.S. EPA Regional Administrator of Region 5 further delegated the authority to the Superfund Division Director by EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

3. In accordance with Section 121(f)(1)(F), U.S. EPA has notified the State of Indiana (the "State") of negotiations with potentially responsible parties regarding the implementation of the remedial investigation and feasibility study for the Site.

4. U.S. EPA and Respondents recognize that this Consent Order has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Consent Order do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the findings of facts, conclusions of law, and determinations in

Sections V and VI of this Consent Order. Respondents agree to comply with and be bound by the terms of this Consent Order and further agree that they will not contest the basis or validity of this Consent Order or its terms.

## II. PARTIES BOUND

5. This Consent Order applies to and is binding upon U.S. EPA and upon Respondents, their agents, successors and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. Any change in the ownership or corporate status of the Respondents or of the facility or site shall not alter Respondents' responsibilities under this Consent Order.

6. Respondents' participation in this Order shall not constitute an admission of liability or of U.S. EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that they will not contest the basis or validity of this Order or its terms. Respondents are jointly and severally responsible for carrying out all actions required of them by this Consent Order.

7. Respondents shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondents shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within 30 days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondents shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Consent Order and for ensuring that their subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Consent Order.

## III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Consent Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"AOC I" shall mean the Administrative Order on Consent entered into between the parties on February 6, 2003, Docket No. V-W-03-C-730, and as amended from time to time, concerning the groundwater removal action undertaken by Respondents in certain areas in the Pines Site. To distinguish this Consent Order from AOC I, this Consent Order at times may be referred to as "AOC II".

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

“Coal Combustion Byproducts” or “CCB” shall mean the solid particles of non-combustible material resulting from the combustion of coal including bottom ash and fly ash.

“Consent Order” shall mean this Administrative Order on Consent and all appendices attached hereto.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the date on which this Consent Order is signed by the Director of the Superfund Division, U.S. EPA, Region 5.

“Future Response Costs” shall mean all costs that are not arbitrary, capricious or otherwise inconsistent with the National Contingency Plan, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing, overseeing or developing the plans, technical memoranda, reports and other items pursuant to this Consent Order, conducting community relations, verifying the activities required by this Consent Order, or otherwise implementing, overseeing, or enforcing this Consent Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs and the costs incurred to secure access pursuant to Paragraph 42.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. Section 9507, compounded annually on October 1, of each year, in accordance with 42 U.S.C. Section 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“IDEM” shall mean the Indiana Department of Environmental Management.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. Section 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Parties” shall mean U.S. EPA and Respondents.

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that the United States incurred and paid at or in connection with the Town of Pines Site through October 31, 2003, that are not arbitrary, capricious or otherwise inconsistent with the National Contingency Plan, and that will not be reimbursed under the terms of AOC 1.

“Respondents” shall mean Northern Indiana Public Service Company, Brown Inc., Ddalt Corp., and Bulk Transport Corp.

“Site” or “Pines Site” includes the area located in and near the Town of Pines in Porter County, Indiana, as depicted in Exhibit A, and includes all locations where hazardous substances,

pollutants or contaminants from the Site related to Coal Combustion Byproducts have or may have come to be located.

“State” shall mean the State of Indiana.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Investigation and Feasibility Study as set forth in Appendix A to this Consent Order and any modifications made thereto as approved or modified by U.S. EPA in accordance with this Consent Order.

“Waste Material” shall mean 1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any “hazardous substance” under Indiana Statute IC 13-11-2-98 or “hazardous waste” under Indiana Statute IC 13-11-2-99.

“Work” shall mean all activities Respondents are required to perform under this Consent Order.

#### IV. STATEMENT OF PURPOSE

9. In entering into this Consent Order, the objectives of U.S. EPA and Respondents are:

a. To determine the nature and extent of contamination at the Site and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants related to Coal Combustion By-products (“CCB”) at or from the Site, by conducting a Remedial Investigation;

b. To collect data necessary to adequately characterize, for the purpose of developing and evaluating effective remedial alternatives: (i) whether the city water service extension installed pursuant to AOC I, as amended, is sufficiently protective of current and reasonable future drinking water use of groundwater in accordance with Federal, State, and Local requirements, (ii) any additional human health risks at the Site associated with exposure to CCBs, and (iii) whether CCB-derived constituents may be causing unacceptable risks to ecological receptors;

c. To determine and evaluate alternatives for remedial action to prevent, mitigate, control or eliminate risks posed by any release or threatened release of hazardous substances, pollutants, or contaminants related to CCBs at or from the Site, by conducting a Feasibility Study; and

d. To recover Past Response Costs and Future Response Costs incurred by U.S. EPA with respect to this Consent Order.

10. Respondents shall conduct all activities under this Consent Order in accordance with CERCLA, the National Contingency Plan (NCP), 40 C.F.R. Part 300 and all applicable U.S. EPA guidance, policies, and procedures.

#### IV. FINDINGS OF FACT

Based on available information, U.S. EPA makes the following findings of fact:

1. A state-permitted landfill known as Yard 520, owned by Ddalt Corp. and operated by Brown, Inc. and located within the Pines Site, has received fly ash from Respondent NIPSCO's electricity generating station in Michigan City, Indiana.
2. From May, 2000 to May, 2002, both U.S. EPA and IDEM conducted sampling of over 100 drinking water wells in and around the Town of Pines. Laboratory analysis of these samples showed that drinking water wells at over 30 homes and businesses in the Pines community have elevated levels of boron and/or molybdenum, which exceed Removal Action Levels established in the "U.S. EPA Numeric Removal Action Levels for Contaminated Drinking Water Sites," April, 1997.
3. Soil samples taken in residential areas of Pines during September, 2001, revealed elevated levels of chromium and arsenic.
4. Laboratory analysis of samples taken from ground water monitoring wells at Yard 520 by U.S. EPA in May 2002 indicate elevated levels of boron and molybdenum.
5. Brown Ditch is a surface water body located adjacent to Yard 520. Laboratory analysis of surface water samples taken from Brown Ditch at locations upstream of Yard 520 show the presence of boron in concentrations of 130 parts-per-billion (ppb), while boron is present in concentrations of over 13,000 ppb in surface water samples taken from Brown Ditch at locations downstream of Yard 520. Laboratory analysis of a sample collected as runoff from Yard 520 shows boron at a concentration in excess of 6,000 ppb.
6. CCB is known to contain detectable amounts of boron, arsenic, molybdenum, and other metals. Boron, molybdenum and arsenic are "hazardous substances" within the meaning of CERCLA.
7. On February 6, 2003, Respondents and U.S. EPA entered into AOC I pursuant to which Respondents agreed to design and construct municipal water service to certain of the businesses and residences located in the Pines Site, which were identified by U.S. EPA.
8. The work required by AOC I was undertaken and substantially completed by Respondents by December 1, 2003, so that two discrete neighborhoods within the Pines Site are receiving municipal water service at this time.
9. The Respondents have agreed to expand the area to receive municipal water service beyond the areas identified in AOC I. This expanded area is identified in an Amendment to AOC I, which Amendment the parties are entering into concurrent with this Consent Order.
10. The Respondents and U.S. EPA have discussed the need for further study of the soil, sediment, surface water, and groundwater impacts in the area of the Site and Respondents have agreed to enter into this Consent Order so as to achieve such purpose.

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

11. Based on the Findings of Fact set forth above, and the Administrative Record supporting this action, U.S. EPA has determined that:

- a. The Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
- b. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), or constitute “any pollutant or contaminant” that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.
- c. The conditions described in the Findings of Fact above constitute an actual and/or threatened “release” as defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).
- d. Respondents are “persons” as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
- e. Each Respondent is a responsible party under Section 107(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.
  - i. Respondent NIPSCO arranged for disposal of fly ash to Yard 520, from NIPSCO’s Michigan City generating station, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. Section 9607(a).
  - ii. Respondent Brown, Inc. was the “operator” of Yard 520 and Respondent Ddalt Corp. was the owner of the Yard 520 facility at the time of disposal of hazardous substances at the Yard 520 facility within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. Section 9607(a)(2).
  - iii. Respondent Bulk Transport Corp. accepted hazardous substances for transport to the Yard 520 facility within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. Section 9607(a)(4).
- f. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, or are in the public interest, 42 U.S.C. Section 9622(a), and if carried out in compliance with the terms of this Consent Order will be considered consistent the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

## VI. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR

12. All work performed under this Consent Order shall be under the direction and supervision of qualified personnel. Within 30 days of the Effective Date of this Consent Order, and before the work outlined below begins, Respondents shall notify U.S. EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors,

consultants and laboratories to be used in carrying out such work. The qualifications of the persons undertaking the work for Respondents shall be subject to U.S. EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Consent Order is contingent on Respondent's demonstration to U.S. EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Consent Order. If U.S. EPA disapproves in writing of any person's technical qualifications, Respondents shall notify U.S. EPA of the identity and qualifications of the replacement within 30 days of the written notice. If U.S. EPA subsequently disapproves of the replacement, U.S. EPA reserves the right to terminate this Consent Order and to conduct a complete Remedial Investigation and Feasibility Study, and to seek reimbursement for costs and penalties from Respondents. During the course of conducting the Remedial Investigation and Feasibility Study, Respondents shall notify U.S. EPA in writing of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. U.S. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

13. Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this Consent Order, shall be sent in such manner as agreed to by U.S. EPA and the Respondents, with submission by certified mail, return receipt requested, as the method in absence of agreement on another method to the following addressees or to any other addressees which the Respondents and U.S. EPA designate in writing:

a. Documents to be submitted to U.S. EPA should be sent to U.S. EPA's Project Coordinator at the following address or at such electronic or other address as he directs:

Tim Drexler RPM  
Superfund Division (SR-5J)  
US EPA, Region 5,  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

b. Copies of documents submitted to U.S. EPA should be sent to the State at the following address or at such electronic or other address as it directs:

Kevin Herron  
Project Manager  
Indiana Department of Environmental Management  
100 North Senate Ave.  
P.O. Box 6015  
Indianapolis, Indiana 46206

c. Documents to be submitted to the Respondents should be sent to the following address or at such electronic or other address as he directs:

Mr. Dan Sullivan  
NiSource, Inc.  
801 E. 86th Ave.  
Merrillville, Indiana 46410

14. On or before the effective date of this Consent Order, U.S. EPA and the Respondents shall each designate their own Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondents and U.S. EPA shall be directed to the Project Coordinator in accordance with Paragraph 13 with copies to such other persons as U.S. EPA, the State, and Respondents may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Consent Order.

15. U.S. EPA and the Respondents each have the right to change their respective Project Coordinator. The other party must be notified in writing at least 10 days prior to the change.

16. U.S. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, U.S. EPA's Project Coordinator shall have the authority consistent with the NCP, to halt any work required by this Consent Order, and to take any necessary response action when he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the U.S. EPA Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.

17. U.S. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the Work, as required by Section 104(a) of CERCLA, 42 U.S.C. Section 9604(a). The oversight assistant may observe work and make inquiries in the absence of U.S. EPA, but is not authorized to modify the RI/FS Work Plan or Statement of Work.

## VII. WORK TO BE PERFORMED

18. Respondents shall conduct activities and submit deliverables as provided by the attached Statement of Work ("SOW"), which is incorporated by reference, for the development of the RI/FS. The RI/FS will be conducted consistent with CERCLA, the NCP, and the "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (U.S. EPA, Office of Emergency and Remedial Response, October 1988) and additional appropriate U.S. EPA guidance, as well as any additional requirements in this Consent Order. U.S. EPA will provide any new or revised guidance published or disseminated during the conduct of the RI/FS to the Respondents in a reasonable timeframe prior to the due date for submittal of appropriate interim or final deliverables identified in the SOW. Respondents shall furnish all personnel, materials, and services necessary for, or incidental to, performing the RI/FS at the Site, except as otherwise specified herein. As specified in CERCLA Section 104(a)(1), as amended by SARA, U.S. EPA will provide oversight of the Respondents' activities throughout the RI/FS, including all field sampling activities. The Respondents shall support U.S. EPA's oversight activities.

### 19. Task 1: RI/FS Site Management Strategy.

Within 60 days of the Effective Date of this Consent Order, Respondents shall submit a Site Management Strategy as described in the attached SOW. Prior to developing a specific plan for the RI, the Respondents and U.S. EPA will develop an approach for

implementing the RI. This approach will be documented in a Site Management Strategy, which will serve as the basis for the development of the RI/FS Work Plan, including the Field Sampling Plan. The Site Management Strategy shall outline the approach to be used for conducting the RI/FS and contain site background information, a conceptual site model, data gap description, and a management strategy for the site investigation. Respondents shall also identify the general data requirements that may be necessary to evaluate remedial activities in the RI/FS.

20. Task 2: RI/FS Work Plan and Field Sampling Plan.

a. Within 60 days of U.S. EPA approval of the Site Management Strategy, the Respondents shall develop a RI/FS Work Plan including a Field Sampling Plan (FSP), as described in the attached SOW. The FSP will specify the locations, numbers, and types of samples that will be collected during the RI to satisfy the identified data gaps and cover all RI sample collection activities. Sampling data will be sufficient to support the evaluation of potential human health and ecological risks, and select an appropriate remedy, if necessary. As set forth in the SOW, the RI/FS Work Plan will include a human health risk assessment work plan, an ecological risk assessment work plan, a Quality Assurance Project Plan (QAPP), a Health and Safety Plan (HASP), and a Quality Management Plan (QMP).

b. U.S. EPA, after reasonable opportunity for review and comment by IDEM, may: (a) approve, in whole or in part, (b) require revisions to, (c) modify in whole or in part, or (d) disapprove the RI/FS Work Plan in whole or in part. If U.S. EPA requires revisions, Respondents shall submit a revised RI/FS Work Plan within 60 days of receipt of U.S. EPA's notification of the required revisions. Respondents shall implement the RI/FS Work Plan as approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the RI/FS Work Plan and any subsequent modifications shall be incorporated into and become fully enforceable under this Consent Order.

21. Task 3: Site Characterization/Remedial Investigation.

Following U.S. EPA approval or modification of the RI/FS Work Plan, Respondents shall conduct the Remedial Investigation according to the U.S. EPA approved RI/FS Work Plan, and the attached Statement of Work. Respondents shall complete the Remedial Investigation within the deadlines established by the RI/FS Work Plan.

22. Task 4: Remedial Investigation Report.

Within 90 days following the collection of the last field sample under the terms of the RI Work Plan, Respondents shall submit a Remedial Investigation Report ("RI Report") consistent with the SOW and RI Work Plan to U.S. EPA with a copy to IDEM. Data included in the RI Report shall also be submitted electronically according to U.S. EPA Region 5 specifications. U.S. EPA, after reasonable opportunity for review and comment by IDEM, may: (a) approve, in whole or in part, (b) require revisions to, (c) modify in whole or in part, or (d) disapprove the RI Report in whole or in part. If U.S. EPA requires revisions, Respondents shall submit a revised RI Report within 60 days after receipt of U.S. EPA's notification of the required revisions.

23. Task 5: Human Health and Ecological Risk Assessment Reports.

Within 60 days after approval of the RI Report, Respondents shall submit a Human Health Risk Assessment Report and Ecological Risk Assessment Report consistent with the attached SOW. U.S. EPA, after reasonable opportunity for review and comment by IDEM, may: (a) approve, in whole or in part; (b) require revisions to; (c) modify in whole or in part; or (d) disapprove the Human Health and Ecological Risk Assessment Reports in whole or in part. If U.S. EPA requires revisions, Respondents shall submit the revised Human Health and Ecological Risk Assessment Reports within 60 days of receipt of U.S. EPA's notification of the required revisions.

24. Task 6: Identification of Remedial Action Objectives.

Within 30 days of approval of the Human Health Risk Assessment Report and the Ecological Risk Assessment Report, Respondents shall submit a Remedial Action Objectives Technical Memorandum consistent with the SOW to U.S. EPA with a copy to IDEM. Based on the Human Health Risk Assessment Report and Ecological Risk Assessment Report, Respondents shall develop Site-specific remedial action objectives. The Remedial Action Objectives Technical Memorandum shall specify contaminants and media of concern, potential exposure pathways and receptors, and an acceptable constituent level or range of levels (at particular locations for each exposure route). The Respondents shall address and incorporate U.S. EPA's comments on the Remedial Action Objectives Technical Memorandum in the Alternatives Screening Technical Memorandum described below.

25. Task 7: Alternatives Screening Technical Memorandum.

Within 60 days after receipt of U.S. EPA's comments on the Remedial Action Objectives Technical Memorandum, Respondents shall submit an Alternatives Screening Technical Memorandum to U.S. EPA with a copy to IDEM. As provided in the SOW, the Alternatives Screening Technical Memorandum shall present and summarize the development and screening of the remedial alternatives. It shall include descriptions of technologies that were eliminated from consideration and will provide the basis for their elimination. Preliminary screening will be based on permanence, effectiveness, implementability, and order of magnitude cost. The outcome of the alternatives screening will be a short list of alternatives which will undergo detailed analysis in the FS. Respondents shall revise the Remedial Action Objectives in accordance with U.S. EPA's comments and include the revised Remedial Action Objectives within the Alternatives Screening Technical Memorandum. The Alternatives Screening Technical Memorandum shall identify and assess a limited number of alternatives appropriate for addressing the Remedial Action Objectives. The Alternatives Screening Technical Memorandum shall document the methods, the rationale and the results of the alternatives screening process. The Respondents shall incorporate U.S. EPA's comments on the Alternatives Screening Technical Memorandum in the Feasibility Study Report.

26. Task 8: Feasibility Study Report.

a. Within 90 days of U.S. EPA approval of the Alternatives Screening Technical Memorandum, the Respondents shall submit to U.S. EPA, for review and approval, a

FS Report. As provided in the SOW, the Feasibility Study shall include a detailed analysis of the alternatives that represent viable approaches to remedial action and shall incorporate U.S. EPA's comments on the Alternatives Screening Technical Memorandum. The detailed analysis consists of an assessment of individual alternatives against each of the nine evaluation criteria set forth in 40 C.F.R. 300.430(e)(9)(iii) and a comparative analysis that focuses upon the relative performance of each alternative against those criteria.

b. U.S. EPA, after reasonable opportunity for review and comment by IDEM, may: (a) approve, in whole or in part, (b) require revisions to, (c) modify in whole or in part, or (d) disapprove the Feasibility Study Report in whole or in part. If U.S. EPA requires revisions, Respondents shall submit a revised Feasibility Study Report within 60 days of receipt of U.S. EPA's notification of the required revisions.

27. Task 9: Progress Reports.

Respondents shall submit a monthly written progress report to U.S. EPA by the 15th Day of the following month, beginning with the first full calendar month after the Effective Date of this Consent Order, until termination of this Consent Order, unless otherwise directed in writing by the RPM. The monthly reports shall describe all significant developments during the preceding period, including the work performed, copies of any draft or validated data in electronic form (text or PDF files for text and spreadsheets or databases for numeric data), and any problems encountered, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

28. Task 10: Community Relations and Technical Assistance Plan.

U.S. EPA will prepare a Community Relations Plan for the Site, in accordance with U.S. EPA guidance and the NCP. Respondents shall provide information supporting U.S. EPA's community relations programs. Within 30 days after a request by U.S. EPA, Respondents shall submit to U.S. EPA, a Technical Assistance Plan for providing and administering \$50,000 of Respondents' funds to be used by a qualified community group to hire independent technical advisors to help interpret and comment on Site-related documents developed under this Consent Order and through U.S. EPA's issuance of the Record of Decision (ROD). If U.S. EPA disapproves or requires revisions to the Technical Assistance Plan, in whole or in part, Respondents shall amend and submit to U.S. EPA a revised TAP that incorporates all of U.S. EPA's required revisions, within 14 days of receiving U.S. EPA's comments. The TAP shall state that Respondents will provide and administer any additional amounts needed, as more fully set forth in the SOW, if the selected community group demonstrates such a need prior to U.S. EPA's issuance of the ROD. An eligible community group shall be: 1) a group of people who may be affected by a release or threatened release at the Site; 2) incorporated as a nonprofit organization for the purposes of the Site or otherwise established as a charitable organization that operates within the geographical range of the Site and is already incorporated as a nonprofit organization; and 3) able to demonstrate its capability to adequately and responsibly manage any funds awarded. The U.S. EPA shall solicit applications from eligible community groups. The U.S. EPA shall identify all qualified groups from among the applications it receives. The Respondents

shall select the community group to receive funding from among the group(s) identified by the U.S. EPA.

29. Quality Assurance. Respondents shall assure that work performed, samples taken and analyses conducted conform to the requirements of the SOW, the Quality Assurance Project Plan (QAPP) component of the U.S. EPA approved RI/FS Work Plan, and guidance identified therein. Respondents will assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures. Respondents shall only use laboratories which have a documented quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) to meet the quality system requirements.

30. All plans, reports, and other items required to be submitted to U.S. EPA under this Consent Order shall, upon approval or modification by U.S. EPA, be enforceable under this Consent Order. Neither failure of U.S. EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by U.S. EPA.

31. Off Site Shipments. Respondents shall, prior to any off-Site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to U.S. EPA's Designated Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-site shipments when the total volume of such shipments will not exceed 10 cubic yards.

a. Respondents shall include in the written notification: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the remedial investigation and feasibility study. Respondents shall provide all relevant information, including information under the categories noted in paragraph 31.a. above, on the off-site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

### VIII. MODIFICATION OF THE WORK PLAN

32. If at any time during the Work, Respondents identify a need for additional data, a memorandum documenting the need for additional data shall be submitted to the U.S. EPA Project Coordinator within 30 days of identification. U.S. EPA in its discretion may provide

comments on the memorandum.

33. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondents shall notify U.S. EPA and the IDEM immediately. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the U.S. EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that U.S. EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the SOW and RI/FS Work Plan, U.S. EPA shall modify or amend the SOW and RI/FS Work Plan in writing accordingly. Respondents shall perform the SOW and RI/FS Work Plan as modified or amended.

34. U.S. EPA may determine that in addition to tasks defined in the SOW and initially approved RI/FS Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS as set forth in this Consent Order, including the SOW for this RI/FS. U.S. EPA may require that the Respondents perform these response actions in addition to those required by the SOW and initially approved RI/FS Work Plan, including any approved modifications, if it determines that such actions are necessary for a complete RI/FS. Respondents shall confirm their willingness to perform the additional work in writing to U.S. EPA within 30 days of receipt of the U.S. EPA request or Respondents shall invoke dispute resolution. Subject to U.S. EPA resolution of any dispute, Respondents shall implement the additional tasks which U.S. EPA determines are necessary. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by U.S. EPA in a written modification to the SOW and RI/FS Work Plan or written SOW and RI/FS Work Plan supplement. U.S. EPA reserves the right to conduct the work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

#### IX. FINAL PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION, ADMINISTRATIVE RECORD

35. U.S. EPA retains responsibility for the preparation and release to the public of the Proposed Plan, the ROD, and the Administrative Record in accordance with CERCLA and the NCP.

#### X. ACCESS TO INFORMATION

36. Respondents shall make presentations at, and participate in, coordination meetings at the request of U.S. EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled as needed and in accordance with the SOW.

37. Upon request by U.S. EPA, Respondents shall provide to U.S. EPA, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Order, including, but not limited to, sampling, analysis, modeling, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Upon request of U.S. EPA, Respondents shall provide U.S. EPA with an

electronic copy (in a commonly used format according to U.S. EPA specifications) of any data or report generated during implementation of this Consent Order.

38. Respondents will verbally notify U.S. EPA at least 15 days prior to conducting significant field events as described in the Statement of Work or U.S. EPA approved RI/FS Work Plan. At U.S. EPA's verbal or written request, or the request of U.S. EPA's oversight assistant, Respondents shall allow split or duplicate samples to be taken by U.S. EPA or its authorized representatives of any samples collected by the Respondents in implementing this Consent Order. All split samples taken by U.S. EPA shall be analyzed by the methods identified in the QAPP. The results of the split sampling shall be provided to the Respondents in a timely manner.

39. At all reasonable times, U.S. EPA and its representatives shall have the authority to enter and freely move about all property at the Site and off-site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and their contractor pursuant to this Consent Order; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting tests as U.S. EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to U.S. EPA by the Respondents. The Respondents shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Consent Order. Nothing herein shall be interpreted as limiting or affecting U.S. EPA's right of entry or inspection authority under federal law. All parties with access to the Site under this paragraph shall comply with all approved health and safety plans under the RI/FS Work Plan.

40. The Respondents may assert a claim of business confidentiality covering part or all of the information submitted to U.S. EPA pursuant to the terms of this Consent Order to the extent permitted herein and by and in accordance with 40 C.F.R. Section 2.203(b) and Section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7). Information determined to be confidential by U.S. EPA will be given the protection specified in 40 C.F.R. Part 2 Subpart B. If no such claim accompanies the information when it is submitted to U.S. EPA or if U.S. EPA notifies the Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such information by U.S. EPA without further notice to the Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

## XI. SITE ACCESS

41. If the Site, or any other property where access is needed to implement this Consent Order, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide U.S. EPA, IDEM and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Order.

42. Where any action under this Consent 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 90 days after the Effective Date, or as otherwise specified in writing by the RPM. Respondents shall immediately notify U.S. EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of the type and degree of access needed to perform actions under this Consent Order. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the activities described herein, using such means as U.S. EPA deems appropriate. Respondents shall reimburse U.S. EPA for all costs, including payment of reasonable sums of money as described herein, and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XIX (Payment of Response Costs).

## XII. OTHER APPLICABLE LAWS

43. Respondents shall comply with all laws that are applicable when performing the RI/FS.

## XIII. RECORD PRESERVATION

44. All records and documents in Respondents possession that relate in any way to the Site shall be preserved during the conduct of this Consent Order and for a minimum of 10 years after commencement of construction of any remedial action. After this 10 year period, the Respondents shall notify U.S. EPA at least 90 days before the documents are scheduled to be destroyed. If U.S. EPA requests that the documents be saved, the Respondents shall, at no cost to U.S. EPA, give U.S. EPA the documents or copies of the documents.

## XIV. DISPUTE RESOLUTION

45. Any disputes concerning activities or deliverables required under this Consent Order, for which dispute resolution has been expressly provided for, shall be resolved as follows: If either Respondent objects to any U.S. EPA notice of disapproval or requirement made pursuant to this Consent Order, Respondents shall notify U.S. EPA's Project Coordinator in writing of their objections within 14 days of receipt of the disapproval notice or requirement. Respondents' written objections shall define the dispute, state the basis of Respondents' objections, and be sent certified mail, return receipt requested. U.S. EPA and the Respondents then have an additional 14 days after U.S. EPA's receipt of Respondents' written objections to reach agreement. In the event that the parties cannot resolve the dispute, then the position advanced by U.S. EPA is binding, unless Respondents request a determination by U.S. EPA's Chief of the Remedial Response Branch within 14 days after conclusion of the negotiation period. Respondents' request for a determination by U.S. EPA's Remedial Response Branch Chief shall include a written Statement of Position on the matter including, but not limited to any factual data, analysis or opinions supporting that position and any supporting documentation. The Branch Chief's determination is U.S. EPA's final decision. Respondents shall proceed in accordance with U.S. EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If the Respondents either do not agree to perform or do not actually perform the work in accordance with U.S. EPA's final decision, U.S. EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from the Respondents, to seek enforcement of the

decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

46. Respondents are not relieved of their obligations to perform and conduct activities and submit deliverables on the schedule set forth in the RI/FS Work Plan while a matter is pending in dispute resolution. With respect to the disputed matter, stipulated penalties shall continue to accrue from the first day of noncompliance but payment shall be stayed pending resolution of the dispute.

#### XV. DELAY IN PERFORMANCE/STIPULATED PENALTIES

47. For each day that the Respondents fail to complete a deliverable in a timely manner or fail to produce a deliverable of acceptable quality, or otherwise fail to perform in accordance with the requirements of this Consent Order, Respondents shall be liable for stipulated penalties. Penalties begin to accrue on the day that performance is due or a violation occurs, and extend through the period of correction. Where a revised submission by Respondents is required, stipulated penalties shall continue to accrue until a satisfactory deliverable is produced. U.S. EPA will provide written notice for violations that are not based on timeliness; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within 30 days of receipt of a demand letter from U.S. EPA.

48. Respondents shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. Section 3717.

49. Respondents shall make all payments by forwarding a check to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

Checks should identify the name of the site, the site identification number, the account number, and the title of this Consent Order. A copy of the check and/or transmittal letter shall be forwarded to the U.S. EPA Project Coordinator.

50. Stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first seven days of noncompliance; \$1,000 per day, per violation, for the 8th through 14th day of noncompliance; \$1,500 per day, per violation, for the 15th day through the 30th day; and \$2,000 per day per violation for all violations lasting beyond 30 days for the violations noted in subparagraphs a and b below:

a. Respondents' failure to submit any document specified in the Consent Order (including the Statement of Work) in accordance with the Schedule set forth in the Statement of Work and this Consent Order.

b. Respondents' failure to implement the work as prescribed in the Statement of Work and the approved RI/FS Work Plan and Schedule.

51. Respondents shall be liable for stipulated penalties in the amount of \$500 per day for the first week or part thereof and \$1,000 per day for each week or part thereof thereafter for failure to meet any other obligation under this Consent Order.

52. Respondents may dispute U.S. EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XV herein. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties shall be due to U.S. EPA within 30 days of resolution of the dispute. If Respondents prevail upon resolution, no penalties shall be paid.

53. In the event that U.S. EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by U.S. EPA.

54. The stipulated penalties provisions do not preclude U.S. EPA from pursuing any other remedies or sanctions which are available to U.S. EPA because of the Respondents' failure to comply with this Consent Order, including but not limited to conduct of all or part of the RI/FS by U.S. EPA. In addition to stipulated penalties, U.S. EPA reserves the right to seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein.

#### XVI. FORCE MAJEURE

55. Respondents agree to perform all requirements of this Consent Order within the time limits established under this Consent Order, unless the performance is delayed by a force majeure. For purpose of this Consent Order, a force majeure is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Consent Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work, or increased cost of performance.

56. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, Respondents shall notify U.S. EPA orally within 72 hours of when Respondents first knew that the event might cause a delay. Within 7 days thereafter, Respondents shall provide to U.S. EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

57. If U.S. EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Order that are affected by the force majeure event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, U.S. EPA will notify Respondents in writing of its decision. If U.S. EPA agrees that the delay is attributed to a force majeure event, U.S. EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

58. Should Respondents carry the burden set forth in paragraph 54, the delay at issue shall be deemed not to be a violation of the affected obligation of this Consent Order.

#### XVII. REIMBURSEMENT OF PAST RESPONSE COSTS

59. Within 30 days of the Effective Date of this Consent Order, Respondents shall pay to U.S. EPA \$73,878.59 for Past Response Costs. Payment shall be made by certified or cashiers check and made payable to "U.S. EPA Hazardous Substance Superfund". Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number INN000508071/B5V9, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency  
Program Accounting and Analysis Section  
P.O. Box 70753  
Chicago, IL 60673

60. The total amount to be paid by Respondents pursuant to paragraph 48 shall be deposited in the Town of Pines Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

61. A copy of the check should be sent simultaneously to the U.S. EPA Project Coordinator and Regional Attorney.

#### XVIII. REIMBURSEMENT OF FUTURE RESPONSE COSTS

62. Respondents shall pay U.S. EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, U.S. EPA will send Respondents a bill requiring payment that includes a standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by U.S. EPA and its contractors. Respondents shall make all payments within 30 days of receipt of each bill requiring payment.

63. Respondents shall make all payments by a certified or cashier's check made payable to "U.S. EPA Hazardous Substance Superfund," referencing the name and address of the parties making payment and U.S. EPA Site/Spill ID number INN000508071/B5V9. Respondents shall send checks to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

64. The total amount to be paid by Respondents pursuant to Paragraphs 47, 59, and 62 shall be deposited in the Town of Pines Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

65. Copies of the transmittal letter and check should be sent simultaneously to the U.S. EPA Project Coordinator and Regional Attorney.

66. Respondents agree to limit any disputes concerning costs to accounting errors, inconsistencies with the NCP, and whether the costs were arbitrary and capricious. Respondents shall identify any contested costs and the basis of their objection. All undisputed costs shall be remitted by Respondents in accordance with the schedule set forth above. Disputed costs shall be paid by Respondents into an escrow account while the dispute is pending. Respondents bear the burden of establishing an U.S. EPA accounting error or that costs are inconsistent with the NCP.

#### XIX. RESERVATIONS OF RIGHTS

67. Except as specifically provided in this Consent Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or oil or hazardous or solid waste on, at, or from the Site. Nothing in this Consent Order shall affect U.S. EPA's removal authority or U.S. EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

68. Except as specifically provided in this Consent Order nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Consent Order.

69. Except as specifically set forth in this Consent Order, U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

70. The covenant not to sue set forth in Section XXI does not pertain to any matters other than those expressly identified therein. Except as specifically provided in this Consent Order, the United States and U.S. EPA reserve, and this Agreement is without prejudice to, all rights against the Respondents with respect to all other matters, including but not limited to:

a. Liability for failure of Respondents to meet a requirement of this Consent Order including but not limited to the ability to collect stipulated penalties assessed pursuant to Section XVI of this Consent Order, and to seek penalties pursuant to Section 109 of CERCLA, 42

U.S.C. Section 9609;

b. Liability for any Future Response Costs incurred at the Site that are not reimbursed by the Respondents;

c. Liability for any costs incurred in the event that U.S. EPA performs the RI/FS or any part thereof pursuant to Paragraph 70;

d. Liability for costs incurred or to be incurred that are not Past Response Costs or Future Response Costs as defined in Sections XVIII and XIX of this Consent Order;

e. Liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. Section 9606, excluding work satisfactorily performed under the terms of this Consent Order;

f. Criminal liability; and

g. Liability for damages for injury to, destruction of or loss of natural resources, and for the costs of any natural resource damage assessments.

71. U.S. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

72. In the event that Respondents amend or revise a report, plan or other submittal upon receipt of U.S. EPA comments, if U.S. EPA subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect U.S. EPA's directions for revisions, U.S. EPA retains the right to seek stipulated or statutory penalties; perform its own studies, modify and/or complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondents for its costs; and/or seek any other appropriate relief. Respondents may invoke the procedures set forth in Section XV(Dispute Resolution) to dispute U.S. EPA's determination that takeover of the Work is warranted under this paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section XIX. Notwithstanding any other provision of this Consent Order, U.S. EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

73. In the event that U.S. EPA takes over some of the tasks, Respondents shall incorporate and integrate information supplied by U.S. EPA into the final Remedial Investigation Report and Feasibility Report if requested by U.S. EPA.

## XX. COVENANT NOT TO SUE

74. Following satisfaction of the requirements of this Consent Order, Respondents shall have resolved their liability to U.S. EPA for the work performed by Respondents pursuant to this Consent Order. Respondents are not released from liability, if any, for any response actions taken beyond the scope of this Consent Order regarding removals, other operable units, remedial design/remedial action of this operable unit, or activities arising pursuant to Section 121(c) of CERCLA. Except as otherwise specifically provided for in this Consent Order, in consideration

and upon Respondents' payment of the Past Response Costs and Future Response Costs specified in Sections XVIII and XIX of this Consent Order, U.S. EPA covenants not to sue or to take administrative action against Respondents under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for recovery of Past Response Costs and Future Response Costs paid by Respondents in connection with this Consent Order. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondents. This covenant not to sue shall take effect upon receipt by U.S. EPA of the payments required by Section XIX for Future Response Costs.

## XXI. CONTRIBUTION PROTECTION

75. The Parties agree that the Respondents are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Order and the attached SOW. Except as provided in Paragraph 77, nothing in this Consent Order precludes the United States or Respondents from asserting any claims, causes of action, or demands against any person not a party to this Consent Order for indemnification, contribution or cost recovery.

## XXII. COVENANTS NOT TO SUE BY RESPONDENTS

76. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Consent Order, including but not limited to:

a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. Section 9507, based on Sections 106(b), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. Sections 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. Any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Indiana Constitution, the Tucker Act, 28 U.S.C. Section 1491, the Equal Access to Justice Act, 28 U.S.C. Section 2412, as amended, or at common law; or

c. Any claim against the United States pursuant to Section 107 and 113 of CERCLA, 42 U.S.C. Section 9607 and 9613, relating to the Site.

77. Respondents shall bear their own costs and attorneys fees.

78. Respondents hereby agree to toll any statute of limitations defense that may apply to any claim or cause of action by the United States or the State of Indiana for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments until three years following the date U.S. EPA certifies completion of the remedial action (excluding operation and maintenance activities).

### XXIII. OTHER CLAIMS

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

80. Nothing in this Consent Order 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, subsidiary or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

### XXIV. INSURANCE

81. (a) At least 7 days prior to commencement of any work under this Consent Order, Respondents shall secure, and shall maintain in force for the duration of this Consent Order, Comprehensive General Liability ("CGL") and automobile insurance, with limits of \$1 million dollars, combined single limit. Within the same time period, Respondents shall provide U.S. EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Consent Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Consent Order. If Respondents demonstrate by evidence satisfactory to U.S. EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

82. At least 5 days prior to commencing any work under this Consent Order, Respondents shall certify to U.S. EPA that the required insurance has been obtained by that contractor.

### XXV. INDEMNIFICATION

83. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of act on arising from or on account of negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, servants, contractors, or subcontractors, in carrying out activities under this Consent Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Consent Order. Neither Respondents nor any such contractor shall be considered an agent of the United States.

84. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling the claim.

85. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

#### XXVI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

86. The Effective Date of this Consent Order shall be the date it is signed by U.S. EPA.

87. This Consent Order may be amended by mutual agreement of U.S. EPA and Respondents. Amendments shall be in writing and project coordinators do not have the authority to sign amendments to the Consent Order.

88. No informal advice, guidance, suggestions, or comments by U.S. EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondents will be construed as relieving the Respondents of their obligation to obtain such formal approval as may be required by this Consent Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Consent Order are, upon approval by U.S. EPA, incorporated into this Consent Order.

#### XXVII. NOTICE OF COMPLETION

89. Upon completion of the Work, Respondents shall provide the following certification by a responsible official representing the Respondents. Each representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

90. When U.S. EPA determines that all activities required under this Consent Order, including any additional work, payment of Past Response Costs and Future Response Costs, and any stipulated penalties demanded by U.S. EPA, have been performed, U.S. EPA will provide Respondents with a notice of completion. This notice shall not, however, terminate Respondents' continuing obligations required by this Consent Order, including those under Section XIV (Record Preservation), Section XIX (Reimbursement of Future Costs), and Section XX (Reservation of Rights) of this Consent Order.

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

FOR BROWN, INC.

9<sup>th</sup> of March 04  
DATE

Signature:

Name:

Title:

Address:

[Signature]  
B. D. Brown  
VP  
720 W. US Hwy 20  
Michigan City, IN.

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

FOR DDALT CORP.

9<sup>th</sup> of March 2004  
DATE

Signature:

Name:

Title:

Address:

[Signature]  
B. D. Brown  
President  
P.O. Box 53  
Beckley Shores, IN  
46301

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

FOR BULK TRANSPORT CORP.

9<sup>TH</sup> OF March 04  
DATE

Signature:

Name:

Title:

Address:

[Signature]  
B D Brown  
President  
720 W. US Hwy 20  
Michigan City, IN  
46360

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

FOR NORTHERN INDIANA PUBLIC  
SERVICE COMPANY

\_\_\_\_\_  
DATE

Signature:

Name:

Title:

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IT IS SO ORDERED AND AGREED

4-5-04  
DATE

[Signature]  
Richard C. Karl, Acting  
Superfund Division Director  
U.S. Environmental Protection Agency  
Region 5

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

FOR BULK TRANSPORT CORP.

\_\_\_\_\_  
DATE

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

FOR NORTHERN INDIANA PUBLIC  
SERVICE COMPANY

March 29, 2004

DATE

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

*Mark T. Maassel*  
\_\_\_\_\_  
Mark T. Maassel

\_\_\_\_\_  
President, NIPSCO

\_\_\_\_\_  
801 E. 86th Avenue

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Merrillville, IN 46410  
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IT IS SO ORDERED AND AGREED

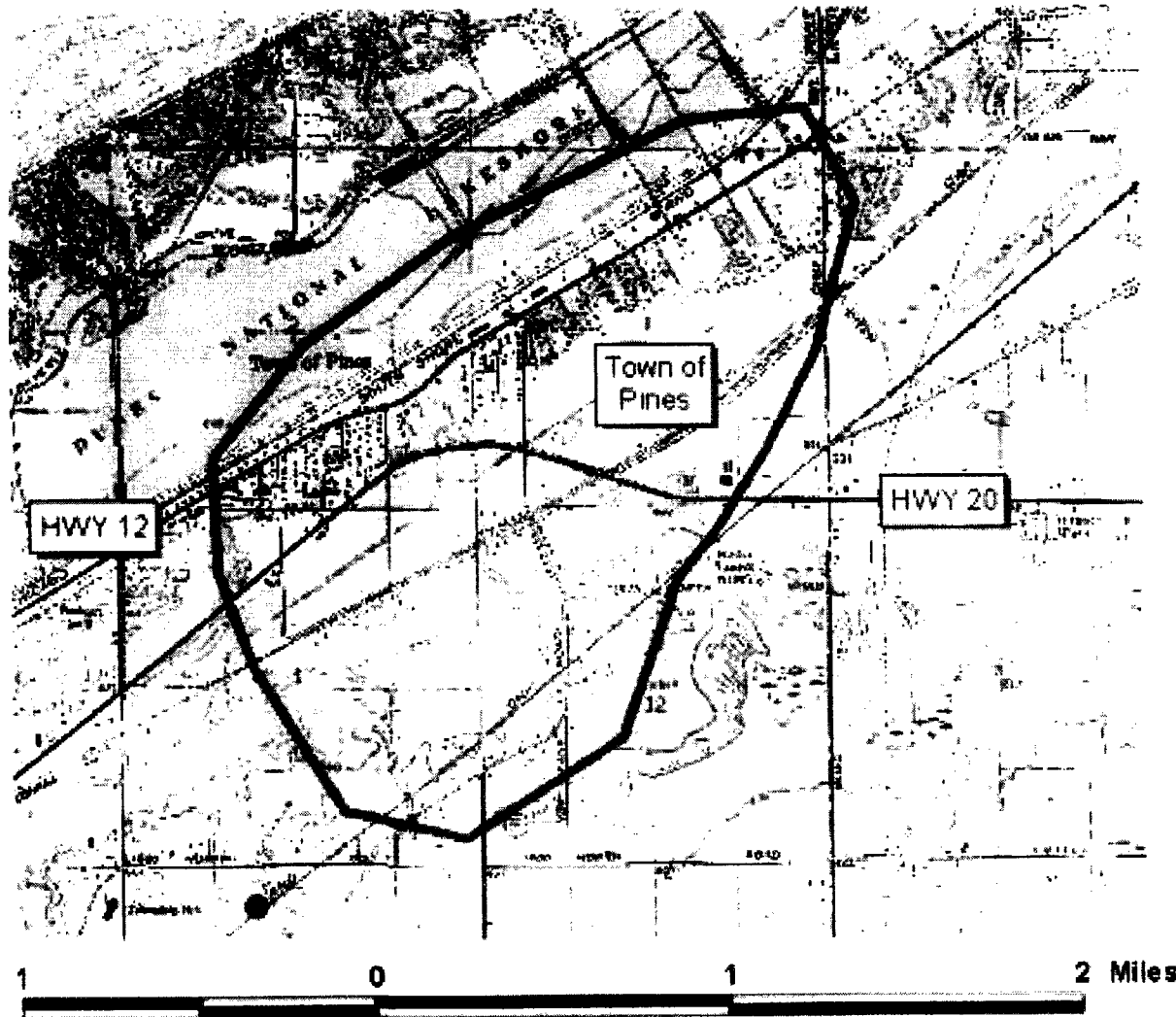
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DATE

*Richard C. Karl*  
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Richard C. Karl, Acting  
Superfund Division Director  
U.S. Environmental Protection Agency  
Region 5

EXHIBIT I

# Pines RI/FS Site Location

Porter County, Indiana



## LEGEND

 Area of Investigation

**STATEMENT OF WORK FOR  
REMEDIAL INVESTIGATION AND FEASIBILITY STUDY  
AT THE PINES SITE  
TOWN OF PINES, INDIANA**

Purpose: This Statement of Work (SOW) as part of the Administrative Order on Consent for Remedial Investigation/Feasibility Study, Pines Site (AOC II), sets forth the requirements for conducting a Remedial Investigation (RI) and Feasibility Study (FS) at the Pines Site (the Site) in the Town of Pines, Indiana. The objectives of the RI/FS are:

(a) To determine the nature and extent of contamination at the Site and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants related to coal combustion by-products ("CCB") at or from the Site or facility, by conducting a remedial investigation.

(b) To collect data necessary to adequately characterize, for the purpose of developing and evaluating effective remedial alternatives:

- i) Whether the water service extension installed pursuant to AOC I as amended is sufficiently protective of current and reasonable future drinking water use of groundwater in accordance with Federal, State, and local requirements.
- ii) Any additional human health risks at the Site associated with exposure to CCBs, and
- iii) Whether CCB-derived constituents may be causing unacceptable risks to ecological receptors.

(c) To determine and evaluate alternatives for remedial action to prevent, mitigate, control or eliminate risks posed by any release or threatened release of hazardous substances, pollutants, or contaminants related to CCBs at or from the Site, by conducting an FS.

The purpose of the RI is to obtain the data necessary to appropriately evaluate current and potential future risks to human health and ecological receptors. The risk assessment evaluates these risks. If risks are found to be unacceptable, the FS evaluates the merits of alternative remedial technologies to address these risks.

The RI/FS will be conducted consistent with the "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (U.S. Environmental Protection Agency (USEPA), Office of Emergency and Remedial Response, October 1988) and additional appropriate USEPA guidance, as well as any additional requirements in AOC II. USEPA will provide any new guidance, published or evolving during the conduct of the RI/FS to the Respondents in a reasonable timeframe prior to the due date for submittal of appropriate interim or final deliverables identified in this SOW.

Respondents shall furnish all personnel, materials, and services necessary for, or incidental to, performing the RI/FS at the Site, except as otherwise specified herein. As specified in CERCLA Section 104(a)(1), as amended by SARA, USEPA will provide oversight of the Respondents' activities throughout the RI/FS, including all field sampling activities. The Respondents shall support USEPA's oversight activities.

At the completion of the RI/FS, USEPA will be responsible for the selection of a site remedy and will document this selection in a Record of Decision (ROD). The selected remedy will meet the following criteria (specified in CERCLA Section 121): to be protective of human health and the environment; to be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements of other laws; to be cost-effective; to utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable; and to address the statutory preference for treatment as a principal element.

Background: Molybdenum and boron have been detected in groundwater samples from some domestic drinking water wells located in a section of the Town of Pines, Indiana. The concentrations above Removal Action Levels (USEPA, Office of Solid Waste and Emergency Response, "Numeric Removal Action Levels at Contaminated Drinking Water Sites," April, 1997) have been attributed to CCBs, in particular, fly ash. Fly ash was disposed at a Restricted Waste Site known as Yard 520, and may also have been used as fill in areas of the Pines Site outside Yard 520. A Removal Action has been implemented to connect certain residences to the municipal water supply. Pursuant to AOC I, as amended, additional human health risk reduction measures will be undertaken by the Respondents as follows: to provide bottled water as an interim measure, and to extend the municipal service to additional residences as part of a final remedy.

Maps of the Site and the extent of the proposed Interim Human Health Measures are attached to AOC II and to this SOW.

The Yard 520 Restricted Waste Site operates under permits issued by the Indiana Department of Environmental Management (IDEM). Yard 520 will be closed under the direction of IDEM in accordance with its permits, closure plans, and IDEM regulations imposing post-closure care requirements for restricted solid waste facilities.

Scope: The tasks to be completed in this statement of work for the RI/FS include:

- Task 1: RI/FS Site Management Strategy
- Task 2: RI/FS Work Plan and Field Sampling Plan
- Task 3: Remedial Investigation
- Task 4: RI Report
- Task 5: Human Health and Ecological Risk Assessments and Reports
- Task 6: Identification of Remedial Action Objectives
- Task 7: Development and Screening of Alternatives
- Task 8: FS Report
- Task 9: Progress Reports
- Task 10: Community Relations Support and Technical Assistance Plan
- Task 11: Project Meetings

#### **Task 1: RI/FS Site Management Strategy**

Within 60 calendar days of the effective date of AOC II, Respondents shall submit a draft Site Management Strategy. Prior to developing a specific plan for the RI, the Respondents and

USEPA will develop an approach for implementing the RI. This approach will be documented in a Site Management Strategy. This will serve as the basis for the development of the RI/FS Work Plan, including the Field Sampling Plan.

The Site Management Strategy shall outline the approach to be used for conducting the RI/FS and contain site background information, a conceptual site model, data gap description, and a management strategy for the site investigation. The site management strategy will be discussed among the USEPA and the Respondents during at least one meeting prior to submission.

Respondents shall also identify the general data requirements that may be necessary to evaluate remedial activities in the RI/FS

The Site Management Strategy shall include the following information:

#### 1.1 Site Background

Before planning the RI/FS activities, the Respondents shall thoroughly compile and review all available Site data. Specifically, this includes presently available data relating to the location, varieties and quantities of hazardous substances associated with CCBs at the Site, past disposal practices, and the results of previous sampling activities, including analytical data packages from residential well sampling conducted by USEPA, the U.S. Geological Survey (USGS), IDEM and/or others. USEPA will make available their files on the site for Respondents review. Examples of existing information about the Site include Site Investigation Reports, Preliminary Assessment Reports, Site Inspection Reports, the HRS Scoring Package, USGS regional studies, historical aerial photography, IDEM monitoring wells, etc.

The available information will be summarized and will be used to develop a preliminary conceptual site model, which will describe the following aspects of the site conditions: location and character of potential sources, description of the use/deposition of CCB materials in the area (thickness, locations, types), description of the geologic and hydrogeologic systems, description of the Brown Ditch watershed, groundwater-surface water interactions, identification of contaminants of concern, distribution of CCB-related constituents in soil, groundwater, sediment, and surface water (and other media, if known), fate and transport of CCB-related constituents in all media, potential receptors, and potential exposure pathways. The preliminary conceptual site model will serve as the basis for evaluating data gaps and scoping the RI/FS activities.

#### 1.2 Data Gap Description

Based on the preliminary conceptual site model, data gaps will be identified which will outline information that is needed to meet the RI/FS objectives listed above. The data gap description will be used in Task 2 to determine the data that is to be obtained during the RI/FS.

#### 1.3 Site Management Strategy

The site management strategy will be a general outline of the approach to be taken during the RI/FS. Plans for preliminary ash characterization, screening level risk assessments and hydrogeological approaches will be outlined.

## **Task 2: RI/FS Work Plan and Field Sampling Plan**

Within 60 days of USEPA approval of the Site Management Strategy, the Respondents shall develop a draft RI/FS Work Plan including a Field Sampling Plan (FSP), as described in "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA," October, 1988. The FSP will specify the locations, numbers, and types of samples that will be collected during the RI to satisfy the identified data gaps and cover all RI sample collection activities. Sampling data will be sufficient to support the evaluation of potential human health and ecological risks, and select an appropriate remedy, if necessary. The RI/FS Work Plan will include a human health risk assessment work plan and an ecological risk assessment work plan.

The RI/FS Work Plan shall also contain the Quality Assurance Project Plan (QAPP), Health and Safety Plan (HASP), and Quality Management Plan (QMP), as described below.

### 2.1 Field Sampling Plan

The FSP portion of the RI/FS Work Plan shall be prepared to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data meet the Site-specific data quality objectives (DQOs). All sampling and analyses performed shall conform to USEPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures.

The USEPA and Respondents recognize that there may be potential sources for the CCB-related constituents other than fly ash, both natural and anthropogenic. The RI may include the identification of these other sources.

Upon request by USEPA, the Respondents shall allow USEPA or its authorized representatives to take split and/or duplicate samples of any samples collected by the Respondents or their contractors or agents. The Respondents shall notify USEPA not less than 15 business days in advance of any sample collection activity. USEPA shall have the right to take any additional samples that it deems necessary.

The Respondents shall submit draft and final versions of the FSP according to the schedule in the Order and attached to this SOW.

Descriptions of the following activities will be included in the FSP as appropriate:

1. **Characterization of CCB materials.** The Respondents shall include a program to characterize the nature of the CCB materials located within the Site. The characterization will include an evaluation of the different types of materials (e.g., fly ash, bottom ash, etc.), the location, thickness, and approximate age of the CCB materials (if possible), the potential for releases within and from the Site through surface water, sediment, and dust, and potential risks related to exposure to the CCB materials. Direct chemical analysis, leaching tests, in vivo and/or in vitro bioavailability studies, analysis of particle size distribution for ash materials, and CCB-specific screening level human health and ecological risk assessments may be used to evaluate potential for releases and potential risks. The screening risk assessments will be used to determine the need for a detailed evaluation of the distribution of CCB materials at the Site. This evaluation would be based on the review of historical air photos, mapping and/or sampling.
2. **Hydrogeologic Investigation.** The FSP shall include a detailed hydrogeologic characterization to evaluate the nature and extent of CCB-derived constituents in groundwater, and their fate and transport in the groundwater system. The characterization will include installation of wells, water level measurements, groundwater sampling, hydrogeologic testing, and evaluation of groundwater-surface water interactions. The hydrogeologic evaluation may include characterization of seasonality in groundwater conditions and/or changes over time, either of which may require several monitoring events over a longer period of time. A numerical groundwater model may be used to aid in guiding investigation activities and interpreting results. If used, the model will be identified in the RI/FS Work Plan or a subsequent technical memorandum to the USEPA for approval prior to use.
3. **Residential Well Testing.** Based on the site hydrogeology and available water quality data, the Respondents shall identify a subset of residential wells outside the water service extension area for targeted sampling of CCB-derived constituents. This well sampling will complement the hydrogeologic investigation described above and will provide a more direct evaluation of current exposure of residents to groundwater. Details of the sampling and analysis of the well samples will be described in the FSP.
4. **Surface Water Investigation.** The RI/FS Work Plan and the FSP shall include a detailed characterization to evaluate the nature and extent of CCB-derived constituents in surface water and sediment, and their fate in these media. The characterization will include installation of surface water gauges and collection of surface water levels, streamflow measurements, and surface water and sediment sampling. The surface water investigation will be used to support both the hydrogeologic and ecological evaluations.
5. **Soil Investigation.** The characterization of CCB-derived materials will include surface and subsurface materials. The RI/FS Work Plan and the FSP will include a detailed description of the sampling to be performed. The characterization will include sampling of surface and near-surface CCB materials and undisturbed soils. Sampling will be sufficient in location, type, and number of samples to provide a statistically defensible

value for background concentration of the constituents in the area soils, as approved in the FSP.

6. **Air Pathway Evaluation.** The RI/FS Work Plan and FSP shall include a detailed methodology to evaluate the potential for CCB-derived constituents to re-suspend in the air. The RI/FS Work Plan and FSP will identify models to be used to evaluate this pathway. If modeling results indicate the need for air sampling, a memorandum detailing a sampling plan will be submitted to USEPA for approval.
7. **Ecological Investigation.** The Respondents shall include an ecological investigation to assess the impact to aquatic and terrestrial ecosystems that may have been affected by the CCBs at the Site. These ecosystems include Brown Ditch, the Indiana Dunes National Lakeshore and any other rivers, lakes, ponds, creeks and/or wetlands that are or may be impacted by the Site. Ecological resources will be inventoried, including the hydrologic system, the nature of the vegetation and habitats, and available information regarding potential sensitive ecological receptors. The evaluation shall include a program to determine the impacts from the Site on surface water, groundwater, soil, sediments and the floodplain of Brown Ditch and any other river, lake, stream, pit, pond, and/or wetland, including the Indiana Dunes National Lakeshore, that may be impacted by CCB-derived constituents at the Site. The program may include the collection of background surface water, sediment, and/or floodplain samples for use in determining whether any CCB constituents detected in these media are related to local and/or regional background conditions. The RI will include, as appropriate, an evaluation of toxicity; an assessment of endpoint organisms; relevant exposure pathways; an evaluation of potential ecological risk; and an assessment of ecological concerns. The RI will also include, as appropriate, additional field work (e.g., toxicity testing, biological surveys, bioaccumulation collections, etc.) needed to support the assessment. The Respondents shall conduct the ecological investigation and assessment in accordance with USEPA guidance, including "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments" (June 5, 1997; EPA 540-R-97-006).
8. **Evaluate and Document the Need for Treatability Studies.** If the Respondents or USEPA identify potential remedial actions that involve treatment, the Respondents shall perform treatability studies unless the Respondents satisfactorily demonstrate to USEPA that such studies are not needed. When treatability studies are needed, the Respondents shall plan initial treatability testing activities (such as research and study design) to occur concurrently with Site characterization activities. The results of the treatability testing will be documented in a Technical Memorandum.

## 2.2 Quality Assurance Project Plan (QAPP)

The Respondents shall prepare a Site-specific QAPP covering sample analysis and data handling for samples collected during the RI, based on AOC II and guidance provided by USEPA. The QAPP shall be consistent with the requirements of the USEPA Contract Lab Program (CLP) for laboratories proposed outside the CLP. The Respondents shall follow the USEPA Region 5 Superfund Division Model QAPP guidance to prepare the QAPP. The QAPP will be prepared in

accordance with "EPA Requirements of Quality - Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001) and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998).

The Respondents will demonstrate, in advance to USEPA's satisfaction, that each laboratory it may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the chemicals of concern in the media sampled within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP for the Site by USEPA. The laboratory must have and follow an approved QA program. If a laboratory not in the CLP is selected, methods consistent with CLP methods that would be used at this Site for the purposes proposed and QA/QC procedures approved by USEPA will be used. The Respondents shall only use laboratories which have a documented Quality Assurance Program which complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01-002, March 2001) or equivalent documentation as determined by USEPA.

Upon request by USEPA, the Respondents shall have such a laboratory analyze samples submitted by USEPA for quality assurance monitoring. The Respondents shall provide USEPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. The Respondents shall also ensure the provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

The Respondents shall participate in a pre-QAPP meeting or conference call with USEPA. The purpose of this meeting or conference call is to discuss QAPP requirements and obtain any clarification needed to prepare the QAPP.

### 2.3 Health and Safety Plan (HASP)

The Respondents shall prepare a HASP that conforms to their health and safety program and complies with the Occupational Safety and Health Administration (OSHA) regulations and protocols outlined in Title 29 of the Code of Federal Regulations (CFR), Part 1910. The Health and Safety Plan shall include the 11 elements described in the RI/FS Guidance such as a health and safety risk analysis, a description of monitoring and personal protective equipment, medical monitoring, and Site control. USEPA does not "approve" the Respondent's HASP, but rather USEPA reviews it to ensure that all the necessary elements are included, and that the plan provides for the protection of human health and the environment, and after that review provides comments as may be necessary and appropriate. The safety plan must, at a minimum, follow the USEPA's guidance document "Standard Operating Safety Guides" (Publication 9285.1-03, PB92-963414, June 1992).

### 2.4 Quality Management Plan (QMP)

All work performed under this Consent Order shall be under the direction and supervision of qualified personnel. Respondents shall notify USEPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories

to be used in carrying out such work. With respect to any proposed contractor, the Respondents shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by USEPA. The qualifications of the persons undertaking the work for Respondents shall be subject to USEPA's review, for verification that such persons meet minimum technical background and experience requirements.

## 2.5 Schedule

The RI/FS Work Plan and FSP shall include a schedule which identifies timing for initiation and completion of the RI/FS tasks identified in the Work Plan. The schedule in the Work Plan(s) will specify when the final field sampling effort is expected to be completed. The timing of any deliverables will also be specified.

### **Task 3: Remedial Investigation (RI)**

Respondents shall conduct the RI according to the USEPA-approved RI/FS Work Plan, FSP, and schedule. Respondents shall coordinate activities with USEPA's Remedial Project Manager (RPM). Respondents shall provide the RPM with all laboratory data in electronic form, both in draft and once validation has been completed.

It may be necessary for the Respondents to perform a second phase of RI activities to meet the objectives of the RI/FS. If this becomes the case, the Respondents will submit to the USEPA for approval an amendment to the RI/FS Work Plan which outlines the additional work to be performed and an amended schedule.

### **Task 4: RI Report**

Within 90 calendar days following collection of the final field sample as specified in the schedule in the FSP (see Section 2.5 above), the Respondents shall submit to USEPA, for review, a draft RI Report presenting all of the data collected during the RI. The RI Report shall be consistent with AOC II and this SOW. The Respondents shall refer to Section 3 (especially Table 3-13) of the RI/FS Guidance for an outline of suggested RI Report format and the RI Report contents. The RI Report will present the site characterization, including site description and background, previous removal actions, a description of the physical systems (geology, groundwater, surface water bodies, CCB materials, etc.), nature and extent of CCB-derived constituents in groundwater and other media that may be impacted, potential receptors of CCB materials, and the fate and transport of CCB-derived constituents. This information will be compiled to form a conceptual model of the Site which will serve as the basis for the human health and ecological risk assessments.

Components to be included in the RI report are described below.

4.1 Executive Summary. The Executive Summary shall provide a general overview of the contents of the RI Report. It shall contain a brief discussion of the Site and the current and/or potential threats posed by conditions at the Site.

4.2 Site Description and Background. The Site description includes current and historical information. The types of information to be included, where available and as appropriate, are provided in Section 3 of the RI/FS Guidance.

4.3 Previous Removal Actions. The RI Report shall describe any previous removal and remedial actions at the Site and nearby areas. Previous information shall be organized as follows:

- The scope and objectives of the previous removal and remedial action(s).
- The nature and extent of hazardous substances, pollutants, or constituents treated or controlled during the previous removal and remedial action(s) (including all monitoring conducted).
- The technologies used and/or treatment levels used for the previous removal and remedial action(s).

4.4 Description of Physical Systems. The RI Report shall present the characterization of the physical system in which the CCB materials are located and in which they may migrate. The description of the physical system is necessary to understand the current and potential future distribution of CCB-derived constituents as it may affect potential risks. Aspects of the physical system may include: geology, hydrogeology, groundwater-surface water interactions, hydrology of the Brown Ditch watershed, characterization of the CCB materials, and ecological resources.

4.5 Nature and Extent of CCB-Derived Constituents. The RI report shall describe the CCB-derived constituents present in groundwater and any other impacted media, and their distribution in those media.

4.6 Analytical Data. Available data will be provided, including, but not limited to, results of sample collection from soil, groundwater, surface water, sediments, and air. Historical data gaps that were identified, and the measures taken to develop all necessary, additional data will be discussed.

4.7 Groundwater Fate and Transport. The RI report will discuss the potential migration of CCB-derived constituents in groundwater and other impacted media along with the fate of these constituents in environmental media.

4.8 Potential Receptors. The potential receptors of the CCB-derived constituents shall be identified.

## **Task 5: Human Health and Ecological Risk Assessments and Reports**

Within 60 days of USEPA approval of the RI Report, the Respondents shall submit to USEPA, for review and approval, a draft Human Health Risk Assessment Report and a draft Ecological Risk

Assessment Report. The data collected during the RI will be used as the basis to evaluate potential risks to human health and ecological receptors at the Site.

#### 5.1 Human Health Risk Assessment

Respondents shall conduct a human health risk assessment that focuses on the evaluation of current and future risks to persons coming into contact with on-site hazardous substances or constituents as well as risks to the nearby residential, recreational and industrial worker populations from exposure to hazardous substances or constituents in groundwater, soils, sediments, surface water, air, and ingestion of contaminated organisms in nearby, impacted ecosystems. The human health risk assessment shall define central tendency and reasonable maximum estimates of exposure for current land use conditions and reasonable future land use conditions. The human health risk assessment shall use data from the Site and nearby areas to identify the constituents of potential concern (COPC), provide an estimate of how and to what extent human receptors might be exposed to these COPCs, and provide an assessment of the health effects associated with these COPCs. The human health risk assessment shall assess potential human health risk if no cleanup action is taken at the Site.

Respondents shall conduct the human health risk assessment in accordance with USEPA guidance including, at a minimum: "Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part A)," Interim Final (EPA-540-1-89-002), OSWER Directive 9285.7-01A; December 1, 1989; and "Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)," Interim, (EPA 540-R-97-033), OSWER 9285.7-01D, January, 1998.

Respondents shall also conduct the human health risk assessment in accordance with the following additional guidance found in the following USEPA Office of Solid Waste and Emergency Response (OSWER) directives:

- 1) "Clarification to the 1994 Revised Interim Soil Lead Guidance for CERCLA Sites and RCRA Corrective Action Facilities," OSWER Directive 9200.4-27; August, 1998,
- 2) "Soil Screening Guidance: Technical Background Document," OSWER Directive 9355.4-17A; May 1, 1996 and "Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites," OSWER Directive 9355.4 24; March 2001,
- 3) "Soil Screening Guidance: User's Guide," Publication 9355.4-23; April, 1996,
- 4) "Revised Interim Soil Lead Guidance for CERCLA Sites and RCRA Corrective Action Facilities," OSWER Directive 9355.4-12; July 14, 1994,
- 5) "Guidance Manual for the Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children," Publication 9285.7-15-1; February, 1994, and associated, clarifying Short Sheets on IEUBK Model inputs, including but not limited to OSWER 9285.7-32 through 34, as listed on the OSWER lead internet site at [www.epa.gov/superfund/programs/lead/prods.htm](http://www.epa.gov/superfund/programs/lead/prods.htm),

- 6) "Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children," Version 0.99D, NTIS PB94-501517, 1994 or "Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children," Windows© version, 2001,
- 7) "Risk Assessment Guidance for Superfund: Volume I - Human Health Evaluation Manual: (Part B, Development of Risk-based Preliminary Remediation Goals)," Interim, OSWER Directive 9285.7-01B; December, 1991,
- 8) "Human Health Evaluation Manual, Supplemental Guidance: Standard Default Exposure Factors," OSWER Directive 9285.6-03; March 25, 1991,
- 9) "Exposure Factors Handbook," Volumes I, II, and III; August 1997 (EPA/600/P-95/002Fa,b,c),
- 10) "Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions", OSWER 9355.0-30, April 1991, and
- 12) "Land Use in CERCLA Remedy Selection Process", OSWER 9355.7-04, 1995.

Respondents shall also comply with the guidance on assessing human health risk associated with adult exposures to lead in soil as found in the following document: "Recommendations of the Technical Review Workgroup for Lead for an Interim Approach to Assessing Risks Associated with Adult Exposures to Lead in Soil," December, 1996. This document may be downloaded from the Internet at the following address: [www.epa.gov/superfund/programs/lead/prods.htm](http://www.epa.gov/superfund/programs/lead/prods.htm).

The human health risk assessment shall also include the following elements:

- Hazard Identification (sources). The Respondents shall review available information on the hazardous substances present at the Site, and identify the major COPCs. COPCs should be selected based on their detected concentrations and intrinsic toxicological properties.
- Conceptual Site Model and Exposure/Pathway Analysis.
- Characterization of Site and Potential Receptors.
- Exposure Assessment. The Respondents shall develop central tendency and reasonable maximum estimates of exposure for current and potential land use conditions at and near the Site.
- Toxicity Assessment.
- Risk Characterization.
- Identification of Limitations/Uncertainties.

## 5.2 Ecological Risk Evaluation

Respondents shall conduct the ecological risk assessment in accordance with USEPA guidance including, at a minimum: "Ecological Risk Assessment Guidance for Superfund, Process for Designing and Conducting Ecological Risk Assessments," (EPA-540-R-97-006, June 1997), OSWER Directive 9285.7-25.

The ecological risk assessment shall describe the ecological characterization and data collection activities conducted as part of the RI as well as the following information:

### Problem Formulation

- Characterization of Environmental Setting of Site and Potential Ecological Receptors – The Respondents will identify potential ecological habitats and resources on or adjacent to the Site, including federal or state-listed species.
- Development of Conceptual Site Model (Selection of Chemicals, Indicator Species, and End Points) – The Respondents will develop a preliminary Conceptual Site Model that will identify COPCs, complete exposure pathways, selected indicator species or communities (that are more heavily exposed to COPCs or especially sensitive to environmental constituents), and list relevant assessment and measurement end points.

### Risk Analysis

- Exposure Assessment – The exposure assessment shall identify the magnitude of actual exposures, the frequency and duration of these exposures, and the routes by which ecological receptors are exposed. The exposure assessment shall include an evaluation of the likelihood of such exposures occurring and shall provide the basis for the development of acceptable exposure levels.
- Toxicity Assessment/Ecological Effects Assessment – The toxicity and ecological effects assessment shall address the types of adverse environmental effects associated with chemical exposures, the relationships between magnitude of exposures and adverse effects, and the related uncertainties for constituent toxicity (e.g., weight of evidence for adverse effects).

### Risk Characterization

- Risk Characterization – During risk characterization, chemical-specific ecotoxicity information, combined with quantitative and qualitative information from the exposure assessment, shall be compared to measured levels of constituent exposure levels and the levels predicted through environmental fate and transport modeling. These comparisons shall determine whether concentrations of constituents at or from the Site are affecting or could potentially affect the ecological receptors.
- Identification of Limitations/Uncertainties – The Respondents shall identify critical assumptions (e.g., background concentrations and conditions) and uncertainties in the report.

## **Task 6: Identification of Remedial Action Objectives**

Within 30 days of USEPA approval of the Human Health Risk Assessment Report and the Ecological Risk Assessment Report, the Respondents shall submit to USEPA, for review and approval, a draft Remedial Action Objectives Technical Memorandum. Based on the human health and ecological risk assessments, the Respondents shall develop Site-specific remedial action objectives, considering the following:

- Prevention or abatement of unacceptable risks (current and/or reasonable future) to nearby human populations, (including workers), animals, or the food chain from hazardous substances, pollutants, or constituents associated with CCBs.
- Prevention or abatement of unacceptable risks (current and/or reasonable future) associated with CCBs due to exposures including drinking water supplies and ecosystems.
- Acceptable constituent levels, or range of levels, for appropriate site-specific exposure routes.
- Mitigation or abatement of other situations or factors that may pose threats to public health, welfare, or the environment.
- A preliminary evaluation of applicable or relevant and appropriate requirements (ARARs).

The Respondents shall document the remedial action objectives in a Remedial Action Objectives Technical Memorandum for USEPA review and approval. The remedial action objectives shall specify the constituents of concern and the media of interest; exposure pathways and receptors; and an acceptable constituent level or range of levels (at particular locations for each exposure route). The Respondents shall address and incorporate USEPA's comments on the Remedial Action Objectives Technical Memorandum in the Alternatives Screening Technical Memorandum (see below).

## **Task 7: Development and Screening of Remedial Alternatives**

Within 60 days of receipt of USEPA's comments on the Remedial Action Objectives Technical Memorandum, the Respondents shall submit to USEPA, for review and approval, a draft Alternatives Screening Technical Memorandum. The Respondents shall begin to develop and evaluate a range of appropriate remedial options that at a minimum ensure protection of human health and the environment and meet the remedial action objectives. The Respondents shall present and summarize the development and screening of the remedial alternatives in an Alternatives Screening Technical Memorandum. The Alternatives Screening Technical Memorandum shall include descriptions of technologies that were eliminated from consideration and will provide the basis for their elimination. Preliminary screening will be based on permanence, effectiveness, implementability, and order of magnitude cost. The outcome of the alternatives screening will be a short list of alternatives which will undergo detailed analysis in the FS. Respondents shall revise the Remedial Action Objectives in accordance with USEPA's comments and include the revised Remedial Action Objectives within the Alternatives Screening Technical Memorandum.

The range of alternatives to be screened shall include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but which vary in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed; options involving containment with little or no treatment; options involving both treatment and containment; and a no-action alternative. The Respondents shall perform the following activities (7.1 through 7.6) as a function of the development and screening of remedial alternatives. Potential remedial alternatives will be screened and developed in accordance with "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (EPA/540/G-89/004, October 1988). "Implementing Presumptive Remedies" (EPA 540-R-97-029, October 1997) will also be considered. Presumptive remedies involve using remedial technologies that have been consistently selected at similar sites or for similar types of contamination. Using the presumptive remedy guidance provides an immediate focus to the identification and analysis of remedial alternatives.

The components of the Alternatives Screening Technical Memorandum are described below.

### 7.1 Develop General Response Actions

After USEPA provides comments on the Remedial Action Objectives (Task 6), the Respondents shall develop general response actions for each medium of interest including containment, treatment, excavation, pumping, or other actions, singly or in combination, to satisfy the USEPA-approved remedial action objectives.

### 7.2 Identify Areas or Volumes of Media

The Respondents shall identify areas or volumes of media to which the general response actions may apply, taking into account requirements for protectiveness as identified in the remedial action objectives. The Respondents shall also take into account the chemical and physical characterization of the Site.

### 7.3 Identify, Screen, and Document Remedial Technologies

The Respondents shall identify and evaluate technologies applicable to each general response action to eliminate those that cannot be implemented at the Site. The Respondents shall refine applicable general response actions to specify remedial technology types. The Respondents shall identify technology process options for each of the technology types concurrently with the identification of such technology types or following the screening of considered technology types. The Respondents shall evaluate process options on the basis of effectiveness, implementability, and order of magnitude costs to select and retain one or, if necessary, more representative processes for each technology type. A summary of the technology types and process options will be included in the memorandum. Whenever practicable, the alternatives shall also consider the CERCLA preference for treatment over conventional containment or land disposal approaches.

### 7.4 Assemble and Document Alternatives

The Respondents shall assemble the selected representative technologies into alternatives for each affected medium or operable unit. Together, all of the alternatives shall represent a range of treatment and containment combinations that shall address either the Site or an operable unit (if any are defined) as a whole. The Respondents will summarize the assembled alternatives and their related action-specific ARARs for the memorandum. The Respondents shall specify the reasons for eliminating alternatives during the preliminary screening process.

### 7.5 Conduct and Document Screening Evaluation of Each Alternative

The Respondents will perform a final screening process based on short and long term aspects of effectiveness, implementability, and relative cost. Generally, this screening process is only necessary when there are many feasible alternatives available for a detailed analysis. If necessary, the Respondents shall conduct the screening of alternatives to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. The range of alternatives shall include options that use treatment technologies and permanent solutions to the maximum extent practicable. The memorandum shall include a summary of the results and reasoning employed in screening; an array of the alternatives that remain after screening; and the action-specific ARARs for the alternatives that remain after screening.

### 7.6 Documentation of Alternatives Screening

The Respondents shall submit an Alternatives Screening Technical Memorandum to USEPA for review. The Alternatives Screening Technical Memorandum shall summarize the work performed during and the results of each of the above tasks, and shall include an alternatives array summary. If required by USEPA, the Respondents shall modify the alternatives array to assure that the array identifies a complete and appropriate range of viable alternatives to be considered in the detailed analysis. The Alternatives Screening Technical Memorandum shall document the methods, the rationale and the results of the alternatives screening process.

The Respondents shall incorporate USEPA's comments on the Alternatives Screening Technical Memorandum in the FS Report.

## **Task 8: Feasibility Study**

Within 90 days of USEPA approval of the Alternatives Screening Technical Memorandum, the Respondents shall submit to USEPA, for review and approval, a draft FS Report. Based on the outcome of the remedial alternatives screening process, an FS will be performed to provide a detailed evaluation of a list of alternatives as approved by USEPA. The FS will provide the USEPA with the information needed to select an appropriate remedy for the Site.

### **8.1 Detailed Analysis of Alternatives**

The Respondents shall conduct a detailed analysis of the remedial alternatives for the Site. The detailed analysis shall include an analysis of each remedial option against a set of nine evaluation criteria, and a comparative analysis of all options using the same nine criteria as a basis for comparison.

The Respondents shall apply the nine evaluation criteria to the assembled remedial alternatives. The nine evaluation criteria consist of: (1) overall protection of human health and the environment and how the alternative meets each of the remedial action objectives; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) cost; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: criteria 8 and 9 are considered after the RI/FS report has been released to the general public.) For each alternative the Respondents shall provide: (1) a description of the alternative that outlines the remediation strategy involved and identifies the key ARARs associated with each alternative, and (2) Aa discussion of the individual criterion assessment. USEPA will address criteria (8) state (or support agency) acceptance and (9) community acceptance.

The Respondents shall then perform a comparative analysis between the remedial alternatives. That is, the Respondents shall compare each alternative against the other alternatives using the nine evaluation criteria as a basis of comparison. Based on these evaluations, USEPA will identify and select the preferred alternative.

### **8.2 Feasibility Study Report**

The Respondents shall prepare and submit a draft FS Report which documents the detailed analysis of alternatives for USEPA review. The FS Report shall be consistent with the AOC and this SOW. The FS report shall present the detailed analysis of remedial alternatives. The Alternatives Screening Technical Memorandum will be included as an attachment to the FS Report for reference. If applicable, the Technical Memorandum concerning the results of treatability studies will also be included. In addition, the FS Report shall also include the information USEPA will need to prepare relevant sections of the ROD for the Site [see Chapters 6 and 9 of USEPA's "A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents" (EPA 540-R-98-031, July 1999) for the information that is needed].

The FS Report, as ultimately adopted or amended by USEPA provides the basis for conducting a remedial action at the Site and documents the development and analysis of remedial alternatives. The Respondents shall refer to Section 6 of the RI/FS Guidance for an outline of the FS Report format and the required FS Report contents.

#### **Task 9: Progress Reports**

Respondents shall submit a monthly written progress report to USEPA concerning actions undertaken pursuant to the Order and this SOW, by the 15<sup>th</sup> day of the following month beginning with the first full calendar month after the effective date of AOC II, until termination of AOC II, unless otherwise directed in writing by the RPM. These brief reports shall describe all significant developments during the preceding period, including the work performed, copies of any draft or validated data in electronic form (text or PDF files for text and spreadsheets or databases for numeric data), and any problems encountered, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Laboratory analytical data will be submitted to the USEPA after completion of data validation in accordance with the QAPP. The data will be submitted in electronic spreadsheet/ database format within 30 days after completion of the validation. The data validation reports including Forms 1 will be included in the RI report, and can be provided to the USEPA upon request.

#### **Task 10: Community Relations Support and Technical Assistance Plan**

USEPA has the responsibility of developing and implementing community relations activities for the Site. The critical community relations planning steps performed by USEPA and IDEM include conducting community interviews and developing a Community Relations Plan. Although implementing the Community Relations Plan is the responsibility of USEPA, the Respondents, if directed by USEPA, shall assist by providing information regarding the Site's history; participating in public meetings; assisting in preparing fact sheets for distribution to the general public; or conducting other activities approved by USEPA. All PRP-conducted community relations activities shall be planned and developed in coordination with USEPA.

In addition to any assistance with community relations activities, the Respondents shall prepare a Technical Assistance Plan (TAP) that will provide and administer \$50,000 for a qualified community group to hire Technical Advisors, independent from the Respondents, to help interpret and comment on Site-related documents developed under this SOW and through USEPA's issuance of the Record of Decision. Within thirty (30) days after a request by USEPA, the Respondents shall submit to USEPA its Technical Assistance Plan for Agency approval. As a part of the TAP, the Respondents shall propose methods, including selection criteria for awarding and administering the funds above.

Any eligible group shall be: 1) a group of people who may be affected by a release or threatened release at the Site; 2) incorporated as a nonprofit organization for the purposes of the Site or otherwise established as a charitable organization that operates within the geographical range of the Site and is already incorporated as a nonprofit organization; and 3) able to demonstrate its

capability to adequately and responsibly manage any funds awarded. The USEPA shall solicit applications from eligible community groups. Any group is ineligible if it is: 1) potentially responsible party (PRP) at the Site or represents such a PRP or is a group whose ability to represent the interests of the affected individuals might be limited as a result of receiving money or services from a PRP; 2) affiliated with a national organization; 3) an academic institution; 4) a political subdivision; or 5) a group established or presently sustained by government entities, a PRP, or any ineligible entity. The USEPA shall identify qualified groups from among the applications it receives. The Respondents shall select the community group to receive funding from among the groups identified by the USEPA. Selection criteria should be consistent with 40 CFR §35.4155. Funds may be awarded to only one qualified group at a time for purposes of this Consent Order and SOW. Also as part of the TAP, Respondents shall include a proposed plan for documenting the eligibility of the selected community group, and informing the group and USEPA if it believes any individual member is ineligible (consistent with 40 CFR §35.4030) to participate in the group. The lists of eligible and ineligible activities shall be consistent with 40 CFR §35.4070 and §35.4075, respectively. The TAP shall also include a proposal for offering and, if accepted, transferring up to \$5,000 to the selected group to cover its estimated need for funds for an initial start-up period.

USEPA shall include a plan for providing assistance to the selected community group in the solicitation for an independent Technical Advisor. As long as the group documents its selection and the advisor selected by the group satisfies the requirements specified in 40 CFR §35.4190 and §35.4195, Respondents shall accept the group's choice. Finally, Respondents shall include a proposed plan for negotiating a contract with the selected community organization and the independent Technical Advisor. The contract shall specify the duties of the Respondents, community group, and Technical Advisor, respectively, and establish a dispute resolution process. Respondents will provide USEPA with a copy of the draft contract for approval.

The Respondents may hire a third party to coordinate and administer the TAP (hereinafter referred to as the TAP Coordinator). However, any such TAP Coordinator shall be approved by USEPA. It is the Respondents' burden to demonstrate that the TAP Coordinator is qualified to perform this task. If the Respondents opt to hire a TAP Coordinator, then they shall submit in writing that person's name, title, and qualifications to USEPA within thirty (30) days of the effective date of AOC II.

The Respondents shall provide USEPA quarterly progress reports regarding the implementation of the TAP. To the extent practicable, the Respondents shall: 1) select the TAP recipient; 2) release an initial \$5,000 in start-up expenses; and 3) finalize the contract with the community group and its advisor; at least by the date on which the Draft RI/FS Workplan is due to USEPA.

If the Community Group demonstrates, consistent with the criteria specified in 40 CFR §35.4065, that it needs additional funds for TAP activity, then Respondents will provide the additional monies needed. Any unobligated funds shall revert to the Respondents upon USEPA's issuance of the ROD to be issued based upon the RI/FS to be conducted pursuant to this SOW.

Within 30 calendar days of USEPA's approval of the TAP, the Respondents shall select the TAP recipient and release \$5,000 in start-up funds.

## **Task 11: Project Meetings**

Throughout the RI/FS process, the Respondents and USEPA will conduct meetings to help facilitate communications and streamline progress. These meetings will be scheduled as requested by either party, but suggested milestones include:

- Task 1 – After completion of the data review, conceptual model, and identification of data gaps, and prior to submission of the Site Management Strategy document, to jointly develop the site management strategy.
- Task 2 – Prior to submission of the RI/FS Work Plan and FSP to review the proposed sampling program.
- Task 4 – After samples have been collected and data obtained, but prior to submission of the RI Report.
- Task 5 – After submission of the RI Report, but prior to submission of the Risk Assessment Reports.
- Task 6 – Prior to submission of the Remedial Action Objectives Technical Memorandum.
- Task 7 – Prior to submission of the Alternatives Screening Technical Memorandum.
- Task 8 – After completion of the detailed alternatives analysis but prior to submission of the FS Report.

In addition, it may be beneficial to conduct meetings following issuance of USEPA comments to discuss the comments and response prior to a formal submission.

**SCHEDULE FOR MAJOR DELIVERABLES**  
**PINES SITE**  
**TOWN OF PINES, INDIANA**

<b>Deliverable</b>	<b>Deadline</b>
Task 1: Draft RI/FS Site Management Strategy	60 days after effective date of AOC II
Task 1: Final RI/FS Site Management Strategy	60 days after receipt of USEPA comments on draft Strategy
Task 2: Draft RI/FS Work Plan and FSP	60 days from USEPA approval of Site Management Strategy
Task 2: Final RI/FS Work Plan and FSP	60 days after receipt of USEPA comments on draft RI/FS Work Plan and FSP
Task 3: Remedial Investigation	As described in USEPA approved RI/FS Work Plan
Task 4: Draft RI Report	90 days after collection of the final field sample as specified in the schedule in the approved RI/FS Work Plan and FSP
Task 4: Final RI Report	60 days after receipt of USEPA comments on draft RI Report
Task 5: Draft Human Health and Ecological Risk Assessment Reports	60 days after USEPA approval of the Final RI Report
Task 6: Remedial Action Objectives Technical Memorandum	30 days after USEPA approval of the Human Health Risk Assessment Report and the Ecological Risk Assessment Report
Task 5: Final Human Health and Ecological Risk Assessment Reports	60 days after receipt of USEPA comments on draft Risk Assessment Reports
Task 7: Alternatives Screening Technical Memorandum	60 days after USEPA comments on the Remedial Action Objectives Technical Memorandum
Task 8: Draft FS Report	90 days after USEPA approval of Alternatives Screening Technical Memorandum
Task 8: Final FS Report	60 days after receipt of USEPA comments on draft FS Report
Task 9: Progress Reports	15th day of each month, starting after the first full calendar month after effective date of AOC II
Task 10: Technical Assistance Plan	30 days after requested by USEPA
Task 10: TAP Coordinator	Within 30 days of the effective date of AOC II
Task 11: Project Meetings	As requested by either party.