Managing Formal Enforcement Actions for Corrective Action

Scope of operations

The scope of this Standard Operating Procedure (SOP) is to maintain a consistent level of quality of Resource Conservation and Recovery Act (RCRA) Corrective Action enforcement actions sent to the Office of the Commissioner and the Office of the Attorney General. This SOP is intended to be congruous with the other SOPs of the Indiana Department of Environmental Management (IDEM). These procedures provide guidance on how to prepare and manage a hazardous waste corrective action enforcement action that will prevail in hearing or result in an acceptable settlement agreement. Circumstances may arise where deviation from this SOP is necessary.

Scope of applicability

This Standard Operating Procedure (SOP) applies to the Hazardous Waste Permit Section of the Office of Land Quality (OLQ), the Office of Legal Counsel, IDEM’s Office of the Commissioner and the Office of the Attorney General.
Authorized Signatures

I approve and authorize this Standard Operating Procedure:

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This Standard Operating Procedure is consistent with Agency requirements.

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Date
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1.0 Overview work flow chart

![Workflow Diagram]

2.0 Definitions

2.1. “Area of Concern (AOC)” - A unit or area that could potentially produce unacceptable direct exposures, or be a potential source of groundwater contamination, and that unit or area does not meet the definition of a solid waste management unit.

2.2. “Authorized” - Established by official authority and usage; as with a policy, standard operating procedure (SOP) or quality assurance project plan (QAPP) that is signed and dated.

2.3. “Attorney General’s Office” – The elected official representing the State in litigation and the various Deputy AGs (DAGs) assigned to IDEM to review enforcement orders and litigate on behalf of IDEM.

2.4. “Indiana RCRA Activity Tracking System (IRATS)” - The OLQ’s computerized activity tracking system for hazardous waste activities. The information entered into this system is also entered into RCRA Info, which is U. S. EPA’s hazardous waste activity tracking system.

2.5. “RCRA Facility Assessment (RFA)” - A process for identifying and obtaining information on releases from a RCRA treatment, storage or disposal (TSD) facility.

2.6. “Release” - Any spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping or disposing of hazardous wastes or hazardous constituents into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous wastes or hazardous constituents.
2.7. “Solid Waste Management Unit (SWMU)” - Any discernable unit, permitted or unpermitted, existing or historical, at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at which hazardous constituents have been routinely and systematically released.

2.8. “Visual Site Inspection (VSI)” - An on-site inspection of the facility to observe past and present waste management areas and other potential source areas for releases.

3.0 Roles

3.1. Role of the Project Manager

The project manager (PM) is responsible for drafting the enforcement documents and all other necessary paperwork up to the point that the Attorney General’s (AG) Office takes the lead in the action. Such instances will generally occur when an enforcement case results in administrative adjudication or is filed in court.

3.1.1. The PM will be responsible for keeping the working drafts of all enforcement documents on their computer. All drafts to be printed for signature, with the exception of the Deputy AG’s documents, must be printed from the PM’s file. Do not use copies of documents submitted by the Respondent or their attorney for signature by IDEM;

3.1.2. The PM is responsible for tracking the compliance of the Respondent under the terms of an Agreed Order (AO), Commissioner’s Order, Final Order or Judicial Decree, and ensuring that all appropriate event codes and dates are current in IRATS;

3.1.3. The PM is responsible for ensuring that the Respondent meets milestone dates and coordinating the review of any plans or reports submitted by the Respondent. When an enforcement action has been initiated, the PM will be the primary contact for the case;

3.1.4. The PM will initiate any necessary correspondence including comments or recommendations from technical support, arrange any meetings or settlement conferences, and will be responsible for leading settlement conferences. The PM may, on a case-by-case basis, request the Deputy AG to lead the conference. (e.g. When the Respondent is represented by an attorney, or the Respondent has been uncooperative.); and

3.1.5. It is the responsibility of the PM to ensure that all appropriate Agency staff who have been involved in the case, (e.g., inspectors, attorneys, other technical support staff, and other program managers) are aware of any proposed resolution of an enforcement action. The PM must ensure that all involved staff have been given an opportunity to comment on the proposed conditions for resolution of the enforcement action prior to settlement. This final resolution could be an administrative agreed order resolving a Notice of Violation (NOV) or Order of the Commissioner, or settlement of a civil action filed in court.

3.2. Role of the Permits Branch Corrective Action Senior Technical Advisor (E-7)

3.2.1. The E-7 will provide support and assistance when requested by the project manager; and

3.2.2. The E-7 will review all enforcement packets prior to issuance, and if acceptable sign the technical recommendation line on the signature page of the AO.

3.3. Role of the Attorney General’s Office

The Attorney General’s Office will provide legal support to the project manager in the development and resolution of enforcement cases. The Attorney General’s Office is responsible for the following:
3.3.1. Researching legal issues and questions concerning a case;

3.3.2. Reviewing enforcement documents, including the language of drafts proposed by the Respondent. This function includes ensuring that the proper statutes or rules are cited in the documents, that IDEM has sufficient evidence to enforce those statutes or rules, and that AOs and Consent Decrees protect the interests of IDEM and the State of Indiana;

3.3.3. Helping the project manager to develop a legal strategy for the case, including recommendations on the appropriate enforcement response (e.g. NOV, Commissioner’s Order, Emergency Order or other direct court action), and whether any violation(s) revealed during the RFA or any inspections should be referred to the Office of Criminal Investigations (OCI) for potential criminal investigation, or for the assessment and collection of civil penalties in a separate action;

3.3.4. Participating in settlement negotiations and helping the PM devise a strategy for negotiation, including for example, potential fallback positions or alternative means of resolution;

3.3.5. If an Order of the Commissioner is issued and a timely petition for review is filed by the Respondent, the Attorney General’s Office will file an appearance, and represent IDEM; and

3.3.6. Representing IDEM in civil proceedings.

3.4. Role of the Hazardous Waste Permit Section Chief

3.4.1. Reviews and signs enforcement correspondence (e.g. Notices of Deficiencies, Requests for Information, etc.), reviews all enforcement package documents and approves by signing the routing sheet if satisfied; and

3.4.2. Reviews all requests for technical support and sampling requests, and approves if complete and appropriate.

3.5. Role of the Permits Branch Chief

3.5.1. Reviews all enforcement package documents and approves by signing the routing sheet if satisfied; and

3.5.2. Reviews and approves all sampling requests over $10,000 in estimated cost if complete and appropriate.

3.6. Role of the Permits Branch Secretary

3.6.1. Logs and mails all Hazardous Waste Permit Section and Permits Branch correspondence, both regular mail and certified mail with return receipt requested.

3.6.2. Logs all corrective action enforcement packets in and out of the Permits Branch.

3.7. Role of the Office of Land Quality Assistant Commissioner

3.7.1. Reviews and, if in agreement, signs the Notice of Violation, Agreed Orders, Notice of Approval of Agreed Orders, Notice of Approval of Final Orders of IDEM and Notice of Resolution of all RCRA corrective action enforcement actions; and

3.7.2. Reviews and approves all sampling requests over $20,000 in estimated cost if complete and appropriate.

3.8. Role of the Commissioner (or designee)

3.8.1. If in agreement, signs the referrals to the Office of the Attorney General and either signs or delegates someone to sign Orders of the Commissioner.
4.0 **Description of equipment, forms, and/or software to be used**

4.1 Corrective Action Enforcement Document and Letter Templates (See Appendices)
   - 4.1.1. Notice of Violation Template
   - 4.1.2. Proposed Agreed Order Template
   - 4.1.3. Proposed Agreed Order with Penalty Template
   - 4.1.4. Enforcement Scope of Work Template
   - 4.1.5. AC Briefing Memo for NOV Template
   - 4.1.6. Commissioner’s Briefing Memo Template
   - 4.1.7. Order of the Commissioner Template
   - 4.1.8. Notice of Approval Template
   - 4.1.9. Notice of Deficiency Template
   - 4.1.10. Attorney General Memo Template
   - 4.1.11. Technical Evaluation Request
   - 4.1.12. OLQ Sample Request
   - 4.1.13. Hazardous Waste Referral
   - 4.1.14. Notice of Resolution Template
   - 4.1.15. Commissioner’s Routing Sheet

5.0 **Procedure**

5.1 Enforcement Procedures
   - 5.1.1. Prioritization

   Enforcement actions initiated by Indiana’s authorized RCRA Corrective Action Program must adhere to a certain extent to the priorities of the United States Environmental Protection Agency (U.S. EPA). The U.S. EPA has developed the National Corrective Action Prioritization System (NCAPS), to prioritize the over 5,000 TSD facilities nationwide. These facilities in Region V have received an Environmental Significance Evaluation, and have been placed on a high, medium, or low priority list. The enforcement workload should be targeted to the extent practicable at facilities on the high priority list first. However, if information indicates that the facility should be a high priority, and that facility either has not been ranked high, or has not been ranked at all, there are procedures to modify or initiate the ranking. If the facility has been placed on a lower priority list, and you feel that the facility should be escalated to a high priority, contact the RCRA Corrective Action Program Technical Environment Specialist (Corrective Action Program E-7) for assistance.

   - 5.1.2. RCRA Facility Assessment

   The RCRA Facility Assessment (RFA) is the first step in the corrective action process. The RFA is a process for identifying and obtaining information on releases from a TSD facility. Through the RFA, Solid Waste Management Units (SWMUs), and Areas of Concern (AOCs) are evaluated for releases or release potential to the environment. The RFA makes preliminary determinations about releases, evaluates the need for corrective measures, and indicates whether further investigations are needed. Finally, the RFA screens from further action those SWMUs and AOCs which do not pose a threat to human health or the environment. The following three (3) steps of the RFA
process require the collection of data and/or information to support the initial release determination.

5.1.2.1. The Preliminary Review (PR)

The PR focuses primarily on evaluating existing information such as inspection reports, permit applications, historical monitoring data, and other public and enforcement file documents. It may be helpful to conduct interviews with staff of the other program areas that are familiar with the facility.

5.1.2.2. The Visual Site Inspection (VSI)

The VSI entails on-site collection of verbal, visual and potentially facility information to obtain additional evidence of releases.

5.1.2.3. The Sampling Inspection (SI)

The SI if, necessary, fills data gaps that may remain upon completion of the PR/VSI. All RFAs must be consistent with the relevant portions of U.S. EPA’s “RCRA Facility Assessment Guidance” (See References 8.1).

5.1.3. Documentation of a Release

To initiate an enforcement action under Indiana’s corrective action authority Indiana Code (IC) 13-22-13, the Project Manager must be able to prove that a release of hazardous waste or a hazardous constituent is occurring, or has occurred into the environment at or from the facility. See the following: http://www.ai.org/legislative/ic/code/title13/ar22/ch13.html, for the specific statutory language. This can be done during the Preliminary Review through past soil, sediment, air, surface water or groundwater sampling reports. The project manager should also request appropriate Geology Section, Engineering Section and Science Services Branch (technical support) staff assistance at this point, using the Technical Evaluation Request. In most cases, initially both chemistry and geology support should be requested. Review by the Engineering Section may only be necessary for the construction phases of the Corrective Measures Implementation Plan. The Technical Evaluation Request must be routed through the chief of the Hazardous Waste Permit Section (Section Chief). A review of the other offices’ files may also reveal the documentation of a release.

If no documentation of a release can be found, the PR or VSI may reveal areas where it is likely that releases have occurred. In this situation, a Sampling Inspection must be conducted following all protocols for environmental sampling, and collection of evidence. The PM may want to consult the Corrective Action Program E-7 (E-7) for assistance. All inter-office procedures for sampling plan review and analytical requests must be followed. After drafting a sampling plan, fill out an OLQ Sample Request. This document, along with the draft sampling plan, must also be routed through the Section Chief for approval. Depending on the amount of the anticipated sampling costs, approval may also be required by the Permits Branch Chief and Assistant Commissioner. All analytical results must be validated before a decision to issue an order is made, if the release determination is based solely on the sampling event(s). If a decision has been made to issue an order under IC 13-22-13, this SOP will direct the activities required for initiating and tracking the enforcement action.

5.1.4. Request for Legal Services

Draft an Attorney General Memo from the template requesting representation (See Appendix 10.10 for the Attorney General Memo Template). Under the first paragraph of the form, request legal representation for settlement conferences and the administrative hearing process. A new Cause Number is obtained by creating a new enforcement action in the Indiana RCRA Activity Tracking System (IRATS), under the Add Corrective Action Action screen. Send the completed form to the Office of the Attorney General (AG).
The form will be sent back to the project manager with the assigned attorney and the AG’s tracking number. The project manager will call the Deputy AG assigned to set up a meeting to discuss the case. An enforcement strategy must be developed on a case-by-case basis to determine any case weaknesses, heightened public concerns, any special issues, the actions required by the Order, and whether or not any penalties should be assessed for any potential violations revealed during the RFA or other site visits.

If it is determined that the nature of any observed violation(s) warrant civil penalties, a referral must be made for the initiation of a separate enforcement action, or a coordinated enforcement action using the appropriate AO Template (See Appendix 10.3). The current SOP on enforcement referrals will govern all activities related to any such referral. An example of a situation where an enforcement referral would be appropriate would be if you observe containers (55-gallon drums) of hazardous waste stored in an unsafe manner, or if the containers themselves are in poor condition (leaking, rusted, bulging, etc.). Drums of hazardous waste must be stacked no higher than two (2) pallets high and must have a minimum of 2 ½ feet of isle space between pallets so that all drums can be inspected to ensure that they are not leaking and in good condition. All containers of hazardous waste must have a hazardous waste label with the accumulation start date filled in on the label (See Figure 1. below.). If the facility has reverted to generator status only, they are only allowed to store hazardous wastes for less than ninety (90) days, without a permit (One-hundred-eighty (180) days for Conditionally Exempt Small Quantity Generators (CESQGs), or two-hundred seventy (270) days if they are a CESQG over two-hundred (200) miles from an off-site TSD facility.). Extensions of thirty (30) days to the above may be made in accordance with 40 CFR 264.34, “Accumulation time”. However, if you observe a hazardous waste label with an accumulation start date that is over a year old, a referral should be made for the assessment of a civil penalty. If a decision is made to make a referral, fill out the current Hazardous Waste Referral, and route it through the Corrective Action E-7 and Section Chief.

![Figure 1. – Standard Hazardous Waste Label](image-url)
In unusual situations, where the potential of an imminent threat to human health or the environment arises, it may be appropriate to refer the matter immediately to the Office of the Attorney General for civil filing for a Temporary Restraining Order and Request for Permanent Injunction. If you are informed of, or otherwise become aware of such a situation, contact the Corrective Action E-7 immediately. An example of such a situation would be a recent release of hazardous waste where workers are being exposed, or the release is leaving the facility (off-site involvement). Depending on the magnitude and toxicity of the release, and the response of facility personnel, the situation could rise to the level of a criminal violation described below.

Lastly, knowing and intentional violation of our statutes and/or rules constitutes a criminal violation. Violations that substantially endanger human health or the environment due to gross negligence are also potentially criminal in nature. If any violation appears to have been committed intentionally or recklessly to the point of endangerment, a referral to the Office of Criminal Investigations (OCI) should be considered. Another potential criminal violation which you could observe evidence of would be staining around a storm sewer drain, or a floor drain that is connected to the sewerage of a wastewater treatment plant, and is next to a hazardous waste process or storage area. This could be evidence of sewer dumping of hazardous wastes. If you feel any violation rises to the level of a civil or criminal referral, consult the RCRA Corrective Action E-7 for assistance. Once an enforcement strategy has been agreed upon, the project manager will prepare an Enforcement Packet.

5.1.5. Notice of Violation

A Notice of Violation (NOV) must be drafted using the Notice of Violation Template (See Appendix 10.1.). The most current names and addresses of the company, its president and registered agent (Respondents), must appear on the NOV. The company president, registered agent and their current addresses can be obtained for any company incorporated in the State of Indiana from the Secretary of State, Corporations Division. You may call the Corporations Division directly at 317/232-6576. The best time to call is during the off-hours (10:00 am - 2:00 pm). Copies of incorporation documents can be obtained by going to the Secretary of State’s Information Center located at the east end of the lower level of the Indiana Government Center South complex. There is an open paragraph in the NOV template to be tailored to the situation at your facility. Describe the nature of the release and include any supporting analytical results and/or information. This should be specific to the media and contaminants of concern (COCs). After completing the NOV, affix a signature tab on the last page, next to the signature line.

5.1.6. Corrective Action Agreed Order

A proposed Agreed Order (AO) must be drafted using Template 10.1.2. The AO must be tailored to each facility on a case-by-case basis. As stated above, Template 10.1.3. is only used when the NOV and AO is to be issued in a coordinated action with a penalty for noncompliance. Template 10.1.3. has a section for the assessment of a civil penalty for hazardous waste management violations, separate from the stipulated penalties.

All of the information obtained during the RFA that you feel is relevant to your case, should be included in the Findings of Fact section of the AO. It is important that you document all of the facts that support your case and constitute a release to the environment in the Findings. This will help you build your evidence and witness lists, should the case go to hearing.

5.1.7. Enforcement Scope of Work

The Enforcement Scope of Work is an exhibit to both the proposed AO and the Order of the Commissioner, and is drafted using Template 10.1.4. Ensure that the header is consistent throughout the document, and that the total number of pages is correct after
The Scope of Work may be negotiated on a site-specific case-by-case basis for inclusion in subsequent drafts of the AO for settlement purposes. However, the template must be followed for first drafts of the proposed AO for inclusion with the NOV, and as an exhibit for Orders of the Commissioner.

5.1.8. AC Briefing Memo for NOV

An AC Briefing Memo must be drafted using Template 10.1.5., requesting that the Assistant Commissioner sign the NOV. This is a summary of the facility's activities, waste streams, the documentation of the release(s) to the environment, and the recommended actions. The AC Briefing Memo must also include any sensitive issues, public concerns and whether any violations were referred for the assessment and collection of punitive civil penalties, or to the Office of Criminal Investigations for potential criminal investigation.

5.1.9. Enforcement Packet

5.1.9.1. Contents

Inside a Black Folder, include: the NOV, a copy of the completed Attorney General Memo, and two (2) copies of the AC Briefing Memo for NOV on the left side; and the proposed AO on the right. Attach a standard routing slip to the outside of the packet with the following review and signature chain: Corrective Action Program E-7; Hazardous Waste Permit Section Chief; Permits Branch Chief and the Assistant Commissioner of the Office of Land Quality.

5.1.9.2. Distribution

Once the Enforcement Packet (packet) is complete, the project manager starts it up the signature chain by submitting it to the Corrective Action Program E-7 (E-7) for review. If complete and technically correct, the E-7 will initial the routing slip, sign the technical recommendation signature line of the proposed AO, and forward the packet on to the Hazardous Waste Permit Section Chief. If satisfied, the Section Chief initials the routing slip and forwards the packet on to the Permits Branch Chief. The Branch Chief keeps one (1) copy of the Briefing Memo, initials the routing slip and forwards the packet on to the Office of Land Quality (OLQ) Assistant Commissioner. If requested, a briefing is then held for the OLQ Assistant Commissioner with the project manager, the E-7, the Section Chief and/or Branch Chief. If acceptable, the OLQ Assistant Commissioner initials the routing slip, signs the Notice of Violation and then the packet is returned to the Permits Branch secretary. The Permits Branch secretary makes copies of the signed and dated NOV and AO, places them in the packet, logs them into the correspondence log, mails the originals via certified mail and returns the packet to the project manager. If anyone in the signature chain has any questions or comments, they should contact the project manager or anyone down the chain until satisfied with the packet. The Permits Branch secretary will log all Enforcement Packets in and out of the Permits Branch, and send copies of the signed NOV and proposed AO to the Virtual File Cabinet (VFC). The VFC indexing for both documents is as follows: Program = HW Site; Document Type = OLQ Corrective Action; Security Level = Public; HW Program ID = EPA ID No.; and Corrective Action Order. When all of the boxes read as above, hit the “Complete” button to save.

When the verification of receipt (green card) is returned it is sent to the Corrective Action E-7 and stapled to the copy of the NOV, which is kept in the Corrective Action Enforcement File.
5.2. Settlement and Enforcement Action Escalation

5.2.1. Informal Settlement Conferences

The Respondent, or its attorney, will generally call to set up a settlement conference shortly after receiving the Notice of Violation. The PM will schedule the conference, reserve a conference room and notify all parties. If an AO signed by the Respondent is not received within sixty (60) days of its receipt of the NOV, the PM may request that the case be escalated to an Order of the Commissioner (CO) by contacting the Hazardous Waste Permit Section Chief. If in agreement, the PM will inform the Respondent that if settlement is not reached within ninety (90) days of receipt of the NOV, IDEM will recommend that an Order of the Commissioner be issued. If the CO is issued and the Respondent requests administrative review within twenty (20) days of its receipt, the matter will be sent to the Office of Environmental Adjudication for hearing. This determination will be made on a case-by-case basis, and will depend among other things upon the likelihood of settlement. As described further below, if the Respondent fails to request administrative review within the required twenty (20) days, the CO becomes the Final Order of IDEM.

5.2.2. Order of the Commissioner

The major portions of the proposed AO will be used to draft the CO using Template 10.1.7. The Enforcement Scope of Work will require little if any revision. The PM will then prepare a CO Packet using the black folders. Draft a Commissioner’s Briefing Memo using Template 10.1.6. The intro and facility summary may be cut and pasted from the AC Briefing Memo from the NOV packet. The Commissioner’s Briefing Memo must include all informal settlement conference dates, the major obstacle(s) to negotiating a settlement, and recommend that the Order of the Commissioner be issued. Place two (2) copies of the Commissioner’s Briefing Memo in the left side of the folder along with a copy of the green card signed by the respondent for receipt of the NOV, and the CO on the right. One copy of the Briefing Memo is for the Permits Branch Chief to keep, and the other copy remains in the packet. Attach a signature tab next to the Commissioner’s signature line on the CO. Attach a completed Commissioner’s Routing Sheet to the outside of the folder, and forward to the E-7. The E-7 reviews the packet, and if acceptable, forwards it on to the Hazardous Waste Permit Section Chief. The review/sign-off chain from there includes the Permits Branch Chief, the Office of Land Quality Assistant Commissioner, the Deputy AG, the Assistant Commissioner of the Office of Legal Counsel, and then the Commissioner. Anyone in the signature chain may request a briefing if questions cannot be sufficiently answered over the phone or by e-mail. If the CO is acceptable, the Commissioner or designee will sign and date the signature line. Upon return of the CO Packet, the Permits Branch secretary will make copies of the signed and dated CO for the listed copies, the Virtual File Cabinet and the PM; and the original CO will be logged into the correspondence log, and mailed by the Permits Branch secretary via certified mail to the Respondent. The VFC indexing for the CO is as follows: Program = HW Site; Document Type = OLQ Corrective Action; Security Level = Public; HW Program ID = EPA ID No.; and Corrective Action Order. The PM will inform the Deputy AG of when the CO was received by the Respondent when the verification of receipt (green card) is received. The green card is sent to the Corrective Action E-7 and stapled to the copy of the CO which is kept in the Corrective Action Enforcement File. Should the Respondent file a timely petition for review, the Office of Environmental Adjudication (OEA) will assign the case an OEA cause number and schedule all pre-hearings and hearings from that point forward. Informal settlement conferences may still be scheduled at this point by the PM or Deputy AG, however all documents from this point forward will be identified by the OEA’s cause number. Should the action proceed to the end of the hearing process, the Administrative Law Judge (ALJ) will render a Findings of Fact and Conclusions of Law and Order. The ALJ is IDEM’s ultimate authority pursuant to the Administrative Orders and Procedures Act (f/k/a the Administrative Adjudication Act). Therefore, the
Findings and Order will become the Final Order (FO) of IDEM, which ends the administrative process. The Respondent then has the right to appeal the FO of IDEM in civil court (See References 8.2.).

5.2.3. Notice of Final Order Packet

If a proposed AO signed by the Respondent is received, the PM will prepare a Notice of Final Order Packet. A Notice of Final Order Packet will also be prepared for the Findings of Fact and Order of the ALJ presiding over an administrative hearing. The PM will draft a Notice of Approval of the AO or FO, using Template 10.1.8., and either update the AC Briefing Memo for the NOV, or use an existing Commissioner’s Briefing Memo to draft an AC Briefing Memo. Place two (2) copies of the updated memo and the Notice of Approval of the AO or FO on the left side of a black folder, and the original copy of the AO or FO on the right. One copy of the briefing memo is for the Permits Branch Chief to retain. If it is an AO, attach a signature tab on the last page next to the Assistant Commissioner’s signature line. Attach a completed standard routing slip to the outside of the folder. The signature chain from there includes the E-7, Hazardous Waste Permit Section Chief, Permits Branch Chief, Deputy AG and the OLQ Assistant Commissioner. If it is an AO, the assigned Deputy AG must sign the signature page of the AO. If it is an FO, no signatures are required, and the packet is just to inform the Deputy AG that the Final Order of IDEM is about to be issued. After the AO or FO is returned to the PM with all required signatures completed, the PM attaches a standard transmittal slip on the outside, through the E-7, Hazardous Waste Permit Section Chief and Permits Branch Chief to the Assistant Commissioner of OLQ. The Assistant Commissioner signs the Notice of Approval and returns the packet to the Permits Branch secretary for logging, copying and certified mailing as stated above. The Order becomes effective on the date the Respondent receives the Notice of Approval, which will be the date on the verification receipt. The original copies of the AO or FO, and all verification receipts (green cards) for enforcement documents, are evidence, and shall be kept in the Corrective Action Enforcement File maintained by the E-7. The VFC indexing for the file copy is as follows: Program = HW Site; Document Type = OLQ Corrective Action; Security Level = Public; HW Program ID = EPA ID No.; and Corrective Action Order.

5.2.4. Civil Court Actions

If a Respondent significantly violates a Final Order of IDEM (i.e., an approved AO, FO or uncontested CO); the order may be enforced by filing it in civil court. The PM, upon concurrence of the E-7, Section Chief and Branch Chief, will draft an Attorney General Memo. The memo will request the Office of the Attorney General to file a civil action to compel compliance with the Order, and request the collection of any stipulated civil penalties accrued. The PM will draft the memo using Template 10.1.10., and will specify the major milestones of the originating enforcement case, the specific noncompliance of the Respondent, and the relief sought (i.e., what specifically do you want the judge to order the Respondent to do). The PM will prepare an Attorney General Referral Packet, which includes an updated memo listing all relevant details to date, and a paragraph requesting that the matter be filed in civil court. Attach a Commissioner’s Routing Sheet to the outside of the folder. The review chain is the same as any packet for the Commissioner’s signature. If the Commissioner and the Assistant Commissioner of the Office of Legal Counsel agree that the action rises to the level of a civil filing, the memo is sent to the Attorney General, and a copy is sent to the Deputy Attorney General assigned to IDEM with all of the attachments.

In extreme cases (imminent threats to human health or the environment), an action may be filed directly in civil court requesting the issuance of a Temporary Restraining Order and Request for Permanent Injunction. If any such situation arises, immediately consult with the E-7 and Section Chief for direction. If a Deputy AG is assigned, the Deputy AG will contact the PM to set up a meeting to resolve any outstanding issues.
and prepare a case strategy. In a situation such as this, it is imperative that you keep the case moving, both within the Agency as well as after the filing of the action in court. The longer the case is dragged out and continued, the less it will appear that the threat is imminent. The Attorney General Referral Packet will include a briefing memo and an Attorney General Memo. The memo subject line will have to be tailored to the specific action requested. Attach a Commissioner’s Routing Sheet to the outside of the folder. The review chain is the same as any packet for the Commissioner’s signature. Once again, the memo will only be sent if the Commissioner and the Assistant Commissioner of the Office of Legal Counsel agree that it is necessary.

5.3. Review, Oversight and Enforcement Action Resolution

5.3.1. Notice of Deficiency

Once an Order has been obtained, the Respondent will begin submitting work plans and reports as directed. It is the responsibility of the PM to review all documents for completeness and technical adequacy, and to request technical support to review such work plans or reports for technical adequacy. Use the most current technical review request when transmitting documents for review. All inadequacies noted during the reviews must be communicated to the Respondent in a Notice of Deficiency (NOD), Template 10.1.9. The NOD must be tailored to state whether the response is to an original submittal, or to a response from a previous NOD. There are other optional and open paragraphs in the template, depending on specific needs. Copy all technical staff involved in the review. NODs are signed by the Section Chief, and must be sent via certified mail. Verification receipts (green cards) for NODs are maintained by the PM as evidence, and are filed in the Certified Cards Files. The VFC indexing for NODs is as follows: Program = HW Site; Document Type = OLQ Enforcement; Security Level = Public; and the HW Program ID = EPA ID No. The OLQ Corrective Action index will vary, depending on what phase of the process the work reviewed was submitted. For example, if the NOD resulted from a review of an RFI Workplan, then the OLQ Corrective Action index = HW RCRA Facility Investigation. The choices available for this index are: HW Corrective Action General; HW Corrective Measures Implementation; HW Corrective Measures Study; HW RCRA Facility Assessment; HW RCRA Facility Investigation; and Not Applicable. The OLQ Enforcement index will also vary, depending on the type of instrument the work was conducted under. The appropriate choices available for NODs under this index are: Agreed Order; Commissioner’s Order; and Enforcement Order.

5.3.2. Oversight Inspections

Periodically, the PM will be required to observe major fieldwork conducted per approved plans, and document the findings in a Trip Memo to the file. This memo will follow the basic format of State Form 4336. They are to be routed through the Section Chief before being sent to the Virtual File Cabinet. The amount of oversight given to each enforcement action will vary, depending on the size of the facility, the toxicity and magnitude of the release(s), and the compliance history of the facility. For further guidance refer to the EPA document “Corrective Action Oversight” (See References 8.3.).

5.3.3. Enforcement Action Resolution

When the Respondent has met all conditions of an FO of IDEM, the facility will be returned to compliance. A Notice of Resolution (NOR) must be drafted using Template 10.1.14. The NOR is signed by the OLQ Assistant Commissioner and sent via certified mail. You must be certain that all requirements of the Order have been met before issuing the NOR. To require anything from the Respondent subsequent to the issuance of the NOR, a new enforcement action, if possible, must be justified and initiated. The verification of receipt is filed in the Certified Cards Files. The VFC indexing for the NOR is as follows: Program = HW Site; Document Type = OLQ.
6.0 Records Management
Record and document handling is covered in Section 5.0 Procedures.

7.0 Quality Assurance / Quality Control
Multiple layers of review are built into this SOP. Everyone in the signature chain must be satisfied with the quality and completeness of the enforcement action prior to issuance.

8.0 References

9.0 History of Revisions
Not applicable.

10.0 Appendices
10.1. Notice of Violation
NOTICE OF VIOLATION

Cause No. H-[#]

TO:  [President’s Name], President
[Company Name]
[Address]

[VIA CERTIFIED MAIL NO.]

[Agent’s Name], Registered Agent
[Agent’s Company Name]
[Address]

[VIA CERTIFIED MAIL NO.]

A designated representative of the Indiana Department of Environmental Management (Department) conducted an [Inspection?] or a [Record Review?] of your facility, located at [Facility Address], Indiana, on [Inspection Date]. The U.S. EPA I.D. number of your facility is [#].

The [Inspection or Record Review], conducted by [Name(s)] of the Office of Land Quality (OLQ) of the Department, revealed a violation of Indiana Code (IC) 13. The violation observed was IC-13-30-2-1 (4).]

[Open paragraph] [Describe the specific nature of the release, and any supporting information and analytical results.]

In accordance with IC 13-30-3-3, this Notice of Violation is issued to offer you an opportunity to enter into an Agreed Order providing for the actions required to correct the violation. I am not required to extend this offer for more than sixty (60) days from your receipt of this Notice of Violation.

Entering into and timely compliance with the enclosed Agreed Order will constitute the final resolution of this cause. If you are also willing to resolve this matter as provided for in the Agreed Order, sign and return it as soon as possible. In any event, a response must be made within sixty (60) days of your receipt of this Notice. If you do not agree to the specific terms of the proposed Agreed Order, but are willing to enter into a modified Agreed Order, please contact [Your Name] at [Your phone #] within fifteen (15) days of receipt of this Notice, to relate your comments or arrange for a conference to discuss this matter further.

If settlement is not reached within sixty (60) days of your receipt of this Notice, an Order will be issued pursuant to IC 13-22-13-3, IC 13-30-3-4 and IC 13-30-3-11 containing the actions you must take to achieve compliance, and the required time frames.

The advantages of entering into an Agreed Order now, prior to proceedings under IC 13-22-13-3, IC 13-30-3-4 and IC 13-30-3-11, are:
1. At this stage of the proceedings, it is not required that you admit the violation in the Agreed Order as stated.

2. The timely entry into an Agreed Order will prevent the necessity of a formal Order being issued as required by IC 13-30-3-4, or the filing of a civil court action under 13-22-13-1(2).

Dated this ______ day of __________________, 2007.

__________________________________________
Bruce H Palin
Assistant Commissioner
Office of Land Quality

Enclosure

cc: Mr. Hak Cho, U.S. EPA Region V
    Mr. George Hamper, U.S. EPA Region V
    [County of Violation] County Health Department
    Mr. Steven Griffin, Office of the Attorney General
    Mr. Michael E. Sickels, IDEM
    [Additional copies]
10.2. Proposed Agreed Order Template
IN THE MATTER OF: COMMISSIONER,

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Complainant

Vs

Cause No. H-[#]

[Corporate Name]
[Facility Name]
[City, Indiana]
[EPA ID No.]

Respondent

CORRECTIVE ACTION AGREED ORDER

A. JURISDICTION

This Administrative Agreed Order is entered into pursuant to the authority vested in the Commissioner of the Indiana Department of Environmental Management (Commissioner) by Indiana Code (IC) 13-22-13-1 and IC 13-30-3-3. [Corporate Name] hereby agrees to waive the issuance of a Notice of Violation as required by IC 13-30-3-3. [If this Agreed Order is being prepared as an attachment to a Notice of Violation in an enforcement action, delete the preceding sentence.]

This Agreed Order is entered into between the Indiana Department of Environmental Management, (hereinafter referred to as “IDEM”), and [Corporate Name] (hereinafter referred to as “[Abbreviation (Optional)]” or “Respondent”). Respondent is the owner/operator of [Facility Name], hereinafter referred to as “[Abbreviation (Optional)]” or “Facility”. Respondent consents to and agrees not to contest IDEM’s jurisdiction to enter into this Agreed Order and to enforce its terms. Further, Respondent will not contest jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondent’s full or interim compliance with the terms of this Agreed Order; or impose sanctions for violations of this Agreed Order.
B. PARTIES BOUND

1. This Agreed Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, successors and assigns, and upon all persons, independent contractors, contractors and consultants acting under or for Respondent.

2. No change in ownership or corporate or partnership status relating to the facility will in any way alter Respondent’s responsibility under this Agreed Order.

3. Respondent shall provide a copy of this Agreed Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Agreed Order within one (1) week of the effective date of this Agreed Order or date of such retention, and shall condition all such contracts on compliance with the terms of this Agreed Order.

4. Respondent shall give notice of this Agreed Order to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify IDEM of the Respondent’s intent to transfer ownership, within sixty (60) days prior to such transfer. Such notice shall be addressed to the Project Manager as set out in paragraphs F.10. and F.11. below. [Make sure these locations are still correct after editing.]

C. STATEMENT OF PURPOSE

In entering into this Agreed Order, the mutual objectives of IDEM and [Corporate Name or Abbreviation] are: (1) to perform a Resource Conservation and Recovery Act (RCRA) Facility Investigation (RFI) to further define the nature and extent of a release of hazardous waste and/or hazardous constituents at or from the Facility; (2) to perform a Corrective Measures Study (CMS) to identify and evaluate alternatives for the corrective action necessary to prevent or mitigate any migration or releases of hazardous waste and/or hazardous constituents at or from the Facility; and (3) to implement the corrective measure or measures selected by IDEM at the Facility.

D. FINDINGS OF FACT

1. Respondent is a company doing business in the State of Indiana and is a person as defined in Indiana Administrative Code (IAC) 329 IAC 3.1-4-20, and Indiana Code (IC), 13-11-2-158.

2. Respondent is a [Generator?], [Transporter?], and an owner and operator of a hazardous waste management facility located at [Address], Indiana. [Optional – Figure 1. showing the location of the facility and its property boundaries is attached hereto and incorporated herein by reference as Exhibit ___.] Respondent engaged in [List hazardous waste management activities the Respondent engaged in. (May be different than what was in the Notification or Part A.)] of hazardous waste at the Facility subject to the interim status requirements of 329 IAC 3.1.

3. Respondent owned and operated its facility as a hazardous waste management facility on and after November 19, 1980, the applicable date which renders facilities subject to said interim status requirements.

4. Pursuant to Section 3010 of RCRA, 42 United States Code (U.S.C.), 6930, Respondent notified the United States Environmental Protection Agency (EPA) of its hazardous waste activity, and was assigned the EPA I.D. No. [IND #]. In its notification dated [Date the notification was signed.], Respondent identified itself as
[List the hazardous waste management activities for which the Respondent notified.]

5. In its Part A permit application dated [Date the Part A was signed.], the Respondent identified itself as handling the following hazardous wastes at the Facility: [List all hazardous wastes and codes listed on the Part A application.].

6. A RCRA Facility Assessment ("RFA") was conducted at the Facility on [Date(s)]. The RFA Report dated [Date], identified the following Solid Waste Management Units (SWMUs) and Areas of Concern (AOCs). [List all SWMUs and AOCs identified in the RFA Report.] [If the list is extensive, reference it as Exhibit __, attached hereto and incorporated herein by reference.]

[Optional Paragraphs]
X. A sampling Inspection was conducted on [Date(s)]. [Then add an additional paragraph(s) discussing the analytical results.]

7. The existing property grade is [Direction] with the ground surface generally sloping toward the [Direction]. The regional surficial geology consists of [Brief narrative.]. The regional ground water movement is [Direction]. At the facility, the local ground water flow is to the [Direction].

E. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set out above, and after consideration of documentation contained in the public file, IDEM has made the following conclusions of law and determinations.

1. Respondent is a “person” as defined in paragraph D.1. above.

2. Respondent is or was the owner and/or operator of a facility subject to IC 13-22-13 and 329 IAC 3.1.

3. The Facility was authorized to operate under interim status under Section 3005(e) of the Solid Waste Disposal Act (42 U.S.C. 6925(e)) or under IC 13.

4. Certain wastes or constituents thereof found at the Facility are contaminants, hazardous wastes or hazardous constituents as defined by IC 13 and 329 IAC 3.1-6 (Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5)). These are also hazardous wastes or hazardous constituents within the meaning of Section 3001 of RCRA, 42 U.S.C. Section 6921 and Title 40 Code of Federal Regulations (40 C.F.R.).

5. Pursuant to IC 13-22-13-1,

   a. If, on the basis of any information, the Commissioner determines that there is or has been a release of a hazardous waste or a constituent of a hazardous waste into the environment from a facility authorized to operate under interim status under Section 3005(e) of the Solid Waste Disposal Act (42 U.S.C. 6925(e)) or under this chapter, the Commissioner may:

      1) issue an order requiring corrective action or another response measure that the Commissioner considers necessary to protect human health or the environment; or
2) Commence a civil action to compel corrective action as described in subdivision (1).

b. Under subsection (a), the Commissioner or a court may order the performance of corrective action beyond the boundaries of the facility from which the release occurs. However, corrective action may not be ordered by the Commissioner beyond the boundaries of the facility if the owner or operator of the facility demonstrates to the satisfaction of the Commissioner that, despite the best efforts of the owner or operator, the owner or operator is unable to obtain the necessary permission to undertake that corrective action.

c. An order issued by the Commissioner under this section:

1) may include a suspension or revocation of authorization for the facility to operate under interim status;

2) must state with reasonable specificity the nature of corrective action or other response measure required by the order; and

3) must specify a time for compliance.

6. Based on information gathered by IDEM, there is or has been a release of hazardous wastes and/or hazardous constituents into the environment from Respondent’s Facility, which violates IC 13-30-2-1(4).

7. The actions required by this Agreed Order are necessary to protect human health or the environment and are authorized or required pursuant to IC 13-22, IC 13-30 and IC 4-21.5.

F. ORDER

Pursuant to IC 13-30, Respondent is hereby ordered to perform the following acts in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with, at a minimum, the Corrective Action Scope of Work attached hereto and incorporated herein by reference as Exhibit ___. Relevant guidance may include, but is not limited to; IDEM’s “Risk Integrated System of Closure” (RISC), and “Test Methods for Evaluating Solid Waste” (SW-846, 3rd edition, or most recent edition, and the most recent updates.).

1. INTERIM MEASURES (IM)

a. In the event the Respondent identifies a current or potential threat to human health or the environment, the Respondent shall immediately notify IDEM orally and in writing within seven (7) days, summarizing the immediacy and magnitude of the potential threat to human health or the environment. Within fifteen (15) days of notifying IDEM, the Respondent shall submit to IDEM an IM Workplan for approval that identifies Interim Measures which mitigate this threat and are consistent with and integrated into any long term solution at the facility.

b. The IM Workplan shall ensure that the Interim Measures are designed to mitigate current or potential threat(s) to human health or the environment and are consistent with and integrated into any long term solution at the facility. The IM Workplan shall document the procedures to be used by the Respondent for the implementation of Interim Measures and shall include, but not be limited to: the objectives of the Interim Measures; design, construction, operation, monitoring and maintenance requirements; and detailed schedules.
c. In accordance with the Corrective Action Scope of Work herein, the IM Workplan shall include: Interim Measure Objectives; a Health and Safety Plan; a Community Relations Plan; and Reporting Requirements.

d. In the event the Respondent identifies that any water supply well has been contaminated, the following Interim Measures shall be initiated:

1) Within five (5) days, the Respondent shall provide an alternate water supply to the affected parties.

2) Within seven (7) days the Respondent shall submit a report to IDEM detailing the activity pursued and a plan for further Interim Measure activity.

3) Within seven (7) days following IDEM’s transmission of comments, the Respondent shall revise the plan in accordance with IDEM’s comments.

4) Within seven (7) days following IDEM’s approval or modification of the plan, the Respondent shall implement the revised plan in accordance with the schedule therein.

2. RCRA FACILITY INVESTIGATION (RFI)

a. Within thirty (30) days of the effective date of this Order, Respondent shall submit to IDEM an RFI Workplan. The RFI Workplan is subject to approval, disapproval or modification and approval by IDEM and shall conform to the RFI Tasks contained in the Corrective Action Scope of Work herein.

b. The RFI Workplan shall be designed to define the presence, magnitude, extent, direction, and rate of movement of any hazardous wastes or hazardous constituents within and beyond the facility boundary, and be specific to the release and migration of contaminants from the following units. [List all SWMUs and AOCs for which an RFI will be required, and the required activity(ies) for each unit. For larger facilities, you may use a Table as Exhibit __, attached hereto and incorporated herein by reference.] The RFI Workplan shall document the procedures the Respondent shall use to conduct those investigations necessary to: (1) characterize the potential pathways of contaminant migration; (2) characterize the source(s) of contamination; (3) define the degree and extent of contamination; (4) identify actual or potential receptors; and (5) support the development of alternatives from which a corrective measure will be selected by IDEM. A specific schedule for implementation of all activities shall be included in the RFI Workplan, including a date for submission of the RFI Draft Report.

c. In accordance with the provisions of [Exhibit __] herein, the RFI Workplan shall include: (1) a Project Management Plan; (2) a Data Collection Quality Assurance Plan; (3) a Data Management Plan; (4) a Health and Safety Plan; and (5) a Public Involvement Plan.

d. Within thirty (30) days of Respondent’s receipt of the notice of approval or modification and approval of the RFI Workplan, Respondent shall implement the plan as approved or modified and approved, and shall comply with the time schedules therein.
e. Within thirty (30) days of discovery of any new SWMU or AOC identified at the facility, Respondent shall notify IDEM of the following information:

1) The location of the unit or area on the site topographic map;

2) Designation or description of the type of unit or area of concern;

3) General dimensions and structural description;

4) When the unit was operated or the area discovered; and

5) Specifications of all waste(s) that have been managed at the unit, or the specifics (e.g. products or waste(s) involved, spill date, volume, etc.) of the area of concern.

Respondent must submit to IDEM, within thirty (30) days of discovery, all available information pertaining to any release of hazardous waste(s) or hazardous constituent(s) from any new or existing SWMU, or AOC.

IDEM will review the information provided under this condition and may, as necessary require further information, investigations and/or corrective measures. Respondent shall submit a written RFI Workplan to IDEM within thirty (30) days of written notification by IDEM that further investigation is necessary.

3. CORRECTIVE MEASURES STUDY (CMS) AND CORRECTIVE MEASURES IMPLEMENTATION (CMI) PROGRAM PLAN

a. Upon completion of the RCRA Facility Investigation, and/or within thirty (30) days of Respondent’s receipt of notification by IDEM that a CMS is required, the Respondent shall submit a Corrective Measure Study Workplan which is subject to approval, disapproval or modification and approval, and in accordance with the CMS Tasks in the Corrective Action Scope of Work herein. A specific schedule for implementation of all activities shall be included in the CMS Workplan, including a date for submission of the CMS Draft Report.

b. Within thirty (30) days of Respondent’s receipt of the notice of approval or modification and approval of the CMS Workplan. Respondent shall implement the plan as approved or modified and approved, and shall comply with the time schedules therein.

c. Within thirty (30) days of Respondent’s receipt of notification of IDEM’s selection of the corrective measure in the Response to Comments and Final Decision, Respondent shall submit a Corrective Measure Implementation Program Plan (CMI Program Plan). The CMI Program Plan is subject to approval, disapproval or modification and approval by IDEM, and shall conform to the CMI program Tasks in the Corrective Action Scope of Work herein. A specific schedule for all activities shall be included in the CMI Program Plan, including a date for submission of the Draft CMI Report.

d. The CMI Program Plan shall be designed to facilitate the design, construction, operation, maintenance and monitoring of the corrective measure at the Facility. In accordance with the Corrective Action Scope of Work herein, the CMI Program Plan shall also include: (1) a Program Management Plan; (2) a Community Relations Plan;
3) Design plans and Specifications; (4) an Operation and Maintenance Plan; (5) a Cost Estimate with a Financial Assurance Instrument in that amount which meets the requirement of 329 IAC 3.1-15-4 (40 CFR 264.143); (6) a Project Schedule; (7) a Health and Safety Plan; and (8) a Construction Quality Assurance Plan.

e. Within thirty (30) days of Respondent’s receipt of notice of approval or modification and approval of the CMI Program Plan, Respondent shall implement the plan as approved or modified and approved, and shall comply with the time schedules therein.

4. SUBMISSIONS AGENCY APPROVAL AND ADDITIONAL WORK

a. After three (3) submissions of any workplan(s), program plan(s) or report(s) by the Respondent, IDEM may modify and approve any such plan(s) or report(s).

b. Within thirty (30) days of notice of approval or modification and approval by IDEM of any workplan(s) or program plan(s), Respondent shall commence work and implement the tasks required by the workplan(s) or program plan(s) submitted pursuant to the Corrective Action Scope of Work contained herein, in accordance with the standards, specifications and schedule stated in the workplan(s) or program plan(s) as approved or modified and approved by IDEM.

c. Beginning with the month following the effective date of the Order, Respondent shall provide IDEM with progress reports for each month on the tenth day of the following month. The progress reports shall conform to requirements in the relevant tasks in the Corrective Action Scope of Work herein.

d. Respondent shall provide draft and final Interim Measures, RCRA Facility Investigation, Corrective Measure Study and Corrective Measures Implementation Program Plan, reports to IDEM in accordance with the schedule contained in this Order and its Exhibits herein.

e. IDEM will review all draft or final reports, and notify Respondent in writing of IDEM’s approval, disapproval or modification and approval of the report or any part thereof. In the event of any disapproval, IDEM shall specify in writing the deficiencies and reasons for such disapproval. Within thirty (30) days of the receipt of IDEM’s disapproval of any report, Respondent shall amend the report based on IDEM’s comments and submit a revised report. All IDEM approved reports shall be deemed incorporated into and part of this Order by reference.

f. [Number of copies required?] copies of all documents, including Workplans, Program Plans, preliminary and final reports, progress reports, and other correspondence to be submitted pursuant to this Order shall be hand delivered or sent by certified mall, return receipt requested, to the Project Manager designated pursuant to paragraphs F.10. and F.11. [Make sure these locations are still correct after editing.] of this Order below.

g. All work performed pursuant to this Order shall be under the direction and supervision of a certified Professional Engineer or certified Professional Geologist with expertise in hazardous waste site investigation and remediation. On or before the effective date of this Order, Respondent shall notify IDEM in writing of the name, title, and qualifications of the engineer or geologist, and of any contractors or subcontractors and their personnel to be used in carrying out the terms of this Order.

h. IDEM may determine that certain tasks, including investigatory work or engineering
evaluation, are necessary in addition to the tasks and deliverables included in this Order when new findings indicate that such additional work is necessary. IDEM shall request in writing that Respondent perform the additional work in this situation and shall specify the basis and reasons for IDEM’s determination that the additional work is necessary. Within seven (7) days after the receipt of such request, Respondent shall have the opportunity to meet with IDEM to discuss the additional work IDEM has requested. Unless the Respondent can show that the work is unnecessary and does not protect human health or the environment, Respondent shall perform the additional work IDEM has requested according to an IDEM approved Workplan. All additional work performed by Respondent under this paragraph shall be performed in a manner consistent with this Order.

5. QUALITY ASSURANCE

Throughout all sample collection and analysis activities, Respondent shall use IDEM approved quality assurance, quality control, and chain-of-custody procedures. In addition, Respondent shall:

a. Ensure that laboratories used by Respondent for sample analyses perform such analyses according to the EPA methods included in “Test Methods for Evaluating Solid Waste”, (SW-846, 3rd edition or most recent edition, and the most recent updates,) or other methods deemed satisfactory by IDEM. If methods other than IDEM approved methods are to be used, Respondent shall submit all protocols to be used for analyses to IDEM for approval within sixty (60) days prior to the commencement of analyses; and

b. Ensure that laboratories used by Respondent for sample analyses participate in a quality assurance/quality control program equivalent to that which is followed by the Office of Land Quality (OLQ) of IDEM. As part of such a program, and upon request by IDEM, such laboratories shall perform analyses of samples provided by IDEM to demonstrate the quality of the analytical data.

6. PUBLIC COMMENT AND PARTICIPATION

a. Upon approval by IDEM of a Corrective Measures Study Final Report, IDEM shall make the RCRA Facility Investigation Final Report, the Corrective Measures Study Final Report, summary of IDEM’s proposed corrective measure and IDEM’s justification for proposing selection of that corrective measure available to the public for review and comment for at least forty-five (45) days.

b. Following the public review and comment period, IDEM shall notify Respondent of the corrective measure selected by IDEM in the Response to Comments and Final Decision. If the corrective measure recommended in the Corrective Measure Study Final Report is not the corrective measure selected by IDEM, after consideration of public comments, IDEM shall inform Respondent in writing of the reasons for such decision, and the Respondent shall modify the RFI or CMS Final Report based upon public comment if directed to do so by IDEM.

c. All documentation contained in the public file supporting the selection of the corrective measure will be available for public review on IDEM’s web-based Virtual File Cabinet at [http://12.186.81.89/Pages/Public/Search.aspx](http://12.186.81.89/Pages/Public/Search.aspx) and the [County? Health Department from [Opens?] till [Closes?], Monday through Friday OR [Public library and hours?]. [Choose whichever is most convenient.]
7. **ON-SITE AND OFF-SITE ACCESS**

   a. Upon the effective date of this Order, IDEM representatives are authorized to enter and freely move about all property at the Facility during the effective dates of this Order for the purposes of, inter alia: interviewing facility personnel and contractors; inspecting records, operating logs, and contracts related to the facility; reviewing the progress of the Respondent in carrying out the terms of this Order; conducting such tests, sampling or monitoring as IDEM or its Project Manager deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to IDEM by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data that pertain to work undertaken pursuant to this Order.

   b. To the extent that work required by this Order must be done on property not owned or controlled by Respondent, Respondent shall use its best efforts to obtain site access agreements from the present owner(s) of such property within thirty (30) days of approval of any Workplan or required activity for which site access is required. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owners of such property requesting access agreements to permit Respondent and IDEM and its authorized representatives to access such property. Any such access agreement shall be incorporated by reference into this Order. In the event that agreements for access are not obtained within the effective date of this Order, Respondent shall notify IDEM in writing within seven (7) days thereafter regarding both the efforts undertaken to obtain access and its failure to obtain such agreements.

   c. Nothing in this section limits or otherwise affects IDEM’s right of access and entry pursuant to applicable law, including IC 13-14-2-2.

8. **SAMPLING AND DATA. DOCUMENT AVAILABILITY**

   a. The Respondent shall submit to IDEM the results of all sampling and/or tests or other data generated by, or on behalf of the Respondent, in accordance with the requirements of this Order and its Exhibits. Raw data shall be made available to IDEM upon request.

   b. Respondent shall notify IDEM at least fourteen (14) days before engaging in any field activities, such as well drilling, installation of equipment, or sampling. At the request of IDEM, Respondent shall provide IDEM or its authorized representative split samples of all samples collected by Respondent pursuant to this Order. Similarly, at the request of Respondent, IDEM shall allow Respondent or its authorized representatives to take split or duplicate samples of all samples collected by IDEM under this Order.

   c. Respondent may assert a business confidentiality claim covering all or part of any information submitted to IDEM pursuant to this Order. Any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made, and the submission must meet all applicable statutory requirements. Information determined to be confidential by IDEM shall be disclosed only to the extent permitted by IC 13-14-11 and IC 5-14-3-4. If no such confidentiality claim accompanies the information when it is submitted to IDEM or it is improperly submitted, it may be made available to the public by IDEM without further notice to the Respondent. Respondent agrees not to assert any confidentiality claim with regard to any physical or analytical data.
9. **RECORD PRESERVATION**

Respondent shall preserve, during the pendency of this Order and for a minimum of six (6) years after its termination, all data, (including raw data), records, and documents in its possession or in the possession of its divisions, officers, directors, employees, agents, contractors, successors and assigns which relate in any way to this Order or to hazardous waste management and/or disposal at the facility. Respondent shall notify IDEM thirty (30) days prior to the destruction of any such records, and shall provide IDEM with the opportunity to take possession of any such records.

10. **PROJECT MANAGER**

a. On or before the effective date of this Order, IDEM and Respondent shall each designate a Project Manager. Respondent shall notify IDEM in writing of the Project Manager it has selected. Each Project Manager will be IDEM’s designated representative at the facility. All communications between Respondent and IDEM, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the Project Managers.

b. Respondent shall provide at least thirty (30) days written notice prior to changing the Project Manager.

c. If IDEM determines that activities in compliance or noncompliance with the Order, have caused or may cause a release of hazardous waste, hazardous constituent, or a pollutant or contaminant, or a threat to the public health or to the environment, IDEM may order Respondent to stop further implementation of this Order for such period of time as may be needed to abate any such release or threat and/or to undertake any action which IDEM determines is necessary to abate such release or threat.

d. The absence of IDEM’s Project Manager from the facility shall not be cause for the stoppage of work.

11. **NOTIFICATION**

Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices or other submissions relating to or required under this Order shall be in writing and shall be hand delivered or sent via certified mail to the Project Managers.

[**# of copies**] copies of all Documents to be submitted to IDEM should be sent to:

[**[Project Manager’s Name]**, Project Manager]

100 North Senate Avenue, Mail Code 66-20

Indianapolis, IN 46204

12. **DELAY IN PERFORMANCE/STIPULATED PENALTIES**

a. Unless there has been a written modification of a compliance date by IDEM, in the event Respondent fails to meet any requirement set forth in the Order, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of an activity under this Order or a plan approved under this Order or any matter under this Order in an acceptable manner and within the specified time schedules in and approved under this Order.
1) For failure to commence work as prescribed in this Order: $1000 per day for one to seven days of delay, and $2500 per day for each day of delay thereafter;

2) For failure to submit any preliminary and final reports, at the time required pursuant to this Order: $1000 per day for the first one to seven days of delay, and $2500 per day for each day of delay thereafter;

3) For failure to submit progress reports, at the time required pursuant to this Order: $500 per day for the first one to seven days of delay, and $1000 per day for each day of delay thereafter;

4) For failure to submit other deliverables required by this Order: $500 for the first one to seven days, and $1000 for each seven-day delay, or part thereof, thereafter; and

5) For other failure to comply with provisions of this Order after notice by IDEM of noncompliance: $1000 for the first one to seven days, and $10,000 for each seven-day delay, or part thereof, thereafter.

b. All penalties shall begin to accrue on the date that complete performance is due or a violation occurs, and shall continue to accrue through the final day or correction of noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

c. All penalties owed to IDEM under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest shall begin to accrue on the unpaid balance at the end of the thirty-day period. Respondent shall pay interest on the unpaid balance at the rate established by IC 24-4.6-1-101.

d. All penalties shall be payable by certified or cashier’s check to the Indiana Environmental Special Fund and shall be remitted to:

Office of Land Quality, Indiana Department of Environmental Management
100 North Senate Avenue, Mail Code 50-10 C
Indianapolis, Indiana 46204

Attention: Cashier

All payments shall reference the name of the facility, the Respondent’s name and address, and IDEM cause number of this action. Copies of the transmittal of payment shall be sent simultaneously to the Project Manager.

e. The stipulated penalties set forth in this Section do not preclude IDEM from pursuing any other remedies or sanctions which may be available to IDEM by reason of Respondent’s failure to comply with any of the requirements of this Order, any applicable law, or regulatory requirements under 329 IAC 3.1.

13. **FORCE MAJEURE AND EXCUSABLE DELAY**

a. A force majeure event, for purposes of this Agreed Order, is defined as any event
arising from causes beyond the control of the Respondent or of any entity controlled
by Respondent, including, but not limited, to, its contractors and subcontractors, that
delays or prevents the performance of any obligation under this Agreed Order
despite Respondent’s best efforts to fulfill the obligation. The requirement that the
Respondent exercise best efforts to fulfill the obligation includes using best efforts
to anticipate any potential force majeure event and best efforts to address the effects
of any potential force majeure event (1) as it is occurring and (2) following the
potential force majeure event, such that the delay is minimized to the greatest extent
possible. A force majeure event does not include financial inability to complete the
work required by this Agreed Order or increases of costs to perform the work.

b. Respondent shall notify the IDEM by calling within three (3) calendar days and by
writing no later than seven (7) calendar days after any event which Respondent
contends is a force majeure event. Such notification shall describe the anticipated
length of the delay, the cause or causes of the delay, the measures taken or to be
taken by Respondent to minimize the delay, and the timetable by which these
measures will be implemented. Respondent shall include with any notice all
available documentation supporting its claim that the delay was attributable to a
force majeure event. Failure to comply with the above requirements shall preclude
Respondent from asserting any claim of force majeure for that event. The
Respondent shall have the burden of demonstrating that the event is a force majeure.
The decision shall be made by the Assistant Commissioner of the Office of Land
Quality or his/her designate. This decision shall be immediately communicated to
Respondent. This decision is subject to dispute resolution as set forth in this Order.
If the Commissioner brings an action to enforce this Order, Respondent may assert
force majeure as a defense or may assert as a defense that IDEM’s decision
regarding force majeure was arbitrary, capricious, unreasonable, against the weight
of evidence, an abuse of discretion or not in accordance with law.

c. If a delay is attributable to a force majeure event, the time period for performance
under this Agreed Order shall be extended, in writing, by the amount of time that is
attributable to the event constituting the force majeure.

14. DISPUTE RESOLUTION

This section shall apply to any dispute arising out of any section of this Agreed Order,
unless specifically excepted.

a. The parties shall use their best efforts, and good faith, to resolve all disputes or
differences of opinions informally. If, however, disputes arise concerning this Order
that the parties are unable to resolve informally, Respondent may present written
notice of such dispute to the IDEM and set forth specific points of dispute and the
position of Respondent. This written notice shall be submitted no later than ten (10)
business days after Respondent discovers that the project managers are unable to
resolve the dispute by informal means. Respondent’s project manager will notify
IDEM’s project manager immediately by telephone or other appropriate method of
communication, prior to written notice, when he/she believes that the parties are
unable to resolve a dispute.

b. Within ten (10) calendar days of receipt of such a written notice, the IDEM shall
provide a written response to Respondent setting forth its position and the basis
therefore. During the five (5) business days following receipt of the response, the
parties shall attempt to negotiate in good faith a resolution of their differences.
c. Following the expiration of the time periods described in the immediately preceding paragraph, if the IDEM concurs with the position of the Respondent, Respondent shall be notified in writing and this Order shall be modified to include any appropriate extensions of time, variations of work or other agreed change. If the IDEM does not concur with the position of the Respondent, the IDEM, through the Assistant Commissioner of Land Quality, shall issue a final determination regarding the disputed issues, and the Respondent shall comply with the terms of the final determination issued by the IDEM. For purposes of dispute resolution only, the Respondent reserves its right to contest a final agency action in accordance with IC 4-21.5-5, and retains all applicable rights under the Indiana Administrative Orders and Procedures Act and all other applicable statutes and rules of common law.

d. The pendency of dispute resolution set forth in this section shall not affect the time period for completion of work and/or obligations to be performed pursuant to this Order. Elements of work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the Work Plans.

e. Elements of work and any actions required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plan or procedure, and into this Order. Respondent shall proceed with all remaining work according to the modified plan or procedure.

f. In any judicial proceeding initiated by the IDEM concerning enforcement of this Order, the party or parties disputing the IDEM’s position shall have the burden of proving that the IDEM’s position is inconsistent with the terms of this Agreement.

15. RESERVATION OF RIGHTS

a. IDEM expressly reserves all rights and defenses that it may have, including the right both to disapprove work performed by Respondent pursuant to this Order and to request that Respondent perform tasks in addition to those stated in the Work Plans, Scopes of Work, and any other plan or activity required by this Agreed Order.

b. IDEM hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent’s failure to comply with any of the requirements of the Order, including without limitation the assessment of penalties under IC 13-30-4. This Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which IDEM has, or any other statutory, regulatory or common law enforcement authority of the State of Indiana.

c. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with IC 13, 329 IAC 3.1 or any other applicable local, state or federal laws and regulations, even if those laws or regulations are more stringent than the requirements or provisions of this Order.

d. The entry of this Order and Respondent’s compliance shall not limit or otherwise preclude the EPA from taking additional enforcement action pursuant to Section 3008(h) (42 U.S.C. 6928(h)) RCRA should the EPA determine that such actions are warranted.

e. This Order is not intended to be nor shall it be construed as a permit. This Order does not relieve Respondent of any obligation to obtain and comply with any local,
state or federal permits.

f. IDEM reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and response/corrective actions as it deems necessary to protect public health and the environment. The EPA and the State of Indiana may exercise its authority under CERCLA or state authority, to undertake removal actions or remedial actions at any time. In any event, IDEM reserves its right to seek reimbursement from Respondent for such additional costs incurred by State of Indiana. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for the costs of any response actions taken by IDEM.

g. Nothing in this Order shall prevent IDEM, or anyone acting on its behalf, from communicating with the EPA or any other agency or entity about any matters relating to this Order. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the EPA or any other agency or entity.

16. OTHER CLAIMS

Nothing in this 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, or corporation 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 constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility.

17. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations, even if those laws or regulations are more stringent than the requirements or provisions of this Order. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

18. INDEMNIFICATION OF THE STATE OF INDIANA

To the fullest extent permitted by law, the Respondent shall indemnify and hold harmless the State of Indiana, its agencies, IDEMs, agents, and employees, from any and all liabilities, obligations or claims, whether absolute, accrued, contingent or otherwise and whether a contractual, statutory, tax or any other type of liability, obligation or claim, (including, without limitation, all reasonable costs and expenses, including reasonable attorneys’ fees, interest and penalties), caused by negligent acts or omissions of the Respondent, its contractor, subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

19. SUBSEQUENT MODIFICATION

a. This Order may only be amended by mutual agreement of IDEM and Respondent. Such amendments shall be in writing, shall be signed by both parties, shall have as their effective date, the date on which they are signed by IDEM and shall be incorporated into this Order by reference.
b. Any reports, plans, specifications, schedules, and attachments required by this Order are, upon written approval by IDEM, incorporated into this Order by reference. Any noncompliance with such IDEM approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Order and shall subject Respondent to the stipulated penalty provisions included in this Order.

c. No informal advice, guidance suggestions, or comments by IDEM regarding reports, plans, specifications, schedules and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Order.

20. SEVERABILITY

If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

21. TERMINATION AND SATISFACTION

The provisions of this Order shall be deemed satisfied upon Respondent’s receipt of written notice from IDEM that Respondent has demonstrated, to the satisfaction of IDEM, that the terms of this Order, including any additional tasks determined by IDEM to be required pursuant to this Order, or any continuing obligation or promises (e.g., Record Retention, Reservation of Rights) have been satisfactorily completed.

22. EFFECTIVE DATE

The effective date of this Order shall be the date on which Respondent receives the Notice of Approval of this Agreed Order. Because this Order was entered with the consent of both parties, Respondent waives its right to request a public hearing pursuant to IC 4-21.5-3-7, and judicial review pursuant to IC 4-21.5-5.
IT IS SO AGREED AND ORDERED:

TECHNICAL RECOMMENDATION FOR THE RESPONDENT

BY: ____________________________ BY: ____________________________

Michael E. Sickels,
Senior Technical Advisor for the
RCRA Corrective Action Program

DATE: __________________________ DATE: __________________________

OFFICE OF THE ATTORNEY GENERAL ATTORNEY FOR THE RESPONDENT

BY: ____________________________ BY: ____________________________

Deputy Attorney General

DATE: __________________________ DATE: __________________________

APPROVED BY THE INDIANA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

this ___________ day of ________________ , 2007.

________________________________________

Bruce H Palin, Assistant Commissioner, Office of Land Quality
Indiana Department of Environmental Management
10.3. Proposed Agreed Order with Penalty Template
IN THE MATTER OF: COMMISSIONER, )
INDIANA DEPARTMENT OF )
ENVIRONMENTAL MANAGEMENT )
Complainant )

Vs )
Cause No. H-[#] )

[Corporate Name]
[Facility Name]
[City, Indiana]
[EPA ID No.]
Respondent

CORRECTIVE ACTION AGREED ORDER

A. JURISDICTION

This Administrative Agreed Order is entered into pursuant to the authority vested in the Commissioner of the Indiana Department of Environmental Management (Commissioner) by Indiana Code (IC) 13-22-13-1 and IC 13-30-3-3. [Corporate Name] hereby agrees to waive the issuance of a Notice of Violation as required by IC 13-30-3-3. [If this Agreed Order is being prepared as an attachment to a Notice of Violation in an enforcement action, delete the preceding sentence.]

This Agreed Order is entered into between the Indiana Department of Environmental Management, (hereinafter referred to as “IDEM”), and [Corporate Name] (hereinafter referred to as “[Abbreviation (Optional)]” or “Respondent”). Respondent is the owner/operator of [Facility Name], hereinafter referred to as “[Abbreviation (Optional)]” or “Facility”. Respondent consents to and agrees not to contest IDEM’s jurisdiction to enter into this Agreed Order and to enforce its terms. Further, Respondent will not contest jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondent’s full or interim compliance with the terms of this Agreed Order; or impose sanctions for violations of this Agreed Order.
B. PARTIES BOUND

1. This Agreed Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, successors and assigns, and upon all persons, independent contractors, contractors and consultants acting under or for Respondent.

2. No change in ownership or corporate or partnership status relating to the facility will in any way alter Respondent’s responsibility under this Agreed Order.

3. Respondent shall provide a copy of this Agreed Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Agreed Order within one (1) week of the effective date of this Agreed Order or date of such retention, and shall condition all such contracts on compliance with the terms of this Agreed Order.

4. Respondent shall give notice of this Agreed Order to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify IDEM of the Respondent’s intent to transfer ownership, within sixty (60) days prior to such transfer. Such notice shall be addressed to the Project Manager as set out in paragraphs F.10. and F.11. below. [Make sure these locations are still correct after editing.]

C. STATEMENT OF PURPOSE

In entering into this Agreed Order, the mutual objectives of IDEM and [Corporate Name or Abbreviation] are: (1) to perform a Resource Conservation and Recovery Act (RCRA) Facility Investigation (RFI) to further define the nature and extent of a release of hazardous waste and/or hazardous constituents at or from the Facility; (2) to perform a Corrective Measures Study (CMS) to identify and evaluate alternatives for the corrective action necessary to prevent or mitigate any migration or releases of hazardous waste and/or hazardous constituents at or from the Facility; and (3) to implement the corrective measure or measures selected by IDEM at the Facility.

D. FINDINGS OF FACT

1. Respondent is a company doing business in the State of Indiana and is a person as defined in Indiana Administrative Code (IAC) 329 IAC 3.1-4-20, and Indiana Code (IC), 13-11-2-158.

2. Respondent is a [Generator?], [Transporter?], and an owner and operator of a hazardous waste management facility located at [Address], Indiana. [Optional – Figure 1. showing the location of the facility and its property boundaries is attached hereto and incorporated herein by reference as Exhibit ___.] Respondent engaged in [List hazardous waste management activities the Respondent engaged in. (May be different than what was in the Notification or Part A.)] of hazardous waste at the Facility subject to the interim status requirements of 329 IAC 3.1.

3. Respondent owned and operated its facility as a hazardous waste management facility on and after November 19, 1980, the applicable date which renders facilities subject to said interim status requirements.

4. Pursuant to Section 3010 of RCRA, 42 United States Code (U.S.C.), 6930, Respondent notified the United States Environmental Protection Agency (EPA) of its hazardous waste activity, and was assigned the EPA I.D. No. [IND #]. In its notification dated [Date the notification was signed.], Respondent identified itself as [List the hazardous waste management activities for which the Respondent notified.].

5. In its Part A permit application dated [Date the Part A was signed.], the Respondent
identified itself as handling the following hazardous wastes at the Facility: [List all hazardous wastes and codes listed on the Part A application.].

6. A RCRA Facility Assessment (“RFA”) was conducted at the Facility on [Date(s)]. The RFA Report dated [Date], identified the following Solid Waste Management Units (SWMUs) and Areas of Concern (AOCs). [List all SWMUs and AOCs identified in the RFA Report.] [If the list is extensive, reference it as Exhibit __, attached hereto and incorporated herein by reference.].

[Optional Paragraphs]

X. A sampling Inspection was conducted on [Date(s)]. [Then add an additional paragraph(s) discussing the analytical results.]

7. The existing property grade is [Direction] with the ground surface generally sloping toward the [Direction]. The regional surficial geology consists of [Brief narrative.]. The regional ground water movement is [Direction]. At the facility, the local ground water flow is to the [Direction].

E. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set out above, and after consideration of documentation contained in the public file, IDEM has made the following conclusions of law and determinations.

1. Respondent is a “person” as defined in paragraph D.1. above.

2. Respondent is or was the owner and/or operator of a facility subject to IC 13-22-13 and 329 IAC 3.1.

3. The Facility was authorized to operate under interim status under Section 3005(e) of the Solid Waste Disposal Act (42 U.S.C. 6925(e)) or under IC 13.

4. Certain wastes or constituents thereof found at the Facility are contaminants, hazardous wastes or hazardous constituents as defined by IC 13 and 329 IAC 3.1-6 (Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5)). These are also hazardous wastes or hazardous constituents within the meaning of Section 3001 of RCRA, 42 U.S.C. Section 6921 and Title 40 Code of Federal Regulations (40 C.F.R.).

5. Pursuant to IC 13-22-13-1,

a. If, on the basis of any information, the Commissioner determines that there is or has been a release of a hazardous waste or a constituent of a hazardous waste into the environment from a facility authorized to operate under interim status under Section 3005(e) of the Solid Waste Disposal Act (42 U.S.C. 6925(e)) or under this chapter, the Commissioner may:

1) issue an order requiring corrective action or another response measure that the Commissioner considers necessary to protect human health or the environment; or

2) commence a civil action to compel corrective action as described in subdivision (1).

b. Under subsection (a), the Commissioner or a court may order the performance of corrective action beyond the boundaries of the facility from which the release occurs.
However, corrective action may not be ordered by the Commissioner beyond the boundaries of the facility if the owner or operator of the facility demonstrates to the satisfaction of the Commissioner that, despite the best efforts of the owner or operator, the owner or operator is unable to obtain the necessary permission to undertake that corrective action.

c. An order issued by the Commissioner under this section:

1) may include a suspension or revocation of authorization for the facility to operate under interim status;

2) must state with reasonable specificity the nature of corrective action or other response measure required by the order; and

3) must specify a time for compliance.

6. Based on information gathered by IDEM, there is or has been a release of hazardous wastes and/or hazardous constituents into the environment from Respondent’s Facility, which violates IC 13-30-2-1(4).

7. The actions required by this Agreed Order are necessary to protect human health or the environment and are authorized or required pursuant to IC 13-22, IC 13-30 and IC 4-21.5.

F. ORDER

Pursuant to IC 13-30, Respondent is hereby ordered to perform the following acts in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with, at a minimum, the Corrective Action Scope of Work attached hereto and incorporated herein by reference as Exhibit ___. Relevant guidance may include, but is not limited to; IDEM’s “Risk Integrated System of Closure” (RISC), and “Test Methods for Evaluating Solid Waste” (SW-846, 3rd edition, or most recent edition, and the most recent updates.).

1. INTERIM MEASURES (IM)

a. In the event the Respondent identifies a current or potential threat to human health or the environment, the Respondent shall immediately notify IDEM orally and in writing within seven (7) days, summarizing the immediacy and magnitude of the potential threat to human health or the environment. Within fifteen (15) days of notifying IDEM, the Respondent shall submit to IDEM an IM Workplan for approval that identifies Interim Measures which mitigate this threat and are consistent with and integrated into any long term solution at the facility.

b. The IM Workplan shall ensure that the Interim Measures are designed to mitigate current or potential threat(s) to human health or the environment and are consistent with and integrated into any long term solution at the facility. The IM Workplan shall document the procedures to be used by the Respondent for the implementation of Interim Measures and shall include, but not be limited to: the objectives of the Interim Measures; design, construction, operation, monitoring and maintenance requirements; and detailed schedules.

c. In accordance with the Corrective Action Scope of Work herein, the IM Workplan shall include: Interim Measure Objectives; a Health and Safety Plan; a Community Relations Plan; and Reporting Requirements.
d. In the event the Respondent identifies that any water supply well has been contaminated, the following Interim Measures shall be initiated:

1) Within five (5) days, the Respondent shall provide an alternate water supply to the affected parties.

2) Within seven (7) days the Respondent shall submit a report to IDEM detailing the activity pursued and a plan for further Interim Measure activity.

3) Within seven (7) days following IDEM’s transmission of comments, the Respondent shall revise the plan in accordance with IDEM’s comments.

4) Within seven (7) days following IDEM’s approval or modification of the plan, the Respondent shall implement the revised plan in accordance with the schedule therein.

2. RCRA FACILITY INVESTIGATION (RFI)

a. Within thirty (30) days of the effective date of this Order, Respondent shall submit to IDEM an RFI Workplan. The RFI Workplan is subject to approval, disapproval or modification and approval by IDEM and shall conform to the RFI Tasks contained in the Corrective Action Scope of Work herein.

b. The RFI Workplan shall be designed to define the presence, magnitude, extent, direction, and rate of movement of any hazardous wastes or hazardous constituents within and beyond the facility boundary, and be specific to the release and migration of contaminants from the following units. [List all SWMUs and AOCs for which an RFI will be required, and the required activity(ies) for each unit. For larger facilities, you may use a Table as Exhibit __, attached hereto and incorporated herein by reference.] The RFI Workplan shall document the procedures the Respondent shall use to conduct those investigations necessary to: (1) characterize the potential pathways of contaminant migration; (2) characterize the source(s) of contamination; (3) define the degree and extent of contamination; (4) identify actual or potential receptors; and (5) support the development of alternatives from which a corrective measure will be selected by IDEM. A specific schedule for implementation of all activities shall be included in the RFI Workplan, including a date for submission of the RFI Draft Report.

c. In accordance with the provisions of [Exhibit __] herein, the RFI Workplan shall include: (1) a Project Management Plan; (2) a Data Collection Quality Assurance Plan; (3) a Data Management Plan; (4) a Health and Safety Plan; and (5) a Public Involvement Plan.

d. Within thirty (30) days of Respondent’s receipt of the notice of approval or modification and approval of the RFI Workplan, Respondent shall implement the plan as approved or modified and approved, and shall comply with the time schedules therein.

e. Within thirty (30) days of discovery of any new SWMU or AOC identified at the facility, Respondent shall notify IDEM of the following information:

1) The location of the unit or area on the site topographic map;

2) Designation or description of the type of unit or area of concern;
3) General dimensions and structural description;

4) When the unit was operated or the area discovered; and

5) Specifications of all waste(s) that have been managed at the unit, or the specifics (e.g. products or waste(s) involved, spill date, volume, etc.) of the area of concern.

Respondent must submit to IDEM, within thirty (30) days of discovery, all available information pertaining to any release of hazardous waste(s) or hazardous constituent(s) from any new or existing SWMU, or AOC.

IDEM will review the information provided under this condition and may as necessary require further information, investigations and/or corrective measures. Respondent shall submit a written RFI Workplan to IDEM within thirty (30) days of written notification by IDEM that further investigation is necessary.

3. CORRECTIVE MEASURES STUDY (CMS) AND CORRECTIVE MEASURES IMPLEMENTATION (CMI) PROGRAM PLAN

a. Upon completion of the RCRA Facility Investigation, and/or within thirty (30) days of Respondent’s receipt of notification by IDEM that a CMS is required, the Respondent shall submit a Corrective Measure Study Workplan which is subject to approval, disapproval or modification and approval, and in accordance with the CMS Tasks in the Corrective Action Scope of Work herein. A specific schedule for implementation of all activities shall be included in the CMS Workplan, including a date for submission of the CMS Draft Report.

b. Within thirty (30) days of Respondent’s receipt of the notice of approval or modification and approval of the CMS Workplan. Respondent shall implement the plan as approved or modified and approved, and shall comply with the time schedules therein.

c. Within thirty (30) days of Respondent’s receipt of notification of IDEM’s selection of the corrective measure in the Response to Comments and Final Decision, Respondent shall submit a Corrective Measure Implementation Program Plan (CMI Program Plan). The CMI Program Plan is subject to approval, disapproval or modification and approval by IDEM, and shall conform to the CMI program Tasks in the Corrective Action Scope of Work herein. A specific schedule for all activities shall be included in the CMI Program Plan, including a date for submission of the Draft CMI Report.

d. The CMI Program Plan shall be designed to facilitate the design, construction, operation, maintenance and monitoring of the corrective measure at the facility. In accordance with the Corrective Action Scope of Work herein, the CMI Program Plan shall also include: (1) a Program Management Plan; (2) a Community Relations Plan; 3) Design plans and Specifications; (4) an Operation and Maintenance Plan; (5) a Cost Estimate with a Financial Assurance Instrument in that amount which meets the requirement of 329 IAC 3.1-15-4 (40 CFR 264.143); (6) a Project Schedule; (7) a Health and Safety Plan; and (8) a Construction Quality Assurance Plan.

e. Within thirty (30) days of Respondent’s receipt of notice of approval or modification
and approval of the CMI Program Plan, Respondent shall implement the plan as approved or modified and approved, and shall comply with the time schedules therein.

4. **SUBMISSIONS AGENCY APPROVAL AND ADDITIONAL WORK**

   a. After three (3) submissions of any workplan(s), program plan(s) or report(s) by the Respondent, IDEM may modify and approve any such plan(s) or report(s).

   b. Within thirty (30) days of notice of approval or modification and approval by IDEM of any workplan(s) or program plan(s), Respondent shall commence work and implement the tasks required by the workplan(s) or program plan(s) submitted pursuant to the Corrective Action Scope of Work contained herein, in accordance with the standards, specifications and schedule stated in the workplan(s) or program plan(s) as approved or modified and approved by IDEM.

   c. Beginning with the month following the effective date of the Order, Respondent shall provide IDEM with progress reports for each month on the tenth day of the following month. The progress reports shall conform to requirements in the relevant tasks in the Corrective Action Scope of Work herein.

   d. Respondent shall provide draft and final Interim Measures, RCRA Facility Investigation, Corrective Measure Study and Corrective Measures Implementation Program Plan, reports to IDEM in accordance with the schedule contained in this Order and its Exhibits herein.

   e. IDEM will review all draft or final reports, and notify Respondent in writing of IDEM’s approval, disapproval or modification and approval of the report or any part thereof. In the event of any disapproval, IDEM shall specify in writing the deficiencies and reasons for such disapproval. Within thirty (30) days of the receipt of IDEM’s disapproval of any report, Respondent shall amend the report based on IDEM’s comments and submit a revised report. All IDEM approved reports shall be deemed incorporated into and part of this Order by reference.

   f. [Number of copies required?] copies of all documents, including Workplans, Program Plans, preliminary and final reports, progress reports, and other correspondence to be submitted pursuant to this Order shall be hand delivered or sent by certified mail, return receipt requested, to the Project Manager designated pursuant to paragraphs F.10. and F.11. [Make sure these locations are still correct after editing.] of this Order below.

   g. All work performed pursuant to this Order shall be under the direction and supervision of a certified Professional Engineer or certified Professional Geologist with expertise in hazardous waste site investigation and remediation. On or before the effective date of this Order, Respondent shall notify IDEM in writing of the name, title, and qualifications of the engineer or geologist, and of any contractors or subcontractors and their personnel to be used in carrying out the terms of this Order.

   h. IDEM may determine that certain tasks, including investigatory work or engineering evaluation, are necessary in addition to the tasks and deliverables included in this Order when new findings indicate that such additional work is necessary. IDEM shall request in writing that Respondent perform the additional work in this situation and shall specify the basis and reasons for IDEM’s determination that the additional work is necessary. Within seven (7) days after the receipt of such request, Respondent shall have the opportunity to meet with IDEM to discuss the additional work IDEM has requested. Unless the Respondent can show that the work is unnecessary and does not
protect human health or the environment, Respondent shall perform the additional work IDEM has requested according to an IDEM approved workplan. All additional work performed by Respondent under this paragraph shall be performed in a manner consistent with this Order.

5. QUALITY ASSURANCE

Throughout all sample collection and analysis activities, Respondent shall use IDEM approved quality assurance, quality control, and chain-of-custody procedures. In addition, Respondent shall:

a. Ensure that laboratories used by Respondent for sample analyses perform such analyses according to the EPA methods included in “Test Methods for Evaluating Solid Waste, SW-846, 3rd edition or most recent edition, and the most recent updates.” or other methods deemed satisfactory by IDEM. If methods other than IDEM approved methods are to be used, Respondent shall submit all protocols to be used for analyses to IDEM for approval within sixty (60) days prior to the commencement of analyses; and

b. Ensure that laboratories used by Respondent for sample analyses participate in a quality assurance/quality control program equivalent to that which is followed by the Office of Land Quality (OLQ) of IDEM. As part of such a program, and upon request by IDEM, such laboratories shall perform analyses of samples provided by IDEM to demonstrate the quality of the analytical data.

6. PUBLIC COMMENT AND PARTICIPATION

a. Upon approval by IDEM of a Corrective Measures Study Final Report, IDEM shall make the RCRA Facility Investigation Final Report, the Corrective Measures Study Final Report, summary of IDEM’s proposed corrective measure and IDEM’s justification for proposing selection of that corrective measure available to the public for review and comment for at least forty-five (45) days.

b. Following the public review and comment period, IDEM shall notify Respondent of the corrective measure selected by IDEM in the Response to Comments and Final Decision. If the corrective measure recommended in the Corrective Measure Study Final Report is not the corrective measure selected by IDEM, after consideration of public comments, IDEM shall inform Respondent in writing of the reasons for such decision, and the Respondent shall modify the RFI or CMS Final Report based upon public comment if directed to do so by IDEM.

c. All documentation contained in the public file supporting the selection of the corrective measure will be available for public review on IDEM’s web-based Virtual File Cabinet at http://12.186.81.89/Pages/Public/Search.aspx, and the [County?] Health Department from [Opens?] till [Closes?], Monday through Friday OR [Public library and hours?]. [Choose whichever is most convenient.]

7. ON-SITE AND OFF-SITE ACCESS

a. Upon the effective date of this Order, IDEM representatives are authorized to enter and freely move about all property at the Facility during the effective dates of this Order for the purposes of, inter alia: interviewing facility personnel and contractors; inspecting records, operating logs, and contracts related to the facility; reviewing the progress of the Respondent in carrying out the terms of this Order; conducting such tests, sampling or monitoring as IDEM or its Project Manager deem necessary; using a camera, sound
recording, or other documentary type equipment; and verifying the reports and data submitted to IDEM by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data that pertain to work undertaken pursuant to this Order.

b. To the extent that work required by this Order must be done on property not owned or controlled by Respondent, Respondent shall use its best efforts to obtain site access agreements from the present owner(s) of such property within thirty (30) days of approval of any Workplan or required activity for which site access is required. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owners of such property requesting access agreements to permit Respondent and IDEM and its authorized representatives to access such property. Any such access agreement shall be incorporated by reference into this Order. In the event that agreements for access are not obtained within the effective date of this Order, Respondent shall notify IDEM in writing within seven (7) days thereafter regarding both the efforts undertaken to obtain access and its failure to obtain such agreements.

c. Nothing in this section limits or otherwise affects IDEM’s right of access and entry pursuant to applicable law, including IC 13-14-2-2.

8. SAMPLING AND DATA, DOCUMENT AVAILABILITY

a. The Respondent shall submit to IDEM the results of all sampling and/or tests or other data generated by, or on behalf of the Respondent, in accordance with the requirements of this Order and its Exhibits. Raw data shall be made available to IDEM upon request.

b. Respondent shall notify IDEM at least fourteen (14) days before engaging in any field activities, such as well drilling, installation of equipment, or sampling. At the request of IDEM, Respondent shall provide IDEM or its authorized representative split samples of all samples collected by Respondent pursuant to this Order. Similarly, at the request of Respondent, IDEM shall allow Respondent or its authorized representatives to take split or duplicate samples of all samples collected by IDEM under this Order.

c. Respondent may assert a business confidentiality claim covering all or part of any information submitted to IDEM pursuant to this Order. Any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made, and the submission must meet all applicable statutory requirements. Information determined to be confidential by IDEM shall be disclosed only to the extent permitted by IC 13-14-11 and IC 5-14-3-4. If no such confidentiality claim accompanies the information when it is submitted to IDEM or it is improperly submitted, it may be made available to the public by IDEM without further notice to the Respondent. Respondent agrees not to assert any confidentiality claim with regard to any physical or analytical data.

9. RECORD PRESERVATION

Respondent shall preserve, during the pendency of this Order and for a minimum of six (6) years after its termination, all data, including raw data, records, and documents in its possession or in the possession of its divisions, officers, directors, employees, agents, contractors, successors and assigns which relate in any way to this Order or to hazardous waste management and/or disposal at the facility. Respondent shall notify IDEM thirty (30) days prior to the destruction of any such records, and shall provide IDEM with the opportunity to take possession of any such records.
10. **PROJECT MANAGER**
   
a. On or before the effective date of this Order, IDEM and Respondent shall each designate a project manager. Respondent shall notify IDEM in writing of the Project Manager it has selected. Each project manager will be IDEM’s designated representative at the facility. All communications between Respondent and IDEM, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project managers.

b. Respondent shall provide at least thirty (30) days written notice prior to changing the Project Manager.

c. If IDEM determines that activities in compliance or noncompliance with the Order, have caused or may cause a release of hazardous waste, hazardous constituent, or a pollutant or contaminant, or a threat to the public health or to the environment, IDEM may order Respondent to stop further implementation of this Order for such period of time as may be needed to abate any such release or threat and/or to undertake any action which IDEM determines is necessary to abate such release or threat.

d. The absence of IDEM’s project manager from the facility shall not be cause for the stoppage of work.

11. **NOTIFICATION**

   Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices or other submissions relating to or required under this Order shall be in writing and shall be hand delivered or sent via certified mail to the project managers.

   [# of copies] copies of all Documents to be submitted to IDEM should be sent to: [Project Manager’s Name], Project Manager
   
   100 North Senate Avenue, Mail Code 66-20
   
   Indianapolis, IN 46204

   Documents to be submitted to the Respondent should be sent to: [Insert name and address.]

12. **CIVIL PENALTY**

   For violation of IC 13 30-2-1 (4), the Respondent shall pay a civil penalty of [Penalty spelled out.] Dollars, [($Numerals)]. This penalty shall be remitted to the Indiana Department of Environmental Management within thirty (30) days of the Effective Date of this Order. Checks shall be made payable to the Environmental Management Special Fund, with the Case Number indicated on the check and mailed to:

   Office of Land Quality
   Indiana Department of Environmental Management
   100 North Senate Avenue, Mail Code 50-10 C
   
   Indianapolis, Indiana 46204

   Attention: Cashier

13. **DELAY IN PERFORMANCE/STIPULATED PENALTIES**
a. Unless there has been a written modification of a compliance date by IDEM, in the event Respondent fails to meet any requirement set forth in the Order, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of an activity under this Order or a plan approved under this Order or any matter under this Order in an acceptable manner and within the specified time schedules in and approved under this Order.

1) For failure to commence work as prescribed in this Order: $1000 per day for one to seven days of delay, and $2500 per day for each day of delay, thereafter;

2) For failure to submit any preliminary and final reports, at the time required pursuant to this Order: $1000 per day for the first one to seven days of delay, and $2500 per day for each day of delay thereafter;

3) For failure to submit progress reports, at the time required pursuant to this Order: $500 per day for the first one to seven days of delay, and $1000 per day for each day of delay thereafter;

4) For failure to submit other deliverables required by this Order: $500 for the first one to seven days, and $1000 for each seven-day delay, or part thereof, thereafter; and

5) For other failure to comply with provisions of this Order after notice by IDEM of noncompliance: $1000 for the first one to seven days, and $10,000 for each seven-day delay, or part thereof, thereafter.

b. All penalties shall begin to accrue on the date that complete performance is due or a violation occurs, and shall continue to accrue through the final day or correction of noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

c. All penalties owed to IDEM under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest shall begin to accrue on the unpaid balance at the end of the thirty-day period. Respondent shall pay interest on the unpaid balance at the rate established by IC 24-4.6-1-101.

d. All penalties shall be payable by certified or cashier’s check to the Indiana Environmental Special Fund and shall be remitted to:

   Office of Land Quality
   Indiana Department of Environmental Management
   100 North Senate Avenue, Mail Code 50-10 C
   Indianapolis, Indiana 46204

   Attention: Cashier

   All payments shall reference the name of the facility, the Respondent’s name and address, and IDEM cause number of this action. Copies of the transmittal of payment shall be sent simultaneously to the Project Manager.

e. The stipulated penalties set forth in this Section do not preclude IDEM from pursuing any other remedies or sanctions which may be available to IDEM by reason of Respondent’s failure to comply with any of the requirements of this Order, any
applicable law, or regulatory requirements under 329 IAC 3.1.

14. **FORCE MAJEURE AND EXCUSABLE DELAY**

a. A force majeure event, for purposes of this Agreed Order, is defined as any event arising from causes not foreseen and beyond the control of the Respondent or of any entity controlled by Respondent, including, but not limited, to, its contractors and subcontractors, that delays or prevents the performance of any obligation under this Agreed Order despite Respondent's best efforts to fulfill the obligation. The requirement that the Respondent exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. A force majeure event does not include financial inability to complete the work required by this Agreed Order or increases of costs to perform the work.

b. Respondent shall notify the IDEM by calling within three (3) calendar days and by writing no later than seven (7) calendar days after any event which Respondent contends is a force majeure event. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by Respondent to minimize the delay, and the timetable by which these measures will be implemented. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event. The Respondent shall have the burden of demonstrating that the event is a force majeure. The decision shall be made by the Assistant Commissioner of the Office of Land Quality or his/her designate. This decision is subject to dispute resolution as set forth in this Order.

c. If a delay is attributable to a force majeure event, the time period for performance under this Agreed Order shall be extended, in writing, by the amount of time that is attributable to the event constituting the force majeure.

15. **DISPUTE RESOLUTION**

This section shall apply to any dispute arising out of any section of this Agreed Order, unless specifically excepted.

a. The parties shall use their best efforts, and good faith, to resolve all disputes or differences of opinions informally. If, however, disputes arise concerning this Order that the parties are unable to resolve informally, Respondent may present written notice of such dispute to the IDEM and set forth specific points of dispute and the position of Respondent. This written notice shall be submitted no later than ten (10) business days after Respondent discovers that the project managers are unable to resolve the dispute by informal means. Respondent’s project manager will notify IDEM’s project manager immediately by telephone or other appropriate method of communication, prior to written notice, when he/she believes that the parties are unable to resolve a dispute.

b. If the IDEM concurs with the position of the Respondent, Respondent shall be notified in writing and this Order shall be modified to include any appropriate extensions of time, variations of work or other agreed change. If the IDEM does not concur with the position of the Respondent, the IDEM, through the Assistant Commissioner of Land Quality, shall issue a final determination regarding the disputed issues, and the Respondent shall comply with the terms of the final determination.
c. The pendency of dispute resolution set forth in this section shall not affect the time period for completion of work and/or obligations to be performed pursuant to this Order. Elements of work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the Work Plans.

d. Elements of work and any actions required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plan or procedure, and into this Order. Respondent shall proceed with all remaining work according to the modified plan or procedure.

e. In any judicial proceeding initiated by the IDEM concerning enforcement of this Order, the party or parties disputing the IDEM’s position shall have the burden of proving that the IDEM’s position is inconsistent with the terms of this Agreement.

16. RESERVATION OF RIGHTS

a. IDEM expressly reserves all rights and defenses that it may have, including the right both to disapprove work performed by Respondent pursuant to this Order and to request that Respondent perform tasks in addition to those stated in the Work Plans, Scopes of Work, and any other plan or activity required by this Agreed Order.

b. IDEM hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent’s failure to comply with any of the requirements of the Order, including without limitation the assessment of penalties under IC 13-30-4. This Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which IDEM has, or any other statutory, regulatory or common law enforcement authority of the State of Indiana.

c. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with IC 13, 329 IAC 3.1 or any other applicable local, state or federal laws and regulations, even if those laws or regulations are more stringent than the requirements or provisions of this Order.

d. The entry of this Order and Respondent’s compliance shall not limit or otherwise preclude the EPA from taking additional enforcement action pursuant to Section 3008(h) (42 U.S.C. 6928(h)) RCRA should the EPA determine that such actions are warranted.

e. This Order is not intended to be nor shall it be construed as a permit. This Order does not relieve Respondent of any obligation to obtain and comply with any local, state or federal permits.

f. IDEM reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and response/corrective actions as it deems necessary to protect public health and the environment. The EPA and the State of Indiana may exercise its authority under CERCLA or state authority, to undertake removal actions or remedial actions at any time. In any event, IDEM reserves its right to seek reimbursement from Respondent for such additional costs incurred by State of Indiana. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for the costs of any response actions taken by IDEM.

g. Nothing in this Order shall prevent IDEM, or anyone acting on its behalf, from communicating with the EPA or any other agency or entity about any matters relating
to this Order. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the EPA or any other agency or entity.

17. OTHER CLAIMS

Nothing in this 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, or corporation 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 constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility.

18. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations, even if those laws or regulations are more stringent than the requirements or provisions of this Order. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

19. INDEMNIFICATION OF THE STATE OF INDIANA

To the fullest extent permitted by law, the Respondent shall indemnify and hold harmless the State of Indiana, its agencies, departments, agents, and employees, from any and all liabilities, obligations or claims, whether absolute, accrued, contingent or otherwise and whether a contractual, statutory, tax or any other type of liability, obligation or claim, (including, without limitation, all reasonable costs and expenses, including reasonable attorneys’ fees, interest and penalties), caused by negligent acts or omissions of the Respondent, its contractor, subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

20. SUBSEQUENT MODIFICATION

a. This Order may only be amended by mutual agreement of IDEM and Respondent. Such amendments shall be in writing, shall be signed by both parties, shall have as their effective date, the date on which they are signed by IDEM and shall be incorporated into this Order by reference.

b. Any reports, plans, specifications, schedules, and attachments required by this Order are, upon written approval by IDEM, incorporated into this Order by reference. Any noncompliance with such IDEM approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Order and shall subject Respondent to the stipulated penalty provisions included in this Order.

c. No informal advice, guidance suggestions, or comments by IDEM regarding reports, plans, specifications, schedules and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Order.

21. SEVERABILITY

If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application
of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

22. **TERMINATION AND SATISFACTION**

   The provisions of this Order shall be deemed satisfied upon Respondent’s receipt of written notice from IDEM that Respondent has demonstrated, to the satisfaction of IDEM, that the terms of this Order, including any additional tasks determined by IDEM to be required pursuant to this Order, or any continuing obligation or promises (e.g., Record Retention, Reservation of Rights) have been satisfactorily completed.

23. **EFFECTIVE DATE**

   The effective date of this Order shall be the date on which Respondent receives the Notice of Approval of this Agreed Order. Because this Order was entered with the consent of both parties, Respondent waives its right to request a public hearing pursuant to IC 4-21.5-3-7, and judicial review pursuant to IC 4-21.5-5.
IT IS SO AGREED AND ORDERD:

TECHNICAL RECOMMENDATION

BY: ____________________________
    Michael E. Sickels, 
    Senior Technical Advisor for the 
    RCRA Corrective Action Program

DATE: __________________________

FOR THE RESPONDENT

BY: ____________________________

DATE: __________________________

OFFICE OF THE ATTORNEY GENERAL

BY: ______________________________
    Deputy Attorney General

DATE: ____________________________

ATTORNEY FOR THE RESPONDENT

BY: _____________________________

DATE: ____________________________

APPROVED BY THE INDIANA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

this ___________ day of ________________ , __________

_____________________________________________

Bruce H Palin, Assistant Commissioner, Office of Land Quality
Indiana Department of Environmental Management

_______________________________
10.4. Enforcement Scope of Work Template
CORRECTIVE ACTION SCOPE OF WORK

The Resource Conservation and Recovery Act (RCRA) corrective action requirements for [Facility Name], the Owner/Operator (Respondent) are specified in the [Order of the Commissioner or Agreed Order] for Cause No. H-[#], (Order), to which this scope of work is an exhibit. The corrective action for Respondent’s facility located at [Facility Address], (the “Facility”), includes discrete elements. The scope of work for each of the elements is specified below. All workplans, draft reports, and final reports are subject to approval, disapproval or modification and approval by the Indiana Department of Environmental Management (IDEM).

I. INTERIM MEASURES (IM)

Pursuant to the Order, the Respondent shall prepare an Interim Measures Workplan, as necessary. The workplan shall include the development of several plans which shall be prepared concurrently.

A. Interim Measures Objectives

The workplan shall specify the objectives of the interim measures, demonstrate how the interim measures will abate releases and threatened releases, and to the extent possible, be consistent and integrated with any long-term solution at the facility. The IM Workplan will include a discussion of the technical approach, engineering design, engineering plans, schedules, budget, and personnel. The workplan will also include a description of qualifications of personnel performing or directing the interim measures, including contractor personnel. This plan shall also document the overall management approach to the interim measures.

B. RCRA Facility Investigation Workplan

The RCRA Facility Investigation (RFI) Workplan shall incorporate all interim measure activities under the Health and Safety Plan and the Community Relations Plan.

C. Reports

At the completion of the interim measures, the Respondent shall submit to IDEM a report which documents all interim measure activities.

II. RCRA FACILITY INVESTIGATION (RFI)

The purpose of the RFI is to determine the nature and extent of releases of hazardous waste or hazardous constituents from regulated units, solid waste management units (SWMUs), Areas of Concern (AOCs), and other potential source areas at the facility and to gather all necessary data to support the Corrective Measures Study. The Respondent shall furnish all personnel, materials, and services necessary for, or incidental to, performing the RCRA Facility Investigation.

The RCRA Facility Investigation consists of seven (7) tasks.

Task One: Description of Current Conditions

A. Facility Background
B. Nature and Extent of Contamination
C. Implementation of Interim Measures
Task Two: Pre-Investigation Evaluation of Corrective Measure Technologies

Task Three: RFI Workplan Requirements
A. Quality Assurance Project Plan
B. Health and Safety Plan
C. Community Relations Plan

Task Four: Facility Investigation
A. Environmental Setting
B. Source Characterization
C. Contamination Characterization
D. Potential Receptor Identification

Task Five: Investigation Analysis
A. Data Analysis
B. Protection Standards

Task Six: Laboratory and Bench-Scale Studies

Task Seven: Reports
A. Preliminary and Workplan
B. Progress
C. Draft and Final

TASK ONE: DESCRIPTION OF CURRENT CONDITIONS

Pursuant to the Order, the Respondent shall submit for approval by IDEM a report providing the background information pertinent to the facility, contamination and interim measures as set forth below. The data gathered during any previous investigations or inspections and other relevant data shall be included.

A. Facility Background

The Respondent's report shall summarize the regional location, pertinent boundary features, general facility physiography, hydrogeology, and historical use of the facility for the treatment, storage or disposal of solid and hazardous waste. The Respondent’s report shall include the following.

1. Maps depicting the following:
   a. General geographic location, at least encompassing a five (5) mile radius;
   b. Property lines, with the owners of all adjacent property clearly indicated;
   c. Topography and surface drainage depicting all waterways, wetlands, flood plains, water features, drainage patterns, and surface-water containment areas;
   d. All tanks, building, utilities, paved areas, easements, rights-of-way, and other features;
   e. All solid or hazardous waste treatment, storage or disposal areas active after November 19, 1980;
f. All known past solid or hazardous waste treatment, storage or disposal areas regardless of whether they were active on November 19, 1980;

g. All known past and present product and waste underground tanks or piping;

h. Surrounding land uses (residential, commercial, agricultural, recreational);

i. The location of all residential, production, recovery, and groundwater monitoring wells. These wells shall be clearly labeled and have ground and top of casing elevations and construction details included (include all known information on residential wells);

j. Terrestrial habitat cover-types (i.e., vegetation communities) with emphasis on locating natural (undisturbed) areas; and

k. Wildlife nesting and foraging locations for mammals, birds, fish, benthos species, etc. Any critical habitats should be identified, and threatened and endangered species possibly on or near the site should be identified as early as possible.

All maps shall be of sufficient detail and accuracy to locate and report all current and future work performed at the site.

2. A history and description of ownership and operation, solid and hazardous waste generation, treatment, storage and disposal activities at the facility.

3. Approximate dates or periods of past product and waste spills, identification of the materials spilled, the amount spilled, the location where spilled, and a description of the response actions conducted (local, state, or federal response units or private parties), including any inspection reports or technical reports generated as a result of the response.

4. A summary of past permits requested and/or received, any enforcement actions and their subsequent responses, and a list of documents and studies prepared for the facility along with a brief summary of their findings.

B. Nature and Extent of Contamination

The Respondent shall prepare and submit for IDEM approval a preliminary report describing the existing information on the nature and extent of contamination.

1. The Respondent’s report shall summarize all possible source areas of contamination. This, at a minimum, should include all regulated units, solid waste management units, spill areas, and other suspected source areas of contamination. For each area, the Respondent shall identify the following:

   a. Location of unit/area (which shall be depicted on a facility map);

   b. Quantities of solid and hazardous wastes;

   c. Hazardous waste or constituents; and
d. Identification of areas where additional information is necessary.

2. The Respondent shall prepare an assessment and description of the existing degree and extent of contamination. This should include:
   a. Available monitoring data and qualitative information on locations and levels of contamination at the facility;
   b. All potential migration pathways including information on geology, pedology, hydrogeology, physiography, hydrology, water quality, meteorology, and air quality;
   c. The potential impacts on human health and the environment, including demography, ground-water and surface-water use, and land use; and
   d. Habitats and species (including threatened and endangered species) potentially exposed to contaminants and any known or observed effects of site contaminants on biota, such as fish kills or other obvious impacts. Habitat description should be based on available information and a field reconnaissance by a trained ecologist. Experts on local flora and fauna should also be consulted.

C. Implementation of Interim Measures

The Respondent’s report shall document interim measures which were or are being undertaken at the facility. This shall include:

1. Objectives of the interim measures: how the measure is mitigating a potential threat to human health and/or the environment and is consistent with and integrated into any long term solution at the facility;
2. Design, construction, operation, and maintenance requirements;
3. Schedules for design, construction and monitoring; and
4. Schedule for progress reports.

**TASK TWO: PRE-INVESTIGATION EVALUATION OF CORRECTIVE MEASURE TECHNOLOGIES**

Prior to starting the facility investigation, the Respondent shall submit to IDEM a report that identifies the potential corrective measure technologies that may be used on-site or off-site for the containment, treatment, remediation, and/or disposal of contamination. This report shall also identify any field data that needs to be collected in the facility investigation to facilitate the evaluation and selection of the final corrective measure or measures (e.g., compatibility of waste and construction materials, information to evaluate effectiveness, treatability of wastes, etc.). Consideration of potential remedial technologies at the Facility will help to guide the investigation, when deciding which types of data will be needed.

**TASK THREE: RFI WORKPLAN REQUIREMENTS**

Pursuant to the Order, the Respondent shall prepare a RCRA Facility Investigation (RFI) Workplan. This RFI Workplan shall include the development of a Quality Assurance Project Plan, a Health and Safety Plan, and a Community Relations Plan, all of which shall be prepared concurrently. During the RCRA Facility Investigation, it may be necessary to revise the RFI Workplan to increase or decrease the detail of information collected to accommodate the facility specific situation. The RFI Workplan includes the following:
A. Quality Assurance Project Plan (QAPP)

The Respondent shall prepare a plan to document all monitoring procedures, sampling, field measurements, and sample analysis performed during the investigation to characterize the environmental setting, source, and contamination so as to ensure that all information, data, and resulting decisions are technically sound, statistically valid, and properly documented. The QAPP shall be consistent with the United States Environmental Protection Agency (U.S. EPA) guidance on developing Quality Assurance Project Plans, “Guidance for Quality Assurance Project Plans (QA/G-5)”, EPA/240/R-02/009, December 2002, (PDF 111pp, 401K). Note: This version replaces the original document issued in February 1998 (EPA/600/R-98/018).

The QAPP must address:

1. Project management;
2. Data Quality Objectives;
3. Data collection quality assurance;
4. Sampling;
5. Field measurements;
6. Sample analysis; and
7. Data management

Four copies of the QAPP must be submitted initially and for each required revision.

After final approval of the QAPP by IDEM, the Project Manager will determine the distribution, and the responsibility for this distribution, of QAPP copies to each person/organization having a major responsibility for the proposed environmental measurements. This includes, but is not limited to, contractors, subcontractors, and each laboratory.

B. Health and Safety Plan

The Respondent shall prepare a facility Health and Safety Plan.

1. Major elements of the Health and Safety Plan shall include:
   a. Facility description including availability of resources such as roads, water supply, electricity and telephone service;
   b. Describe the known hazards and evaluate the risks associated with possible incidents and with each activity conducted;
   c. List key personnel and alternates responsible for site safety, response operations, and for protection of public health;
   d. Delineate work area;
   e. Describe levels of personal protective equipment to be worn by personnel in work area;
f. Establish procedures to control site access;
g. Describe decontamination procedures for personnel and equipment;
h. Establish site emergency procedures;
i. Address emergency medical care for possible injuries and toxicological problems;
j. Describe requirements for an environmental surveillance program;
k. Specify any routine and special training required for responders; and
l. Establish procedures for protecting workers from weather-related problems.

2. The facility Health and Safety Plan shall be consistent with:
   a. NIOSH Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities (1985);
c. U.S. EPA Order 1440.2-Health and Safety Requirements for Employees engaged in Field Activities;
d. Facility Contingency Plan as required by 29 CFR 1910.38
f. OSHA regulations, particularly in 29 CFR 1910 and 1926;
g. State and local regulations; and
h. Other IDEM or U.S. EPA guidance as updated.

C. Community Relations Plan

The Respondent shall prepare a plan, for the dissemination of information to the public regarding investigation activities and results. The Community Relations Plan shall be consistent with “IDEM’s Guide for Citizen Participation” and U. S. EPA’s “1996 RCRA Public Participation Manual”.

TASK FOUR: FACILITY INVESTIGATION

The Respondent shall conduct those investigations necessary to: Characterize the facility; define the potential contaminant sources; define the degree and extent of contamination; and identify actual and/or potential receptors. The investigations should result in data of adequate technical quality to support the development and evaluation of the corrective measure alternative or alternatives during the Corrective Measures Study.

The site investigation activities shall follow the plans set forth in Task Three. All sampling and analyses shall be conducted in accordance with the approved Quality Assurance Project Plan (QAPP). All sampling locations shall be documented in a log and identified on a detailed site map.
A. **Environmental Setting**

The Respondent shall collect information to supplement and verify existing information on the environmental setting at the facility. The Respondent shall characterize the following:

1. **Hydrogeology**

   The Respondent shall conduct a program to evaluate hydrogeologic conditions at the facility. This program shall provide the following information:

   a. A description of the regional and facility specific geologic and hydrogeologic characteristics affecting groundwater flow beneath the facility, including:

      (1) Regional and facility-specific stratigraphy: description of strata including strike and dip, identification of stratigraphic contacts;
      
      (2) Structural geology: description of local and regional structural features (e.g., folding, faulting, tilting, jointing, etc.);
      
      (3) Depositional history;
      
      (4) Identification and characterization of areas and amounts of recharge and discharge;
      
      (5) Regional and facility-specific groundwater flow patterns; and
      
      (6) Characterize seasonal variations in the groundwater flow regime.

   b. An analysis of any topographic features that might influence the groundwater flow system. (Note: Stereographic analysis of aerial photographs may aid in this analysis).

   c. Based on field data, test, and cores, a representative and accurate classification and description of the hydrogeologic units which may be part of the migration pathways at the facility (i.e., the aquifers and any intervening saturated and unsaturated units), including:

      (1) Hydraulic conductivity and porosity (total and effective);
      
      (2) Lithology, grain size, sorting, degree of cementation;
      
      (3) An interpretation of hydraulic interconnections or the lack thereof, between saturated zones; and
      
      (4) The attenuation capacity and mechanisms of the natural earth materials (e.g., ion exchange capacity, organic carbon content, mineral content, etc.).

   d. Based on field studies and cores, structural geology and hydrogeologic cross sections showing the extent (depth,
thickness, lateral extent) of hydrogeologic units which may be part of the migration pathways identifying:

(1) Sand and gravel deposits in unconsolidated deposits;
(2) Zones of fracturing or channeling in consolidated or unconsolidated deposits;
(3) Zones of higher permeability or low permeability that might direct and restrict the flow of contaminants;
(4) The uppermost aquifer: geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs; and
(5) Water-bearing zones above the first confining layer that may serve as a pathway for contaminant migration including perched zones of saturation.

e. Based on data obtained from groundwater monitoring wells and piezometers installed upgradient and downgradient of the potential contaminant source, a representative description of water level or fluid pressure monitoring including:

(1) Water-level contour and/or potentiometric maps;
(2) Hydrologic cross sections showing vertical gradients;
(3) The flow system, including the vertical and horizontal components of flow; and
(4) Any temporal changes in hydraulic gradients, (e.g., seasonal influences).

f. A description of manmade influences that may affect the hydrogeology of the site, identifying:

(1) Active and inactive local water-supply and production wells with an approximate rate and schedule of pumping; and
(2) Manmade hydraulic structures (dewatering wells, pipelines, french drains, slurry walls, ditches, unlined ponds, septic tanks, National Pollutant Discharge Elimination System (NPDES) outfalls, retention areas, etc.).

2. Soils

The Respondent shall conduct a program to characterize the soil and rock units above the water table in the vicinity of the contaminant release(s). Such characterization shall include but not be limited to, the following information:

a. USDA soil classification;

b. Surface soil distribution;

c. USDA soil profile;
d. Transects of soil stratigraphy;
e. Hydraulic conductivity (saturated and unsaturated);
f. Relative permeability;
g. Bulk density;
h. Porosity;
i. Soil sorptive capacity;
j. Cation exchange capacity (CEC);
k. Soil organic content;
l. Soil pH;
m. Particle size distribution;
n. Depth of water table;
o. Moisture content;
p. Effect of stratification on unsaturated flow;
q. Infiltration;
r. Evapotranspiration;
s. Storage capacity;
t. Vertical flow rate; and
u. Mineral content.

3. **Surface Water and Sediment**

The Respondent shall conduct a program to characterize the surface-water bodies in the vicinity of the facility. Such characterization shall include, but not be limited to, the following activities and information:

a. Description of the intermittent and permanent surface-water bodies including:

   (1) For lakes: location, elevation, surface area, in-flow, out-flow, depth, temperature stratification, and volume;

   (2) For impoundments: location, elevation, surface area, depth, volume, freeboard, and purpose of impoundment;

   (3) For streams, ditches, drains, swamps and channels: location, elevation, flow, velocity, depth, width, seasonal fluctuations, and flooding tendencies (i.e., 100-year and 500-year events):

   (4) Drainage patterns; and
(5) Evapotranspiration.

b. Description of the chemistry of the natural surface water and sediments. This includes determining the pH, total dissolved solids, total suspended solids, biological oxygen demand, alkalinity, conductivity, dissolved oxygen profiles, nutrients (NH₃, NO₃⁻, PO₄³⁻), chemical oxygen demand, total organic carbon, specific contaminant concentrations, etc.

c. Description of sediment characteristics including:

(1) Deposition area;
(2) Thickness profile; and
(3) Physical and chemical parameters (e.g., grain size, density, organic carbon content, ion exchange capacity, pH, etc.)

4. Air

The Respondent shall provide information characterizing the climate in the vicinity of the facility. Such information shall include, but not be limited to:

(1) Annual and monthly rainfall averages;
(2) Monthly temperature averages and extremes;
(3) Wind speed and direction;
(4) Ranges in relative humidity/dew point;
(5) Ranges in atmospheric pressure;
(6) Evaporation data;
(7) Development of inversions; and
(8) Climate extremes that have been known to occur in the vicinity of the facility, including frequency of occurrence.

b. A description of topographic and manmade features which affect air flow and emission patterns, including:

(1) Ridges or hills;
(2) Valleys;
(3) Surface water bodies (e.g., rivers, lakes, ponds, etc.);
(4) Wind breaks and forests; and
(5) Buildings.

B. Source Characterization

The Respondent shall collect analytic data to completely characterize the wastes and the areas where wastes have been leaked, placed, collected or removed
including: type; quantity; physical form; disposition (containment or nature of deposits); and facility characteristics affecting release (e.g., facility security, engineered barriers, etc.). This shall include a discussion of the following specific characteristics, at each source area.

1. Unit/Disposal Area Characteristics:
   a. Location of unit/disposal area;
   b. Type of unit/disposal area;
   c. Design features;
   d. Operating practices (past and present);
   e. Period of operation;
   f. Age of unit/disposal area;
   g. General physical conditions; and
   h. Method used to close the unit/disposal area.

2. Waste Characteristics:
   a. Type of waste placed in the unit;
      (1) Hazardous classification (e.g., flammable, reactive, corrosive, oxidizing or reducing agent);
      (2) Quantity; and
      (3) Chemical composition.
   b. Physical and chemical characteristics;
      (1) Physical form (solid, liquid, gas);
      (2) Physical description (e.g., powder, oily sludge);
      (3) Temperature;
      (4) pH;
      (5) General chemical class (e.g., acid, base, solvent);
      (6) Molecular weight;
      (7) Density;
      (8) Boiling point;
      (9) Viscosity;
      (10) Solubility in water;
      (11) Cohesiveness of the waste;
      (12) Vapor pressure; and
(13) Flash point.

c. Migration and dispersal characteristics of the waste;
   (1) Sorption;
   (2) Biodegradability, bioconcentration, biotransformation;
   (3) Photodegradation rates;
   (4) Hydrolysis rates; and
   (5) Chemical transformations.

The Respondent shall document the procedures used in making the above determinations.

C. Contamination Characterization

The Respondent shall collect analytical data on groundwater, soils, surface water, sediment, and subsurface gas contamination in the vicinity of the facility. This data shall be sufficient to define the extent, origin, direction, and rate of movement of contaminant plumes. Data shall include time and location of sampling, media sampled, concentrations found, and conditions during sampling, and the identity of the individuals performing the sampling and analysis. The Respondent shall address the following types of contamination at the facility.

1. Groundwater Contamination

   The Respondent shall conduct a Groundwater Investigation to characterize any plumes of contamination at the facility. This investigation shall at a minimum provide the following information:

   a. A description of the horizontal and vertical extent of any immiscible or dissolved plume(s) originating from the facility;
   b. The horizontal and vertical direction of contaminant movement;
   c. The velocity of contaminant movement;
   d. The horizontal and vertical concentration profiles of all hazardous constituents in the plume(s);
   e. An evaluation of factors influencing the plume movement; and
   f. An extrapolation of future contaminant movement.

   The Respondent shall document the procedures used in making the above determinations (e.g., well design, well construction, geophysics, modeling, etc.).

2. Soil Contamination

   The Respondent shall conduct an investigation to characterize the contamination of the soil and rock units above the water table in the vicinity of the contaminant release. The investigation shall include the following information:

   a. A description of the vertical and horizontal extent of contamination;
b. A description of contaminant and soil chemical properties within the contaminant source area and plume (including contaminant solubility, specification, adsorption, leachability, exchange capacity, biodegradability, hydrolysis, photolysis, oxidation and other factors that might affect contaminant migration and transformation);

c. Specific contaminant concentrations;

d. The velocity and direction of contaminant movement; and

e. An extrapolation of future contaminant movement.

The Respondent shall document the procedures used in making the above determinations.

3. Surface-water and Sediment Contamination

The Respondent shall conduct a surface-water investigation to characterize contamination in surface-water bodies resulting from contaminant releases at the facility.

The investigation shall include, but not be limited to, the following information:

a. A description of the horizontal and vertical extent of any immiscible or dissolved plume(s) originating from the facility, and the extent of contamination in underlying sediments;

b. The horizontal and vertical direction of contaminant movement;

c. The contaminant velocity;

d. An evaluation of the physical, biological and chemical factors influencing contaminant movement;

e. An extrapolation of future contaminant movement; and

f. A description of the chemistry of the contaminated surface waters and sediments. This includes determining the pH, total dissolved solids, specific contaminant concentrations, etc.

The Respondent shall document the procedures used in making the above determinations.

4. Air Contamination

The Respondent shall conduct an investigation to characterize the particulate and gaseous contaminants released into the atmosphere. This investigation shall provide the following information:

a. A description of the horizontal and vertical direction and velocity of contaminant movement;

b. The rate and amount of the release; and

c. The chemical and physical composition of the contaminant(s) released, including horizontal and vertical concentration profiles.
The Respondent shall document the procedures used in making the above determinations.

5. Subsurface Gas Contamination

The Respondent shall conduct an investigation to characterize subsurface gases emitted from buried hazardous waste and hazardous constituents in the groundwater. This investigation shall include the following information:

a. A description of the horizontal and vertical extent of subsurface gas migration;

b. The chemical composition of the gases being emitted;

c. The rate, amount, and density of the gases being emitted;

d. Horizontal and vertical concentration profiles of the subsurface gases emitted.

The Respondent shall document the procedures used in making the above determinations.

D. Potential Receptors

The Respondent shall collect data describing the human populations and environmental systems that are susceptible to contaminant exposure from the facility. Chemical analysis of biological samples may be needed. Data on observable effects in ecosystems may also be obtained. The following characteristics shall be identified.

1. Local uses and possible future uses of groundwater:

   a. Type of use (e.g., drinking water source: municipal or residential, agricultural, domestic/non-potable, and industrial); and

   b. Location of groundwater users including wells and discharge areas.

2. Local uses and possible future uses of surface waters draining the facility:

   a. Domestic and municipal (e.g., potable and lawn/gardening watering);

   b. Recreational (e.g., swimming, fishing);

   c. Agricultural;

   d. Industrial; and

   e. Environmental (e.g., fish and wildlife propagation).

3. Human use of or access to the facility and adjacent lands, including but not limited to:

   a. Trespasser;

   b. Employees;
c. Construction workers;
d. Recreation;
e. Hunting/fishing;
f. Residential;
g. Commercial;
h. Zoning; and
i. Relationship between population locations and prevailing wind direction.

4. A description of the biota in surface water bodies on, adjacent to, or affected by the facility.

5. A description of the ecology overlying and adjacent to the facility.

6. A demographic profile of the people who use or have access to the facility and adjacent land, including, but not limited to: age; sex; and sensitive subgroups.

7. A description of any endangered or threatened species near the facility.

**TASK FIVE: INVESTIGATION ANALYSIS**

The Respondent shall prepare an analysis and summary of all facility investigations and their results. The objective of this task shall be to ensure that the investigation data are sufficient in quality (e.g., quality assurance procedures have been followed) and quantity to describe the nature and extent of contamination, potential threat to human health and/or the environment, and to support the Corrective Measures Study.

A. **Data Analysis**

The Respondent shall analyze all facility investigation data outlined in Task Four and prepare a report on the type and extent of contamination at the facility including sources and migration pathways. The report shall describe the extent of contamination (qualitative/quantitative) in relation to background levels indicative for the area.

B. **Protection Standards**

1. Groundwater Protection Standards

For regulated units the Respondent shall provide information to support IDEM's selection/development of Groundwater Protection Standards for all hazardous waste and hazardous constituents found in the groundwater during the Facility Investigation (Task Four).

a. The Groundwater Protection Standards shall consist of:

   (1) For any constituents listed in 329 IAC 3.1-9-1 (40 CFR 264.94), the respective value given in that table (maximum level) if the background level of the constituent is below the value given; or
(2) The background level of any constituent in the groundwater; or

(3) An approved Alternate Concentration Limit (ACL).

b. Information to support IDEM’s subsequent selection of Alternate Concentration Limits (ACL’s) shall be developed by the Respondent in accordance with IDEM’s Risk Integrated System of Closure (RISC), and other IDEM guidance and policy; and all applicable U.S. EPA guidance. For any proposed ACL’s the Respondent shall include a justification based upon the criteria set forth in 40 CFR 264.94(b).

c. Within thirty (30) days of receipt of IDEM’s notification of disapproval of any proposed ACL, the Respondent shall amend and submit revisions to IDEM.

2. Other Relevant Protection Standards

For all SWMUs and AOCs, the Respondent shall identify all relevant and applicable standards for the protection of human health and the environment (e.g., IDEM’s RISC nonrule policy, National Ambient Air Quality Standards, Federally-approved state water quality standards, etc.).

TASK SIX: LABORATORY AND BENCH-SCALE STUDIES

The Respondent shall conduct laboratory and/or bench scale studies to determine the applicability of a corrective measure technology or technologies to facility conditions. The Respondent shall analyze the technologies, based on literature review, vendor contracts, and past experience to determine the testing requirements. The Respondent shall develop a testing plan identifying the type(s) and goal(s) of the study or studies, the level of effort needed, and the procedures to be used for data management and interpretation.

Upon completion of the testing, the Respondent shall evaluate the testing results to assess the technology or technologies with respect to the site-specific questions identified in the test plan. The Respondent shall prepare a report summarizing the testing program and its results, both positive and negative.

TASK SEVEN: REPORTS

A. Preliminary and Workplan

The Respondent shall submit to IDEM reports on Task One and Task Two when it submits the RCRA Facility Investigation Workplan (Task Three).

B. Progress

The Respondent shall, at a minimum, provide IDEM with signed monthly progress reports containing:

1. A description and estimate of the percentage of the RFI completed;
2. Summaries of all findings;
3. Summaries of all changes made in the RFI during the reporting period;
4. Summaries of all contacts with representatives of the local community, public interest groups, or State government during the reporting period;
5. Summaries of all problems or potential problems encountered during the reporting period;
6. Actions being taken to rectify problems;
7. Changes in personnel during the reporting period;
8. Projected work for the next reporting period; and
9. Copies of daily reports, inspection reports, laboratory/monitoring data, etc.

C. Draft and Final

Pursuant to the Order, the Respondent shall prepare a RCRA Facility Investigation Report to present Task Four and Task Five. The RFI Report shall be developed in draft form for IDEM review. The RFI Report shall be developed in final format incorporating comments received on the Draft RFI Report. Task Six shall be submitted as a separate report when the Final RFI Report is submitted.

Four (4) copies of all reports, including the Task One report, Task Two report, Task Three workplan, Task Six report and both the Draft and Final RFI Reports (Task Four and Task Five) shall be provided by the Respondent to IDEM.

III. CORRECTIVE MEASURES STUDY (CMS)

Pursuant to the Order, the Respondent shall submit a CMS Workplan. The purpose of the Corrective Measures Study (CMS) is to ensure that the Respondent develops and evaluates the corrective action alternative or alternatives and to recommend the corrective measure or measures to be taken at the facility. The Respondent will furnish the personnel, materials, and services necessary to prepare the Corrective Measures Study, except as otherwise specified.

The Corrective Measures Study consists of four tasks.

Task Eight: Identification and Development of the Corrective Measure Alternative or Alternatives

A. Description of Current Situation
B. Establishment of Corrective Action Objectives
C. Screening of Corrective Measure Technologies
D. Identification of the Corrective Measure Alternative or Alternatives

Task Nine: Evaluation of the Corrective Measure Alternative or Alternatives

A. Technical/Environmental/Human Health/Institutional
B. Cost Estimate

Task Ten: Justification and Recommendation of the Corrective Measure or Measures

A. Technical
B. Environmental
C. Human Health
D. Cost

Task Eleven: Reports

A. Progress
B. Draft
C. Final
TASK EIGHT: IDENTIFICATION AND DEVELOPMENT OF THE CORRECTIVE ACTION ALTERNATIVE OR ALTERNATIVES

Based on the results of the RCRA Facility Investigation and consideration of the identified Preliminary Corrective Measure Technologies (Task Two), the Respondent shall identify, screen and develop the alternative or alternatives for removal, containment, treatment and/or other remediation of the contamination based on the objectives established for the corrective action.

A. Description of Current Situation

The Respondent shall submit to the IDEM, an update to the information describing the current situation at the facility and the known nature and extent of the contamination as documented by the RCRA Facility Investigation Report. The Respondent shall provide an update to information presented in Task One of the RFI to IDEM regarding previous response activities and any interim measures which have been or are being implemented at the facility. The Respondent shall also make a facility-specific statement of the purpose for the response, based on the results of the RCRA Facility Investigation. The statement of purpose should identify the actual or potential exposure pathways that should be addressed by corrective measures.

B. Establishment of Corrective Action Objectives

The Respondent, in conjunction with IDEM, shall establish site-specific objectives for the corrective action. These objectives shall be based on public health and environmental criteria, information gathered during the RCRA Facility Investigation, IDEM’s RISC Program, EPA guidance, and the requirements of any applicable State or Federal statutes.

C. Screening of Corrective Measure Technologies

The Respondent shall review the results of the RCRA Facility Investigation and reassess the technologies specified in Task Two and to identify additional technologies which are applicable at the facility. The Respondent shall screen the preliminary corrective measure technologies identified in Task Two of the RCRA Facility Investigation and any supplemental technologies to eliminate those that may prove infeasible to implement, that rely on technologies unlikely to perform satisfactorily or reliably, or that do not achieve the corrective measure objective within a reasonable time period. This screening process focuses on eliminating those technologies which have severe limitations for a given set of waste and site-specific conditions. The screening step may also eliminate technologies based on inherent technology limitations.

Site, waste, and technology characteristics which are used to screen inapplicable technologies are described in more detail below.

1. Site Characteristics

Site data should be reviewed to identify conditions that may limit or promote the use of certain technologies. Technologies whose use is clearly precluded by site characteristics should be eliminated from further consideration;

2. Waste Characteristics

Identification of waste characteristics that limit the effectiveness or feasibility of technologies is an important part of the screening process. Technologies clearly limited by these waste characteristics should be eliminated from consideration. Waste Characteristics particularly affect
the feasibility of in-situ methods, direct treatment methods, and land disposal (on/off-site); and

3. Technology Limitations

During the screening process, the level of technology development, performance record, and inherent construction, operation, and maintenance problems should be identified for each technology considered. Technologies that are unreliable, perform poorly, or are not fully demonstrated may be eliminated in the screening process. For example, certain treatment methods have been developed to a point where they can be implemented in the field without extensive technology transfer or development.

D. Identification of the Corrective Measure Alternative or Alternatives

The Respondent shall develop the Corrective Measure Alternative or Alternatives based on the corrective action objectives and analysis of Preliminary Corrective Measure Technologies, as presented in Task Two of the RCRA Facility Investigation and as supplemented following the preparation of the RFI Report. The Respondent shall rely on engineering practice to determine which of the previously identified technologies appear most suitable for the site. Technologies can be combined to form the overall corrective action alternative or alternatives. The alternative or alternatives developed should represent a workable number of option(s) that adequately address all site problems and corrective action objectives. Each alternative may consist of an individual technology or a combination of technologies. The Respondent shall document the reasons for excluding technologies, identified in Task Two, as supplemented in the development of the alternative or alternatives.

TASK NINE: EVALUATION OF THE CORRECTIVE MEASURE ALTERNATIVE OR ALTERNATIVES

The Respondent shall describe each corrective measure alternative that passes through the initial screening in Task Eight and evaluate each corrective measure alternative and its components. The evaluation shall be based on technical, environmental, human health and institutional concerns. The Respondent shall also develop cost estimates of each corrective measure.

A. Technical/Environmental/Human Health/Institutional

The Respondent shall provide a description of each corrective measure alternative which includes but is not limited to the following: preliminary process flow sheets; preliminary sizing and type of construction for buildings and structures; and rough quantities of utilities required. The Respondent shall evaluate each alternative in the four following areas.

1. Technical

The Respondent shall evaluate each corrective measure alternative based on performance, reliability, implementability and safety.

a. The Respondent shall evaluate performance based on the effectiveness and useful life of the corrective measure:

(1) Effectiveness shall be evaluated in terms of the ability to perform intended functions, such as containment, diversion, removal, destruction, or treatment. The effectiveness of each corrective measure shall be determined either through design specifications or by performance evaluation. Any specific waste or site
characteristics which could potentially impede effectiveness shall be considered. The evaluation should also consider the effectiveness of combinations of technologies; and

(2) Useful life is defined as the length of time the level of effectiveness can be maintained. Most corrective measure technologies, with the exception of destruction, deteriorate with time. Often, deterioration can be slowed through proper system operation and maintenance, but the technology eventually may require replacement. Each corrective measure shall be evaluated in terms of the projected service lives of its component technologies. Resource availability in the future life of the technology, as well as appropriateness of the technology, must be considered in estimating the useful life of the project.

b. The Respondent shall provide information on the reliability of each corrective measure including their operation and maintenance requirements and their demonstrated reliability:

(1) Operation and maintenance requirements include the frequency and complexity of necessary operation and maintenance. Technologies requiring frequent or complex operation and maintenance activities should be regarded as less reliable than technologies requiring little or straightforward operation and maintenance. The availability of labor and materials to meet these requirements shall also be considered; and

(2) Demonstrated and expected reliability is a way of measuring the risk and effect of failure. The Respondent should evaluate whether the technologies have been used effectively under analogous conditions; whether the combination of technologies have been used together effectively; whether failure of any one technology has an immediate impact on receptors or the other technologies; and whether the corrective measure has the flexibility to deal with uncontrollable changes at the site.

c. The Respondent shall describe the implementability of each corrective measure including the relative ease of installation (constructability) and the time required to achieve a given level of response:

(1) Constructability is determined by conditions both internal and external to the facility conditions and includes such items as location of underground utilities, depth to water table, heterogeneity of subsurface materials, and location of the facility (i.e., remote location vs. a congested urban area). The Respondent shall evaluate what measures can be taken to facilitate construction under these conditions. External factors which affect implementation include the need for special permits or agreements, equipment availability, and the location of suitable off-site treatment or disposal facilities; and
(2) Time has two components that shall be addressed; the time it takes to implement a corrective measure and the time it takes to actually see beneficial results. Beneficial results are defined as the reduction of contaminants to some acceptable, pre-established level.

d. The Respondent shall evaluate each corrective measure alternative with regard to safety. This evaluation shall include threats to the safety of nearby communities and environments as well as those to workers during implementation. Factors to consider are fire, explosion, and exposure to hazardous substances.

2. Environmental

The Respondent shall perform an Environmental Assessment for each alternative. The Environmental Assessment shall focus on the facility conditions and pathways of contamination actually addressed by each alternative. The Environmental Assessment for each alternative will include, at a minimum, an evaluation of: the short-term and long-term beneficial and adverse effects of the response alternative; any adverse effects on environmentally sensitive areas; and an analysis of measures to mitigate adverse effects.

3. Human Health

The Respondent shall assess each alternative in terms of the extent of which it mitigates short-term and long-term potential exposure to any residual contamination and protects human health both during and after implementation of the corrective measure. The assessment will describe the levels and characterizations of contaminants on-site, potential exposure routes, and potentially affected population. Each alternative will be evaluated to determine the level of exposure to contaminant and the reduction over time. For management of mitigation measures, the relative reduction of impact will be determined by comparing residual levels of each alternative with existing criteria, standards, or guidelines acceptable to IDEM.

4. Institutional.

The Respondent shall assess relevant institutional needs for each alternative. Specifically, the effects of federal, state, and local environmental and public health standards, regulations, guidance, advisories, ordinances, or community relations on the design, operation, and timing of each alternative.

B. Cost Estimate

For the purposes of cost comparisons and financial assurance, the Respondent shall develop an estimate of the cost of each corrective measure alternative (and for each phase or segment of the alternative). The cost estimate shall include both capital and operation and maintenance costs.

1. Capital costs consist of direct (construction) and indirect (non-construction and overhead) costs.

   a. Direct capital costs include:
1. Construction costs: Costs of materials, labor (including fringe benefits and worker's compensation), and equipment required to install the corrective measure.

2. Equipment costs: Costs of treatment, containment, disposal and/or service equipment necessary to implement the action; these materials remain until the corrective action is complete.

3. Land and site-development costs: Expenses associated with purchase of land and development of existing property; and

4. Buildings and services costs: Costs of process and non-process buildings, utility connections, purchased services, and disposal costs.

b. Indirect capital costs include:

1. Engineering expenses: Costs of administration, design, construction supervision, drafting, and testing of corrective measure alternatives;

2. Legal fees and license or permit costs: Administrative and technical costs necessary to obtain licenses and permits for installation and operation;

3. Startup and shakedown costs: Costs incurred during corrective measure startup; and

4. Contingency allowances: Funds to cover costs resulting from unforeseen circumstances, such as adverse weather conditions, strikes, and inadequate facility characterization.

2. Operation and maintenance costs are post-construction costs necessary to ensure continued effectiveness of a corrective measure. The Respondent shall consider the following operation and maintenance cost components:

a. Operating labor costs: Wages, salaries, training, overhead, and fringe benefits associated with the labor needed for post-construction operations;

b. Maintenance materials and labor costs: Costs for labor, parts, and other resources required for routine maintenance of facilities and equipment;

c. Auxiliary materials and energy: Costs of such items as chemicals and electricity for treatment plant operations, water and sewer service, and fuel;

d. Purchased services: Sampling costs, laboratory fees, and professional fees for which the need can be predicted;

e. Disposal and treatment costs: Costs of transporting, treating, and disposing of waste materials, such as treatment plant residues, generated during operations;
f. Administrative costs: Costs associated with administration of corrective measure operation and maintenance not included under other categories;

g. Insurance, taxes, and licensing costs: Costs of such items as liability and sudden accidental insurance; real estate taxes on purchased land or rights-of-way; licensing fees for certain technologies; and permit renewal and reporting costs;

h. Maintenance reserve and contingency funds: Annual payments into escrow funds to cover (1) costs of anticipated replacement or rebuilding of equipment and (2) any large unanticipated operation and maintenance costs; and

i. Other costs: Items that do not fit any of the above categories.

**TASK TEN: JUSTIFICATION AND RECOMMENDATION OF THE CORRECTIVE MEASURE OR MEASURES**

The Respondent shall justify and recommend a corrective measure alternative using technical, human health, environmental, and cost criteria. This recommendation shall include summary tables which allow the alternative or alternatives to be understood easily. Tradeoffs among health risks, environmental effects, and other pertinent factors shall be highlighted. IDEM will select the corrective measure alternative or alternatives to be implemented based on the results of Task Nine and Task Ten. At a minimum, the following criteria will be used to justify the final corrective measure or measures.

**A. Technical**

1. Performance - corrective measure or measures which are most effective at performing their intended functions and maintaining the performance over extended periods of time will be given preference;

2. Reliability - corrective measure or measures which do not require frequent or complex operation and maintenance activities and that have proven effective under waste and facility conditions similar to those anticipated will be given preference;

3. Implementability - corrective measure or measures which can be constructed and operated to reduce levels of contamination to attain or exceed applicable standards in the shortest period of time will be preferred; and

4. Safety - corrective measure or measures which pose the least threat to the safety of nearby residents and environments as well as workers during implementation will be preferred.

**B. Human Health**

The corrective measure or measures must comply with existing IDEM and U.S. EPA criteria, standards, or guidelines for the protection of human health. Corrective measures which provide the minimum level of exposure to contaminants and the maximum reduction in exposure with time are preferred.

**C. Environmental**

The corrective measure or measures posing the least adverse impact (or greatest improvement) over the shortest period of time on the environment will be favored.
D. Cost

If multiple corrective measures are found to be technically adequate and sufficiently protective of human health and the environment, the corrective measure(s) which cost(s) the least will be selected.

TASK ELEVEN: REPORTS

Pursuant to the Order, the Respondent shall prepare a Corrective Measures Study Report presenting the results of Task Eight through Task Ten and recommending a corrective measure alternative. Four (4) copies of the preliminary report shall be provided by the Respondent.

A. Progress

The Respondent shall at a minimum provide IDEM with signed, monthly progress reports containing:

1. A description and estimate of the percentage of the CMS completed;
2. Summaries of all findings;
3. Summaries of all changes made in the CMS during the reporting period;
4. Summaries of all contacts with representatives of the local community, public interest groups or State government during the reporting period;
5. Summaries of all problems or potential problems encountered during the reporting period;
6. Actions being taken to rectify problems;
7. Changes in personnel during reporting periods;
8. Projected work for the next reporting period; and
9. Copies of daily reports, inspection reports, laboratory/monitoring data, etc.

B. Draft

The report shall at a minimum include:

1. A description of the facility;
   a. Site topographic map and preliminary layouts.
2. A summary of the corrective measure or measures;
   a. Description of the corrective measure or measures and rationale for selection;
   b. Performance expectations;
   c. Preliminary design criteria and rationale;
   d. General operation and maintenance requirements; and
   e. Long-term monitoring requirements.
3. A summary of the RCRA Facility Investigation and impact on the selected corrective measure or measures;
   a. Field studies (groundwater, surface water, soil, air); and
   b. Laboratory studies (bench scale, pick scale).
4. Design and Implementation Precautions;
   a. Special technical problems;
   b. Additional engineering data required;
   c. Permits and regulatory requirements;
   d. Access, easements, right-of-way;
   e. Health and safety requirements; and
   f. Community relations activities.
5. Cost Estimates and Schedules;
   a. Capital cost estimate;
   b. Operation and maintenance cost estimate; and
   c. Project schedule (design, construction, operation).

Four (4) copies of the draft shall be provided by the Respondent to IDEM.

C. Final

The Respondent shall finalize the Corrective Measures Study Report incorporating comments received from IDEM on the Draft Corrective Measures Study Report.

IV. CORRECTIVE MEASURE IMPLEMENTATION (CMI)

The purpose of the Corrective Measure Implementation Program Plan is to ensure that the Respondent designs, constructs, operates, maintains, and monitors the performance of the corrective measure or measures selected to protect human health and the environment. The Respondent will furnish all personnel, materials and services necessary for the implementation of the corrective measure or measures.

The Corrective Measure Implementation program consists of four tasks.

Task Twelve: Corrective Measure Implementation Program Plan
   A. Program Management Plan
   B. Community Relations Plan

Task Thirteen: Corrective Measure Design
   A. Design Plans and Specifications
   B. Operation and Maintenance Plan
   C. Cost Estimate
   D. Project Schedule
   E. Construction Quality Assurance Objectives
   F. Health and Safety Plan
G. Design Phases

Task Fourteen: Corrective Measure Construction

A. Responsibility and Authority
B. Construction Quality Assurance Personnel Qualifications
C. Inspection Activities
D. Sampling Requirements
E. Documentation
F. Financial Assurance

Task Fifteen: Reports

A. Progress
B. Draft
C. Final

TASK TWELVE: CORRECTIVE MEASURE IMPLEMENTATION PROGRAM PLAN

Pursuant to the Order, Respondent shall submit to IDEM, a Corrective Measure Implementation Program Plan. This program will include the development and implementation of several plans, which require concurrent preparation. It may be necessary to revise plans as the work is performed to focus efforts on a particular problem. The CMI Program Plan includes the following plans.

A. Program Management Plan

The Respondent shall prepare a Program Management Plan which will document the overall management strategy for performing the design, construction, operation, maintenance and monitoring of corrective measure(s). The plan shall document the responsibility and authority of all organizations and key personnel involved with the implementation. The Program Management Plan will also include a description of qualifications of key personnel directing the CMI, including contractor personnel.

B. Community Relations Plan

The Respondent shall revise the Community Relations Plan to include any changes in the level of concern of information needs to the community during design and construction activities.

1. Specific activities which must be conducted during the design stage are the following:
   a. Revise the facility Community Relations Plan to reflect knowledge of citizen concerns and involvement at this stage of the process; and
   b. Prepare and distribute a public notice and an updated fact sheet at the completion of engineering design.

2. Specific activities to be conducted during the construction stage could be the following: Depending on citizen interest at a facility at this point in the corrective action process, community relations activities could range from group meetings to fact sheets on the technical status.

TASK THIRTEEN: CORRECTIVE MEASURE DESIGN

The Respondent shall prepare final construction plan and specifications to implement the corrective measure(s) at the facility as defined in the Corrective Measures Study.
A. **Design Plans and Specifications**

The Respondent shall develop clear and comprehensive design plans and specifications which include but are not limited to the following:

1. Discussion of the design strategy and the design basis, including:
   a. Compliance with all applicable or relevant environmental and public health standards; and
   b. Minimization of environmental and public impacts.

2. Discussion of the technical factors of importance including:
   a. Use of currently accepted environmental control measures and technology;
   b. The constructability of the design; and
   c. Use of currently acceptable construction practices and techniques.

3. Description of assumptions made and detailed justification of these assumptions;

4. Discussion of the possible sources of error and references to possible operation and maintenance problems;

5. Detailed drawings of the proposed design including:
   a. Qualitative flow sheets; and
   b. Quantitative flow sheets.

6. Tables listing equipment and specifications;

7. Tables giving material and energy balances;

8. Appendices including:
   a. Sample calculations (one example presented and explained clearly for significant or unique design calculations);
   b. Derivation of equations essential to understanding the report; and
   c. Results of laboratory or field tests.

B. **Operation and Maintenance Plan**

The Respondent shall prepare an Operation and Maintenance Plan to cover both implementation and long term maintenance of the corrective measure. The plan shall be composed of the elements listed below.

1. Description of normal operation and maintenance (O&M):
   a. Description of tasks for operations;
   b. Description of tasks for maintenance;
c. Description of prescribed treatment or operation conditions; and
d. Schedule showing frequency of each O&M task.

2. Description of potential operating problems:
   a. Description and analysis of potential operation problems;
   b. Sources of information regarding problems; and
   c. Common and/or anticipated remedies.

3. Description of routine monitoring and laboratory testing:
   a. Description of monitoring tasks;
   b. Description of required laboratory tests and their interpretation;
   c. Required QA/QC; and
   d. Schedule of monitoring frequency and date, if appropriate, when monitoring may cease.

4. Description of alternate O&M:
   a. Should systems fail, alternate procedures to prevent undue hazard; and
   b. Analysis of vulnerability and additional resource requirements should a failure occur.

5. Safety Plan:
   a. Description of precautions, of necessary equipment, etc., for site personnel; and
   b. Safety tasks required in event of systems failure.

6. Description of equipment:
   a. Equipment identification;
   b. Installation of monitoring components;
   c. Maintenance of site equipment; and
   d. Replacement schedule for equipment and installed components.

7. Records and reporting mechanisms required:
   a. Daily operating logs;
   b. Laboratory records;
   c. Records for operating costs;
   d. Mechanism for reporting emergencies;
   e. Personnel and maintenance records; and
f. Monthly/annual reports to state agencies.

An initial Draft Operation and Maintenance Plan shall be submitted simultaneously with the Prefinal Design Document Submission and the Final Operation and Maintenance Plan with the Final Design Documents.

C. Cost Estimate

The Respondent shall develop cost estimates for the purpose of assuring that the facility has the financial resources necessary to construct and implement the corrective measure. The cost estimate developed in the Corrective Measures Study shall be refined to reflect the more detailed/accurate design plans and specifications being developed. The cost estimate shall include both capital and O&M costs. An Initial Cost Estimate shall be submitted simultaneously with the Prefinal Design submission and the Final Cost Estimate with the Final Design Document.

D. Project Schedule

The Respondent shall develop a Project Schedule for construction and implementation of the corrective measure or measures which identifies timing for initiation and completion of all critical path tasks. Respondent shall specifically identify dates for completion of the project and major interim milestones. An Initial Project Schedule shall be submitted simultaneously with the Prefinal Design Document submission and the Final Project Schedule with the Final Design Document.

E. Construction Quality Assurance Objectives

The Respondent shall identify and document the objectives and framework for the development of a construction quality assurance program including, but not limited to the following: responsibility and authority; personnel qualifications; inspection activities; sampling requirements; and documentation.

F. Health and Safety Plan

The Respondent shall modify the Health Safety Plan developed for the RCRA Facility Investigation to address the activities to be performed at the facility to implement the corrective measure(s).

G. Design Phases

The design of the corrective measure(s) should include the phases outlined below.

1. Preliminary design

The Respondent shall submit the Preliminary design when the design effort is approximately 30% complete. At this stage the Respondent shall have field verified the existing conditions of the facility. The preliminary design shall reflect a level of effort such that the technical requirements of the project have been addressed and outlined so that they may be reviewed to determine if the final design will provide an operable and usable corrective measure. Supporting data and documentation shall be provided with the design documents defining the functional aspects of the program. The preliminary construction drawings by the Respondent shall reflect organization and clarity. The scope of the technical specifications shall be outlined in a manner reflecting the final specifications. The Respondent shall include with the preliminary
submission design calculations reflecting the same percentage of completion as the designs they support.

2. Intermediate design

Complex project design may necessitate review of the design documents between the preliminary and the prefinal/final design. At the discretion of IDEM, a design review may be required at 60% completion of the project. The intermediate design submittal should include the same elements as the prefinal design.

3. Correlating plans and specifications

General correlation between drawings and technical specifications is a basic requirement of any set of working construction plans and specifications. Before submitting the project specifications, the Respondent shall:

a. Coordinate and cross-check the specifications and drawings; and

b. Complete the proofing of the edited specifications and required cross-checking of all drawings and specifications.

These activities shall be completed prior to the 95% prefinal submittal to IDEM.

4. Equipment start-up and operator training

The Respondent shall prepare, and include in the technical specifications governing treatment systems, contractor requirements for providing: appropriate service visits by experienced personnel to supervise the installation, adjustment, startup and operation of the treatment systems, and training covering appropriate operational procedures once the startup has been successfully accomplished.

5. Additional studies

Corrective Measure Implementation may require additional studies to supplement the available technical data. At the direction of IDEM for any such studies required, the Respondent shall furnish all services, including field work as required, materials, supplies, plant, labor, equipment, investigations, studies and superintendence. Sufficient sampling, testing and analysis shall be performed to optimize the required treatment and/or disposal operations and systems. There shall be an initial meeting of all principal personnel involved in the development of the program. The purpose will be to discuss objectives, resources, communication channels, role of personnel involved and orientation of the site, etc. The interim report shall present the results of the testing with the recommended treatment or disposal system (including options). A review conference shall be scheduled after the interim report has been reviewed by all interested parties. The final report of the testing shall include all data taken during the testing and a summary of the results of the studies.

6. Prefinal and final design

The Respondent shall submit the prefinal/final design documents in two parts. The first submission shall be at 95% completion of design (i.e.,
After approval of the prefinal submission, the Respondent shall execute the required revisions provided from IDEM review and submit the final documents 100% complete with reproducible drawings and specifications.

The prefinal design submittal shall consist of the Design Plans and Specifications, Operation and Maintenance Plan, Capital and Operating and Maintenance Cost Estimate, Project Schedule, Quality Assurance Plan and Specifications for the Health and Safety Plan.

The final design submittal shall consist of the Final Design Plans and Specifications (100% complete), the Respondent’s Final Construction Cost Estimate, the Final Operation and Maintenance Plan, Final Quality Assurance Plan, Final Project Schedule and Final Health and Safety Plan specifications. The quality of the design documents should be such that the Respondent would be able to include them in a bid package and invite contractors to submit bids for the construction project.

TASK FOURTEEN: CORRECTIVE MEASURE CONSTRUCTION

Following IDEM approval of the final design, the Respondent shall develop and implement a Construction Quality Assurance (CQA) Program to ensure, with a reasonable degree of certainty, that a completed corrective measure(s) meets or exceeds all design criteria, plans and specifications. The CQA plan is a facility-specific document which must be submitted to IDEM for approval prior to the start of construction. At a minimum, the CQA plan should include the elements, which are summarized below. Upon IDEM approval of the CQA plan, the Respondent shall construct and implement the corrective measures in accordance with the approved design, schedule and the CQA plan. The Respondent shall also implement the elements of the approved Operation and Maintenance plan.

A. Responsibility and Authority

The responsibility and authority of all organizations (i.e., technical consultants, construction firms, etc.) and key personnel involved in the construction of the corrective measure shall be described fully in the CQA plan. The Respondent must identify a CQA officer and the necessary supporting inspection staff.

B. Construction Quality Assurance Personnel Qualifications

The qualifications of the CQA officer and supporting inspection personnel shall be presented in the CQA plan to demonstrate that they possess the training and experience necessary to fulfill their identified responsibilities.

C. Inspection Activities

The observations and tests that will be used to monitor the construction and/or installation of the components of the corrective measure(s) shall be summarized in the CQA plan. The plan shall include the scope and frequency of each type of inspection. Inspections shall verify compliance with all environmental requirements and include, but not be limited to air quality and emissions monitoring records, waste disposal records (e.g., RCRA transportation manifests), etc. The inspection should also ensure compliance with all health and safety procedures. In addition to oversight inspections, the Respondent shall conduct the following activities:

1. Preconstruction inspection and meeting

The Respondent shall conduct a preconstruction inspection and meeting to:
a. Review methods for documenting and reporting inspection data;
b. Review methods for distributing and storing documents and reports;
c. Review work area security and safety protocol;
d. Discuss any appropriate modifications of the construction quality assurance plan to ensure that site-specific considerations are addressed; and
e. Conduct a site walk-around to verify that the design criteria, plans, and specifications are understood and to review material and equipment storage locations.

The preconstruction inspection and meeting shall be documented by a designated person and minutes should be transmitted to all parties.

2. Prefinal inspection

Upon preliminary project completion, the Respondent shall notify IDEM for the purposes of conducting a prefinal inspection. The prefinal inspection will consist of a walk-through inspection of the entire project site. The inspection is to determine whether the project is complete and consistent with the contract documents and IDEM approved corrective measure. Any outstanding construction items discovered during the inspection will be identified and noted. Additionally, treatment equipment will be operationally tested by the Respondent. The Respondent will certify that the equipment has performed to meet the purpose and intent of the specifications. Retesting will be completed where deficiencies are revealed. The prefinal inspection report must outline the outstanding construction items, actions required to resolve items, completion date for these items, and date for final inspection.

3. Final inspection

Upon completion of any outstanding construction items, the Respondent shall notify IDEM for the purposes of conducting a final inspection. The final inspection will consist of a walk-through inspection of the project site. The prefinal inspection report will be used as a checklist with the final inspection focusing on the outstanding construction items identified in the prefinal inspection. Confirmation shall be made that outstanding items have been resolved.

D. Sampling Requirements

The sampling activities, sample size, sample locations, frequency of testing, acceptance and rejection criteria, and plans for correcting problems as addressed in the project specifications shall be presented in the CQA plan.

E. Documentation

Reporting requirements for CQA activities shall be described in detail in the CQA plan. This should include such items as daily summary reports, inspection data sheets, problem identification and corrective measures reports, design acceptance reports, and final documentation. Provisions for the final storage of all records also should be presented in the CQA plan.

F. Financial Assurance
The implementation of a corrective measure requires the establishment of financial assurance for the estimated costs of the corrective action. The demonstration of financial assurance shall be in accordance with 329 IAC 3.1-15-4 (40 CFR 264.143).

**TASK FIFTEEN: REPORTS**

Pursuant to the Order, the Respondent shall prepare plans, specifications, and reports as set forth in Task Twelve through Task Fifteen to document the design, construction, operation, maintenance, and monitoring of the corrective measure. The documentation shall include, but not be limited to the following.

A. **Progress**

The Respondent shall, at a minimum, provide IDEM with signed, monthly progress reports during the design and construction phases and semi-annual progress reports for operation and maintenance activities containing:

1. A description and estimate of the percentage of the CMI completed;
2. Summaries of all findings;
3. Summaries of all changes made in the CMI during the reporting period;
4. Summaries of all contacts with representatives of the local community, public interest groups or State government during the reporting period;
5. Summaries of all problems or potential problems encountered during the reporting period;
6. Actions being taken to rectify problems;
7. Changes in personnel during the reporting period;
8. Projected work for the next reporting period; and
9. Copies of daily reports, inspection reports, laboratory/monitoring data, etc.

B. **Draft**

1. The Respondent shall submit a draft Corrective Measure Implementation Program Plan as outlined in Task Twelve;
3. The Respondent shall submit a draft Construction Quality Assurance Program Plan and Documentation as outlined in Task Fourteen; and
4. At the "completion" of the construction of the project and/or pursuant to the Order, the Respondent shall submit a Draft Corrective Measure Implementation Report to IDEM. The Draft CMI Report shall document that the project is consistent with the design specifications, and that the corrective measure is performing adequately. The Report shall include, but not be limited to the following elements:
a. Synopsis of the corrective measure and certification of the design and construction;

b. Explanation of any modifications to the plans and why these were necessary for the project;

c. Listing of the criteria, established before the corrective measure was initiated, for judging the functioning of the corrective measure and also explaining any modification to these criteria;

d. Results of facility monitoring, indicating that the corrective measure will meet or exceed the performance criteria; and

e. Explanation of the operation and maintenance (including monitoring) to be undertaken at the facility.

This report should include all of the daily inspection summary reports, inspection summary reports, inspection data sheets, problem identification and corrective measure reports, block evaluation reports, photographic reporting data sheets, design engineers' acceptance reports, deviations from design and material specifications (with justifying documentation) and as-built drawings.

C. Final

10.5. AC Briefing Memo for NOV Template
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

INDIANAPOLIS

OFFICE MEMORANDUM

Date: [Date]

To: Bruce H Palin, Asst. Commissioner       Thru: Michael E. Sickels
       Office of Land Quality       Victor P. Windle
       Thomas E. Linson

From: [Project Manager] [Phone #]
       Hazardous Waste Permit Section
       Permits Branch
       Office of Land Quality

Subject: Briefing Memo for the issuance of a Notice of
       Violation
       [Respondent]
       [Facility Address]
       [County]
       [EPA ID No.]
       [Cause Number H-#]

This is a request to issue a Notice of Violation for a RCRA corrective action enforcement action
for the above facility under the RCRA Corrective Action Orders SOP.

[Intro paragraph covering the manufacturing/production processes and setting.]

[Part A/notification Information, Permits, Closure and History]

[Summary of RFA and documentation of release(s)]

[Special issues, or public concerns.]

Certain wastes and/or contaminants found at the facility are hazardous wastes or hazardous
constituents as defined by IC 13-7-1-12 and 329 IAC 3.1-6 (Section 1004(5) of RCRA, 42 U.S.C.
Section 6903(5)). These are also hazardous wastes or hazardous constituents within the meaning

Pursuant to IC 13-22-13-1,

a. If, on the basis of any information, the Commissioner determines that there is or has
   been a release of a hazardous waste or a constituent of a hazardous waste into the
environment from a facility authorized to operate under interim status under Section 3005(e) of the Solid Waste Disposal Act (42 U.S.C. 6925(e)) or under this chapter, the Commissioner may:

1) issue an order requiring corrective action or another response measure that the Commissioner considers necessary to protect human health or the environment; or

2) commence a civil action to compel corrective action as described in subdivision (1).

b. Under subsection (a), the Commissioner or a court may order the performance of corrective action beyond the boundaries of the facility from which the release occurs. However, corrective action may not be ordered by the Commissioner beyond the boundaries of the facility if the owner or operator of the facility demonstrates to the satisfaction of the Commissioner that, despite the best efforts of the owner or operator, the owner or operator is unable to obtain the necessary permission to undertake that corrective action.

c. An order issued by the Commissioner under this section:

1) may include a suspension or revocation of authorization for the facility to operate under interim status;

2) must state with reasonable specificity the nature of corrective action or other response measure required by the order; and

3) must specify a time for compliance.

Based on information gathered by IDEM, there is or has been a release of hazardous wastes and/or hazardous constituents into the environment from Respondent’s Facility, which violates IC 13-30-2-1(4). Issuance of this Notice of Violation will begin this administrative process.

Please sign the enclosed Notice of Violation and return the packet to Cindy Shively, Permits Branch Secretary. If you have any questions or comments, feel free to call or e-mail me.
10.6. Commissioner’s Briefing Memo
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

INDIANAPOLIS

OFFICE MEMORANDUM

Date: [Date]

To: Thomas W. Easterly, Commissioner Thru: Michael E. Sickels
    Office of the Commissioner Victor P. Windle
                                       Thomas E. Linson
                                       Bruce H Palin
                                       Steven Griffin

From: [Project Manager] [Phone #]
    Hazardous Waste Permit Section
    Permits Branch
    Office of Land Quality

Subject: Briefing Memo for the issuance of an [Order of the Commissioner, Referral to
    the Office of the Attorney General or Final Order of IDEM]
    [Respondent]
    [Facility Address]
    [County]
    [EPA ID No.]
    [Cause Number H-#]

This is a request for approval and signature to send [an/a] [Order of the Commissioner, Referral
    to the Office of the Attorney General or Final Order of IDEM] for the above facility under the
    RCRA Corrective Action Orders SOP.

[Include a brief intro paragraph covering the manufacturing/production processes and
    setting.]

[Summarize the Part A/notification information, permits issued, closure activities and
    history.]

[Summarize the RFA and the documentation of release(s)]

[Summarize the history of case including dates of settlement conferences and unresolved]
issues.]

[Note any special issues, or public concerns.]

Certain wastes and/or contaminants found at the facility are hazardous wastes or hazardous constituents as defined by IC 13-7-1-12 and 329 IAC 3.1-6 (Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5)). These are also hazardous wastes or hazardous constituents within the meaning of Section 3001 of RCRA, 42 U.S.C. Section 6921 and 40 CFR Part 261.

Pursuant to IC 13-22-13-1,

a. If, on the basis of any information, the Commissioner determines that there is or has been a release of a hazardous waste or a constituent of a hazardous waste into the environment from a facility authorized to operate under interim status under Section 3005(e) of the Solid Waste Disposal Act (42 U.S.C. 6925(e)) or under this chapter, the Commissioner may:

1) issue an order requiring corrective action or another response measure that the Commissioner considers necessary to protect human health or the environment; or

2) commence a civil action to compel corrective action as described in subdivision (1).

b. Under subsection (a), the Commissioner or a court may order the performance of corrective action beyond the boundaries of the facility from which the release occurs. However, corrective action may not be ordered by the Commissioner beyond the boundaries of the facility if the owner or operator of the facility demonstrates to the satisfaction of the Commissioner that, despite the best efforts of the owner or operator, the owner or operator is unable to obtain the necessary permission to undertake that corrective action.

c. An order issued by the Commissioner under this section:

1) may include a suspension or revocation of authorization for the facility to operate under interim status;

2) must state with reasonable specificity the nature of corrective action or other response measure required by the order; and

3) must specify a time for compliance.

Based on information gathered by IDEM, there is or has been a release of hazardous wastes and/or hazardous constituents into the environment from Respondent’s Facility, which violates IC 13-30-2-1(4).

On [NOV issuance date.], a Notice of Violation was issued, pursuant to IC 13-30-3-3, to [Facility Name]. The facility received this Notice of Violation on [Green Card Date].

[For Orders of the Commissioner use the following paragraph.]

The Notice of Violation contained an offer to enter into an Agreed Order. More than sixty (60) days have elapsed since the facility was offered the opportunity to enter into an Agreed Order and [Facility Name] has not entered into an Agreed Order resolving these violations or the actions required. Please sign the enclosed Order of the Commissioner and return the packet to Cindy Shively, Permits Branch Secretary. If you have any questions or comments, feel free to call or e-mail me.
[A new paragraph must be tailored to a memo for the issuance of a Final Order of IDEM or a referral to the Office of the Attorney General.]
10.7. Order of the Commissioner Template
This Notice and Order of the Commissioner of the Indiana Department of Environmental Management ("Order") is issued against [Company Name] (Respondent), for violation of the Indiana Environmental Management Act. This Order is issued pursuant to Indiana Code (IC) 13-30-3-4, IC 13-22-13-1(1), IC 13-30-3-10, and IC 13-30-3-11, and is based on a violation found during an investigation conducted by the Office of Land Quality on [Inspection Date], and subsequent record reviews. [If additional violations, other than the acts prohibited statutes, are included, add the following: During that investigation and subsequent record reviews, it was determined that the Respondent was in violation of 329 Indiana Administrative Code (IAC) 3.1 and IC 13-30, as specified below. Article 3.1 of Title 329 incorporates many of the federal hazardous waste management standards found in Title 40 of the Code of Federal Regulation (CFR), Parts 260 through 273, including those identified below in Section A.]

This Order includes specific findings made by the Indiana Department of Environmental Management (IDEM), and states with reasonable specificity, the nature of the corrective action or other response measures required. This Order also specifies a time schedule for compliance.

A. FINDINGS OF FACT AND VIOLATION

[You may cut and paste paragraphs from the proposed AO if appropriate.]
1. Respondent is a company doing business in the State of Indiana and is a person as defined in Indiana Administrative Code (IAC) 329 IAC 3.1-4-20, and Indiana Code (IC), 13-11-2-158.

2. Respondent is a [generator?], [transporter?], and an owner and operator of a hazardous waste management facility located at [Address, City, & County], Indiana (Facility). [Optional: Figure 1, which shows the location of the Facility is attached hereto and incorporated herein by reference as Exhibit A.] Respondent engaged in [List the specific hazardous waste management activities the Respondent engaged in. (May be different than what was in the Notification or Part A.)] of hazardous waste at the Facility subject to the interim status requirements of 329 IAC 3.1.

3. Respondent owned [and/or] operated the Facility as a hazardous waste management facility on [and/or] after November 19, 1980, the applicable date which renders facilities subject to said interim status requirements.

4. Pursuant to Section 3010 of the Resource Conservation and Recovery Act (RCRA), 42 United States Code (U.S.C.), 6930, Respondent notified the United States Environmental Protection Agency (EPA) of its hazardous waste activity, and was assigned the EPA I.D. No. [IND #]. In its notification dated [Date], Respondent identified itself as [Notification Activities (May not be the same as your allegations above.)].

5. In its Part A permit application dated [Date Part A was signed.], the Respondent identified itself as handling the following hazardous wastes at the Facility: [List all hazardous wastes and codes listed on the Part A application.].

6. A RCRA Facility Assessment (“RFA”) was conducted at the Facility on [Date(s)]. The RFA Report dated [Date], identified the following Solid Waste Management Units (SWMUs) and Areas of Concern (AOCs).[List all SWMUs and AOCs identified in the RFA Report.] [If the list is extensive, reference it as Exhibit __, attached hereto and incorporated herein by reference.].

[Optional Paragraphs]

X. A sampling Inspection was conducted on [Date(s)]. [Then add an additional paragraph(s) discussing the analytical results.]

7. [Separately list all relevant facts to support your case.]

8. [Include the following if violations of 329 IAC 3.1 are being alleged.] On [Date], representatives of the Office of Land Quality of IDEM conducted an inspection of the Respondent’s facility. Based on information obtained during the inspection and other information gathered by IDEM, Respondent was found to be in violation of the following statues and rules.

a. [List rule compliance violations.]
9. On [NOV issuance date.], a Notice of Violation was issued, pursuant to IC 13-30-3-3, to the Respondent for violation of [If above paragraph is used cite:329 IAC 3.1 and] IC 13 [Specific statutory violation(s) if applicable]. Respondent received this Notice of Violation on [Green Card Date].

10. The Notice of Violation contained an offer to enter into an Agreed Order containing the actions required to correct [the/these violation(s)] and comply with the Agreed Order. The Respondent and IDEM met on [Informal settlement conference date(s)], in an attempt to resolve the issues addressed in the Notice of Violation and to discuss settlement and terms for an Agreed Order.

11. More than sixty (60) days have elapsed since Respondent was offered the opportunity to enter into an Agreed Order.

12. The Respondent has not entered into an Agreed Order resolving these violations or the actions required.

B. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact [and Violation?] set out above, and after consideration of the administrative record, IDEM has made the following conclusions of law and determinations.

1. Respondent is a “person” as defined in paragraph A.1. above.

2. Respondent is or was the owner and/or operator of a facility subject to IC 13-22-13 and 329 IAC 3.1.

3. The Facility was authorized to operate under interim status under Section 3005(e) of the Solid Waste Disposal Act (42 U.S.C. 6925(e)) or under IC 13.

4. Certain wastes and constituents thereof found at the Facility are contaminants, hazardous wastes or hazardous constituents as defined by IC 13 and 329 IAC 3.1-6 (Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5)). These are also hazardous wastes or hazardous constituents within the meaning of Section 3001 of RCRA, 42 U.S.C. Section 6921 and Title 40 Code of Federal Regulations (40 C.F.R.).

5. Pursuant to IC 13-22-13-1,

   a. If, on the basis of any information, the Commissioner determines that there is or has been a release of a hazardous waste or a constituent of a hazardous waste into the environment from a facility authorized to operate under interim status under Section 3005(e) of the Solid Waste Disposal Act (42 U.S.C. 6925(e)) or under this chapter, the Commissioner may:

      1) issue an order requiring corrective action or another response measure that the Commissioner considers necessary to protect human health or the environment; or
2) commence a civil action to compel corrective action as described in subdivision (1).

b. Under subsection (a), the Commissioner or a court may order the performance of corrective action beyond the boundaries of the facility from which the release occurs. However, corrective action may not be ordered by the Commissioner beyond the boundaries of the facility if the owner or operator of the facility demonstrates to the satisfaction of the Commissioner that, despite the best efforts of the owner or operator, the owner or operator is unable to obtain the necessary permission to undertake that corrective action.

c. An order issued by the Commissioner under this section:

1) may include a suspension or revocation of authorization for the facility to operate under interim status;

2) must state with reasonable specificity the nature of corrective action or other response measure required by the order; and

3) must specify a time for compliance.

6. Based on information gathered by IDEM, there is or has been a release of hazardous wastes and/or hazardous constituents into the environment from Respondent’s Facility, which violates IC 13-30-2-1(4).

7. The actions required by this Order are necessary to protect human health or the environment and are authorized or required pursuant to IC 13-22, IC 13-30 and IC 4-21.5.

C. COMPLIANCE ORDER
[This section is for orders with compliance violations and civil penalties only.]

1. The Respondent shall immediately cease and desist violation of 329 IAC 3.1 and IC 13-30-[Specific statutory violation(s)].

2. [Open paragraph for the correction of any violations noted in the findings.]

   a. [For each violation, list each compliance order separately.]

3. The Respondent shall pay a civil penalty of [Spell out amount of civil penalty.] Dollars ($X) for violation of [List violation(s) for which a civil penalty is being assessed.]. This penalty shall be remitted to IDEM of Environmental Management within thirty (30) days of the Effective Date of this Order. Checks shall be made payable to the Environmental Management Special Fund, with the Case Number indicated on the checks and mailed to:

   Office of Land Quality
   Indiana Department of
   Environmental Management
   Mail Code 50-10 C
Indianapolis, Indiana 46204

Attention: Cashier

4. In the event that the civil penalty required by paragraph C.3. above is not paid within thirty (30) days of the effective date of this order, Respondent shall pay interest on the unpaid balance at the rate established by IC 24-4.6-1-101. The interest shall continue to accrue until the civil penalty is paid in full.

5. This Order shall apply to and be binding upon the Respondent, its successors and assigns. No change in ownership, corporate, or partnership status of the Respondent shall in any way alter its status or responsibilities under this Order.

D. CORRECTIVE ACTION ORDER

Pursuant to IC 13-30, Respondent is hereby ordered to perform the following acts in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with, at a minimum, the Corrective Action Scope of Work attached hereto and incorporated herein by reference as Exhibit ___. Relevant guidance may include, but is not limited to; IDEM’s “Risk Integrated System of Closure” (RISC), and “Test Methods for Evaluating Solid Waste” (SW-846, 3rd edition, or most recent edition, and the most recent updates.).

1. INTERIM MEASURES (IM)

a. In the event the Respondent identifies a current or potential threat to human health or the environment, the Respondent shall immediately notify IDEM orally and in writing within seven (7) days, summarizing the immediacy and magnitude of the potential threat to human health or the environment. Within fifteen (15) days of notifying IDEM, the Respondent shall submit to IDEM an IM Workplan for approval that identifies Interim Measures which mitigate this threat and are consistent with and integrated into any long term solution at the facility.

b. The IM Workplan shall ensure that the Interim Measures are designed to mitigate current or potential threat(s) to human health or the environment and are consistent with and integrated into any long term solution at the facility. The IM Workplan shall document the procedures to be used by the Respondent for the implementation of Interim Measures and shall include, but not be limited to: the objectives of the Interim Measures; design, construction, operation, monitoring and maintenance requirements; and detailed schedules.

c. In accordance with the Corrective Action Scope of Work herein, the IM Workplan shall include: Interim Measure Objectives; a Health and Safety Plan; a Community Relations Plan; and Reporting Requirements.

d. In the event the Respondent identifies that any water supply well has been contaminated, the following Interim Measures shall be initiated:

1) Within five (5) days, the Respondent shall provide an alternate water
supply to the affected parties.

2) Within seven (7) days the Respondent shall submit a report to IDEM detailing the activity pursued and a plan for further Interim Measure activity.

3) Within seven (7) days following IDEM’s transmission of comments, the Respondent shall revise the plan in accordance with IDEM’s comments.

4) Within seven (7) days following IDEM’s approval or modification of the plan, the Respondent shall implement the revised plan in accordance with the schedule therein.

2. RCRA FACILITY INVESTIGATION (RFI)

a. Within thirty (30) days of the effective date of this Order, Respondent shall submit to IDEM an RFI Workplan. The RFI Workplan is subject to approval, disapproval or modification and approval by IDEM and shall conform to the RFI Tasks contained in the Corrective Action Scope of Work herein.

b. The RFI Workplan shall be designed to define the presence, magnitude, extent, direction, and rate of movement of any hazardous wastes or hazardous constituents within and beyond the facility boundary, and be specific to the release and migration of contaminants from the following units. [List all SWMUs and AOCs for which an RFI will be required, and the required activity(ies) for each unit. For larger facilities, you may use a Table as Exhibit __, attached hereto and incorporated herein by reference.] The RFI Workplan shall document the procedures the Respondent shall use to conduct those investigations necessary to: (1) characterize the potential pathways of contaminant migration; (2) characterize the source(s) of contamination; (3) define the degree and extent of contamination; (4) identify actual or potential receptors; and (5) support the development of alternatives from which a corrective measure will be selected by IDEM. A specific schedule for implementation of all activities shall be included in the RFI Workplan, including a date for submission of the RFI Draft Report.

c. In accordance with the provisions of the RFI Tasks in the Corrective Action Scope of Work herein, the RFI Workplan shall include: (1) a Project Management Plan; (2) a Data Collection Quality Assurance Plan; (3) a Data Management Plan; (4) a Health and Safety Plan; and (5) a Public Involvement Plan

d. Within thirty (30) days of Respondent’s receipt of the notice of approval or modification and approval of the RFI Workplan, Respondent shall implement the plan as approved or modified and approved, and shall comply with the time schedules contained therein.

e. Within thirty (30) days of discovery of any new SWMU or AOC identified
at the facility, Respondent shall notify IDEM of the following information:

1) The location of the unit or area on the site topographic map;
2) Designation or description of the type of unit or area of concern;
3) General dimensions and structural description;
4) When the unit was operated or the area discovered; and
5) Specifications of all waste(s) that have been managed at the unit, or the specifics (e.g. products or waste(s) involved, spill date, volume, etc.) of the area of concern.

Respondent must submit to IDEM, within thirty (30) days of discovery, all available information pertaining to any release of hazardous waste(s) or hazardous constituent(s) from any new or existing SWMU, or AOC.

IDEM will review the information provided under this condition and may as necessary require further information, investigations and/or corrective measures. Respondent shall submit a written RFI Workplan to IDEM within thirty (30) days of written notification by IDEM that further investigation is necessary.

3. CORRECTIVE MEASURES STUDY (CMS) AND CORRECTIVE MEASURES IMPLEMENTATION (CMI) PROGRAM PLAN

a. Upon completion of the RCRA Facility Investigation, and/or within thirty (30) days of Respondent’s receipt of notification by IDEM that a CMS is required, the Respondent shall submit a Corrective Measure Study Workplan which is subject to approval, disapproved or modification and approval, and in accordance with the CMS Tasks in the Corrective Action Scope of Work herein. A specific schedule for implementation of all activities shall be included in the CMS Workplan, including a date for submission of the CMS Draft Report.

b. Within thirty (30) days of Respondent’s receipt of the notice of approval or modification and approval of the CMS Workplan, Respondent shall implement the plan as approved or modified and approved, and shall comply with the time schedules contained therein.

c. Within thirty (30) days of Respondent’s receipt of notification of IDEM’s Response to Comments and Final Decision on the Corrective Measure, Respondent shall submit a Corrective Measure Implementation Program Plan (CMI Program Plan). The CMI Program Plan is subject to approval, disapproval or modification and approval by IDEM and shall conform to the CMI program Tasks in the Corrective Action Scope of Work herein. A specific schedule for all activities shall be included in the CMI Program Plan, including a date for the submission of the Draft CMI Report.
d. The CMI Program Plan shall be designed to facilitate the design, construction, operation, maintenance and monitoring of the corrective measure at the facility. In accordance with the Corrective Action Scope of Work herein, the CMI Program Plan shall also include: (1) a Program Management Plan; (2) a Community Relations Plan; (3) Design plans and Specifications; (4) an Operation and Maintenance Plan; (5) a Cost Estimate with a Financial Assurance Instrument in that amount which meets the requirement of 329 IAC 3.1-15-4 (40 CFR 264.143); (6) a Project Schedule; (7) a Health and Safety Plan; and (8) a Construction Quality Assurance Plan.

e. Within thirty (30) days of Respondent’s receipt of notice of approval or modification and approval of the CMI Program Plan, Respondent shall implement the plan as approved or modified and approved, and shall comply with the time schedules contained therein.

4. SUBMISSIONS AGENCY APPROVAL AND ADDITIONAL WORK

After three (3) submissions of any workplan(s), program plan(s) or report(s) by the Respondent, IDEM may modify and approve any such plan(s) or report(s).

Within thirty (30) days of notice of approval or modification and approval by IDEM of any workplan(s) or program plan(s), Respondent shall commence work and implement the tasks required by the workplan(s) or program plan(s) submitted as modified and approved and in accordance with the Corrective Action Scope of Work contained herein.

Beginning with the month following the effective date of the Order, Respondent shall provide IDEM with progress reports for each month on the tenth day of the following month. The progress reports shall conform to requirements in the Corrective Action Scope of Work herein.

Respondent shall provide draft and final Interim Measures, RCRA Facility Investigation, Corrective Measure Study and Corrective Measures Implementation reports to IDEM as required and in accordance with the schedules contained in this Order and its Exhibits herein.

a. IDEM will review all draft or final reports, and notify Respondent in writing of IDEM’s approval, disapproval or modification and approval of the report or any part thereof. In the event of any disapproval, IDEM shall specify in writing the deficiencies and reasons for such disapproval. Within thirty (30) days of the receipt of IDEM’s disapproval of any report, Respondent shall amend and submit a revised report as directed. All IDEM approved reports shall be deemed incorporated into and part of this Order by reference.

b. [Number of copies required?] copies of all documents, including Workplans, Program Plans, preliminary and final reports, progress reports, and other correspondence to be submitted pursuant to this Order shall be hand
delivered or sent by certified mall, return receipt requested, to the Project Manager designated pursuant to paragraphs F.10. and F.11. [Make sure these locations are still correct after editing.] of this Order below.

c. All work performed pursuant to this Order shall be under the direction and supervision of a certified Professional Engineer or certified Professional Geologist with expertise in hazardous waste site investigation and remediation. On or before the effective date of this Order, Respondent shall notify IDEM in writing of the name, title, and qualifications of the engineer or geologist, and of any contractors or subcontractors and their personnel to be used in carrying out the terms of this Order.

d. IDEM may determine that certain tasks, including investigatory work or engineering evaluation, are necessary in addition to the tasks and deliverables included in this Order when new findings indicate that such additional work is necessary. IDEM shall request in writing that Respondent perform the additional work in this situation and shall specify the basis and reasons for IDEM’s determination that the additional work is necessary. Within seven (7) days after the receipt of such request, Respondent shall have the opportunity to meet with IDEM to discuss the additional work IDEM has requested. Unless the Respondent can show that the work is unnecessary and does not protect human health or the environment, Respondent shall perform the additional work IDEM has requested according to an IDEM approved workplan. All additional work performed by Respondent under this paragraph shall be performed in a manner consistent with this Order and exhibits.

5. QUALITY ASSURANCE

Throughout all sample collection and analysis activities, Respondent shall use IDEM approved quality assurance, quality control, and chain-of-custody procedures. In addition, Respondent shall:

a. Ensure that laboratories used by Respondent for sample analyses perform such analyses according to the EPA methods included in “Test Methods for Evaluating Solid Waste, (SW-846, 3rd edition or most recent edition, and the most recent updates.) or other methods deemed satisfactory by IDEM. If methods other than IDEM approved methods are to be used, Respondent shall submit all protocols to be used for analyses to IDEM for approval within sixty (60) days prior to the commencement of analyses; and

b. Ensure that laboratories used by Respondent for sample analyses participate in a quality assurance/quality control program equivalent to that which is followed by the Office of Land Quality (OLQ) of IDEM. As part of such a program, and upon request by IDEM, such laboratories shall perform analyses of samples provided by IDEM to demonstrate the quality of the analytical data.

6. PUBLIC COMMENT AND PARTICIPATION
Upon approval by IDEM of a Corrective Measures Study Final Report, IDEM shall make the RCRA Facility Investigation Final Report, the Corrective Measures Study Final Report, a summary of IDEM’s proposed corrective measure and IDEM’s justification for proposing selection of that corrective measure available to the public for review and comment for at least forty-five (45) days.

Following the public review and comment period, IDEM shall notify Respondent of the corrective measure selected by IDEM in the Response to Comments and Final Decision. If the corrective measure recommended in the Corrective Measure Study Final Report is not the corrective measure selected by IDEM after consideration of public comments, IDEM shall inform Respondent in writing of the reasons for such decision, and the Respondent shall modify the RFI or CMS Final Report based upon public comment if directed to do so by IDEM.

All documentation contained in the public file supporting the selection of the corrective measure will be available for public review on IDEM’s web-based Virtual File Cabinet at http://12.186.81.89/Pages/Public/Search.aspx, and the [County?] Health Department from [Opens?] till [Closes?], Monday through Friday OR [Public library and hours?]. [Choose whichever is most convenient.]

7. ON-SITE AND OFF-SITE ACCESS

Upon the effective date of this Order, IDEM representatives are authorized to enter and freely move about all property at the Facility during the effective dates of this Order for the purposes of, inter alia: interviewing facility personnel and contractors; inspecting records, operating logs, and contracts related to the facility; reviewing the progress of the Respondent in carrying out the terms of this Order; conducting such tests, sampling or monitoring as IDEM or its Project Manager deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to IDEM by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Order.

To the extent that work required by this Order must be done on property not owned or controlled by Respondent, Respondent shall use its best efforts to obtain site access agreements from the present owner(s) of such property within thirty (30) days of approval of any Workplan or required activity for which site access is required. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owners of such property requesting access agreements to permit Respondent and IDEM and its authorized representatives to access such property. Any such access agreement shall be incorporated by reference into this Order. In the event that agreements for access are not obtained within the effective date of this Order, Respondent shall notify IDEM in writing within seven (7) days thereafter regarding both the efforts undertaken to obtain access and its failure to obtain such agreements.

Nothing in this section limits or otherwise affects IDEM’s right of access and entry pursuant
8. **ON-SITE SAMPLING AND DATA DOCUMENT AVAILABILITY**

a. The Respondent shall submit to IDEM the results of all sampling and/or tests or other data generated by, or on behalf of the Respondent, in accordance with the requirements of this Order and its Exhibits. Raw data shall be made available to IDEM upon request.

b. Respondent shall notify IDEM at least fourteen (14) days before engaging in any field activities, such as well drilling, installation of equipment, or sampling. At the request of IDEM, Respondent shall provide IDEM or its authorized representative split samples of all samples collected by Respondent pursuant to this Order. Similarly, at the request of Respondent, IDEM shall allow Respondent or its authorized representatives to take split or duplicate samples of all samples collected by IDEM under this Order.

c. Respondent may assert a business confidentiality claim covering all or part of any information submitted to IDEM pursuant to this Order. Any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made, and the submission thereof must meet all applicable statutory requirements. Information determined to be confidential by IDEM shall be disclosed only to the extent permitted by IC 13-14-11 and IC 5-14-3-4. If no such confidentiality claim accompanies the information when it is submitted to IDEM, or it is improperly submitted, it may be made available to the public by IDEM without further notice to the Respondent. Respondent agrees not to assert any confidentiality claim with regard to any physical or analytical data.

9. **RECORD PRESERVATION**

Respondent shall preserve, during the pendency of this Order and for a minimum of six (6) years after its termination, all data, (including raw data), records, and documents in its possession or in the possession of its divisions, officers, directors, employees, agents, contractors, successors and assigns which relate in any way to this Order or to hazardous waste management and/or disposal at the facility. Respondent shall notify IDEM thirty (30) days prior to the destruction of any such records, and shall provide IDEM with the opportunity to take possession of any such records.

10. **PROJECT MANAGERS**

a. On or before the effective date of this Order, IDEM and Respondent shall each designate a Project Manager. Respondent shall notify IDEM in writing of the Project Manager it has selected. Each Project Manager will be IDEM’s designated representative at the facility. All communications between Respondent and IDEM, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the Project Managers.

b. Respondent shall provide at least thirty (30) days written notice prior to changing
the Project Manager.

c. If IDEM determines that activities in compliance or noncompliance with the Order, have caused or may cause a release of hazardous waste, hazardous constituent, or a pollutant or contaminant, or a threat to the public health or to the environment, IDEM may order Respondent to stop further implementation of this Order for such period of time as may be needed to abate any such release or threat and/or to undertake any action which IDEM determines is necessary to abate such release or threat.

d. The absence of IDEM’s Project Manager from the facility shall not be cause for the stoppage of work.

11. NOTIFICATION

Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices or other submissions relating to or required under this Order shall be in writing and shall be hand delivered or sent via certified mail to the Project Managers.

[# of copies] copies of all Documents to be submitted to IDEM should be sent to:

[Project Manager], Project Manager
100 North Senate Avenue
Mail Code 66-20
Indianapolis, IN 46204

[Insert Name] [Address]

12. DELAY IN PERFORMANCE/STIPULATED PENALTIES

a. Unless there has been a written modification of a compliance date by IDEM, in the event Respondent fails to meet any requirement set forth in the Order, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of an activity under this Order or a plan approved under this Order or any matter under this Order in an acceptable manner and within the specified time schedules in and approved under this Order.

1) For failure to commence work as prescribed in this Order: $1000 per day for one to seven days of delay, and $2500 per day for each day of delay, thereafter;

2) For failure to submit any preliminary and final reports, at the time required pursuant to this Order: $1000 per day for the first one to seven days of delay, and $2500 per day for each day of delay thereafter;

3) For failure to submit progress reports, at the time required pursuant to this Order: $500 per day for the first one to seven days of delay, and
$1000 per day for each day of delay thereafter;

4) For failure to submit other deliverables required by this Order: $500 for the first one to seven days, and $1000 for each seven-day delay, or part thereof, thereafter; and

5) For other failure to comply with provisions of this Order after notice by IDEM of noncompliance: $1000 for the first one to seven days, and $10,000 for each seven-day delay, or part thereof, thereafter.

b. All penalties shall begin to accrue on the date that complete performance is due or a violation occurs, and shall continue to accrue through the final day or correction of noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

c. All penalties owed to IDEM under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest shall begin to accrue on the unpaid balance at the end of the thirty-day period. Respondent shall pay interest on the unpaid balance at the rate established by IC 24-4.6-1-101.

d. All penalties shall be payable by certified or cashier’s check to the Indiana Environmental Special Fund and shall be remitted to:

Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Avenue, Mail Code 50-10 C
Indianapolis, Indiana 46204

Attention: Cashier

All payments shall reference the name of the facility, the Respondent’s name and address, and IDEM cause number of this action. Copies of the transmittal of payment shall be sent simultaneously to the Project Manager.

e. The stipulated penalties set forth in this Section do not preclude IDEM from pursuing any other remedies or sanctions which may be available to IDEM by reason of Respondent’s failure to comply with any of the requirements of this Order, any applicable law, or regulatory requirements under 329 IAC 3.1.

13. **RESERVATION OF RIGHTS**

a. IDEM expressly reserves all rights and defenses that it may have, including the right both to disapprove work performed by Respondent pursuant to this Order and to request that Respondent perform tasks in addition to those stated in the Work Plans, Scopes of Work, and any other plan or activity required by this Order.
b. IDEM hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent’s failure to comply with any of the requirements of the Order, including without limitation the assessment of penalties under IC 13-30-4. This Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which IDEM has, or any other statutory, regulatory or common law enforcement authority of the State of Indiana.

c. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with IC 13, 329 IAC 3.1 or any other applicable local, state or federal laws and regulations, even if those laws or regulations are more stringent than the requirements or provisions of this Order.

d. The entry of this Order and Respondent’s compliance shall not limit or otherwise preclude the EPA from taking additional enforcement action pursuant to Section 3008(h) (42 U.S.C. 6928(h)) RCRA should the EPA determine that such actions are warranted.

e. This Order is not intended to be nor shall it be construed as a permit. This Order does not relieve Respondent of any obligation to obtain and comply with any local, state or federal permits.

f. IDEM reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and response/corrective actions as it deems necessary to protect public health and the environment. The EPA and the State of Indiana may exercise its authority under CERCLA or state authority, to undertake removal actions or remedial actions at any time. In any event, IDEM reserves its right to seek reimbursement from Respondent for such additional costs incurred by State of Indiana. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for the costs of any response actions taken by IDEM.

g. Nothing in this Order shall prevent IDEM, or anyone acting on its behalf, from communicating with the EPA or any other agency or entity about any matters relating to this Order. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the EPA or any other agency or entity.

14. OTHER CLAIMS

Nothing in this 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, or corporation 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 constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility.

15. **OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations, even if those laws or regulations are more stringent than the requirements or provisions of this Order. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

16. **INDEMNIFICATION OF THE STATE OF INDIANA**

To the fullest extent permitted by law, the Respondent shall indemnify and hold harmless the State of Indiana, its agencies, departments, agents, and employees, from any and all liabilities, obligations or claims, whether absolute, accrued, contingent or otherwise and whether a contractual, statutory, tax or any other type of liability, obligation or claim, (including, without limitation, all reasonable costs and expenses, including reasonable attorneys’ fees, interest and penalties), caused by negligent acts or omissions of the Respondent, its contractor, subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

17. **SUBSEQUENT MODIFICATION**

a. This Order may only be amended by IDEM.

b. Any reports, plans, specifications, schedules, and attachments required by this Order are, upon written approval by IDEM, incorporated into this Order by reference. Any noncompliance with such IDEM approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Order and shall subject Respondent to the stipulated penalty provisions included in this Order.

c. No informal advice, guidance suggestions, or comments by IDEM regarding reports, plans, specifications, schedules and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Order.

18. **SEVERABILITY**

If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

19. **TERMINATION AND SATISFACTION**

The provisions of this Order shall be deemed satisfied upon Respondent’s receipt of written notice from IDEM that Respondent has demonstrated, to the satisfaction of IDEM, that the
terms of this Order, including any additional tasks determined by IDEM to be required pursuant to this Order, or any continuing obligation or promises (e.g., Record Retention, Reservation of Rights) have been satisfactorily completed.

E. EFFECTIVE DATE OF ORDER

Pursuant to IC 13-30-3-5, this Order takes effect twenty (20) days following receipt unless you request review of this Order, before the twentieth (20th) day after receipt, by filing a written request for review with the Office of Environmental Adjudication, and serving a copy of the request for review upon the Commissioner of the Indiana Department of Environmental Management. You may request that the Office of Environmental Adjudication conduct a hearing to review this Order, under IC 4-21.5, in its entirety, or you may limit your request for review to specific findings of fact and/or orders contained in this Order. Requests for review must be submitted to the Office of Environmental Adjudication and the Commissioner of the Indiana Department of Environmental Management at the following addresses:

Chief Environmental Law Judge
Office of Environmental Adjudication
Indiana Government Center North
100 N. Senate Avenue, Room N1049
Indianapolis, Indiana 46206

Commissioner
IDEM
Indiana Government Center North
100 N. Senate, Mail Code 50-01
Indianapolis, Indiana 46206

Failure to properly submit a request for review, before the twentieth day following receipt of this Order of the Commissioner, waives your right to administrative review of this Order and your right to judicial review of the Order. The petition for administrative review must contain the following information:

1. Name, address, and telephone number of each person filing the petition.

2. Identification of the interest of each petitioner in the subject of the petition.

3. Statement of facts demonstrating that the petitioner is:
   a. a person to whom the order is directed;
   b. aggrieved or adversely affected by the order; or
   c. entitled to review under any law.

4. Statement with particularity the legal issues proposed for consideration in the proceedings.

The petition for administrative review should also contain the following information:

1. Identification of any persons represented by the person making the request.

2. Statement identifying the person against whom administrative review is sought.
3. A copy of the notice of the Commissioner’s action issued by the Indiana Department of Environmental Management which is the basis of the petition for administrative review.

4. The specific findings of fact and/or order to be reviewed, and the legal basis for your challenge to this Order.

5. Statement indicating the identification of petitioner’s attorney or other representative.

If you have procedural or scheduling questions regarding your request for review you may contact the Office of Environmental Adjudication at (317) 232-8591.

Dated at Indianapolis, Indiana, this _____ day of ________________, 2008.

____________________________
Thomas W. Easterly, Commissioner
Indiana Department of Environmental Management

cc: [Assigned DAG], Deputy Attorney General
    [County of Jurisdiction] County Health Department
    [Project Manager], Office of Land Quality
    [Other copies?]
10.8. Notice of Approval Template
VIA CERTIFIED MAIL

Name
Street Address
City, State, Zip

Re: Notice of Approval of Agreed Order
Indiana Department of
Environmental Management versus
Respondent
Cause No. Cause Number

Dear Mr. Last Name:

This is to inform you that the Commissioner of the Indiana Department of Environmental Management (IDEM), has approved the Agreed Order negotiated between you or your representatives and members of our staff. A copy of the order executed by the Commissioner on behalf of IDEM, is enclosed.

You are no doubt familiar with the terms of the order necessary to ensure future compliance. The timeframes for compliance are effective upon your receipt of this correspondence. Please direct any questions you may have, or any submittals required under this order to PM's Name, of the Remediation Services Branch at E-mail Address, this address, or contact them by phone at (317) Phone Number.

Sincerely,

Bruce H Palin,
Assistant Commissioner
Office of Land Quality

Enclosure

cc: County Health Department (with enclosure)
Respondents Attorney (with enclosure)
Deputy Attorney General (with enclosure)
Mr. George Hamper, U.S. EPA (with enclosure)
Mr. Michael E. Sickels (with original enclosure)
10.9. Notice of Deficiency Template
[Company Contact’s Name]
[Company Name]
[Address], Indiana [Zip Code]

[Mr./Ms.]:

Re: Notice of Deficiency (H-[#])
[Facility Name]
EPA ID No. IND [#]

This will acknowledge the receipt of information or documents from [Company Name] on [Date]. The [Type of information (e.g. RFI Workplan)] was submitted as directed by terms of the Order contained in the [Agreed Order, Final Order or Consent Decree] in Cause Number [#] effective on [Date].

[Open paragraph to list the deficiencies, or reference an enclosed Comment Sheet.]

If you have any questions regarding this matter, please call (800) 451-6027, press 0, and ask for [Project Manager] at extension [#], or call 317/ [#].

Sincerely,

Victor P. Windle, Chief
Hazardous Waste Permit Section
Permits Branch
Office of Land Quality

Enclosures

cc: [Name] County Health Department
[Facility Contact]
[Other copies?]
10.10. Attorney General Memo Template
MEMORANDUM

[Date]

To: Honorable Steve Carter, Attorney General of Indiana
    Thru: Thomas W. Easterly, Commissioner
          Acting Assistant Commissioner
          Office of Legal Counsel

From: Bruce H Palin, Assistant Commissioner
      Office of Land Quality

Subject: Request for Representation and Civil Filing for Noncompliance with a Final Order

[Facility Name] has violated a Final Order of the Indiana Department of Environmental Management. In accordance with statutory authority under IC 4-21.5-6, the Hazardous Waste Permit Section of the Office of Land Quality is requesting that this matter be filed in civil court.

It is hereby requested that the Office of the Attorney General represent the staff of the Office of Land Quality in this matter. Please have the Deputy Attorney General assigned to this matter contact [Project Manager] to schedule a meeting to discuss this case.

cc: Steven Griffin, Deputy Attorney General
    Office of the Attorney General, (With attachments)

    Vic Windle, Chief
    Hazardous Waste Permit Section (Without attachments)

    [Project Manager], (Without attachments)
10.11. Technical Evaluation Request
Training □ Special Project □ Field Work

Appropriateness/Cost Evaluation: □ No □ Yes

Comments

Revised 04/13/06 This form and instructions succeed all previous ones. Comments continued on back

S:\IGCN\OLQ\TechnicalReviews\SSB Project Tracking\Technical Evaluation Request Form 2006.xls
10.12. OLQ Sample Request
# OLQ Sample Request

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<tr>
<th></th>
<th>1. Date</th>
<th>Sample Numbers</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th></th>
<th>2. Site Name</th>
<th>3. Site ID Number</th>
<th>4. Grant Code</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</table>

<table>
<thead>
<tr>
<th></th>
<th>5. Street Address</th>
<th>6. City</th>
<th>7. County</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>8. Person Requesting Samples</th>
<th>Branch/Section</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>9. Sampler(s)</th>
<th>Branch/Section</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>10. Site Manager / Facility Contact</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>11. Reason for Sampling: Briefly describe the problem <strong>sampling and analysis</strong> should resolve.</th>
<th>Electronic Copy</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>12. DQO</th>
<th>13. Protocol:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>14. Matrix Type</th>
<th>15. Dedicated Equipment?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**16. This section for Air Analysis only:**

<table>
<thead>
<tr>
<th></th>
<th>16 A. Six (6) Liter Summa Certification (Includes vacuum and pressure gauge):</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>16 B. Flow Controller:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>17. Analysis:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>18. Samples:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Duplicates:</td>
</tr>
<tr>
<td></td>
<td>Trip Blanks:</td>
</tr>
<tr>
<td></td>
<td>Equipment Blanks:</td>
</tr>
<tr>
<td></td>
<td>Total:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>19. Projected Sample Date(s)</th>
<th>20. Projected Date(s) to Lab</th>
<th>21. Turnaround Time</th>
<th>22. Cooler Arrival</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Lab Assigned</th>
<th>Lab Contact</th>
<th>Lab Contact Date</th>
<th>Projected Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Actual Date to Lab</th>
<th>Data Package Due</th>
<th>Preliminary Results Received</th>
<th>Package Received</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chemistry Gatekeeper</td>
<td>Sampling Setup Chemist</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------------</td>
<td>------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section Chief</td>
<td>Branch Chief</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistant Commissioner</td>
<td>Assistant Commissioner of OMBA</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

$0-$10,000 - Gatekeeper & Section Chief
$10,001-$20,000 - Add Branch Chief
$20,001-$40,000 - Add Assistant Commissioner of OLQ
Over $40,000 - Add Assistant Commissioner of OMBA

02/07 Revision
10.13. Hazardous Waste Referral
Indiana Department of Environmental Management

HAZARDOUS WASTE REFERRAL

(INCOMPLETE OR INACCURATE INFORMATION MAY DELAY REFERRAL PROCESSING)

DATE: __________________________

TO: ___________________________
   Enforcement Section Chief

THRU: __________________________

FROM: __________________________

Name: __________________________
Telephone: ______________________

Section: __________________________
Office: __________________________

I. VIOLATION LOCATION

A. Violator/Respondent Legal Name (including d/b/a):

B. Violation Street Address:
   Phone: ( )

C. Address (eg: plant, site, name, etc.):
   Fax: ( )

D. City: __________________________
   State: __________________________
   Zip: __________________________
   County: __________________________

E. Facility ID / Permit #:
   Exp. Date: __________________________

F. Facility Contact Person:
   Phone: ( )

G. Business Sector (Enforcement Staff):

H. Former Name / Alias:

II. RESPONDENT “MAIL TO” INFORMATION

A. Contact Person:
   Phone: ( )

B. Contact Title:
   Fax: ( )

C. Mailing Address:

D. Mailing Address:
### III. CASE INFORMATION

<table>
<thead>
<tr>
<th>A. Date of Inspection(s) or Review(s) Prompting This Referral:</th>
<th>Planned Follow-up Date(s):</th>
</tr>
</thead>
<tbody>
<tr>
<td>B. Referral is the Result of a Multi-Media Inspection:</td>
<td>Yes</td>
</tr>
<tr>
<td>C. Evaluation Type:</td>
<td></td>
</tr>
<tr>
<td>D. Violation Classification (If applicable)</td>
<td>R.E.R.</td>
</tr>
<tr>
<td>E. Violation Description:</td>
<td></td>
</tr>
<tr>
<td>F. Recommended Action:</td>
<td></td>
</tr>
</tbody>
</table>

(Note: The form includes fields for city, state, zip, county, registered agent, and case manager information. The form also includes options for referral acceptance, case number, phone number, and action details.)
G. Attached Documentation:

- Contingency Plan
- Closure Costs
- MSDS / Analytical
- Training Records
- Manifests
- LDR Notification
- Operating Records
- WAP
- Other (describe)
- Tank Assessments
- Pictures

IV. DATA ENTRY

(To Be Completed By Enforcement Staff)

- Case Manager has entered data into M.E.T.S.?
  - Yes
  - No

- Clerical support has entered data into M.E.T.S.?
  - Yes
  - No

Revised: February 2009
10.14. Notice of Resolution Template
[Facility Contact Name]  
[Facility Name]  
[Facility Address]  
[City], Indiana  [Zip Code]  

Dear [Mr./Ms.]:

Re: Notice of Resolution of the  
Agreed Order on Cause No. H-[#]  
[Facility Name]  
[Facility Address]  
EPA ID No. IND [#]

Based upon documents available to the Office of Land Quality, and the results of the Corrective Action Completion Determination conducted by the Hazardous Waste Permit Section, it has been determined that [Company Name] has achieved compliance with the terms of the [Agreed Order / Final Order] on Cause No. H-[#], issued to you on [Date].

Thank you for your assistance. If you have any questions regarding this matter, please call (800) 451-6027, press 0, and ask for [Project Manager] at extension 2-[#], or call 317/232-[#].

Sincerely,

Victor P. Windle, Chief  
Hazardous Waste Permit Section  
Permits Branch  
Office of Land Quality

Enclosures

cc:  [Facility Contact]  
[Other copies?]
10.15. Commissioner’s Routing Sheet
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

ROUTING SHEET FOR COMMISSIONER'S SIGNATURE

TO: Thomas W. Easterly
Commissioner

THRU: Michael E. Sickels
Victor P. Windle
Thomas E. Linson
Bruce H Palin
Steven Griffin

FROM: [Project Manager] [Phone #]
Hazardous Waste Permit Section
Permits Branch
Office of Land Quality

SUBJECT: RCRA Corrective Action Enforcement Orders SOP

CAUSE NO : [Fill in cause number.]

AG FILE NO. : _______________________________

[Check the documents enclosed.]

_____ Commissioner's Order
_____ Briefing Memo
_____ Referral to the Office of the Attorney General

Facility Name: [Name]
Facility Location: [Address] [County]
U.S. EPA ID No.: [IND #]