UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

August 5, 2013 LU-9J
Via Email

David Hertzing
Countrymark Refining and Logistics, LLC
1200 Refinery Road
Mt. Vernon, IN 47620

Dave,

Attached to this letter is the signed Administrative Order on Consent between US EPA and Countrymark Refining and Logistics, LLC, effective 8/2/2013. The Agency looks forward to working with Countrymark on fulfilling the terms of this agreement. We request a meeting with Countrymark to be held at EPA's offices within the next 90 days to discuss the Corrective Action process and some specific programmatic and regulatory considerations. Please let me know what your availability is for such a meeting.

In accordance with the Order, below is a path forward for EPA and Countrymark to initiate Corrective Action activities. The deliverables and dates below are not a comprehensive list encompassing all AOC obligations, but provides us with an immediate path forward. Please let me know if you see any discrepancies or oversights (I have not included holidays in this schedule; therefore, dates may move accordingly).

- Project Manager designation in writing from EPA and Countrymark by 8/22/2013, paragraph 9.
- Corrective Action "kick-off" meeting within 90 days of the Order.
- Countrymark must establish a web portal, or other agreeable method of maintaining and sharing data with EPA by 12/6/2013, paragraph 20d.
- Submittal of Current Conditions Report by Countrymark by 1/17/2014, paragraph 11a.

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- Current Conditions Report: I would be happy to review a draft, interim work product (outline, partial, or full draft) prior to the due date to expedite the review process. This may be preferable for certain portions, particularly the draft Conceptual Site Model (CSM).

- Countrymark must establish a publicly accessible repository at the local library within 120 days of this Order, by 1/17/2014, paragraph 20a.

- Submittal of RCRA Facility Investigation Work Plan (RFI Work Plan) by Countrymark, paragraph 11b. There is no submittal date associated with the RFI Work Plan; however, the final RFI Report and risk assessments must be submitted within 240 days following the effective date of the Order (or as agreed to in the RFI Work Plan).

  - I suggest we schedule a meeting *after* the CCR submittal and *before* the RFI Work Plan submittal to discuss critical CCR information, conceptual site model inputs and parameters, and data quality objectives. EPA and Countrymark should agree on the scope and objectives outlined in the RFI Work Plan to ensure a smooth data collection and analysis effort (see below).

- Upon completion of the RCRA Facility Investigation (RFI) (in accordance with an approved RFI Work Plan) the final report is due within 240 days from the effective date of the Order, or, on or around July 7, 2014 (or as agreed to in the RFI Work Plan), paragraph 11b.

  - The RFI and associated work plan(s) may proceed in phases; therefore, frequent communication during the RFI Work Plan design process will assist in developing the investigation and final report schedule. A phased, or iterative, approach to the RFI can focus the data collection efforts and facilitate a definition of "nature and extent" in a more precise manner. We may adjust the schedule to reflect the nature of the investigation.

- Submittal of the Human Exposures Environmental Indicator Report (EI 725) by Countrymark by 8/2/2014, paragraph 13a.

- Submittal of the Groundwater Migration Environmental Indicator Report (EI 750) by Countrymark by 8/2/2016.

- Within one year of EPA's approval of the Final RFI Report and risk assessments, Countrymark must submit the Corrective Measures Study (CMS).

- Financial assurance obligations will follow the CMS in accordance with the Order.

The Agency looks forward to proceeding in a collaborative fashion in order to execute the Corrective Action work in the most efficient way possible. Please contact me with any questions you may have regarding the Order. If you have any questions about the Corrective Action program in general, feel free to contact me or visit the following website:

http://www.epa.gov/epawaste/hazard/correctiveaction/index.htm

Thank you,

Michelle Kaysen
Project Manager
US EPA, Region 5
LCD, RRB, CAS2
(312) 886-4253
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cc (*electronically*): Bhooma Sundar, EPA
Jennifer Dodds, EPA
John Matson, EPA
Tony Sullivan, Barnes & Thornburg

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF	)	
	)	**EPA Docket No:**
Countrymark Refining	)	
and Logistics LLC	)	**Proceeding under Section 3008(h) of the**
1200 Refinery Road	)	**Resource Conservation and Recovery**
Mt. Vernon, IN 47620	)	**Act, as amended, 42 U.S.C. § 6928(h).**
	)	
EPA ID No: IND 044 908 663	)	
	)	
Respondent	)	

ADMINISTRATIVE ORDER ON CONSENT

I. JURISDICTION

1. The United States Environmental Protection Agency is issuing this Administrative Order on Consent ("Order" or "AOC") to Countrymark Refining and Logistics, LLC ("CountryMark" or "Respondent") for the performance of corrective action and the funding of such corrective action activities under the authority vested in the Administrator of EPA pursuant to Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6928(h), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h). The Administrator has delegated the authority to issue orders under Section 3008(h) of RCRA to the Director of the Land and Chemicals Division, Region 5, EPA.

2. CountryMark owns and operates an oil refinery located north of Mount Vernon, Posey County, Indiana, and approximately 1.5 miles north of the Ohio River (the "Facility"). The Facility is bordered on the west by Refinery Road, on the southeast by a residential area, and on the northeast by a golf course. Attachment 1 is a schematic depiction of the location of the Facility. EPA previously identified contaminant sources of concern at the Facility based on a report entitled "Preliminary Review RCRA Assessment Report/Visual Site Inspection." In 2010, EPA requested that CountryMark conduct sampling and analysis for possible releases of hazardous waste and hazardous constituents at or from these sources. A total of four Solid Waste Management Units and two Areas of Concern were identified by EPA, and CountryMark added an additional area (the "Other" area) during preparation of the Sampling and Analysis Plan ("SAP") for each of these seven areas.

3. CountryMark agrees not to contest EPA's jurisdiction to issue this Order, to enforce its terms, or to impose sanctions for violations of the Order.

4. CountryMark waives any rights to request a hearing on this matter pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) and 40 C.F.R. Parts 22 and 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA as a Consent Order issued pursuant to Section 3008(h) of RCRA.

II. DEFINITIONS

5. This Order incorporates the definitions in RCRA, 42 U.S.C. §§ 6901-6922k, and the regulations promulgated under RCRA unless otherwise specified. In addition, "Work" shall mean all activities CountryMark is required to perform under this Order.

III. PARTIES BOUND

6. This Order applies to and binds EPA, CountryMark, its successors, assignees and receivers ("the Parties"). CountryMark is liable for carrying out all activities required by this Order, and CountryMark shall ensure that its contractors, subcontractors, representatives, and consultants comply with this Order while acting on behalf of CountryMark in their representative capacities. CountryMark will be responsible for and liable for any noncompliance or violations of this Order, regardless of CountryMark's use of employees, agents, contractors, or consultants to perform work required by this Order.

7. No change in ownership or corporate or partnership status relating to the Facility will alter CountryMark's obligations under this Order. Any conveyance of title, easement, or other interest in the Facility, or a portion of the Facility, will not affect CountryMark's obligations under this Order. CountryMark will give written notice of this Order to any successor in interest prior to transferring ownership or operation of the Facility or a portion thereof and will notify EPA in writing within fourteen (14) days of the transfer. This written notice will describe how CountryMark has assured that, despite the transfer, all institutional controls required now or in the future for the Facility will be implemented and maintained. This paragraph will not apply if EPA and CountryMark agree that this Order has terminated as to the Facility or any relevant portion of the Facility.

IV. DETERMINATIONS

8. After consideration of the Administrative Record, the Director, Land and Chemicals Division, EPA Region 5 has made the following conclusions of law and determinations:

a. CountryMark is a "person" as defined by 329 IAC § 3.1-4-20, 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

b. CountryMark is the "owner" or "operator" of the Facility as those terms are defined under 40 C.F.R. § 260.10.

c. CountryMark's Facility is a "facility," as that term is defined by 40 C.F.R. §§ 260.10 and 270.2.

d. CountryMark is the owner or operator of a facility that has operated under interim status subject to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

e. CountryMark generates "solid waste" from its petroleum refining activities at the Facility, as that term is defined by 40 C.F.R. § 261.2.

f. At times relevant to this Order, certain solid wastes generated or found at the Facility were "hazardous wastes," as that term is defined by Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and 40 C.F.R. § 261.3.

g. There is, or has been, a release of hazardous wastes and/or hazardous constituents into the environment from the Facility.

h. Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), authorizes EPA to, among other things, issue orders or initiate civil actions to compel corrective action for onsite and offsite releases of hazardous wastes from RCRA interim status facilities.

i. Section 3008(h) orders may address releases to all media for contamination both onsite and offsite.

j. EPA may thus use Section 3008(h) orders to require study or cleanup actions media for contamination both onsite and offsite where EPA has determined that there is or has been a release of hazardous waste or hazardous constituents into the environment from a facility.

k. The actions required by this Order are necessary to protect human health and the environment.

V. PROJECT MANAGER

9. EPA and CountryMark must each designate a Project Manager and notify each other in writing of their Project Manager selections within fourteen (14) days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of this Order. The Parties must provide prompt written notice whenever they change Project Managers.

VI. WORK TO BE PERFORMED

10. Pursuant to Section 3008(h) of RCRA, CountryMark agrees to and is hereby ordered to perform the actions specified in this Section in the manner and by the dates specified in this Order. CountryMark represents that it has the technical and financial ability to carry out the corrective action Work required by this Order. CountryMark must perform the Work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant EPA and state guidance documents as appropriate to the Facility. This guidance includes, but is not limited to, the Indiana Remediation Closure Guide, the Documentation of Environmental Indicator Determination Guidance, relevant portions of the Model Scopes of Work for RCRA Corrective Action, EPA's ecological and human health risk assessment guidance, Risk Assessment

Guidance for Superfund, Ecological Risk Assessment Guidance for Superfund, and other guidance documents found at or linked through EPA web sites primarily at:

http://www.epa.gov/oswer/riskassessment/risk_superfund.htm

11. CountryMark must identify all contaminant sources at the Facility, and define the nature and extent of releases of hazardous waste and hazardous constituents at or from these sources. CountryMark asserts that any releases at the Facility are confined within the boundaries of the Facility. CountryMark must assess the effects of such releases on human health and the environment and their potential for cross-media contamination. This includes:

a. Provide to EPA, within one-hundred-twenty (120) days after the effective date of this Order, a brief Current Conditions Report that includes any recent sampling data from the Facility, and a summary of the historic operations and physical setting of the Facility. The Current Conditions Report must describe, at a minimum, conditions at all locations specified in the document entitled "Preliminary Review RCRA Assessment Report/Visual Site Inspection" and any other past or present locations at the Facility for which CountryMark knows of past treatment, storage, disposal or releases of hazardous waste or hazardous constituents, including any areas previously addressed through closure by the State of Indiana. To the extent this information has already been gathered, it may be resubmitted as part of the Current Conditions Report. The Current Conditions Report must include a preliminary Conceptual Site Model ("CSM"), including source identification, migration pathways, and potential complete exposure pathways to human and ecological receptors, both onsite and offsite. CountryMark must update the CSM as the scope of investigation expands.

CountryMark must submit for EPA review and approval a Corrective Action Facility Master Plan ("Master Plan") along with the Current Conditions Report. The Master Plan is a planning document (usually a one-page spreadsheet) for facility-wide corrective action that lists each specific corrective action goal and the interim corrective actions ("Interim Measures") or other response measures required to achieve each goal. The proposed interim corrective measures must contain a workplan and a project schedule. The EPA Project Manager will determine whether any public participation activities are appropriate prior to acting on CountryMark's request for approval of the Master Plan. The Master Plan supplements the RCRA Facility Investigation ("RFI") and tracks the progress with the work at the facility. CountryMark must submit updates to the Master Plan on a quarterly basis.

b. Investigate the nature and extent of any releases of hazardous waste and/or hazardous constituents at or from the Facility in accordance with an approved RCRA Facility Investigation (RFI) Work Plan. The RFI Work Plan may be submitted and/or implemented in phases. During the development of the RFI Work Plan, EPA will work with CountryMark to design a program that is phased in such a way as to reasonably assess and incorporate existing data. CountryMark may focus early RFI data collection and analyses in order to meet the scheduled demonstrations required by paragraph 13, and to identify conditions that require Interim Measures. The final RFI Report and risk assessments (based on comparison of the data to the screening levels indicated in Paragraph 20(h) or to site-specific closure levels), submitted as appendices to the

RFI Report, must be submitted within 240 days following the effective date of this order or the deadline set forth in the approved RFI Work Plan, whichever occurs last.

c. Evaluate the releases for their potential to serve as a source of contamination, whether the releases pose any unacceptable risk to human health and the environment, and provide risk assessment document(s) to EPA. Risk screening steps may be completed with the data available at the appropriate risk assessment phases, such as for Environmental Indicator ("EI") determinations, identifying a need for interim measures, the RFI, and the Corrective Measures Study ("CMS"), as appropriate. Generally, a screening risk assessment would be conducted during implementation of the RFI with additional, more detailed analysis, including appropriate cumulative risk analyses presented in the RFI Report.

12. If CountryMark determines that Interim Measures would limit Facility investigation work or risk assessment analyses and activities, or assist in attaining the EI measures, as defined in paragraph 13(a) through (b), below, CountryMark must receive EPA's approval to perform these Interim Measures. CountryMark shall notify EPA in writing of the interim measures it believes to be necessary, the reasons for performing the interim measures, demonstrate that such Interim Measures would be consistent with EPA's threshold and balancing criteria for potential future final remedies, and propose and submit to EPA a schedule for the Interim Measures. Any proposed Interim Measures must include cleanup objectives, decision criteria, and points of compliance, where appropriate. EPA will conduct oversight of the construction and performance of any Interim Measures.

13. By the dates set forth in items (a) and (b) below, CountryMark must demonstrate, through submitting EI Reports and by performing any other necessary activities, consistent with this section, that the Facility has obtained the following EI measures as intermediate goals consistent with the RFI Implementation:

a. **Within One year after the effective date of the AOC.** All current human exposures to contamination at or from the Facility are under control. To make this showing, CountryMark must demonstrate that significant or unacceptable exposures do not exist for all media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels, or for which there are complete pathways between contamination and human receptors.

b. **Within Three years after the effective date of the AOC.** Migration of contaminated groundwater at or from the Facility is stabilized. To make this showing, CountryMark must demonstrate that the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized to remain within any existing areas of contamination as defined by monitoring locations designated at the time of the demonstration. In addition, any discharge of groundwater to surface water is either insignificant or currently acceptable according to an appropriate interim assessment. CountryMark must collect monitoring and measurement data in the future as necessary to verify that migration of any contaminated groundwater is stabilized.

14. To prepare for and provide the demonstrations required by paragraph 13, above, CountryMark must:

a. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria;

b. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable;

c. Control any unacceptable current human exposures that CountryMark or EPA identifies. This includes performing any corrective actions or other response measures ("Corrective Measures") necessary to control current human exposures to contamination to within acceptable risk levels;

d. Stabilize the migration of contaminated groundwater. This includes implementing any interim measures necessary to stabilize the migration of contaminated groundwater;

e. Conduct groundwater monitoring to confirm that any contaminated groundwater remains within the original area of contamination; and

f. Prepare a report, either prior to or as part of the EI Reports, which describes and justifies any interim measures performed to meet the requirements of this Section, including sampling documentation, construction completion documentation and/or confirmatory sampling results.

15. Within One year of the date EPA approves the Final RFI Report, CountryMark must submit a Corrective Measures Study (CMS) to EPA which proposes the final Corrective Measures necessary to eliminate or contain sources of contamination and protect human health and the environment from all current and future unacceptable risks from exposures to hazardous waste or hazardous constituents at or from the Facility. The CMS must describe any interim measures already begun or completed at the Facility and any final corrective measures CountryMark proposes to implement at the Facility. The CMS must describe how the proposed corrective measures meet remedy selection criteria guidance found in the Advance Notice of Proposed Rule Making found at:

http://www.epa.gov/epawaste/hazard/correctiveaction/resources/guidance/anpr.htm

The CMS must also include a description of all other final Corrective Measures that CountryMark evaluated, a detailed explanation of why CountryMark preferred the proposed final Corrective Measures to the alternative measures, and cost estimates for the final Corrective Measures evaluated. The CMS must also include a detailed schedule for the design, construction, and implementation of the final Corrective Measures, and the submission of a Final Remedy Construction Completion Report. CountryMark must complete as much of the initial construction work as practicable within one year after EPA selects the final Corrective Measures.

CountryMark must complete all final Corrective Measures within a reasonable period of time to protect human health and the environment.

16. As part of developing its proposal, CountryMark must propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios and provide the basis and justification for these decisions.

17. EPA may request supplemental information from CountryMark if EPA determines that the CMS and supporting information do not provide an adequate basis to select final Corrective Measures that will protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the Facility. CountryMark must provide any supplemental information that EPA requests in writing by the deadline established in the EPA request for supplemental information.

18. EPA will provide the public with an opportunity to review and comment on its proposed final Corrective Measures through a detailed description and justification for the proposal in the "Statement of Basis" document and other means of public outreach. Following the public comment period, EPA will select the final Corrective Measures, and will notify the public of the selected corrective measures and provide the basis for its decision in a "Final Decision and Response to Comments" ("Final Decision") document.

19. Upon notice by EPA, CountryMark must implement the final Corrective Measures selected in EPA's Final Decision according to the schedule in the Final Decision.

20. Reporting and other requirements:

a. Within 120 days of the effective date of this Order, CountryMark must establish a publicly accessible repository for information regarding all activities at the Facility conducted pursuant to this Order, and may conduct public outreach and involvement activities. This repository usually consists of a section in the local public library dedicated and preserved to the information concerning corrective action activities at the Facility.

b. Public outreach and involvement activities performed under this Order will commence when EPA determines that CountryMark has gathered sufficient information regarding Site conditions. CountryMark may participate in EPA's public outreach and involvement activities, in which case CountryMark must submit to EPA a Facility Community Involvement Plan detailing the nature of its involvement. CountryMark's submission shall be within 30 days of EPA communicating to CountryMark its determination that CountryMark has gathered sufficient information regarding Site conditions, and that EPA is commencing public participation and involvement activities under this Order. Nothing in this Order shall restrict EPA's authority and obligation to undertake any public outreach and involvement activities it deems necessary and appropriate.

c. CountryMark must provide quarterly progress reports, which must cover the work performed to date, data collected, and a recent, updated version of the Master Plan incorporating any and all progress with the Work, and setting forth the current updated work schedule.

d. CountryMark must establish, maintain, and provide EPA access to a web portal, or another means acceptable to EPA, within 90 days of the effective date of the AOC to facilitate the transfer of electronic information. Such information must include sampling data, which CountryMark may post to the web portal, or the alternative means approved by EPA, on a continuous basis as such data becomes available.

e. The parties will frequently communicate in good faith to assure successful completion of the requirements of this Order, and will confer on at least a semi-annual basis to discuss the work proposed and performed under this Order.

f. CountryMark must provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in the CMS or, if the remedy in EPA's Final Decision is different from that selected by CountryMark in the CMS, as agreed upon in writing by both parties within sixty (60) days of EPA's Final Decision, and demonstrating that it has completed construction of the remedies pursuant to EPA's Final Decision document.

g. If ongoing monitoring or operation and maintenance are required after construction of the final Corrective Measures, CountryMark must include an operations, monitoring, and maintenance plan in the Final Remedy Construction Completion Report. CountryMark must revise and resubmit the report in response to EPA's written comments, if any, by the dates EPA specifies. Upon EPA's written approval, CountryMark must implement the approved operation and maintenance plan according to the schedule and terms of the plan.

h. Any risk assessments CountryMark conducts must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, CountryMark will follow the Risk Assessment Guidance for Superfund ("RAGS"), Ecological Risk Assessment Guidance for Superfund and other appropriate EPA and state guidance. CountryMark will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, EPA Regional screening levels, EPA EcoSSLs, EPA Region 5 Ecological Screening Levels, EPA Region 5 Risk Based Screening Levels, EPA vapor intrusion guidance, RAGS, the Indiana Remediation Closure Guide, or other sources of screening levels approved by the EPA Project Manager, including state screening levels.

i. All sampling and analysis conducted under this Order must be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998), as appropriate for the Facility, and be sufficient to identify and characterize the nature and extent of all releases as required by this Order. CountryMark will follow the QAPP submitted to EPA in 2010. EPA may audit laboratories CountryMark selects or require CountryMark to purchase and analyze any performance evaluation samples selected by EPA which are compounds of concern. CountryMark must notify EPA in writing at least fourteen (14) days before beginning each separate phase of field work performed under this Order. At the request of EPA, CountryMark

will provide or allow EPA or its authorized representative to take split or duplicate samples of all samples CountryMark collects under this Order.

21. Project Managers can agree in writing to extend any deadline in this section for ninety (90) days or less. However, extensions of greater than ninety (90) days require obtaining approval from the Chief of the Remediation and Reuse Branch, Land and Chemicals Division.

VII. ACCESS

22. Upon reasonable notice, and at reasonable times, EPA, its contractors, employees, and any designated EPA representatives may, for purposes of overseeing the implementation of this AOC, enter and freely move about the Facility to, among other things: interview Facility personnel and contractors; review CountryMark's progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data CountryMark submits to EPA. EPA, its contractors, employees, and any other designated representative will observe all plant safety requirements, warning signals, and emergency procedures while at the Facility. CountryMark will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to Work undertaken under this Order and that are within the possession or under the control of CountryMark or its contractors or consultants. CountryMark may request split samples, or copies of all photographs, tapes, videos or other recorded evidence created by EPA and releasable under the Freedom of Information Act.

23. If CountryMark must go beyond the Facility's boundary to perform work required by this Order, CountryMark must use its best efforts to obtain the necessary access agreements from the present owner(s) of such property within thirty (30) days after CountryMark knows of the need for access. Any such access agreement must provide for access by EPA and its representatives. CountryMark must submit a copy of any access agreement to EPA's Project Manager. If it does not obtain agreements for access within thirty (30) days, CountryMark must notify EPA in writing within fourteen (14) additional days of both the efforts undertaken to obtain access and the failure to obtain access agreements. EPA may, at its discretion, assist CountryMark in obtaining access.

24. Nothing in this section limits or otherwise affects EPA's right of access and entry under applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675.

VIII. COST ESTIMATES AND ASSURANCES OF FINANCIAL RESPONSIBILITY FOR COMPLETING THE WORK

25. Estimated Cost of the Work

a. Within thirty (30) days after submission of the CMS required by paragraph 15 above, CountryMark must submit to EPA for approval detailed written estimates, in current dollars, of the cost of hiring a third party to perform the Work to Be Performed under Section VI of this

Order ("Cost Estimate"). The Cost Estimate must account for the costs of all foreseeable Work, including, but not limited to, all remaining investigations and reports, construction work, monitoring, and other long term care work. All Cost Estimates must be consistent with the requirements of 40 C.F.R. §§ 264.142 and 264.144. References in these regulations to closure and post-closure shall mean the Work to be Performed under Section VI of this Order.

b. CountryMark shall annually adjust the Cost Estimate for inflation and for changes in the scope of the Work to be Performed until the Work required by this Order is completed. Within thirty (30) days after the close of CountryMark's fiscal year, CountryMark must submit each annual Cost Estimate to EPA for review.

c. If at any time EPA determines that a Cost Estimate provided pursuant to this section is inadequate, EPA shall notify CountryMark in writing, stating the basis for its determination. If at any time CountryMark becomes aware of information indicating that any Cost Estimate provided pursuant to this section is inadequate, CountryMark must notify EPA in writing of such information within ten (10) days. Within thirty (30) days of EPA's notification, or within thirty (30) days of becoming aware of such information, as the case may be, CountryMark must submit a revised Cost Estimate to EPA for review.

26. Assurances of Financial Responsibility for Completing the Work

a. Within sixty (60) days after EPA approves the Cost Estimate, CountryMark must establish financial assurance for the benefit of the EPA. In the event that EPA approval of CountryMark's Cost Estimate is not received within thirty (30) days after close of CountryMark's fiscal year, CountryMark shall establish and maintain the financial assurance in the amount of the Cost Estimate submitted under Paragraph 25(a) within ninety (90) days of the end of its fiscal year.

b. Within ninety (90) days after the close of the CountryMark's fiscal year, CountryMark must update the financial instrument or financial test demonstration to reflect changes to the annual adjusted Cost Estimate required under Paragraph 25(b).

c. CountryMark must maintain adequate financial assurance until EPA releases CountryMark from this requirement under Paragraph 27(c).

d. CountryMark may use one or more of the financial assurance forms described in subparagraphs (i) – (vi), below. Any and all financial assurance documents provided pursuant to this Order shall be submitted to EPA for review in draft form at least thirty (30) days before they are due to be filed and must be satisfactory in form and substance as determined by EPA.

i. A trust fund established for the benefit of EPA, administered by a trustee;

ii. A surety bond unconditionally guaranteeing performance of the Work in accordance with this Order, or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in subparagraph (i) above;

iii. An irrevocable letter of credit, payable at the direction of the Director, Land and Chemicals Division, into a standby trust fund that meets the requirements of the trust fund in subparagraph (i) above;

iv. An insurance policy that provides EPA with rights as a beneficiary, issued for a face amount at least equal to the current Cost Estimate, except where costs not covered by the insurance policy are covered by another financial assurance instrument;

v. A corporate guarantee, executed in favor of the EPA by one or more of the following: (1) a direct or indirect parent company, or (2) a company that has a "substantial business relationship" with CountryMark (as defined in 40 C.F.R. § 264.141(h)), to perform the Work to be performed under Section VI of this Order or to establish a trust fund as permitted by subparagraph (i) above; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the portion of the Cost Estimate that it proposes to guarantee;

vi. A demonstration by CountryMark that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Cost Estimate, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

e. CountryMark must submit all original executed and/or otherwise finalized instruments to EPA's Regional Comptroller (MF-10J), 77 W. Jackson Blvd., Chicago, IL 60604-3590, within thirty (30) days after date of execution or finalization as required to make the documents legally binding. The EPA ID Number IND 044 908 663 must appear on all submitted documents. CountryMark must also provide copies to the EPA Project Manager.

f. If at any time CountryMark provides financial assurance by means of a corporate guarantee or financial test, CountryMark must also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, and will promptly provide any additional information requested by EPA from CountryMark, or any other corporate guarantor at any time.

g. For purposes of the corporate guarantee or the financial test described above, references in 40 C.F.R. § 264.143(f) to "the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates" will mean the sum of all environmental remediation obligations (including obligations under CERCLA, RCRA, the Underground Injection Control program, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2695d, and any other state or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Cost Estimate.

h. CountryMark may combine more than one mechanism to demonstrate financial assurance.

i. CountryMark may satisfy its obligation to provide financial assurance by providing a third party who satisfies the obligations of the financial assurance requirements of this Order; however, CountryMark will remain responsible for providing financial assurance in the event such third party fails to do so and any financial assurance from a third party must be in one of the forms provided in subparagraphs 26(d)(i) through 26(d)(vi) above.

j. If at any time EPA determines that a financial assurance mechanism provided pursuant to this section is inadequate, EPA shall notify CountryMark in writing. If at any time CountryMark becomes aware of information indicating that any financial assurance mechanism(s) provided pursuant to this section is inadequate, CountryMark must notify EPA in writing of such information within ten (10) days. Within ninety (90) days of receipt of notice of EPA's determination, or within ninety (90) days of CountryMark's becoming aware of such information, CountryMark must establish and maintain adequate financial assurance for the benefit of the EPA which satisfies all requirements set forth in this section. Any and all financial assurance documents provided pursuant to this Order must be submitted to EPA for review in draft form at least thirty (30) days before they are due to be filed and shall be satisfactory in form and substance as determined by EPA.

k. CountryMark's inability or failure to establish or maintain financial assurance for completion of the Work will in no way excuse performance of any other requirements of this Order.

27. Modification of Amount and/or Form of Performance Guarantee

a. Reduction of Amount of Financial Assurance. If CountryMark believes that the Cost Estimate has diminished below the amount covered by the existing financial assurance provided under this Order, CountryMark may, at the same time that CountryMark submits its annual Cost Estimate, submit a written proposal to EPA for approval to reduce the amount of the financial assurance to equal the revised Cost Estimate.

b. Change of Form of Financial Assurance. If CountryMark desires to change the form or terms of financial assurance, CountryMark may, at the same time that CountryMark submits the annual Cost Estimate, submit a written proposal to EPA for approval to change the form of financial assurance. The written proposal shall specify all proposed instruments or other documents required in order to make the proposed financial assurance legally binding and shall satisfy all requirements set forth in this section. Within ten (10) days after receiving written approval of the proposed revised or alternative financial assurance, CountryMark shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding. In order to make the selected financial assurance legally binding, CountryMark must submit all executed and/or otherwise finalized instruments or other documents required to the EPA Comptroller's Office, with a copy to EPA's Project Manager, as provided in paragraph 26(e), above.

c. Release of Financial Assurance. CountryMark may submit a written request to the Director, Land and Chemicals Division that EPA release CountryMark from the requirement to maintain financial assurance under this section once EPA and CountryMark have both executed an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right" pursuant to Section XVIII (Termination and Satisfaction) of the Order. The Director, Land and Chemicals Division will notify both CountryMark and any other provider(s) of the financial assurance that CountryMark is released from all financial assurance obligations under this Order.

d. Nothing in this section restricts or otherwise prevents the parties from agreeing to make written modifications to the financial assurance obligations under this Order that take into account the financial status of CountryMark and are consistent with Agency guidance.

28. Performance Failure

a. If EPA determines that CountryMark (i) has ceased implementing any portion of the Work; (ii) is significantly or repeatedly deficient or late in its performance of the Work; or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both CountryMark and the financial assurance provider of CountryMark's failure to perform. The notice issued by EPA will specify the grounds upon which such a notice was issued and will provide CountryMark with a period of twenty (20) days within which to remedy the circumstances giving rise to the issuance of such notice.

b. Failure by CountryMark to remedy the relevant performance failure to EPA's satisfaction before the expiration of the twenty-day notice period specified in paragraph 28(a) shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to subparagraphs 26(a)(i), 26(a)(ii), 26(a)(iii), 26(a)(iv), or 2(a)(v). If EPA is unable after reasonable efforts to secure payment of funds or performance of the Work from the financial assurance provider, then upon written notice from EPA, CountryMark must within twenty (20) days deposit into a trust fund approved by EPA, a cash amount equal to the Cost Estimate.

IX. RECORD PRESERVATION

29. CountryMark must retain during the pendency of this Order, and for at least six years after the Order terminates, all data and all final documents now in its possession or control or which come into its possession or control which relate to this Order. CountryMark must notify EPA in writing ninety (90) days before destroying any such records, and give EPA the opportunity to take possession of any non-privileged documents. CountryMark's notice will refer to the effective date, caption, and docket number of this Order and will be addressed to:

Director
Land and Chemicals Division
EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

CountryMark will also promptly give EPA's Project Manager a copy of the notice.

Within thirty (30) days of retaining or employing any agent, consultant, or contractor ("agents") to carry out the terms of this Order, CountryMark will enter into an agreement with the agents to give CountryMark a copy of all data and final non-privileged document produced under this Order.

30. CountryMark shall not assert any privilege or confidentiality claim concerning any data gathered during any investigations or other actions required by this Order.

X. STIPULATED PENALTIES

31. CountryMark must pay the following stipulated penalties to the United States for violations of this Order:

a. For failure to submit progress reports by the dates scheduled in paragraph 20(b), above: $250 per day for the first fourteen (14) days and $500 per day thereafter.

b. For failure to submit the Current Conditions Report as scheduled by paragraph 11(a): $250 per day for the first fourteen (14) days and $500 per day thereafter.

c. For failure to submit the RFI Report as scheduled by paragraph 11(b): $250 per day for the first fourteen (14) days and $500 per day thereafter.

d. For failure to adequately demonstrate that current human exposures are under control as scheduled by paragraph 13(a): $1,250 per day.

e. For failure to adequately demonstrate that groundwater migration is stabilized as scheduled by paragraph 13(b): $1,250 per day.

f. For failure to submit the CMS as scheduled by paragraph 15: $250 per day for the first fourteen (14) days and $500 per day thereafter.

g. For failure to implement according to the approved schedule, the selected final Corrective Measures as described in paragraphs 15-19: $750 per day for the first fourteen (14) days and $1,500 per day thereafter.

h. For failure to submit the Final Remedy Construction Completion Report as scheduled in paragraph 20(e): $250 per day for the first fourteen (14) days and $500 per day thereafter.

i. For failure to submit the Cost Estimate as scheduled by paragraph 25(a): $100 per day for the first fourteen (14) days and $250 per day thereafter.

j. For failure to submit and maintain the financial assurance required by paragraph 26: $250 per day for the first fourteen (14) days and $500 per day thereafter.

32. All Stipulated penalties will begin to accrue on the day after complete performance is due or the day a violation occurs whether or not CountryMark has received notice of a violation, and will continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue under paragraphs 31(d) and (e), above, during the period, if any, beginning thirty-one (31) days after the EI Report is due, until the date that EPA notifies CountryMark in writing of any deficiency in the required demonstration(s). Separate stipulated penalties for separate violations of this Order will accrue simultaneously.

33. CountryMark must pay any stipulated penalties owed to the United States under this section within thirty (30) days of receiving EPA's written demand to pay the penalties, unless CountryMark invokes the dispute resolution procedures under Section XI (Dispute Resolution). A written demand for stipulated penalties will describe the violation and will indicate the amount of penalties due.

34. Interest will begin to accrue on any unpaid stipulated penalty balance beginning thirty-one (31) days after CountryMark receives EPA's demand letter. Interest will accrue at the current value of funds rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. § 3717, CountryMark must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than ninety (90) days overdue.

35. CountryMark must pay all penalties by certified or cashier's check payable to the United States of America, or by wire transfer, and will send the check to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

A transmittal letter stating the name of the Facility, CountryMark's name and address, and the EPA docket number of this action must accompany the payment. CountryMark will simultaneously send a copy of the check and transmittal letters to the EPA Project Manager.

36. CountryMark may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section XI (Dispute Resolution). The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. CountryMark must pay stipulated penalties and interest, if any, according to the dispute resolution decision or agreement. CountryMark must submit such payment to EPA within thirty (30) days after receiving the resolution according to the payment instructions of this section.

37. Neither invoking dispute resolution nor paying penalties will affect CountryMark's obligation to comply with the terms of this Order not directly in dispute.

38. 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 for CountryMark's violation of any terms of this Order. However, EPA will not seek both a stipulated penalty under this section and a statutory penalty for the same violation.

XI. DISPUTE RESOLUTION

39. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.

40. If either party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Project Manager of the dispute via telephone or electronic mail. The Project Managers will attempt to resolve the dispute informally.

41. If the Project Managers cannot resolve the dispute informally, either party may pursue the matter formally by sending its objections in writing to the other party within fourteen (14) days of the initial notification of the dispute. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.

42. EPA and CountryMark will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the parties. During formal negotiations, either party may request a conference with appropriate senior management to discuss the dispute.

43. If the parties are unable to reach an agreement through formal negotiations, within fourteen (14) business days after any formal negotiations end, CountryMark and EPA's Project Manager may submit additional written information to the Director of the Land and Chemicals Division, EPA Region 5. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this section. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, EPA will respond to CountryMark's arguments and evidence and provide a detailed written decision on the dispute signed by the Director of the Land and Chemicals Division, EPA Region 5.

44. CountryMark's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, CountryMark shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XII. FORCE MAJEURE AND EXCUSABLE DELAY

45. Force majeure, for purposes of this Order, is any event arising from causes not foreseen and beyond CountryMark's control that delays or prevents the timely performance of any obligation under this Order despite CountryMark's best efforts.

46. If any event occurs that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, CountryMark must notify EPA within two (2) business days after learning that the event may cause a delay. If CountryMark wishes to claim a force majeure event, within fifteen (15) business days thereafter CountryMark must provide to EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

47. If EPA determines that a delay or anticipated delay is attributable to a force majeure event, EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as EPA determines is necessary to complete the obligation or obligations.

XIII. MODIFICATION

48. This Order may be modified only by mutual agreement of EPA and CountryMark, except as provided in Section VI (Work to be Performed). Any agreed modifications will be in writing, shall be signed by both parties, will be effective on the date of signature by EPA, and will be incorporated into this Order.

XIV. RESERVATION OF RIGHTS

49. Nothing in this Order shall restrict EPA's authority to seek CountryMark's compliance with the Order and applicable laws and regulations. For violations of this Order, EPA reserves its rights to bring an action to enforce the Order, to assess penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2), and to issue an administrative order to perform corrective actions or other response measures. In any later proceeding, CountryMark shall not assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by the United States in the later proceeding were or should have been raised here. This Order is not a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities of EPA.

50. EPA reserves all of its rights to perform any portion of the Work consented to in this Order, or any additional characterization of the Facility, feasibility study, and remedial work, as it deems necessary to protect human health or the environment.

51. If EPA determines that CountryMark's actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituents, or a threat to human health or the environment, or that CountryMark cannot perform any of the Work ordered, EPA may order CountryMark to stop implementing this Order for the time EPA determines may be needed to abate the release or threat and to take any action that EPA determines is necessary to abate the release or threat.

52. CountryMark does not admit any of EPA's factual or legal determinations. Except for the specific waivers in this Order, CountryMark reserves all of its rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge EPA's performance of work; (b) to challenge EPA's stop work orders; and (c) regarding liability or responsibility for conditions at the Facility, except for its right to contest EPA's jurisdiction to issue or enforce this Order. CountryMark has entered into this Order in good faith without trial or adjudication of any issue of fact or law. CountryMark reserves its right to seek judicial review of EPA actions taken under this Order, including a proceeding brought by the United States to enforce the Order or to collect penalties for violations of the Order. CountryMark waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review of this Order, or EPA's actions taken under this Order, that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under 5 U.S.C. §§ 702 and 704.

53. The Parties' consent to enter into this Order shall not constitute a waiver by, or affect the right of EPA or the United States to pursue appropriate legal, injunctive or other equitable relief, or criminal sanctions for any legal violations.

54. This Order does not affect CountryMark's responsibility to comply with RCRA and other applicable federal, state, and local laws, regulations, and permits.

XV. OTHER CLAIMS

55. CountryMark waives any claims or demands for compensation or payment under Section 106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred under this Order. In addition, this Order is not a decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

XVI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

56. CountryMark agrees to indemnify, save, and holds harmless the United States, its agencies, departments, officers, agents, and employees, from all claims or causes of action arising from, or on account of, acts or omissions of CountryMark, or its officers, employees, agents, independent contractors, receivers, trustees, and assigns, in carrying out activities required by this Order. This indemnification will not affect or limit the rights or obligations of CountryMark or the United States under their various contracts. This indemnification will not create any obligation on the part of CountryMark to indemnify the United States from claims arising from the acts or omissions of the United States.

57. Neither the United States nor EPA is, or will be, a party to any contract involving the Work performed by CountryMark pursuant to this Order.

XVII. SEVERABILITY

58. If any judicial or administrative authority holds any provision of this Order to be invalid, the remaining provisions will remain in force and will not be affected.

XVIII. TERMINATION AND SATISFACTION

59. CountryMark may request that EPA issue a determination that CountryMark has met the requirements of the Order for all or a portion of the Facility. CountryMark may also request that EPA issue a "corrective action complete" or "corrective action complete with controls" determination for all or a portion of the Facility as described at 67 Federal Register 9176, dated February 27, 2002.

60. The provisions of the Order will be satisfied upon CountryMark's and EPA's execution of an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights," consistent with EPA's Model Scope of Work for Corrective Action.

61. CountryMark's execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section IX (Record Preservation), to maintain any necessary institutional controls or other long terms measures, and to recognize EPA's reservation of rights as required in Section XIV (Reservation of Rights).

XIX. EFFECTIVE DATE

62. This Order is effective on the date that EPA signs the Order.

IT IS SO AGREED:

DATE: 7-15-13

BY: Charles E Smith
Charles E. Smith
President & CEO
Countrymark Refining and Logistics, LLC

IT IS SO ORDERED:

DATE: 8/2/13

BY: Anton Martey
for Margaret Guerriero
Director
Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5

ATTACHMENT 1

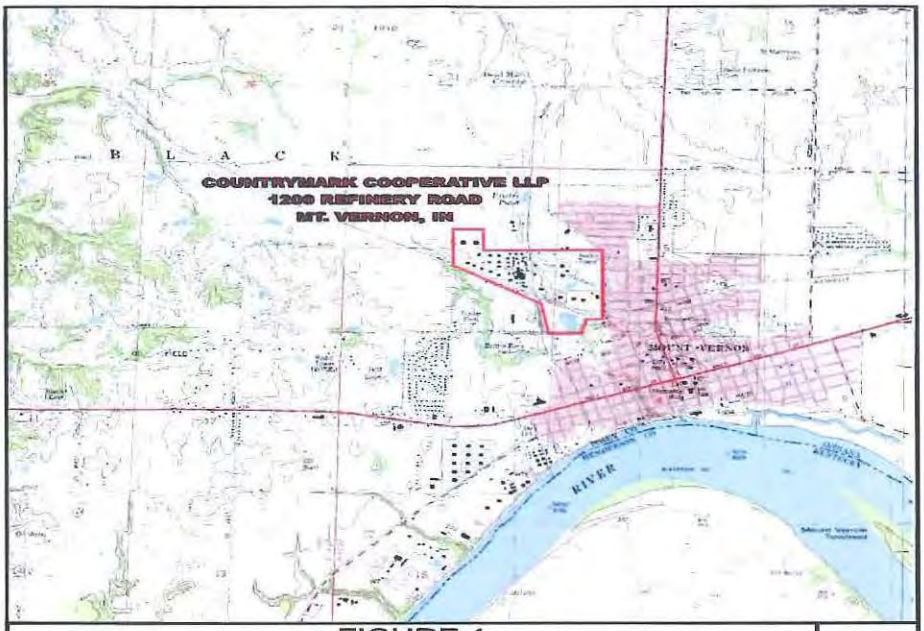

FIGURE 1

TOPOGRAPHIC LOCATION MAP

COUNTRYMARK REFINERY
1200 REFINERY ROAD
MT. VERNON INDIANA 47620

NORTH

MAP SCALE; N/A