

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
Mallard Lake Landfill)
26 W 580 Schick Road)
Hanover Park, Illinois 60103)
)
)
)
BFI Waste Systems of North)
America, Inc. and Forest Preserve)
District of DuPage County)
)
RESPONDENTS)
)
Proceeding under Section 7003 of)
the Resource Conservation and)
Recovery Act, 42 U.S.C. Section)
6900, et seq., as amended.)

EPA DOCKET NO.
RCRA 7003-5-08-001

RCRA § 7003 ADMINISTRATIVE ORDER ON CONSENT

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I. INTRODUCTION

1. This Administrative Order on Consent (AOC) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Respondents BFI Waste Systems of North America, Inc. (BFI) and the Forest Preserve District of DuPage County (the District). This AOC provides that Respondents shall monitor, investigate and control methane at and near the Mallard Lake Landfill (the Landfill), in Hanover Park, DuPage County, Illinois, as described in Section VIII (Work to Be Performed); and perform any Additional Work that may be required by Section XXVI (Additional Work) of this AOC. In entering into this AOC, the mutual objectives of EPA and Respondent are to identify, investigate, remedy, and/or prevent any potential endangerment to human health and/or the environment from activities involving the release of methane or hazardous substances from the Landfill, and to insure that the Work ordered by EPA be designed and implemented to protect human health and/or the environment. These mutual objectives are described in Section VIII (Work to Be Performed). Respondents shall finance and perform the Work in accordance with this AOC, plans, standards, specifications and schedules set forth in this AOC or developed by Respondents and approved by EPA pursuant to this AOC.
2. EPA has determined that Respondents have contributed to the past disposal of solid waste that may present an imminent and substantial endangerment to health or the environment.
3. EPA has notified the State of Illinois of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).
4. Respondents' participation in this AOC shall not constitute or be construed as an admission of liability or any fact, conclusion or determination contained in this AOC. In particular, Respondents specifically deny that there exists or may exist any imminent and substantial endangerment to human health or the environment.
5. EPA and Respondents acknowledge that this AOC has been negotiated by the parties in good faith and that this AOC is fair, reasonable, and in the public interest. EPA further acknowledges that, Respondents have performed investigatory activity at and around the Landfill in response to EPA request. It is the intent of the parties that the Work required under this Order will fully address any potential endangerment to human health and/or the environment involving the release of methane or hazardous substances from the Landfill.

II. JURISDICTION

6. This AOC is issued under the authority vested in the Administrator of EPA by Section 7003 of RCRA, which authority has been delegated to the Regional Administrators of EPA by Delegations 8-22-A and 8-22-C (April 20, 1994), and redelegated to the Director,

Land and Chemicals Division, of EPA Region 5 by Regional Delegations 8-11-A and 8-22-C (October 22, 2007).

7. Respondents agree to undertake and complete all actions required by the terms and conditions of this AOC. In any action by EPA or the United States to enforce the terms of this AOC, Respondents consent to and agree not to contest the authority or jurisdiction of the Director, Land and Chemicals Division, of EPA Region 5 to issue or enforce this AOC, and agrees not to contest the validity of this AOC or its terms or conditions.

III. PARTIES BOUND

8. This AOC shall apply to and be binding upon EPA, and on Respondents and Respondents' officers, directors, employees, agents, successors, assigns, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondents, as well as upon subsequent purchasers of the Landfill. Respondents are jointly and severally responsible for carrying out all actions required of them by this AOC. Any change in the ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter Respondents' responsibilities under this AOC.
9. Respondents acknowledge and agree between themselves that their participation in this Order does not impact in any way the agreements, rights and obligations that they may have between them, including without limitation, indemnification rights.
10. Respondents shall provide a copy of this AOC to any subsequent owners or successors before a controlling interest in ownership rights, stock, assets or the Landfill is transferred. Respondents shall be responsible for and liable for completing all of the activities required pursuant to this AOC, regardless of whether there has been a transfer of ownership or control of the Landfill or whether said activities are to be performed by employees, agents, contractors, subcontractors, laboratories, or consultants of Respondents. Respondents shall provide a copy of this AOC within seven (7) days of the Effective Date of this AOC, or the date that such services are retained, to all contractors, subcontractors, laboratories, and consultants that are retained to conduct or monitor any portion of the Work performed pursuant to this AOC. Respondents shall condition all contracts or agreements with contractors, subcontractors, laboratories and/or consultants in connection with this AOC, on compliance with the terms of this AOC. Respondents shall ensure that their contractors, subcontractors, laboratories, and consultants comply with this AOC.
11. Not later than 60 days prior to any voluntary transfer by Respondents of any interest in the Landfill or the operation of the facility, Respondents shall notify EPA of the proposed transfer. In the case of a voluntary transfer through a bankruptcy, Respondents shall notify EPA within 24 hours of the decision to transfer property. Respondents shall notify

EPA of any involuntary transfers immediately upon Respondents' initial receipt of notice of any involuntary transfer. Not later than 3 days after any transfer, Respondent shall submit copies of the transfer documents to EPA.

IV. DEFINITIONS

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

"AOC" shall mean this Administrative Order on Consent, any amendments thereto, and any documents incorporated by reference into this AOC.

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

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

"Effective Date" shall be the date on which EPA signs this AOC.

"Investigation Area" shall mean the Mallard Lake Landfill, encompassing approximately 230 acres at 26 W 580 Schick Road in Hanover Park, DuPage County, Illinois, and nearby properties where methane and other solid or hazardous wastes, or constituents of such wastes, have migrated or otherwise come to be located.

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

"Solid Waste" shall have the same meaning as in RCRA § 1004(27).

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

V. EPA'S FINDINGS OF FACT

13. Based on an administrative record supporting this AOC, EPA finds that:
14. The District is the owner of the Landfill and is a municipal corporation existing under the laws of the State of Illinois.
15. BFI is the operator of the Landfill, and a corporation authorized to do business in the

State of Illinois.

16. The Landfill is a closed municipal solid waste landfill located at 26 W 580 Schick Road, in Hanover Park, DuPage County, Illinois, and has a footprint area of approximately 230 acres on a 534 acre site, with maximum final elevations of approximately 982 feet above mean sea level.
17. The Landfill property is bordered to the north by the DuPage River and residential properties in the Village of Hanover Park. To the east it is bordered by residential properties located in the Village of Bloomingdale. The south portion of the Landfill property is bordered by a mixed industrial and residential area and the western boundary of the Landfill property is bordered by residential properties located in Hanover Park.
18. As of approximately 1975, the Landfill began accepting solid waste for disposal. The Landfill was certified closed in 2002.
19. The State of Illinois issued Permit No. 1997-223-LFM (the Permit) to the District and BFI on December 23, 1998. The Landfill operates under the conditions of the Permit, as subsequently modified. Under the terms of the Permit, the Landfill is forbidden to accept any additional waste.
20. Methane is a common landfill gas. The Permit recognizes that the Landfill generates methane and requires monitoring and control of methane at and from the Landfill.
21. Methane has been detected at the perimeter of the landfill. High levels of methane and VOCs also were found in landfill gas collected in the gas header pipes in April of 1992. VOCs detected in high concentrations at the header pipes include vinyl chloride, trichloroethylene, perchloroethylene, methylene chloride, benzene, ethyl benzene, toluene, and 1,1-dichloroethane.
22. Degradation of "solid waste" as defined by RCRA §1004(27) results in the generation of methane gas at the Landfill. Under 40 Code of Federal Regulations (C.F.R.) § 258.23(a)(2), owners or operators of all municipal solid waste landfill units must ensure that the concentration of methane gas generated does not exceed the Lower Explosive Limit (LEL) for methane at the facility property boundary.
23. Methane is explosive between its LEL of 5% methane in air by volume and its Upper Explosive Limit (UEL) of 15%.
24. Vinyl chloride, trichloroethylene, perchloroethylene, methylene chloride, benzene, ethyl benzene, toluene, and 1,1-dichloroethane can be hazardous wastes as defined by RCRA § 1004(5).

25. EPA review of data and well logs from the Landfill revealed elevated levels of methane within 50 feet of a residential neighborhood on the West perimeter of the Landfill. In response, EPA and the Illinois Environmental Protection Agency (Illinois EPA) requested that BFI and the District conduct an investigation outside the West boundary and the South boundary of the Landfill, and on the Right-of Way to Schick Road, to further determine the extent of the gas migration off site of the Landfill.
26. During the first phase of the subsequent investigation, conducted November 6 through November 10, 2007, high levels of methane exceeding 75% methane in air sampled, were detected in temporary monitoring wells at locations 30 to 50 feet laterally from residential homes, at locations outside the west boundary of the Landfill. This is five times the UEL for methane.
27. Both methane and VOC gases are capable of entering the unsaturated void spaces within the subsurface soil. As a result, methane and VOCs could potentially migrate toward or into basements, crawl spaces and sumps of homes to the west and south sides of the Landfill.
28. As methane migrates and is diluted the methane gas mixture may be present at explosive levels.
29. VOCs detected in landfill gas samples from the Landfill include vinyl chloride, trichloroethylene, perchloroethylene, methylene chloride, benzene, ethyl benzene, toluene, and 1,1-dichloroethane. Due to the volatile nature of these chemicals, vapors from the groundwater or subsurface soils could potentially migrate into homes near the landfill. If the concentrations are high enough in the indoor air within these homes, exposure of residents to these vapors could pose a public health hazard.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

30. Based on the Findings of Fact set forth above, and an administrative record supporting this AOC, EPA has determined that:
 - a. Respondents are each a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15). Respondent District is an owner of a treatment, storage, or disposal facility, Respondent BFI is an operator of a treatment, storage, or disposal facility.
 - b. Degradation of "solid waste" as defined by RCRA § 1004(27) results in the generation of methane gas. Owners or operators of all municipal solid waste landfill units must ensure that the concentration of methane gas does not exceed the LEL for methane at the Landfill facility property boundary pursuant to 40 C.F.R § 258.23(a)(2).
 - c. Imminent and Substantial Endangerment. The presence of methane at potentially

explosive levels in and near residential areas, arising from migration of uncontrolled gas associated with past disposal of solid waste at the Landfill, may present an imminent and substantial endangerment to human health and the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

d. As a consequence of Respondents' ownership and operation of the Landfill, landfill gas has been documented to be migrating off the Landfill facility property boundary toward residential neighborhoods with the potential to cause explosive environments and the potential for vapor intrusion of hazardous constituents into homes, basements, crawl spaces and sumps.

e. The actions required by this AOC may be necessary to protect human health and/or the environment.

VII. ORDER ON CONSENT

31. Based upon the administrative record for the Investigation Area and the EPA Findings of Fact (Section V) and Conclusions of Law and Determinations (Section VI) set forth above, and in consideration of the promises set forth herein, the following is hereby agreed to and ordered. Respondents shall comply with all provisions of this AOC, including, but not limited to, all appendices to this AOC and all documents incorporated by reference into this AOC.
32. Respondents shall finance and perform the Work in accordance with this AOC, plans, standards, specifications and schedules set forth in this AOC or developed by Respondents and approved by EPA pursuant to this AOC.

VIII. WORK TO BE PERFORMED

33. Project Coordinator. The EPA Project Coordinator will be Steven J. Faryan, On-Scene Coordinator, EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590, 312-353-9351, Faryan.Steven@epa.gov. EPA's Deputy Project Coordinator will be Donna Twickler, Materials Management Branch, EPA Region 5 (LM-7J), 77 W. Jackson Blvd., Chicago, IL 60604-3590, 312-886-6184, Twickler.Donna@epa.gov. EPA has also designated an Alternate Project Coordinator, Walter Nied, On-Scene Coordinator, EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590, 312-886-4466, Walter.Nied@epa.gov. Each Project Coordinator shall be responsible for overseeing the implementation of this AOC. EPA and Respondents have the right to change their respective Project Coordinators. The other party must be notified in writing at least 10 days prior to the change.
34. The EPA Project Coordinator shall be EPA's designated representative for the AOC. Unless otherwise provided in this AOC, all reports, correspondence, notices, or other

submittals relating to or required under this AOC shall be in writing and shall be sent to the EPA Project Coordinator at the address specified in Paragraph 33, unless notice is given in writing to Respondents of a change in address. Copies of all submittals also shall be sent to Mary Setnicar, Associate Chief, Materials Management Branch, EPA Region 5 (LM-7J), 77 W. Jackson Blvd., Chicago, IL 60604-3590. Reports, correspondence, notices or other submittals shall be delivered by U.S. Postal Service, private courier service or electronic mail. All correspondence shall include a reference to the case caption EPA Docket No. RCRA 7003-5-08-001.

35. Respondents shall undertake and complete all of the Work required by this Order to the satisfaction of EPA, pursuant to RCRA § 7003, 42 U.S.C. § 6973. All of the Work performed under this AOC shall be under the direction and supervision of Respondents' Project Coordinator and shall be in accordance with the terms of this AOC.
36. Respondents have agreed to perform the Work as provided in the schedule in Paragraph 38 below, recognizing that some of this Work will begin prior to the Effective Date of this AOC.
37. The Work undertaken pursuant to this AOC shall be conducted in compliance with all applicable EPA guidances, policies and procedures, and with this AOC, and is subject to EPA approval.
38. The Work Plan shall be submitted for EPA approval and shall be implemented in phases. Each submittal shall include a schedule of the Work to be performed in the relevant phase of the Work. Following EPA's approval or modification of each Work Plan submittal pursuant to Paragraph 42, Respondents shall implement each such phase of the Work Plan in accordance with the schedule and provisions approved by EPA, consistent with the objectives of Paragraph 5, including but not limited to the Work Plan goals set out in Attachment A, which is incorporated herein by reference. The phases of the Work Plan shall be provided as follows:
 - a. Within two business days after the effective date of this AOC, Respondents shall submit a Work Plan providing for prompt installation of explosive meters in homes that are within the area of potential landfill gas impact. The Work Plan shall provide for, among other things, a list of written instructions for installation and operation that shall be given to the residents, with emergency contacts to call in the event of an alarm. Respondents' Work Plan shall also provide a contingency plan for temporary relocation of residents if explosive vapors or VOCs above health levels exist.
 - b. Within four business days after the effective date of this AOC, Respondents shall submit a sampling and analysis plan (SAP) describing the sampling method(s), data collection method(s), and analysis method(s) to be used for characterization of the nature and extent of the landfill gas migration at the Site. The SAP shall provide for (1)

sampling and analysis of soil at the Site focusing on Residential, Recreational/Undeveloped, and Commercial properties and (2) shall provide for, as needed, sampling and analysis of soil gas, ground water and VOCs in the landfill gas in order to evaluate the need for further response actions.

c. Within seven business days after the effective date of this AOC, Respondents shall submit a Work Plan submittal to address screening of residences for explosive gas and VOCs. The Plan shall address obtaining written access agreements to private properties within the potentially impacted area and provide an expedited schedule for screening activities.

d. Within seven business days after the effective date of this AOC, Respondents shall submit a Work Plan submittal outlining an expedited procedure and schedule to collect ground water samples from temporary and permanent wells in the investigation area. This submittal shall expand on the initial investigation already underway. The Work Plan submittal shall identify action levels for VOCs in groundwater and shall provide for development of measures to collect, treat or contain the contaminated ground water if necessary and for provision of an alternative water source if necessary.

e. Within seven business days after the effective date of this AOC, Respondents shall submit a Work Plan submittal to address the enhancement of the existing gas extraction system or the installation of an additional system to meet performance standards. The work plan shall identify steps that can be initiated immediately and steps that can be initiated in the near term to mitigate and control the off-site migration of the landfill gas.

f. Within seven business days after the effective date of this AOC, Respondents shall submit a Work Plan submittal to address installation of sub slab ports and collection of indoor air samples to evaluate potential vapor intrusion problems. The submittal shall also address contingency planning and corrective measures to be taken if vapor intrusion of Site-related contamination is located within the homes.

39. Respondents shall maintain an electronic database of analytical data compatible with EPA's requirements for electronic reporting of analytical data. Respondents shall submit electronic copies of all laboratory data on a weekly basis to the EPA Project Manager; to Mary Setnicar, Associate Chief, Materials Management Branch, EPA Region 5 (LM-7J), 77 W. Jackson Blvd., Chicago, IL 60604-3590; and to the project manager to be identified by the State of Illinois.
40. Health and Safety Plan. Within three days after their signature of this AOC, Respondents shall develop a Health and Safety Plan and it shall be implemented during the Work performed under this AOC. The Health and Safety plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations.

IX. EPA APPROVAL OF DELIVERABLES

41. Deliverables required by this AOC shall be submitted to EPA for approval or modification pursuant to Paragraph 42. All deliverables must be received at EPA by the due date specified in this AOC or by schedules developed pursuant to this AOC.
42. After review of any deliverable that is required pursuant to this AOC, EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, EPA will not modify a submission without first providing Respondents at least one notice of deficiency and an opportunity to cure within 5 business days, except where EPA determines that to do so would cause serious disruption to the Work or where EPA has disapproved previous submission(s) due to material defects and EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.
43. In the event of approval, approval upon conditions, or modification by EPA, pursuant to 42(a), (b), or (c), Respondents shall proceed to take any action required by the deliverable, as approved or modified by EPA subject only to Respondents' right to invoke the Dispute Resolution procedures set forth in Section XVIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 42(c) and EPA determines the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XIX (Penalties).
44. Resubmission of Deliverable. Upon receipt of a notice of disapproval, in whole or in part, pursuant to 41(d), Respondents shall, within 5 business days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XIX (Penalties), shall accrue during the 5-day opportunity to cure period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 42 and 43.
45. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 42(d), Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties for the deficient portion of the deliverable under Section XIX (Penalties).
46. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondents to correct the deficiencies, in accordance with the

preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Respondents shall implement any action as required in a deliverable which has been modified or developed by EPA, subject only to Respondents' right to invoke the procedures set forth in Section XVIII (Dispute Resolution).

47. If upon resubmission, a deliverable is disapproved or modified by EPA due to a material defect, Respondents shall be deemed to have failed to submit such deliverable timely and adequately unless Respondents invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution) and EPA's action to disapprove or modify a deliverable is overturned pursuant to that Section. The provisions of Section XVIII (Dispute Resolution) and Section XIX (Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XIX (Penalties).
48. All deliverables required to be submitted to EPA under this AOC, shall, upon approval or modification by EPA, be incorporated into and be enforceable under this AOC. In the event EPA approves or modifies a portion of a deliverable required to be submitted to EPA under this AOC, the approved or modified portion shall be enforceable under this AOC.

X. MODIFICATION OF THE WORK PLAN

49. If at any time during the implementation of the Work, Respondents identify a need for a compliance date modification or revision of the Work Plan, Respondents shall submit a memorandum documenting the need for the modification or revision to the EPA Project Coordinator. EPA in its discretion will determine if the modification or revision is warranted and may provide written approval or disapproval. Any approved modified compliance date or Work Plan modification is incorporated by reference into this AOC.
50. Emergency Response. In the event of any action or occurrence during the performance of the Work that constitutes an emergency situation or may present an immediate threat to human health and the environment, Respondents shall immediately take all appropriate action to minimize such emergency or threat, and shall immediately notify the EPA's Project Coordinator. Respondents shall take such immediate and appropriate actions in consultation with EPA's Project Coordinator. Respondents shall then submit to EPA written notification of such emergency or threat at the Investigation Area within three (3) calendar days of such discovery. Respondents shall thereafter submit to EPA for approval, within 10 days, a plan to mitigate this threat. EPA will approve or modify this plan, and Respondents shall implement this plan as approved or modified by EPA. In the case of an extreme emergency, Respondents may act as they deem appropriate, at their own risk, to protect human health or the environment.

XI. QUALITY ASSURANCE

51. As part of the Work Plan, within 10 business days after their signature of the AOC, Respondents shall include a Quality Assurance Project Plan (QAPP), for EPA review and approval. The QAPP shall address quality assurance, quality control, and chain of custody procedures for all sampling, monitoring and analytical activities. Respondents shall follow appropriate provisions of *EPA Requirements for Quality Assurance Project Plans (QA/R-5)* March 2001 (Reissued May 2006), EPA/240/B-01/003, *Guidance for Quality Assurance Project Plans (G-5)* December 2002, EPA/240/R-02/009, and other applicable documents identified by EPA. The QAPP shall be incorporated into this AOC by reference.
52. As part of the Work Plan, Respondents shall include Data Quality Objectives for any data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use as required by this AOC.
53. Respondents shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of *Test Methods for Evaluating Solid Waste (SW-846)* or other methods approved by EPA. If methods other than EPA methods are to be used, Respondents shall specify all such protocols in the applicable Work Plan. EPA may reject any data that does not meet the requirements of the approved Work Plan and EPA analytical methods and may require resampling and additional analysis.
54. Respondents shall, upon EPA's request, make arrangements for EPA to conduct a performance and QA/QC audit of the laboratories chosen by Respondents, whether before, during, or after sample analyses. Upon EPA's request, Respondents shall have their laboratories perform analyses of samples provided by EPA to demonstrate laboratory QA/QC and performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, Respondents shall submit a plan to address the deficiencies and EPA may require resampling and additional analysis.
55. EPA reserves the right to require a change in laboratories for reasons which may include, but shall not be limited to, QA/QC, performance, conflict of interest, or confidential agency audit information. In the event EPA requires a laboratory change, Respondents shall propose two alternative laboratories within 30 calendar days. Once EPA approves of the laboratory change, Respondent shall ensure that laboratory service shall be made available within 15 calendar days.
56. The requirements of this Section do not apply to sampling activity conducted prior to the approval of the QAPP.

XII. ADMINISTRATIVE DOCUMENTATION

- 57. EPA retains the responsibility for the issuance of any decision documents related to the Order or Investigation Area.
- 58. EPA will provide Respondents with copies of all decision documents for the Order or Investigation Area.
- 59. Submission of Documentation. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of performing the Work upon which selection of the response action may be based. EPA will maintain an administrative record file. The administrative record supporting this AOC and the Work to be performed shall be available for public review at Poplar Creek Public Library, Hanover Park Branch, 4300 Audrey Lane, Hanover Park, Illinois, and at the EPA Region 5 Records Center, 77 W. Jackson Blvd, 7th floor, Chicago, IL 60604.

XIII. DOCUMENT CERTIFICATION

- 60. Any report or other document submitted by Respondents pursuant to this AOC which makes recommendations as to whether or not further actions are necessary, or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this AOC shall be certified by a responsible corporate officer of a Respondent. A responsible corporate officer means: a president, secretary, treasurer, or vice-president in charge of a principal business function, Director of Environmental Services, or any other person who performs similar policy or decision-making functions.
- 61. The certification required by Paragraph 60 above, shall be in the following form:

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

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

XIV. SAMPLING, ACCESS AND DATA AVAILABILITY

62. All results of sampling, testing, modeling or other data generated (including raw data if requested) by Respondents, or on Respondents' behalf, during implementation of this AOC shall be validated by Respondents and submitted to EPA within 5 days of Respondents' receipt of the data. Respondents shall tabulate data chronologically by media. EPA will make available to Respondents data generated by EPA for the purposes of oversight of the Work unless it is exempt from disclosure by any federal or state law or regulation.
63. Respondents shall orally notify EPA at least 5 days prior to conducting field sampling. At EPA's request, Respondents shall allow split or duplicate samples to be taken by EPA or EPA's representative.
64. Site Access. Pursuant to RCRA § 3007(a), 42 U.S.C. § 6927(a), Respondents shall provide access to the Landfill at reasonable times to EPA, EPA's contractors and oversight officials, and representatives of the Illinois EPA. Respondents shall also provide access at reasonable times to EPA, EPA's contractors and oversight officials and representatives of the Illinois EPA to all records and documentation in their possession or control, including those records and documents in the possession or control of Respondents' contractors and employees, related to the conditions at the Site and the actions conducted pursuant to this AOC. Such access shall be provided to EPA, its contractors and oversight officials and representatives of the Illinois EPA. These individuals shall be permitted to move freely about the Investigation Area in order to conduct actions that EPA determines to be necessary. EPA, its contractors and oversight officials and representatives of the Illinois EPA shall notify Respondents of their presence on the Investigation Area by presenting their credentials. All parties with access to the Investigation Area under this paragraph shall comply with all approved health and safety plans and regulations.
65. Pursuant to this Section, any denial of access at reasonable times to any portion of the Landfill property where a request for access was made for the purposes of enforcing the requirements of RCRA or this AOC shall be construed as a violation of the terms of this AOC subject to the penalty provisions outlined in Section XIX (Penalties) of this AOC.
66. Access Agreements. Where action under this AOC is to be performed in areas owned by, or in possession of, someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 15 days of approval of any Work Plan for which access is necessary or as otherwise specified, in writing, by the EPA Project Coordinator. Any such access agreement shall provide for access by EPA and its representatives and representatives of the Illinois EPA to move freely in order to conduct actions that EPA determines to be necessary. The access agreement shall specify that

Respondents are not EPA's representative with respect to any liabilities associated with activities to be performed. Respondents shall provide EPA's Project Coordinator with copies of any access agreements. Respondents shall immediately notify EPA if after using Respondents' best efforts they are unable to obtain such agreements within the time required. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondents to the present owner of such property requesting access agreements to permit Respondents, EPA, EPA's authorized representatives and Illinois EPA to enter such property. Respondents shall, within 10 days of their receipt of a denial of access, submit in writing, a description of their efforts to obtain access. EPA may, at its discretion, assist Respondents in obtaining access. In the event EPA obtains access, Respondents shall undertake the Work on such property and Respondents shall reimburse EPA for all costs and attorney fees incurred by the United States in obtaining such access.

67. Confidential Business Information. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this AOC under 40 CFR § 2.203 in the manner described at 40 CFR § 2.203(b) and substantiated with the information described at 40 CFR § 2.204(e)(4). Information EPA determines is confidential will be given the protection specified in 40 CFR Part 2. If no such claim or substantiation accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to Investigation Area conditions, sampling, monitoring or the Work performed pursuant to this AOC.
68. Privileged Documents. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Respondent asserts such a privilege in lieu of providing documents, Respondent shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the author's name and title; (4) the name and title of each addressee and recipient; (5) a description of the contents; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this AOC shall be withheld on the grounds that they are privileged.
69. All data, information, and records created or maintained pursuant to this AOC shall be made available to EPA upon request unless Respondents assert a claim that such documents are legally privileged from disclosure. Respondents shall have the burden of demonstrating that such privilege exists. EPA will also provide validated sampling data it generates at the Investigation Area to Respondents on a timely basis.
70. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data evidencing conditions at or around the Investigation Area.

71. Nothing in this AOC shall be construed to limit EPA's or Illinois EPA's right of access, entry, inspection, and information gathering pursuant to applicable law, including but not limited to RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*, (CERCLA).

XV. COMPLIANCE WITH OTHER LAWS

72. Respondents shall perform all actions required pursuant to this AOC in accordance with all applicable local, state, and federal laws and regulations. Respondents shall obtain or cause their representatives to obtain all approvals necessary under such laws and regulations in a timely manner so as not to delay the Work required by this AOC. Respondents, as persons complying with an AOC issued under Section 7003 of RCRA, may treat, store or dispose of waste without securing a RCRA permit for the actions required by that AOC as long as they satisfy all substantive regulatory requirements.

XVI. RECORD RETENTION

73. Respondents shall preserve all documents and information, including raw data, relating to the Work performed under this AOC, or relating to any solid waste or hazardous waste found at the Investigation Area, for 10 years following completion of the Work required by this AOC.
74. Respondents shall acquire and retain copies of all documents that relate to the Investigation Area that are in the possession of their employees, agents, accountants, contractors or attorneys.
75. Respondents shall make available to EPA all employees and persons, including contractors, who engage in activities under this AOC and ensure their cooperation with EPA with respect to this AOC.
76. After the 10 year retention period and 90 days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies (at no extra cost) of such documents and information to EPA. Notification shall be in writing and shall reference the effective date, caption, and docket number of this AOC and shall be addressed to the Director, Land and Chemicals Division, EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the 10 year retention period at the written request of EPA.
77. All documents pertaining to this AOC shall be stored by Respondents in a centralized location at the Investigation Area, or an alternative location mutually approved by

Respondents and EPA, to promote easy access by EPA or its representatives.

XVII. REIMBURSEMENT OF OVERSIGHT COSTS

78. EPA reserves the right to bring an action against Respondents under any applicable law for recovery of all response costs, including oversight costs, and past costs incurred by EPA with respect to the Investigation Area that have not been reimbursed by Respondents; any costs incurred in the event that EPA performs the Work or any part thereof; and any costs incurred by EPA in connection with any other response activities conducted at this Investigation Area. Oversight costs shall mean costs that EPA incurs in monitoring and supervising Respondents' performance of the Work to determine whether such performance is consistent with the requirements of this AOC, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this AOC, as well as costs incurred in overseeing implementation of the Work.

XVIII. DISPUTE RESOLUTION

79. Respondents shall raise any disputes concerning the Work required under this AOC to EPA (excluding any decision document(s) issued by EPA), in writing, within 15 days after receiving written notice from EPA regarding any aspect of the Work required under this AOC that Respondents disputes. EPA and Respondents shall expeditiously and informally attempt to resolve any disagreements. EPA and Respondents' Project Coordinators shall first confer in an effort to resolve the dispute. If the Project Coordinators are unable to informally resolve the dispute within 3 days of the first conference, Respondents shall notify EPA, within 5 days, in writing of its objections. Written objections shall identify Respondents' objections, state the basis for those objections, and provide all data, analyses and information relied upon by Respondents. EPA and Respondents then have an additional 14 days from EPA's receipt of the objections to reach agreement. If an agreement is not reached within the 14 days, Respondents may request in writing, within 5 days, a determination resolving the dispute by EPA Region 5's Director, Land and Chemicals Division, EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604. The request should provide all information that Respondents believe is relevant to the dispute. If such request is submitted within 5 days, the Division Director shall issue a determination in writing. EPA's final decision shall be incorporated into and become an enforceable part of this AOC and shall no longer be subject to dispute pursuant to this AOC. Respondents shall proceed in accordance with the Division Director's decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If Respondents do not agree to perform or does not actually perform the Work in accordance with EPA's decision, EPA reserves the right in its sole discretion to conduct the Work itself, seek reimbursement from Respondents, seek enforcement of this AOC, seek stipulated penalties, and/or any other appropriate relief. Any disputes arising under this AOC are not subject to judicial review until such time as EPA seeks to enforce this AOC.

- 80. If EPA and Respondents reach agreement on the dispute at any stage, the agreement shall be set forth in writing and shall, upon signature of both parties, be incorporated into and become an enforceable part of this AOC.
- 81. The existence of a dispute and EPA's consideration of matters placed in dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this AOC during the pendency of the dispute resolution process except as agreed by EPA in writing. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this AOC.

XIX. PENALTIES

- 82. Stipulated Penalties. Any time Respondents fail to comply with any requirement of this AOC, Respondents shall be liable for stipulated penalties in the amounts set forth in this section unless a Force Majeure event has occurred as defined in Section XX (Force Majeure) and EPA has approved the extension of a deadline as required by Section XX (Force Majeure). For each violation, a single penalty shall be assessed against both Respondents collectively. Compliance with this AOC by Respondents shall include completion of an activity or any matter under this AOC in accordance with this AOC, and within the specified time schedules approved under this AOC.

	Penalty per violation per day and period of violation			
	1-10 Days	11-30 Days	31-60 Days	Over 60 Days
Failure to submit a Work Plan component on time	\$200	\$800	\$1,600	\$4,000
Failure to meet a deadline in an Approved Work Plan document	\$400	\$1,600	\$3,200	\$8,000

- 83. Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the violation or completion of the activity. Payment shall be due within 30 days of receipt of a demand letter from EPA. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this AOC..
- 84. If payment is not made within 30 days of the date of Respondents' receipt from EPA of a written demand for payment of the penalties or of the date of agreement or decision resolving the dispute, interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the first day after Respondents' receipt of EPA's demand letter, or

the date of the agreement or decision resolving the dispute, and will accrue until such penalties and interest have been paid in full. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. An additional penalty of six percent (6 %) per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for ninety (90) days or more. The applicable rate of interest shall be the rate in effect at the time the interest accrues pursuant to 31 U.S.C. § 3717.

85. Respondents shall make payments by money order, certified check, company check, electronic funds transfer, or cashier's check payable to the Treasurer of the United States within thirty (30) days of Respondents' receipt of EPA's request, and shall be submitted to the following address:

U.S. EPA, Region 5
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

86. Docket No. RCRA 7003-5-08-001 should be clearly typed on the check to ensure proper credit. Respondent shall send simultaneous notices of such payments, including copies of the money order, certified check, company check, electronic funds transfer, or cashier's check to EPA's Project Coordinator and to the following:

Comptroller
U.S. EPA, Region 5 (MF-10J)
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Blake Edwards
Finance Office
U.S. EPA Facilities
26 W. Martin Luther King Drive
Mail Code NWD
Cincinnati, OH 45268

87. Respondents may dispute an EPA determination that it failed to comply with this AOC by invoking the dispute resolution procedures under Section XVIII (Dispute Resolution) unless the matter has already been in or is the subject of dispute resolution. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondents prevail upon resolution, no penalties shall be paid. In the event that Respondent prevails in part, penalties shall be due on those matters in which

Respondents did not prevail.

88. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondents' obligation to comply with the terms and conditions of this AOC. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondents' failure to comply with any of the terms and conditions of this AOC.
89. No payments under this Section shall be deducted for federal tax purposes.
90. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this AOC.
91. Civil Penalties. Violation of this AOC may subject Respondents to civil penalties of up to six thousand five hundred dollars (\$6,500.00) per violation per day. The assessment of penalties are provided for in Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461 note. Should Respondent violate this AOC or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to any applicable authorities, and/or may seek judicial enforcement of this AOC.

XX. FORCE MAJEURE

92. Respondents agree to perform all requirements under this AOC within the time limits established under this AOC, unless the performance is delayed by a force majeure. For purposes of this AOC, a force majeure is defined as any event arising from causes beyond the control of Respondents, or any entity controlled by Respondents or Respondents' contractors, which delays or prevents performance of any obligation under this AOC despite Respondents' best efforts to fulfill the obligation. The requirement that the Respondents 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. Force majeure does not include financial inability to complete the Work, increased cost of performance, changes in Respondents' business or economic circumstances, or inability to attain media cleanup standards.
93. If any event occurs or has occurred that may delay the performance of any obligation under this AOC, whether or not caused by a force majeure event, Respondents shall orally notify EPA within 48 hours of when Respondent knew or should have known that the event might cause a delay. Such notice shall: (1) identify the event causing the delay, or

anticipated to cause delay, and the anticipated duration of the delay; (2) provide Respondents' rationale for attributing such delay to a force majeure event; (3) state the measures taken or to be taken to prevent or minimize the delay; (4) estimate the timetable for implementation of those measures; and (5) state whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or the environment. Respondents shall undertake best efforts to avoid and minimize the delay. Failure to comply with the notice provision of this paragraph and to undertake best efforts to avoid and minimize the delay shall waive any claim of force majeure by Respondents. Respondents shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

94. If EPA determines that a delay in performance or anticipated delay in fulfilling a requirement of this AOC is or was attributable to a force majeure, then the time period for performance of that requirement will be extended as deemed necessary by EPA. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure, then EPA will notify Respondents, in writing, of the length of the extension, if any, for performance of such obligations affected by the force majeure. Any such extensions shall not alter Respondents' obligation to perform or complete other tasks required by this AOC which are not directly affected by the force majeure.
95. If EPA disagrees with Respondents' assertion of a force majeure, then Respondents may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in Section XVIII (Dispute Resolution). In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that Respondents' best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section. If Respondents satisfies this burden, then EPA will extend the time for performance as EPA determines is necessary.

XXI. RESERVATION OF RIGHTS

96. Notwithstanding any other provisions of this AOC, the United States retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Investigation Area, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.
97. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of

the requirements of this AOC, including without limitation the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. § 6973.

98. This AOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.
99. This AOC is not intended to be nor shall it be construed to be a permit. Respondents acknowledge and agree that EPA's approval of the Work and/or Work Plan does not constitute a warranty or representation that the Work and/or Work Plans will achieve the required cleanup or performance standards. Compliance by Respondents with the terms of this AOC shall not relieve Respondents of their obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.
100. Notwithstanding any other provision of this AOC, no action or decision by EPA pursuant to this AOC, including without limitation, decisions of the Regional Administrator, the Director, Land and Chemicals Division, EPA Region 5, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this AOC, including an action for penalties or an action to compel Respondents' compliance with the terms and conditions of this AOC.

XXII. OTHER CLAIMS

101. By issuance of this AOC, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA will not be deemed a party to any contract, agreement or other arrangement entered into by Respondents or their officers, directors, employees, agents, successors, assigns, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this AOC.
102. Respondents waive all claims against the United States relating to or arising out of conduct of this AOC, including, but not limited to, contribution and counterclaims.
103. Respondents shall bear their own litigation costs and attorney fees, subject to any indemnification or insurance rights.
104. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Investigation Area, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the

subsequent proceeding were or should have been raised in the present matter.

XXIII. INSURANCE

105. Prior to commencing the on-site Work under this AOC, Respondents shall secure, and shall maintain in force for the duration of this AOC and for 2 years after the completion of all activities required by this AOC, comprehensive general liability insurance and automobile insurance with limits of \$ 2 million dollars, combined single limit, naming EPA as an additional insured. Prior to commencement of the Work under this AOC, and annually thereafter on the anniversary of the Effective Date of this AOC, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondents demonstrate by evidence satisfactory to EPA that their contractors and subcontractors maintain insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by the contractors and subcontractors.
106. For the duration of this AOC, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and worker's compensation insurance for all persons performing the Work on behalf of Respondents, in furtherance of this AOC.
107. At least 1 day prior to commencing the Work under this AOC, Respondents shall certify to EPA that their contractors and subcontractors have obtained the required insurance.

XXIV. INDEMNIFICATION

108. Respondents agree to indemnify, save and hold harmless the United States, its officials, agents, contractors, employees, and representatives from any and all claims or causes of action: (a) arising from, or on account of, acts or omissions of Respondents, Respondents' directors, officers, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this AOC; and (b) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any persons for performance of the Work on or relating to the Investigation Area, including claims on account of construction delays. In addition, Respondents agree to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in the preceding sentence.

XXV. MODIFICATION OF THIS AOC

109. Except for Modification of the Work Plan as provided in Sections IX or X, this AOC may only be modified by the mutual agreement of EPA and Respondents. Any agreed

modifications shall: be in writing; be signed by both parties; have as their effective date the date on which they are signed by EPA; and be incorporated into this AOC.

110. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain such formal approval as may be required by this AOC, and to comply with all requirements of this AOC unless it is formally modified. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this AOC are, upon approval by EPA, incorporated into and enforceable under this AOC.

XXVI. ADDITIONAL WORK

111. EPA may determine or Respondents may propose that certain tasks are necessary in addition to or in lieu of the tasks included in any EPA-approved Work Plan when such additional work is necessary to meet the objectives set forth in Paragraph 38. EPA may determine that Respondents shall perform any additional work and EPA will specify, in writing, the basis for its determination that any additional work is necessary. Within 5 days after the receipt of such determination, Respondents shall have the opportunity to meet or confer with EPA to discuss any additional work. Respondents shall submit for EPA approval a Work Plan for any additional work. Such Work Plan shall be submitted within 10 days of Respondents' receipt of EPA's determination that any additional work is necessary, or according to an alternative schedule established by EPA. Upon approval of a Work Plan for any additional work, Respondents shall implement the Work Plan for any additional work in accordance with the schedule and provisions contained therein. The Work Plan for any additional work shall be incorporated by reference into this AOC.

XXVII. TERMINATION AND SATISFACTION

112. The provisions of this AOC shall be deemed terminated and satisfied by Respondents upon written notice from EPA that Respondents have demonstrated that all of the terms of this AOC, including any additional work as may be performed pursuant to Section XXVI (Additional Work) and any stipulated penalties demanded by EPA under Section XIX (Penalties), have been addressed to the satisfaction of EPA. Termination of this AOC shall not terminate Respondents' obligation to comply with: Sections XIV (Sampling, Access and Data Availability); XVI (Record Retention); XXI (Reservation of Rights); and XXIV (Indemnification) of this AOC. This determination shall not be unreasonably withheld.

XXVIII. PUBLIC COMMENT ON THIS AOC

113. EPA shall provide public notice, opportunity for a public meeting and a reasonable opportunity for public comment on the proposed settlement. After consideration of any comments submitted during a public comment period, EPA may seek to amend all or part of this AOC if EPA determines that comments received disclose facts or considerations which indicate that this AOC is inappropriate, improper, or inadequate.

XXIX. SEVERABILITY

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

XXXI. EFFECTIVE DATE

115. This AOC shall be effective when EPA signs this AOC. Within 2 business days of signing this AOC, EPA will provide Respondents with a copy of the signature page of this AOC signed by the Director, Land and Chemicals Division, EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604. The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this AOC and to bind the party they represent to this document. Respondents agree not to contest the validity or terms of this AOC, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms or seek penalties for its violation. Respondents retain their right to assert claims against any third parties with respect to this Investigation Area.

Docket No. RCRA 7003-5-08-001

Agreed this 4th day of December, 2007.

FOREST PRESERVE DISTRICT
OF DUPAGE COUNTY

BFI WASTE SYSTEMS OF
NORTH AMERICA, INC.

BY:  BY: _____
Title: *Director of Environmental Services* Title: _____

It is so ORDERED and Agreed this 4th day of December, 2007.

By: _____
Margaret Guerriero
Director, Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5

EFFECTIVE DATE: December 4, 2007

Docket No. RCRA 7003-5-08-001

Agreed this 4th day of December, 2007.

FOREST PRESERVE DISTRICT
OF DUPAGE COUNTY

BFI WASTE SYSTEMS OF
NORTH AMERICA, INC.

BY: _____

BY: White

Title: _____

Title: Corporate Secretary

It is so ORDERED and Agreed this 4th day of December, 2007.

By: _____
Margaret Guerriero
Director, Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5

EFFECTIVE DATE: December 4, 2007

Docket No. RCRA 7003-5-08-001

Agreed this 4th day of December, 2007.

FOREST PRESERVE DISTRICT
OF DUPAGE COUNTY

BFI WASTE SYSTEMS OF
NORTH AMERICA, INC.

BY: _____

BY: _____

Title: _____

Title: _____

It is so ORDERED and Agreed this 4th day of December, 2007.

By: 
Margaret Guerriero
Director, Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5

EFFECTIVE DATE: December 4, 2007

ATTACHMENT A

- a. Continue to perform in-home monitoring for combustible gas and to provide combustible gas detectors to residents in the areas of potential impact who desire them.
- b. Complete additional cone penetrometer testing in Discovery Park, the Hawk Hollow Forest Preserve, and public right-of-ways along Whitney Drive, Goddard Drive, McCormick Lane, DeForest Lane, Eastman Lane and Schick Road to investigate potential landfill gas migration and to other areas as appropriate based on sampling results.
- c. Conduct screenings of new CPT holes for methane, oxygen and carbon dioxide to determine the locations where landfill gas is located.
- d. Install temporary wells and soil gas monitoring probes in the new CPT holes.
- e. Perform quarterly groundwater and landfill gas monitoring at probes located in Discovery Park and Forest Preserve District Right of Way and other appropriate locations in the investigation area for at least two quarters to test for the presence of VOCs at elevated levels and determine whether monitoring of additional probes is needed.
- f. If deemed necessary based on earlier results, conduct additional summa canister soil gas sampling to determine if elevated levels of landfill gas are present in the soil gas.
- g. Conduct gas shut-in tests on at least three probes that exhibit positive gas pressures and monitor pressures at adjacent probes to estimate the volume of gas present in the permeable layers and the pneumatic continuity of the gas.
- h. Develop maps of stratigraphic conditions and the distribution of gas to support corrective action efforts.
- i. Screen appropriate additional storm and sanitary sewer manholes for combustible gas.
- j. Conduct a shallow soil gas investigation to evaluate whether any landfill gas is present in shallow soils adjacent to the residences.
- k. If landfill gases are detected near any homes, install and monitor sub-slab port monitoring devices at the homes of residents who live in areas of potential gas migration and who authorize such testing.
- l. Monitor sub-slab ports for the presence of VOCs at the homes of residents who live in areas of potential gas migration and who authorize such testing.
- m. Address landfill gas impacts detected through sub-slab monitoring.

- n. Determine radius of influence of the existing on-site perimeter gas extraction system. Maintain and expand the existing landfill gas extraction system, install new perimeter gas extraction wells, and implement a program to remove gas detected in Hawk Hollow and other uninhabited areas west of the Landfill as initial corrective action measures, and expanding to other areas as indicated by sampling results.
- o. Design and implement a final corrective action program, if necessary, to prevent the off-site migration of landfill gas and recover or eliminate gas that may have migrated off-site.
- p. Address relocation of residents and other appropriate measures to be taken if necessary as dictated by sampling results.