UNITED STATES DISTRICT COURT FOR DISTRICT OF NEW JERSEY

BRAD LAFFERTY,
CHRISTEN LAFFERTY,
BRAD LAFFERTY AND CHRISTEN LAFFERTY,
in their capacity of Guardians Ad Litem of their
minor daughter, EL, a minor,
CORRINE PROCAJLO,
SANDRA KEATING
LAUREN PROCAJLO,
MICHAEL DIGIOVANNI,
SPENCER POPE,
LISA DIGIOVANNI,
GINA TARTAGLIA,
ANTHONY TARTAGLIA,
SCOTT LITTLEFIELD,
KRISTEN LITTLEFIELD
SCOTT AND KRISTEN LITTLEFIELD in their
capacity of Guardians Ad Litem of their
minor daughter, LL, a minor,
DAWN D'ORAZIO, AND
GINA HYNDMAN

in their individual capacity and on behalf of
others similarly situated

PLAINTIFFS

V.

THE SHERWIN WILLIAMS COMPANY, INC,
AND JOHN DOES 1 THROUGH 10, inclusive

DEFENDANTS

CIVIL ACTION NUMBER:

JURY TRIAL DEMANDED

PLAINTIFFS CLASS ACTION
AND INDIVIDUAL COMPLAINT
FOR DAMAGES AND DEMAND
FOR JURY TRIAL

1. Declaratory Judgement
2. Medical Monitoring
3. Strict Liability
4. Negligence and Negligence Per Se
5. Fraud & Fraudulent Concealment
6. Negligent Misrepresentation
7. Private Nuisance
8. Strict Liability - Abnormally
   Dangerous Activity
9. Injunctive Relief

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Attorneys for Plaintiffs

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THE SHERWIN WILLIAMS COMPANY, INC,
AND JOHN DOES 1 THROUGH 10, inclusive

DEFENDANTS

PLAINTIFFS' CLASS ACTION COMPLAINT

PLAINTIFFs, by and through their undersigned attorneys, Mitnick Law Office, LLC hereby files this Class Action Complaint, on behalf of themselves and all others similarly situated, against Defendants, The Sherwin-Williams Company and John Does 1 through 10, to obtain damages, both compensatory and punitive, injunctive relief, medical monitoring and costs of suit. Plaintiffs

allege the following upon information based on the investigation of counsel, except as to those allegations that specifically pertain to Plaintiffs which are alleged upon personal knowledge.

THE PARTIES

PLAINTIFFS

1. PLAINTIFF BRAD LAFFERTY, individually, who has resided in Gibbsboro, New Jersey for over eight years and whose address is 38 Winding Way, Gibbsboro, New Jersey and who is married to Christen Lafferty and has not been diagnosed with Cancer or other adverse physical injury.

2. PLAINTIFF CHRISTEN LAFFERTY, individually, who has resided in Gibbsboro, New Jersey for over eight years and whose address is 38 Winding Way, Gibbsboro, New Jersey and who is married to Brad Lafferty and has not been diagnosed with Cancer or other adverse physical injury.

3. PLAINTIFFS BRAD LAFFERTY and CHRISTEN LAFFERTY, residing at 38 Winding Way, Gibbsboro, New Jersey, in their capacity as Guardians Ad Litem of their minor daughter, EL, a minor stricken with cancer (leukemia).

4. PLAINTIFF CORRINE PROCAJLO, individually, who resides at 33 Winding Way, Gibbsboro, New Jersey and has not been diagnosed with cancer or other adverse physical injury.

5. PLAINTIFF SANDRA KEATING, individually, who resides at 278 Marshall Avenue, Blackwood, New Jersey 08012. Plaintiff Sandra Keating exercised in public walking areas three times a week for approximately three years during which time she was diagnosed with Kidney disease.

6. PLAINTIFF LAUREN PROCAJLO, individually, who previously resided at 16 Alden Road, Gibbsboro, New Jersey and who now resides at 36 Eastwood Drive, Voorhees, New Jersey and who has been stricken with cancer (Hodgkin's Lymphoma).

7. PLAINTIFF MICHAEL DIGIOVANNI, individually, who resides at 10 Wexford Road, Gibbsboro, New Jersey and has not been diagnosed with cancer or other adverse physical injury.

8. PLAINTIFF SPENCER POPE, individually, who resides at 33 Winding Way, Gibbsboro, New Jersey and who has not been diagnosed with cancer or other adverse physical illness.

9. PLAINTIFF LISA DIGIOVANNI, individually, who resides at 10 Wexford Road, Gibbsboro, New Jersey 08026 and has not been diagnosed with cancer or other physical injury.

10. PLAINTIFF GINA TARTAGLIA, an individual who resides at 11 Winding Way, Gibbsboro, New Jersey and has not been diagnosed with cancer or other adverse physical injury;

11. PLAINTIFF ANTHONY TARTAGLIA, an individual who resides at 11 Winding Way, Gibbsboro, New Jersey and has not been diagnosed with any other adverse physical injury;

12. PLAINTIFF SCOTT LITTLEFIELD, individually, who resides at 11 United States Avenue, Gibbsboro, New Jersey and has not been diagnosed with cancer or other physical injury.

13. PLAINTIFF KRISTEN LITTLEFIELD, individually, who resides at 11 United States Avenue, Gibbsboro, New Jersey and has not been diagnosed with cancer or other physical injury.

14. PLAINTIFFS SCOTT LITTLEFIELD AND KRISTEN LITTLEFIELD, residing at 11 United States Avenue, Gibbsboro, New Jersey, in their capacity as Guardians Ad Litem of their minor daughter, LL, a minor stricken with Cancer (Nueroblastona).

15. PLAINTIFF GINA HYNDMAN, individually, who resides at 401 Orchard Avenue, Somerdale, New Jersey and who previously resided at 25 West Clementon Road, Gibbsboro, New Jersey for over 20 years and has been diagnosed with a learning disability.

16. PLAINTIFF DAWN D'ORAZIO, individually, who currently resides at 145 Ebbetts Drive, Atco, New Jersey and who previously lived at 25 West Clementon Road, Gibbsboro, New Jersey for 32 years and who has not been diagnosed with cancer or other physical injury.

DEFENDANTS

17. DEFENDANT SHERWIN-WILLIAMS, is an Ohio Corporation whose principal place of business is located at 101 W. Prospect Ave. Cleveland, OH 44115. Upon information and belief, Sherwin-Williams Company is engaged in the development, manufacture, distribution and sale of paint, coatings and related products and conducts business in the United States, including New Jersey.

18. DEFENDANTS JOHN JOES 1-10, are unknown individuals who were additionally responsible for the contamination as set forth in this action, and/or who have covered up and/or censored the extent of the contamination. These Defendants true identities have not yet been ascertained due to the unavailability of information from The Sherwin-Williams Company and the Borough of Gibbsboro, New Jersey.

INTRODUCTION AND NATURE OF THE ACTION

19. This is a civil action to secure redress from The Sherwin-Williams Company (hereinafter referred to as “Sherwin-Williams”) and other unnamed Defendants for damages suffered by members of the putative classes defined below (the "Class Members").

20. The action is brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq. ("CERCLA"); the Administrative Order on Consent (AOC) Index Number II CERCLA-02-99-2035 under date of September 29, 1999; N.J.S.A. 58:10-23.11, New Jersey Spill Compensation and Control Act and other controlling New Jersey law.

21. Plaintiffs and members of the Class seek recovery against the Defendant Sherwin-William, in its capacity as the owner and operator of a paint and varnish manufacturing facility who occupied certain areas of land located within the State of New Jersey, County of Camden, Borough of Gibbsboro.

22. Plaintiffs and members of the Class seek recovery against Defendants 1 through 10,

unnamed defendants who, in their capacity as agents of Sherwin-Williams, or in their capacity individually, are responsible for the contamination as set forth in this action, and/or who have covered up and/or censored the extent of the contamination.

23. Sherwin-Williams was founded in 1866 and incorporated in the state of Ohio in 1884 and is engaged in the development, manufacture, distribution and sale of paint, varnish, coatings and related products.

24. Sherwin-Williams owned a paint manufacturing contaminant facility and operated a paint manufacturing business on three separate parcels of land, all located within the state of New Jersey, County of Camden, Borough of Gibbsboro, from approximately early 1930 until early September of 1978.

25. Sherwin-Williams conducted its' manufacturing operations, including the disposal of manufacturing waste products on three distinct areas of land in Gibbsboro. Since ceasing operations in 1978, all three land areas have been designated on the National Priorities list (NPL) and designated as Superfund Sites by the United States Environmental Protection Agency (hereinafter referred to as USEPA).

26. The first site is known as the United States Avenue Burn Site (hereinafter referred to as "Burn Site"). The second site is referred to as the Route 561 Dump Site (hereinafter referred to as "Dump Site") and the third site is known as the Sherwin-Williams/Hilliard's Creek Site (hereinafter referred to as "Hilliard’s Site"). Collectively these three land areas are hereinafter referred to as the "Sherwin-Williams Site".

27. The Borough of Gibbsboro is located within central Camden County, New Jersey. The Borough is approximately 2.2 miles in size and is home to approximately 2,274 residents according to the 2010 United States Census. The Borough is located about 15 miles southeast of Philadelphia Pennsylvania. Land-use in this small community is comprised of a combination of commercial, industrial, open spaces, and residential zones.

28. The 2.2-mile area of land that encompasses the Borough of Gibbsboro, upon information, may be entirely contaminated with hazardous substances as defined by Appendix A of N.J.SA.C. 7:1E and the current EPA list of hazardous substances under CERCLA Section 302.4. This area of land (hereinafter referred to as the "Class Area") is populated with residential homes, small businesses, restaurants, commercial structures, public parks and walking areas.

29. The "Hilliard's Creek" site encompasses approximately 60 acres and is bordered to the north by the Silverlake and to the east and west by residential dwellings, commercial buildings and businesses. To the south, the Hilliard's Creek area has open space and Woodland's. Hilliard's Creek is a third-order stream which flows westerly and junctions with the Cooper River about one mile west of the former paint manufacturing plant, prior to draining into Kirkwood lake. It is connected to Silverlake via an underground culvert beneath the former paint manufacturing plant. Hilliard's Creek and its' tributaries are also fed through a system of catch basins, storm sewers and coverts from the nearby roadways and potentially from groundwater recharge. This stream flows through the 56 acre Hilliard Creek wildlife refuge.

30. The Burn Site is located to the east of United States Avenue and is bordered to the north by residential properties and to the east and south by commercial properties and undeveloped land. In the past, the Burn Site was used for wastewater sludge storage and the disposal and burning of paint by-product wastes. The area is 8-acres in size.

31. The Dump Site is comprised of approximately 2.9 acres of land and is currently vacant. It is located to the west of Lakeview Road or Route 561, near the intersection with Milford and Crescent Roads. The site is bordered to the north by a shopping plaza and residential properties and to the east by Clement lake. To the south, it is bordered by residential properties.

32. The Sherwin-Williams Site was originally developed in the 19th century as a saw mill and subsequently became a grain mill (USEPA 2006). In 1851, the John Lucas Company purchased the land and converted the existing facility into a paint manufacturing plant. John Lucas company manufactured paint, varnish and associated products from 1851 until 1930 when Sherwin-Williams acquired control of the Lucas Paint Company and the Sherwin-Williams Site that encompassed the manufacturing facility. Sherwin-Williams continued manufacturing operations under the brand name of Sherwin-Williams until September 1, 1978 when it vacated

the property.

33. As part of its operations, Sherwin-Williams utilized and generated hazardous substances, including but not limited to lead, arsenic, pentachlorophenol, aluminum, manganese, iron, pesticides, polycyclic aromatic hydrocarbons, polychlorinated, biphenyls, cadmium, benzo-anthracene, benzo-pyrene, pyrene, copper, mercury, zinc, vanadium and benzene. *(September 29, 1999 Administrative Order of Consent) (See Exhibit A attached).*

34. The toxic and ultra-hazardous properties of lead, arsenic, pentachlorophenol, aluminum, manganese, iron, pesticides, polycyclic aromatic hydrocarbons, polychlorinated, biphenyls, cadmium, benzo-anthracene, benzo-pyrene, pyrene, copper, mercury, zinc, vanadium and benzene have been well documented and known to the paint industry for over a century. In fact, the first reports of fatal blood disorders caused by benzene appeared in scientific literature as early as the 1890s. In 1999, a study conducted by the National Academy of Science found a causal connection between arsenic and several different types of cancer.

35. As early as 1948, the American petroleum Institute (API) published the guideline that the only safe level of exposure to benzene was 0%.

36. Epidemiological Studies and evidence during the 1970s confirmed that exposure to benzene and arsenic, among other carcinogens, was a cause of acute myelogenous leukemia.

37. In August of 2007, the Department of Health and Human Services (DHHS), the Environmental Protection Agency (EPA), and the International Agency for Research on Cancer (IARC) concluded that arsenic and inorganic arsenic compounds, benzene, beryllium and beryllium compounds, cadmium and cadmium compounds are known human carcinogens.

38. The National Institute of health in a 1999 study concluded that focusing on pentachlorophenol provides increased statistical power and precision, and demonstrates associations between hematopoietic cancer and pentachlorophenol.

39. In 2011, the National Institute of Health reported that "Pentachlorophenol is characterized as a likely carcinogen of lymphoma and hematopoietic neoplasm". A systematic review was conducted to explore two kinds of associations, one was between the workers exposed to PCP with lymphoma and hematopoietic neoplasm, the other was between childhood lymphoma and leukemia with their parents exposed to Pentachlorophenol.

40. The International Agency for Research on Cancer (IARC) classifies benzene as "carcinogenic to humans," based on sufficient evidence that benzene causes acute myeloid leukemia (AML). IARC also notes that benzene exposure has been linked with acute lymphocytic leukemia (ALL), chronic lymphocytic leukemia (CLL), multiple myeloma, and non-Hodgkin lymphoma.

41. The National Toxicology Program (NTP) is formed from parts of several different US government agencies, including the National Institutes of Health (NIH), the Centers for Disease Control and Prevention (CDC), and the Food and Drug Administration (FDA). The NTP has classified beryllium and beryllium compounds, arsenic and inorganic arsenic compounds, benzene, benz[a]anthracene, benzo[b]fluoranthene, benzo[j]fluoranthene, benzo[a]and pyrene, as known human carcinogens, all of which have been found on the Sherwin-Williams Site.

42. Additionally, the US Environmental Protection Agency (EPA) maintains the Integrated Risk Information System (IRIS), an electronic database that contains information on human health effects from exposure to hazardous substances. These include arsenic, cadmium, Pentachlorophenol, benzo-anthracen, as well as numerous other substances found within the Sherwin-Williams Site and surrounding areas.

43. According to published sample testing performed on the Sherman-Williams Site, hazardous substances found included Lead, Arsenic, Barium, Cadmium, Pentachlorophenol, Beryllium, Mercury Benzo(a)pyrene, Benzene, 1,2-Dichloroethene, Ethylbenzene, Methylene Chloride, Vinyl Chloride, Xylene, bis(2-ethylhexy) phthalate, 2-Methylnapthalene, Naphthalene, Benzo(a)anthracene, Benzo(b)fluoranthene, Benzo(k)fluoranthene, Indeno (1,2,3-cd)pyrene,

Antimony, Chromium, Copper, Selenium, Zinc, Vanadium, various Pesticides, Arochlor-1254, Arochlor-1260, Alumimum, Cobalt, Nickel, Dibenz(a,h)anthracene.

44. The Sherwin-Williams facility included areas for the unloading of raw materials from railroad cars, raw materials tank forms including storage tanks, storage areas for drums raw materials, an industrial/domestic waste water disposal system, waste disposal areas for paint sludge, and drum cleaning areas. The paint company developed and maintained oil based paints, varnish, lacquer, and ready mix linseed oil paints. Raw materials used in the production of these products included lead oxide, zinc oxide, lead chromate, ferrous sulfuric, sulfuric acid, and various other solvents *(Public Health Assessment, New Jersey Department of Health and Senior Services, August 12, 2009).*

45. The Sherwin-Williams facility was permanently closed on September 1, 1978 according to the United States Environmental Association (hereinafter referred to as the "USEPA"). The property was sold in June 1981 to developer Robert Scarborough who rebuilt the former paint manufacturing plant into a robust business complex known as the Paint Works Corporate Center and then later sold the land and corporate park to Brandywine Realty trust.

46. The process by which Sherwin-Williams manufactured, stored and disposed of paint and paint by-products had the effect of releasing and omitting toxic chemicals and hazardous substances, including but not limited to lead, arsenic, benzene, barium and pentachlorophenol into the grounds, air and surrounding environment. Overtime these hazardous substances have migrated into surrounding corporate, business and residential properties *(September 29, 1999 Administrative Order of Consent).*

47. To date, there has never been a cancer assessment, community or otherwise for the residents of Gibbsboro. However, upon information and belief, cancer continues to threaten the lives of so many residents and others spending substantial periods of time in the area.

48. Plaintiff and Class Members, upon information and belief, allege that defendant Sherwin-Williams has been aware for many years (much earlier than 1978 when the company vacated the Gibbsboro site) that the Sherwin-Williams Site and surrounding residential, commercial and

public recreational areas were highly contaminated due to the company's past manufacturing operations.

49. On information, Sherwin-Williams had full knowledge of the commercial, residential and recreational building that was taking place on the "Sherwin-Williams Site" while all the time knowing that these retail, corporate and residential properties were being built on unsafe groundwater, soil and sediment levels.

50. In April of 1975 the New Jersey Department of environmental protection (hereinafter referred to as NJDEP) inspected the former landfill area of the Sherwin-Williams Site and sampled existing groundwater. Based on the results of the sampling, hazardous substances including barium, lead, arsenic, and phenol were determined to be found in the groundwater at elevated levels that exceeded NJDEP and the USEPA safe background levels.

51. In 1983, presence of an oily substance known as the petroleum seep was reported to the New Jersey Department of Environmental Protection. It was reported that the petroleum seep was emanating from the parking lot at one of the facilities located on the former Sherwin-Williams Site. Investigation of the petroleum seep indicated the presence of hazardous substances in the groundwater underlying the facility, as well as soil surrounding structures at the former plant. The following is a partial list of contaminants that were determined to exist during the seep sample testing: benzene, toluene, see-butyl benzene, p-Xylene, m-Xylene, ethyl benzene, n-Propyl benzene, 1,2,3 -trim ethylbenzene, 1,3,5-trimethylbenzene and tetrachloroethylene *(NJDEP 1990).*

52. More than 10 years later, in February of 1994, the NJDEP conducted another inspection of the route 561 dump site. A greenish blue particle substance was found underground the site. In addition, another blue green material was also found on the ground service and in the wetland area surface water on the property *(September 29, 1999 Administrative Order of Consent).*

53. Subsequently, in May of 1994, a follow-up site investigation was performed within the vicinity of the Sherwin-Williams Site. After collecting waste samples from an area of visible

burnt waste, results contained various hazardous metals including elevated levels of lead that were almost 3 times higher than the acceptable background levels of the State of New Jersey, as well as 3 times as high as acceptable background levels of the USEPA.

54. In August of 1995, the USEPA collected sediment and surface water samples from various areas within the Sherwin-Williams Site. Unsafe levels of lead and arsenic concentrations were found that exceeded acceptable NJDPA and USEPA background levels.

55. Lead, arsenic, benzene, methane and other hazardous substances found on the Sherwin-Williams Site are known by-products of paint and related paint manufacturing activities. Plaintiff and Class Members, upon information and belief, allege that these hazardous substances migrated into surrounding neighborhoods, retail centers and corporate parks where they were inhaled, ingested, or were otherwise contacted by people living, working and visiting the community.

56. Air, land and groundwater contaminated by the Defendant's activities at the Sherwin-Williams Site have migrated for years, and continue to spread to further surrounding areas, with hazardous chemical levels exceeding acceptable NJDEP and USEPA regulatory background guidelines *(September 29, 1999 Administrative Order of Consent).*

57. Upon information and belief, there are approximately 810 residential homes existing within the Borough of Gibbsboro, a borough that is only 2.2 miles in size. At least 50% of those homes (conservatively) are located within 1 mile of the center of the contaminated Sherwin-Williams Site.

58. Hundreds of others living, working or otherwise present in the area surrounding the Sherwin-Williams Site have been exposed to, inhaled or otherwise ingested and/or contacted lead, arsenic, benzene and other hazardous chemicals, which has caused them personal injury and will continue to cause them increased risk of personal injury in the future.

59. Moreover, as a result of Defendant's improper use and maintenance of the paint facility and Defendant's deliberate and intentional release, disposal and/or emission of hazardous

substances onto the Sherwin-Williams Site, these chemicals have migrated outward and continue to migrate into surrounding neighborhoods, lakes, creeks and onto commercial, residential and retail properties that are owned, occupied and controlled by residents of Gibbsboro and surrounding communities. This migration poses an elevated risk to the health and welfare of Gibbsboro residents, business owners and the public.

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JURISDICTION AND VENUE

60. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because Plaintiffs and Sherwin-Williams are citizens of different states and the amount in controversy exceeds the sum or value of $75,000.00, exclusive of interest and costs.

61. This Court has personal jurisdiction over Sherwin-Williams because this suit arises out of Sherwin-Williams contacts with this judicial district and because Sherwin-Williams has had continuous and systematic contacts with this judicial district. Sherwin-Williams is deemed to reside in this judicial district because its contacts are sufficient to subject it to personal jurisdiction here. Sherwin-Williams may be served with process by delivering a copy of the Summons and Complaint to its registered agent, Sherwin Williams Corporation, at its registered office, 101 West Prospect Avenue, Cleveland, Ohio 44115.

62. Venue is appropriate in the District of New Jersey because the acts which give rise to this Complaint occurred and continue to occur within the District and the property that is the subject of this action is situated in this District.

FACTUAL ALLEGATIONS

63. Benzene, Arsenic, Cadmium, Pentachlorophenol and various other toxins are recognized as known human carcinogens that pose severe health risks to anyone who is exposed to them. There is a scientific causal link between Benzene and Leukemia. *(American Cancer Association).* Causal links have also been found between other diseases of the blood and blood forming systems, including various types of cancer. Moreover, exposure to Benzene, Lead, or Arsenic

can also weekend the immune and central nervous system causing a greater susceptibility to infection and illness *(United States Center for Disease Control).*

64. The toxic ultra-hazardous properties of carcinogens have been well documented and known to the paint manufacturing industry for close to a century. In fact, the first reports of fatal blood disorders caused by benzene exposure appeared in scientific literature as early as the 1890s. As early as 1948, the American petroleum Institute published the guideline that the only safe level of exposure to benzene was 0%. Epidemiological studies and evidence during the 1970s confirm that exposure to benzene is a cause of acute myelogenous leukemia.

65. Benzene, Arsenic, and Pentachlorophenol, as well as various other carcinogens, are contained on the list of chemicals known to the State of New Jersey to cause cancer. To date, many scientific studies have demonstrated that even low level exposure to some hazardous substances, even when the exposure is for a relatively short duration, can lead to blood disease and leukemia risk. The American Cancer Association defines Arsenic, Benzene and various other carcinogens as hazardous substances that are known to cause cancer, based on evidence from studies in both people and lab animals. "The link between Benzene and cancer has largely focused on leukemia and other cancers of blood cells" *(The American Cancer Association).*

66. Exposure to hazardous substances, such as the ones listed above, can cause drowsiness, dizziness and unconsciousness. Long-term exposure to hazardous substances cause effects on the bone marrow and can cause anemia and various forms of cancer. Dissolved Benzene concentrations from paint by-products in groundwater at the Sherwin-Williams Site remain at concentrations more than the maximum contaminant level allowed by the NJDEP and by the USEPA.

67. According to the EPA, Lead contamination at Superfund sites, such as the Sherwin-Williams Site, presents a threat to human health and the environment. "Lead can be harmful to humans (particularly children) when ingested or inhaled. Over time, lead has become a common environmental contaminant at Superfund sites across the country".

68. The Agency for Toxic Substances and Disease Registry (ATSDR) has found that "exposure to Lead can happen from breathing workplace air or dust, eating contaminated foods, or drinking contaminated water. Children can be exposed from eating lead-based paint chips or playing in contaminated soil. Lead can damage the nervous system, kidneys, and reproductive system. Lead has been found in at least 1,272 of the 1,684 National Priority List Superfund sites identified by the Environmental Protection Agency (EPA) on the Agency's website. These sites include the Sherwin-Williams Sites in Gibbsboro, New Jersey.

69. Almost 79 years ago, the 1949 industrial directory of New Jersey documents that Sherwin-Williams manufactured paint, varnish, lacquers, dry colors and chemicals at its Gibbsboro plant, leaving large amounts of lead in the environment.

70. Sherwin-Williams conducted its paint manufacturing operations, including the disposal of manufacturing waste products on the three distinct areas of land in Gibbsboro, New Jersey. All three Superfund sites according to the United States Environmental Protection Agency (USEPA). These three distinct land areas make up what is known as the "Sherwin-Williams Site".

71. The three separate areas that make up the Sherwin-Williams Site include: *The Sherwin-Williams/Hilliard's Creek Site* (Hilliard's Creek), *The United States Avenue Burn Site* (Burn Site) and *The 561 Dump Site* (Dump Site).

a. The Hilliard's Creek site encompasses approximately 60 acres and is bordered to the north by the Silverlake and to the east and west by residential dwellings, commercial buildings and small businesses. To the south, the Hilliard's Creek area has open space and Woodland's. Hilliard's Creek is a third-order stream which flows westerly and junctions with the Cooper River about 1 mile west of the former paint manufacturing plant, prior to draining into Kirkwood lake. It is connected to Silverlake via an underground culvert beneath the former paint manufacturing plant. Hilliard's Creek and its' tributaries are also fed through a system of catch basins, storm sewers and coverts from the nearby roadways and potentially from groundwater recharge. This stream flows through the 56 acre Hilliard Creek wildlife refuge.

b. The Burn Site is located to the east of United States Avenue and is bordered to the

north by residential properties and to the east and south by commercial properties and undeveloped land. In the past, the burn site was used for wastewater sludge storage and the disposal and burning of paint wastes. The 8-acre area is heavily vegetated and partially fenced.

c. The Dump Site is comprised of approximately 2.9 acres and is currently vacant. It is located to the west of Lakeview Road or route 561, near the intersection with Milford and Crescent Roads. The site is bordered to the north by a shopping plaza and residential properties and to the east by Clement lake. To the south, it is bordered by residential properties.

72. The Sherwin-Williams Site is situated within a naturally occurring topographic depression. This central part of this topographic low in Gibbsboro is defined by a series of ponds and lakes. Surface water runoff generated from the former paint facility area flows into the Silverlake, which is also located within the Sherwin Williams site. Overflow from the Silverlake discharges directly into several other creeks and lakes in the area. Some of the creeks flow directly through residential areas and commercial areas, as well as the Gibbsboro natural preserve which includes public walking trails for area residents. All water eventually discharges into the headwaters of the Cooper River that is located approximately 3/4 of a mile south west of the site.

73. The Sherwin-Williams Site included areas for the unloading of raw materials from railroad cars, raw materials tank forms including storage tanks, storage areas for drums raw materials, an industrial/domestic waste water disposal system, waste disposal areas for paint

sludge, and drum cleaning areas. The company developed and maintained oil based paints, varnish, lacquer, and ready mix linseed oil paints. Raw materials used in the production of these products included lead oxide, zinc oxide, lead chromate, ferrous sulfuric, sulfuric acid, and various other solvents *(Public Health Assessment, New Jersey Department of Health and Senior Services, August 12, 2009)*.

74. The Sherwin-Williams Site was permanently closed on September 1, 1978 (Public Health Assessment, New Jersey Department of Health and Senior Services, August 12, 2009). The property was sold in June 1981 to developer Robert Scarborough who rebuilt the former paint manufacturing plant into a business complex (Paint Works Corporate Center) and then later sold the land and business park to Brandywine Realty trust.

75. The process by which Sherwin-Williams manufactured, stored and disposed of paint and paint by-products had the effect of releasing and omitting toxic chemicals and hazardous substances, including but not limited to arsenic, benzene and pentachlorophenol, known human carcinogens, as well as high levels of lead into the grounds, air and surrounding environment in violation of Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14). Overtime these hazardous substances have migrated into surrounding corporate, business and residential properties.

76. The Burn Area site was used as disposal and burn site for paint wastes generated at the manufacturing facility. The EPA's National Priority List (NPL) website narrative for the United States Avenue Burn site indicates Sherwin-Williams operations included paint wastes and solvents being dumped and/or poured onto the ground surface and then burned. The report further states that the Burn Landfill was used by Sherwin-Williams for the disposal of paint wastes and the storage of sludge generated from the facility's wastewater treatment plant. ("*NPL, Site Narrative for United States Avenue Burn, Gibbsboro, New Jersey -USEPA"*).

77. According to the EPA, Sherwin-Williams mixed raw materials and processed them in multiple buildings throughout the Sherwin-Williams Site., Nearly 200,000 gallons of naphtha, xylene, mineral spirits, toluene, solvent blends and aromatic were stored there. The operation included 20-foot-deep lagoons for wastewater and paint sludge; above-ground tank farms; a

railroad line and spur; drum storage areas; and large-scale manufacturing operations. From the mid-1800s until 1978 the EPA claims that Sherwin-Williams discharged materials from the lagoons directly into the creek; improperly stored and handled materials, leading to spills and releases; and allowed leaking tanks that resulted in "widespread contamination" involving "high levels of various contaminants. *(EPA; D and D media report, Cleanup Set for Sherwin-Williams Site, Thursday, June 4, 2015).*

78. In April of 1975 the New Jersey Department of environmental protection (NJDEP) inspected the former landfill area of the Sherwin-Williams Site and sampled existing groundwater. Based on the results of the sampling, hazardous substances including barium, lead, arsenic, and phenol were determined to be found in the groundwater at elevated levels that exceeded acceptable New Jersey and USEPA background levels. *(September 29, 1999 Administrative Order of Consent).* Sherwin-Williams was advised of the finding yet their manufacturing activities continued without interruption until the manufacturing facility was closed by the company in early September of 1978.

79. In 1983, presence of an oily substance known as petroleum seep was reported to the New Jersey Department of Environmental Protection. It was reported that the petroleum seep was emanating from the parking lot at one of the facilities located on the former Sherwin-Williams Site. Investigation of the petroleum seep indicated the presence of hazardous substances in the groundwater underlying the facility, as well as soil surrounding structures at the former plant. The following is a partial list of contaminants that were determined to exist during the seep sample testing: benzene, toluene, see-butyl benzene, p-Xylene, m-Xylene, ethyl benzene, n-Propyl benzene, 1,2,3 -trim ethylbenzene, 1,3,5-trimethylbenzene and tetrachloroethylene *(NJDEP 1990).*

80. In 1991, three sediment and surface water samples were collected from Hilliard's Creek near Foster Avenue (USEPA 2006). Results indicated the presence of dinoctyl, phthalate, dibenzofuran, pentachlorophenol, benzene, xylenes, phenols, aluminum, arsenic, chromium, copper, lead, magnesium, pentachlorophenol, manganese, vanadium and zinc *(September 29, 1999 Administrative Order of Consent).*

81. As reported by the New Jersey Department of Environmental Protection, in June 1998, a

consulting firm collected sediment samples from a section of Hilliard's Creek located in the Hillard's Creek wildlife refuge. The original purpose of the sampling event was to obtain background samples for another site. However, sediment sampling results revealed elevated levels of lead, chromium, arsenic, and zinc. One sample result documented a lead level of 221,900 parts per million (ppm), equivalent to approximately 22% lead concentration.

82. On July 25, 1995, Agency for Toxic Substances and Disease Registry (ATSD) issued a report for the Burn Site. In that report conclusions were made that "soil and sediment at the site were contaminated with metal that pose a public health hazard. Roots of exposure to the site contaminants are by ingestion of contaminated soil or the inhalation of suspended dusts". The report further goes on to say "lead contamination is of particular concern because high concentrations of lead were found in bare surface soil in areas where children may play. Sediment sampling results also indicated that contaminants have migrated offsite and are present in sediment samples at levels of public health concern. Contact with these sediments Pose an additional source of contaminated exposure". *(September 29, 1999 Administrative Order of Consent).*

83. In 1998, the Sherwin-Williams Site was referred for investigation to the USEPA from the NJDEP due to overwhelming documented contamination on the land, some of which has been detailed above. (Administrative Order on Consent for Removal Action, 1999). The NJDEP requested, in a letter under date of August 20, 1998, written to the EPA, that the EPA sample, characterize and dispose of all hazardous substances found at the Sherwin-Williams Site in such a way as to safeguard the local population *(Administrative Order on Consent for Removal Action, 1999).*

84. Following the August 20, 1998 referral from the NJDEP, the USEPA conducted sampling operations in September 1998 to delineate the contamination and determine whether any contamination detected at the site would be eligible for removal action under federal law. The USEPA has identified and documented contaminant releases and threatens releases of hazardous substances, pollutants or contaminants including, but not limited to arsenic, cadmium, chromium, lead, Mercury and zinc into the environment at the former paint manufacturing site and adjacent lands. *(Administrative Order on Consent for Removal Action, 1999).*

85. Later in the same year, the United States Environmental Protection Agency collected additional sediment, soil and surface water samples from Hilliard's Creek. The purpose of the testing was to determine the extent of lead contamination within the creek and the floodplain. Three sets of samples were collected from areas including the north Bank, the South Bank, and the center of the creek. Soil samples were collected on the north and south floodplains of the creek as well. The site results contained higher levels of lead and arsenic then those that are acceptable by the State of New Jersey and the USEPA.

86. On September 29, 1999 Sherwin-Williams entered an Administrative Consent Order whereby they agreed to conduct a remedial investigation for the former paint operations site. This Administrative Order was entered into due to the hazardous substances that were found to be present in reported findings from soil and groundwater tests performed by the NJDEP and the USEPA prior to 1999. Many of those hazardous substances, including but not limited to Lead, Chromium, Barium, Benzophenone and Pentachlorophenol, exceeded NJDEP and USEPA acceptable background guideline limits.

87. The September 1999 Administrative Consent Order states in relevant part that:

> *"Exposure to the various hazardous substances present at the Site by direct contact, inhalation, or ingestion may cause a variety of adverse human health effects... and the conditions present at the Site constitute an imminent and substantial endangerment to public health, welfare, or the environment". (United States Environmental Protection Agency, Region II, Administrative Order on Consent for Removal Action, 1999) (See exhibit A attached).*

88. Also in 1999, the New Jersey Department of Health and Senior Services (NJDHSS) and the Agency for Toxic Substances and Disease Registry (ATSDR) concluded that an urgent health hazard existed to children and adults who lived, worked and visited the Sherwin-Williams Site areas. Even with this fact, continued development on contaminated land took place, including constructing public walking trails, constructing commercial establishments and renovating existing residential properties.

89. In late June of the same year, an additional 155 soil samples were collected to define the extent of the lead in soil adjacent to Hilliard's Creek. The samples were analyzed and lead was detected in concentrations higher than acceptable EPA standards allow for, creating a health risk to residents, persons working in the contaminated areas, as well as to the public.

90. In 2004, 39 samples were taken from Gibbsboro-Clementon road to downstream areas within the Sherwin-Williams Site and collected from Hilliard's creek and the adjacent wetlands area. The reported results found an array of chemicals, including but not limited to arsenic and lead. The results of each exceeded EPA environmental regulatory limits.

91. Additionally, in 2004, 13 surface water samples were collected from the Hilliard's Creek area and the samples were analyzed for arsenic and lead. Maximum concentrations of arsenic and lead detected in the surface water exceeded their respective acceptable EPA environmental guideline limits. *(USEPA 2006).*

92. In 2005, an additional 350 soil and settlement samples were collected from the Hilliard's Creek and wetlands area as part of an alleged remedial investigation by Sherwin-Williams. The samples were analyzed for the full list of analogical parameters, including pesticides and metals. Maximum concentrations of benzo-a-anthracene, benzo-fluoranthene, benzo-a-pyrene, antimony, arsenic, cadmium, chromium, copper, lead, selenium, vanadium, zinc, barium, beryllium and cobalt, were found to be present in the sediment. All samples in subsurface oil exceeded their respective acceptable environmental guideline limits *(USEPA 2006).*

93. In November of 2006 the New Jersey Department of Health and Senior Services (NJDHSS) communicated with Gibbsboro, NJ officials to arrange for available sessions for residents to identify community concerns and to provide information to residents about exposure pathways and the contaminations that existed. Officials from the Borough of Gibbsboro did not express any interest to hold these sessions *(Public Health Assessment, New Jersey Department of Health and Senior Services, August 12, 2009)* and the USEPA did not attend any of the proposed sessions.

94. The Human Health Risk Assessment for the United States Avenue Burn Site, submitted in 2016 by Sherwin-Williams as per Administrative Order, Index No. II CERCLA-02-99-2035 of

September 1999 states in relevant part, the following:

a. "*Soil chemicals of potential concern (COPCs) included metals, cyanide, polycyclic aromatic hydrocarbon (PAH) compounds, polychlorinated biphenyl (PCB) compounds, pentachlorophenol, and volatile organic compounds (VOCs). Burn Site Suspect Material (BSSM) COPCs include metals, cyanide, pesticides, di-n- butylphthalate, and pentachlorophenol. Sediment COPCs included metals, cyanide, and PAHs. Surface water COPCs included metals and cyanide. Groundwater COPCs included metals, cyanide, PAHs, pesticides, VOCs, and pentachlorophenol. It should be noted that the COPCs in each medium were not necessarily COPCs in every exposure area*".

b. *"The analytes with the greatest contribution to risk or hazard varied by exposure area and receptor, but generally included the following COPCs:* ***Soil****: Arsenic, chromium, cobalt, cyanide, thallium, benzo(a)pyrene, pentachlorophenol;* ***Groundwater****: Arsenic, chromium, manganese, benzo(a)pyrene;* ***Sediment****: Arsenic, iron, benzo(a)pyrene;* ***Surface Water****: Arsenic, chromium, iron, thallium".*

c. "*Cancer risk and non-cancer hazard for the Resident exceeded EPA's target risk or HI in all exposure areas, and the risk was highest in the Burn Area. Ingestion of arsenic in groundwater was the largest risk/hazard contributor for the Resident. When groundwater exposure was excluded, the Resident still had risk and/or hazard exceedances in all exposure areas, but the risks and/or hazards were lower by up to three orders of magnitude".*

d. *"In summary, the highest risks and hazards were in the Burn Area. The highest risks and/or hazards were for the future Resident, with exposure to arsenic in groundwater as the greatest contributor. In soil, arsenic, chromium, iron, thallium, cyanide, and benzo(a)pyrene were the major contributors to risk or hazard. Pentachlorophenol was a major risk contributor for the LF area and BSSM only. Elevated lead risks were present for at least one receptor in all exposure areas where lead was a COPC".*

95. The Sherwin-Williams Site is surrounded by residential properties with many of the residential homes located directly within the Sherwin-Williams Site and hundreds of others sitting on adjacent land surrounding the Sherwin-Williams Site. Additionally, a public school, library, and the borough offices are located approximately 0.2 two miles west of the Paint Works Corporate Center. Hilliard Creek sits on the property and is accessible from residential backyards that lack continuous fencing. The area also encompasses walking trails for the public.

96. Since learning of the contamination hazards as late as 1975 through sampling performed by the NJDEP, Sherwin-Williams failed to request that Deed notices be placed on any of the contaminated land or structures. In fact, it was not until August of 2017 that the USEPA began informing residents that deed notices will be placed on residential and commercial properties to govern how the land may be managed in the future.

97. Defendant Sherwin-Williams has contaminated both public and private property, inadequately addressed the contamination they caused, and failed to warn plaintiffs and the public of the contamination it knew existed. Sherwin-Williams ignored the health hazards, concealed those hazards from residents by not engaging the community, or by not actively addressing the contamination that it caused, and failed to warn Plaintiffs and the public of the contamination it knew existed. Even with Sherwin-Williams failed clean-up to date, the company still portrays itself to the public as committed to the environment, health and safety.

Continued on next page

SHERWIN-WILLIAMS.

GLOBAL ENVIRONMENTAL, HEALTH and SAFETY POLICY

The Sherwin-Williams Company is committed to global leadership and excellence in Environmental, Health and Safety (EHS) throughout our operations, businesses and products. In order to fulfill this commitment we develop, implement, and work to continually improve our global management systems, EHS standards and performance measures.

In pursuit of EHS Excellence worldwide we are committed to the following:

Work Place - We manage operational risks to provide workplaces that are safe and healthy for our employees, visitors, contractors, customers, and the communities in which we operate.

Compliance - We comply with all applicable EHS legal requirements, Sherwin- Williams standards and other adopted requirements.

Sustainability - We develop, manufacture, distribute and sell our products in a way that preserves resources and minimizes environmental impact.

Training and Communication - We train and communicate with our employees so they have the knowledge and skills to work in a safe and environmentally responsible manner, and take an active role in EHS management.

Business Integration - We integrate EHS considerations into business planning, goal setting, decision making and daily work.

Customers - We provide our customers with product information so they have the knowledge to use our products in a safe and environmentally appropriate way.

All Sherwin-Williams employees, individually and collectively are expected to understand, follow and promote this Policy

John G. Morikis
President and Chief Executive Officer

Sherwin-Williams Policy No. 603
Rev: 6

98. Plaintiffs and Class Members have been exposed to hazardous substances, including, but not limited to, arsenic, lead, pentachlorophenol, aluminum, manganese, iron, pesticides, polycyclic aromatic hydrocarbons, polychlorinated, biphenyls, cadmium, benzo anthracene, benzo pyrene, pyrene, copper, mercury, zinc, vanadium and benzene generated from the manufacturing activities of Sherwin-Williams and Sherwin-Williams has concealed the extent of the contamination and has failed to disclose the hazards to the community.

99. Defendant has repeatedly assured Plaintiffs and Class Members and the public that the paint manufacturing operations that took place on the Sherwin-Williams Site, as well as the contamination of the soil, sediment, pore water, surface water and groundwater did not present any real health risks and nothing to the contrary was provided to the Plaintiffs or Class Members. In fact, Defendant's lack of actions conveyed the exact opposite message than the facts warranted.

100. It was not until August 2017, during a pre-scheduled EPA meeting in Gibbsboro, New Jersey that plaintiffs and Class Members truly became aware of the delayed and/or non-existent cleanup efforts and that the contaminated commercial and residential property they have been occupying had higher levels of hazardous chemicals than previously was communicated to them by Defendant.

101. The assurances that the land is safe to residents, workers and the public have been, and continue to be, echoed by Defendant who has skewed the truth from Plaintiffs, Members of the Class and members of the public.

102. Despite these misleading assurances, the presence of dangerous contamination from hazardous substances on these properties presents a significant health risk to those living on or near the sites, working in and around the sites and those using the sites for recreational activities.

103. According to the EPA and the National Institute of Health, common injuries sustained from exposure to the types of hazardous substances found on the Class Area include: leukemia, lung brain and kidney cancer, blood disorders (such as aplastic anemia and myelodysplastic syndrome), non-Hodgkin lymphoma, brain damage, learning disorders, learning

disabilities, birth defects, breathing difficulties, various stomach, heart, kidney, and liver conditions and Nervous system disorders (reflex malfunction and headaches).

104. Because of false assurances and concealment of the truth by Defendant, Plaintiffs, Members of the Class, and members of the public had no reason to believe that the land they live, work, and play on presented or currently presents a significant health risk.

105. Defendant, a company experienced in paint manufacturing activities was, or should have been familiar with the risks posed by disposing and/or burning toxic chemicals contained or used in the production of paint and the subsequent contamination that would be created by engaging in such behavior.

106. Despite its knowledge of the threat posed by their business operations, Sherwin-Williams improperly disposed of hazardous materials and failed to adequately reclaim and restore the land used in their operations.

107. To this day, Sherwin-Williams continues to fail to adequately restore contaminated land that it once used and fails to disclose the true elevated levels of toxic chemicals known to be inherent in affected property. The Company has additionally failed to disclose the true health risks associated therewith, despite actual knowledge of same.

108. Defendant Sherwin-Williams failure to properly restore the land has created an ongoing presence of contamination that has migrated outward from the originating site and has impacted Plaintiffs' and Class Member properties that sit on the "Class Area" and deprives Plaintiffs and Class Members of their free use and enjoyment of their property.

109. The presence of elevated levels of toxic chemicals has posed, poses, and will continue to pose a significant health threat to the Class Members and to those within the "Class Area".

110. Because of the actions of Defendant, hazardous substances at and from Defendant Sherwin-Williams manufacturing operations have entered onto Plaintiff and the Class Members' person, property, air, land, and dwelling, thereby causing them an increased and significant risk to their health (including cancer) necessitating medical monitoring.

111. Plaintiffs and Class Members have incurred damages because of the contamination of their property by the improper and illegal disposal of hazardous chemicals by Sherwin-Williams.

112. Plaintiff and Class Members have incurred damages as a result of the inadequate restoration activities of Sherwin-Williams and through endorsing the approval of the subsequently developed land into residential, commercial and public properties that were sold to homebuyers, businesses and the public, despite knowing that the land was and still is contaminated with hazardous substances and materials that expose Plaintiffs, Class Members and the public to dangerous health conditions, including Cancer.

113. The hazardous chemicals that were released into the land and waterways scattered and migrated so that persons and properties in the area were and continue to be exposed to hazardous substances. Plaintiffs and Class Member properties and the public area properties have been contaminated with lead and hazardous substances, including but not limited to arsenic, benzene and pentachlorophenol.

114. The presence of chemical contamination has been and continues to be a source of hazardous substance emissions onto and within the surrounding properties of the Sherwin-Williams Site. The waste contains, and has continuously released into the area, a variety of dangerous substances and cancer causing agents.

115. Despite knowing that the immediate and surrounding land that the Sherwin-Williams facility operated on was contaminated and not restored, Defendant knowingly allowed the land to be developed and sold for residential and commercial purposes after assuring residents, businesses and the public that the land was safe.

116. These assurances to the public have been, and continue to be, echoed by local public officials and health and environmental regulators who have concealed the truth from Plaintiffs, Class Members, and the public.

117. Hazardous chemicals found in the soil and water of the site can penetrate the body and increase the risk for a diversity of diseases, including cancer. Inhaling or ingesting arsenic, lead and/or pentachlorophenol can increase the risk of leukemia, lymphoma, and bone cancer, specifically.

118. Sherwin-Williams knew of the risks posed by the contamination on the land prior to vacating the site and selling the property to a commercial developer who developed the site and allowed others to develop retail establishments, restaurants, commercial buildings and homes to Plaintiffs and Class Members, yet chose not to remove the dangerous condition and protect the Plaintiffs and Class Members from what they knew was dangerous chemical exposure.

119. A standard method for assessing whether health hazards exist to a community is to determine whether there is a completed exposure pathway from a contaminant source to a receptor population and weather exposures to contamination are high enough to be considered a health concern (ATSDR 2005). An exposure pathway is a series of steps starting with the release of a contaminant in the environment and ending at the interface with the human body. A completed exposure pathway consists of five elements: source of contamination; environmental media and transport mechanisms; point of exposure; route of exposure, and receptor population. (Agency for Toxic Substances and Disease Registry (ATSDR) 2005).

120. Based on the sampling data set forth above, as well as additional soil, groundwater and sediment samples not mentioned, exposure pathways for individuals who live, or lived in the area and surrounding areas of the Sherwin-Williams Site are as follows:

a. *Ingestion of on-site contaminated soil from former facility areas. Residents including children, were and are currently being exposed to contaminants while living and engaging in outdoor recreational activities at the site. This exposure also includes visitors to the site.*

b. Ingestion of contaminated soil from Hilliard's Creek floodplain and sediment from adjacent wetlands. Site related contaminants were detected in the floodplain soils of Hilliard's Creek and sentiment of adjacent wetlands. Area residents reported to have access to these areas in the past for recreational purposes, including swimming in the Hilliard's creek and adjacent lakes. Residents including children were and are potentially being exposed to contaminants during outdoor recreational activities.

c. Ingestion of surface water from Hilliard's Creek. Site related contaminants have been detected in the Hilliard's Creek surface water. Residents including children, were and are exposed to contaminants during outdoor recreational activities including swimming in the creek.

d. Inhalation of indoor air. The onsite groundwater sampling results indicated the presence of contaminants. Currently the on-site buildings are occupied by various businesses. Local residences are also located on or near the property. Employees and residents may have been or currently are being exposed to groundwater contaminants in the indoor air of the buildings via vapor intrusion. Volatile chemicals in groundwater can migrate through subsurface soils and into indoor air spaces of overlying buildings (USEPA 202a; NJDEP 2005a).

e. Ingestion of biota from Hilliard's Creek. Biota (fish, game and plants). Wildlife in Hilliard's Creek, Kirkwood lake and adjacent areas we're exposed to contaminated soil and sediment. It is possible that's some local area residents grew plants and vegetables in their yards and adjacent areas, as well as fished at Hilliard's Creek and Kirkwood lake and then ate their catch. Since the contaminants detected in the sediment may bio-concentrate in the plants and in the fatty tissue of aquatic animals, contaminants may have been introduced into the food chain.

121. The Public Health Assessment, final release, regarding the Sherwin-Williams/Hilliard's Creek site that was prepared under date of August 12, 2009, was prepared for Sherwin-Williams under a cooperative agreement with United States Department of Health and Human Services and the Agency for toxic substances and Disease Registry. That report details the below conditions:

1. Non-cancer health effects;

2. Cancer effects;

3. Descriptions of contaminated chemicals;

4. Exposure scenarios;

5. Assessment of joint toxic action of chemical mixtures;

6. Childhood lead exposure and;

7. Childhood health considerations.

122. Sherwin Williams knew and failed to disclose the fact that the land comprising the site is contaminated with hazardous materials, including, but not limited to the chemicals listed above. Given this, Plaintiffs and Class Members living, working and visiting the site area, and surrounding residential and commercial developments have been and continue to be exposed to hazardous levels that are significantly above acceptable NJDEP and USEPA background levels.

123. Defendant Sherwin-Williams intentionally and/or negligently concealed and failed to disclose, and continue to conceal and fail to disclose, to Plaintiffs and Class Members material facts concerning the nature, extent, magnitude, and effects of the exposure of Plaintiffs and Class Members and/or their property to these toxic and hazardous substances.

124. Defendants knew and/or reasonably should have known that Plaintiffs and Class Members and/or their property/s would be exposed to hazardous materials and contaminants. Defendants knew and understood, and/or reasonably should have known and understood, that its concealment of such information would subject and continue to subject Plaintiffs and Class Members, and/or their property to continued exposure to hazardous materials and contaminants.

125. Despite this knowledge, Defendant did not take sufficient measures to prevent the contamination from being used in a manner that resulted in harm, or threatened harm, to the property, health, safety, and welfare of Plaintiffs and Class Members, and did not disclose to Plaintiffs or Class Members or to the public that the land upon which they resided, played or worked was contaminated and adverse to their health.

126. Sherwin-William has claimed that they have done everything to protect the residents and visitors of Gibbsboro through their efforts since learning about the hazards in 1975. In fact, current soil and sediment cleanup at the Sherwin-Williams Site by Sherwin-Williams has not been "build on years of previous work conducted at the site to address immediate risks" as stated by the USEPA in a press release under date of July 17, 2017. Under previous orders by the New Jersey Department of Environmental Protection and the USEPA, Sherwin-Williams performed superficial and inadequate cleanup by:

1. Removing only 8,096 cubic yards of sludge from a former lagoon area;

2. Removing only 44,785 gallons of liquid waste from the Site;

3. Installing a non-effective soil vapor extraction treatment system to reduce the volatile organic compounds in soil near only two former plant buildings;

4. Installed fencing on a small parcel of land that has not done anything to mitigate the hazardous waste and has only minimally limited exposure to one small area of the Sherwin-Williams Site and does not limit access or exposure to surrounding contaminated residential, commercial and public areas.

127. The superficial cleanup work performed by Sherwin-Williams over the past 40 years is inadequate and inherently flawed. This is evident from what was communicated and relayed to residents and others working in Gibbsboro who attended a pre-scheduled meeting hosted by the USEPA on August 10, 2017. *(See literature as Exhibit B and incorporated herein by reference).*

128. No one, including Sherwin-Williams, or its agents, notified Plaintiffs or Class Members of the true levels of all hazardous substances on the Class Area, let alone the elevated lead, arsenic and pentachlorophenol in and around their properties before, during or after the meeting on August 10, 2017 referenced above.

129. No one, including Sherwin-Williams, or its agents, notified Plaintiffs or Class Members of the significantly elevated presence of various other hazardous substances in and around their properties.

130. No one, including Sherwin-Williams, or its agents, notified Plaintiffs or Class Members of the internal concerns raised by various Federal and State environmental health agencies about the use of their properties.

131. No one, including Sherwin-Williams, notified Plaintiffs or Class Members of the fact that USEPA had considered emergency actions to remove the threats posed to people living, working and visiting the affected areas in Gibbsboro, New Jersey, nor were residents made aware that many of their properties had been determined to be highly likely to require action to be safe for residential uses.

132. Plaintiffs and Class Members reasonably believed that the groundwater, air, soil, and natural resources at the former Sherwin-Williams Site and surrounding areas did not pose any greater health hazard than any other groundwater, air, soil, and natural resources.

133. Plaintiffs and Class Members have each been exposed to hazardous substances due to Sherwin-Williams negligence in remediating and producing, handling, storing, disposing of, and/or failing to properly remediate hazardous substances contaminating the Sherwin-Williams Site and areas surrounding the Site.

134. Plaintiffs, the Class Members, and their properties have each been exposed to hazardous substances due to Defendant's negligence arising from its' paint manufacturing facility and allowing development of the land without the adequate and appropriate testing, sampling, remediation, disclosures, warnings, and other precautions.

135. Plaintiffs and Class Members seek redress and damages for economic losses, such as loss of property value and the interference with the use and enjoyment of their property; the prompt cleanup, excavation, treatment, and removal of hazardous wastes and related contaminants from their properties; medical monitoring; and punitive damages and other damages as the result of the carelessness, recklessness, negligence and willful and wanton violation of law by the Defendant.

136. Separate and apart from acting negligently, at all relevant times Sherwin-Williams caused injury and damages to Plaintiff, the Class Members and/or their property through acts and omissions actuated by actual malice and/or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by such acts or omissions.

137. Sherwin-Williams, despite its knowledge of the serious health and environmental effects associated with hazardous waste, released, discharged, stored, mishandled, exposed, processed, enhanced, disposed of and dumped hazardous waste throughout the Gibbsboro area and the surrounding environment, while failing to warn the public in general of the dangers that the historical use of the property posed.

138. Sherwin-Williams, despite its knowledge of the serious health and environmental effects associated with the disposal of hazardous waste, and despite continued warnings from health and

environmental regulators, masked the true extent of contamination and its associated risks, thereby enabling it to avoid taking all appropriate steps to properly remediate these properties.

139. Sherwin-Williams, despite its knowledge of the serious health and environmental effects associated with the disposal of hazardous waste, and despite continued warnings from health and environmental regulators, masked the true extent of contamination and its associated risks, thereby enabling new residential and commercial businesses to locate themselves in affected areas and surrounding affected areas.

140. Sherwin Williams, despite its knowledge of the serious health and environmental effects associated with hazardous waste exposure, and despite orders and warnings from health and environmental regulators, failed to properly remediate or eliminate such hazardous waste in the affected areas.

141. These toxic chemicals have damaged and can continue to damage Plaintiffs and Class Members health and property.

142. Plaintiffs and Class Members, upon information and belief allege that defendants have known or should have known that the Sherwin-Williams site contained hazardous and toxic levels of hazardous substances, namely lead, arsenic, and benzene, as well as other toxic substances.

143. Plaintiffs and Class Members allege that Defendant engaged in ultra-hazardous activities at the site, including but not limited to the use, handling, storage, production, emission, release and/or discharge of toxic and hazardous materials into the air and the environment at and around the Sherwin-Williams Site.

144. Specifically, among other activities at the Sherwin-Williams Site, Sherwin-Williams deliberately and intentionally maintained and left behind large deposits of hazardous paint by-products at the Sherwin-Williams Site and eventually closed the toxic facility on or about September 1, 1978.

145. Plaintiffs and Class Members upon information and belief allege that Sherwin-Williams has been aware since 1975, if not earlier, that their operations have caused danger to residents

and businesses located on or surrounding the Sherwin-Williams Site. Lead, arsenic, benzene and methane, all known by-products of paint, leaked into the surrounding neighborhoods and business properties where it was and continues to be inhaled, ingested, or otherwise contacted by people living and working in the community, including Plaintiffs and Class Members.

146. Air, land and groundwater contaminated by the manufacturing activities at the Sherwin-Williams Site have migrated over the years, and continue to spread to surrounding neighborhoods and business areas, at levels in excess of New Jersey and Federal regulatory limits.

147. On information, over 2,200 people reside within the Borough of Gibbsboro and all have been affected and exposed to contamination by defendant's emissions of Lead, Arsenic, Benzene, Mercury, Methane, as well as other hazardous substances found on the land and in the groundwater. Hundreds of other people living, working or otherwise present in the area surrounding the Sherwin-Williams Site have been exposed to, inhaled or otherwise ingested and/or contacted these hazardous substances emitted from the Sherwin-Williams Site, which has caused them personal injury and will continue to cause them increased risk of personal injury in the future.

148. Further, such acts obstruct Plaintiffs and Class Members enjoyment of their properties in that fugitive emissions and/or other matter is blown and/or transported by surface or groundwater across the surrounding communities and is breathed, ingested, or otherwise contacted by members of the community, and is deposited on and in the real and personal property of the surrounding areas to the Sherwin-Williams Site, causing physical damage to such property.

149. As a result of Defendant's conduct in connection with their facilities at the Sherwin-Williams Site, Plaintiffs and Class Members have suffered and will continue to suffer from great physical, mental and nervous pain and suffering, including the fear of cancer. Plaintiffs and Class Members have incurred the cost of medical treatment, and believe that they will be compelled to seek further treatment in the future for care of the injuries sustained as a direct result of defendants conduct.

150. As a further result of Defendant's conduct in connection with their manufacturing

operations at the Sherwin-Williams Site, Plaintiffs and Class Members have suffered and will continue to suffer damage to their real and personal properties, including but not limited to diminution in the value of their properties, as well as past, present and future loss of use and enjoyment of their properties.

151. Additionally, as a result of Defendants improper use and maintenance of the Sherwin-Williams Site and Sherwin-Williams deliberate and intentional release, disposal and/or emission of hazardous substances on or around the site, these chemicals have migrated and continue to migrate into surrounding neighborhoods and onto properties owned, occupied and controlled by residents of surrounding communities, and causing such properties to be contaminated and damaged.

152. Moreover, Defendants acted fraudulently by concealing and deceiving Plaintiffs and Class Members about Defendants release of toxic substances from the Sherwin-Williams site, and the existence of such hazardous substances in the air, groundwater, surface and subsurface soil and environment, were willful, malicious, intentional, and undertaken with a conscious disregard for the rights and the safety of the Plaintiffs and Class Members. Defendants fraudulent, willful, malicious and intentional acts have caused Plaintiffs and Class Members to suffer great harm.

153. Despite being required to do so by Federal regulations and New Jersey law, Defendants failed to disclose to the public, including Plaintiffs and Class Members, that inhalation, ingestion, or other dermal contact of or with lead and Arsenic, as well as other toxic substances emanating from the Sherwin-Williams site are carcinogenic to humans. Defendant Sherwin-Williams wrongful conduct was purposeful and deliberate, and Defendant acted with conscious and reckless disregard of the hazards and health threats to Plaintiffs and Class Members. Defendant's conduct was and still is outrageous, willful, malicious and intentional. Defendant has caused Plaintiffs and Class Members great and irreparable harm. Plaintiffs and Class Members are therefore entitled to recover punitive or are exemplary damages from the defendant.

LIABILITY

154. Sherwin-Williams is liable for their actions under New Jersey applicable law, including the New Jersey Spill Compensation and Control Act, N.J.S. 58:10-23.11, et seq. (Spill Act, the Act), as well as the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq. ("CERCLA);

LIMITATIONS DOES NOT BAR ANY OF THE CLASS MEMBERS' CLAIMS

155. Plaintiffs and Class Members re-allege and incorporate by reference all preceding paragraphs.

156. As a result of the acts and omissions of Defendant, under the delayed discovery doctrine, Plaintiffs or Class Members could not have reasonably known or have learned through the exercise of reasonable diligence that their properties and business establishments were contaminated with significantly elevated levels of arsenic, lead, benzene and other hazardous substances and that those risks were the direct and proximate result of Defendant acts and omissions in inadequately restoring the land on and surrounding the Sherwin-Williams Site. Thus, the applicable limitations periods did not begin to accrue until Plaintiffs discovered, or through the exercise of reasonable diligence should have discovered, Defendant's tortious acts and omissions.

157. Plaintiffs and Class Members were never notified by Sherwin-Williams, the Borough of Gibbsboro, or any other state or federal agency of the existence of the high levels of hazardous substances by way of letter, email, or verbal communication until the EPA meeting on August 10, 2017.

158. In addition, the running of any statute of limitations has been tolled by Defendant's fraudulent concealment. Defendant, through its' affirmative misrepresentations and omissions, actively concealed from Plaintiffs and Class Members the true hazardous contamination present on their properties and businesses.

159. Furthermore, Defendant is equitably estopped from asserting any limitations defense

because of its fraudulent concealment of the true character, quality and nature of the exposure of hazardous substances.

CLASS ALLEGATIONS

160. Plaintiffs and Class Members repeat and re-allege every allegation above as if set forth herein in full.

161. Plaintiffs and Class Members bring this lawsuit as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b), on behalf of itself and all others similarly situated as members of the following Overall Class and Injured Subclass (collectively, the "Classes") on their respective federal and state claims.

162. The proposed Classes are defined as:

a. Overall Class: All persons who reside or operate their business within the borough limits of Gibbsboro, New Jersey and have no known medical diagnosis of cancer or other adverse medical condition.

b. Injured Subclass: All persons who reside or operate their business within the borough limits of Gibbsboro, New Jersey and have been diagnosed with an adverse physical condition, including cancer.

163. Excluded from the Classes is Defendant, including any entity or division in which Defendant has a controlling interest, as well as their agents, representatives, board members, directors, officers, employees, trustees, parents, children, heirs, assigns, subsidiaries and successors, and other persons or entities related to, or affiliated with Defendants.

164. Excluded from the classes are any local, state, or federal government entities.

165. Plaintiffs and Class Members reserve the right to amend the Class definitions if discovery and further investigation reveal that any Class should be expanded, divided into additional subclasses under Rule 23(c)(5), or modified in any other way.

166. Certification of Plaintiffs and Class Members claims for class-wide treatment is appropriate because Plaintiffs and Class Members can prove the elements of its claims on a class-wide basis using the same evidence as would be used in an individual action alleging the same claims.

167. This action has been brought and may be properly maintained on behalf of each of the Classes proposed herein under Federal Rule of Civil Procedure 23 and satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of its provisions.

168. **Numerosity**. Plaintiff does not know the exact size or identities of the members of the proposed Class, since such information is not documented and not available to Plaintiffs and Class Members. However, based on investigative reports, Census reports, and the Borough of Gibbsboro's website, Plaintiffs and Class Members believe that both the Classes encompass many hundreds and perhaps more than a thousand persons and entities. Therefore, the proposed Class is so numerous that joinder of all members is impracticable. Further, based upon the injuries known to Plaintiffs and Class Members, as well as the average house value in Gibbsboro and other damages as enumerated herein, Plaintiffs believe that the amount in controversy exceeds $5 million.

169. **Existence and Predominance of Common Questions of Law and Fact**. All members of the respective Classes have been subject to, and affected by, the same conduct. These questions include, but are not limited to, the following:

a. Whether Sherwin-Williams discharged (or caused any other condition of pollution) a hazardous substance into the land or water on or under the respective Class Area;

b. Whether Sherwin-Williams is strictly liable for discharging (or caused any other condition of pollution) a hazardous substance into the land or water on or under the Class

Area.

c. Whether Sherwin-Williams, through its acts or omissions, is strictly liable for the contamination on, in, and around the Class Area under Title 7 of the N.J.A.C.

d. Whether Sherwin-Williams was negligent in its contaminating, reclaiming, handling, storing, remediating, using, and disposing the presence of hazardous substances and related contamination in the Class Area;

e. Whether Sherwin-Williams, through its acts or omissions, proximately caused property damage, diminution of property values, cleanup costs and health risks due to hazard substances and related contaminants deposited, released, enhanced, or abandoned in the Class Area;

f. Whether Sherwin-Williams, through its acts or omissions, deprived Class Members of the free and reasonable use and enjoyment of their properties due to the contamination of neighboring properties in the Class Area;

g. Whether Class Members, through Sherwin-Williams acts, omissions and/or discharges (or other condition of pollution), have suffered damages, including but not limited to economic damages; and

h. Whether, as a proximate result of Sherwin-Williams's conduct, the Overall sub-class members are at a significantly increased risk of disease due to exposures to Sherwin-Williams's hazard substances, such that they will benefit from ongoing medical monitoring.

i. Whether Plaintiffs and the Class members are entitled to restitution, statutory, or punitive damages, disgorgement, injunction, specific performance, or other relief;

j. Whether any applicable statute of limitations should be tolled due Plaintiffs and the Class members' inability to discover the extent of the conduct and/or damages complained

of herein or due to Sherwin-Williams fraudulent concealment of the true nature and extent of the contamination.;

170. These questions of law and/or fact are common to the Class and predominate over any questions affecting only individual Class Members.

171. All members of the Class have been subjected to and affected by a uniform course of conduct by Defendants that was designed to increase Defendants' income, sales, and reputation through, inter alia:

(a) making false misrepresentations to Plaintiffs and Class members regarding the contamination or extent of contamination to their persons and properties;

(b) knowingly concealing the truth about the contamination and its foreseeable and significant impact on residents, business owners and the public's health and welfare;

(c) not cleaning-up or restoring the affected land areas in a reasonable timeframe;

(d) evading any issue of the true extent of the contamination or restoration of the contaminated land.

172. **Typicality.** The claims asserted by Plaintiffs are typical of the claims of the Sherwin Williams Overall Class and Medical Monitoring Class, as well as the Injured Class, as required by Fed. R. Civ. P. 23(a)(3), in that all claims are based upon the same factual and legal theories. The principal issues in this matter involve Sherwin-Williams conduct in wrongfully handling, releasing, discharging (or other condition of pollution), enhancing, storing, transporting, processing, disposing of, and/or failing to remediate, its toxic and hazardous manufacturing wastes and substances and by-products as well as its reckless and negligent decision to conceal the true extent of the contamination and conscience decision to allow residences, businesses and corporate entities to develop these hazardous lands into residences where people live, work, and play, which impact all Class Members.

173. **No Conflict**. The claims of the individually named Plaintiffs is typical of the claims of the Classes and do not conflict with the interests of any other members of the Classes in that Plaintiffs and the other members of the Class were subject to the same conduct of Sherwin-Williams.

174**.** **Adequacy of Representation**. Plaintiffs will fairly and adequately represent the interests of the Classes. Plaintiffs are committed to the vigorous prosecution of the Classes' claims and have retained attorneys who are qualified to pursue this litigation and have experience in class actions, including personal injury actions.

175**.** **Superiority**. A class action is superior to other methods for the fast and efficient adjudication of this controversy. A class action regarding the issues in this case does not create any problems of manageability. A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be incurred by individual litigation of their claims against Defendants. It would thus be virtually impossible for the Classes, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

176. **Class certification.** Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(1) because the prosecution of separate actions by individual members of the classes would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Sherwin-Williams and/or because adjudications respecting individual members of the class would, as a practical matter, be dispositive of the interests of the other members or would risk substantially impairing or impending their ability to prosecute their interests.

177. **Efficiency**. Maintenance of this action as a class action is a fair and efficient method for adjudication of this controversy. It would be impracticable and undesirable for each member of the class who has suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all members of such class. No unusual difficulties are likely to be encountered in the management of this action as a class action.

Medical Monitoring - The Overall Class

178. In addition, Plaintiffs and the members of the "Overall Class" are also members of the Medical Monitoring Class who allege that:

a. Plaintiffs and the Medical Monitoring Class Members (subclass that have each been exposed to toxic and hazardous substances, including cancer causing agents), due to Defendants' improper and unlawful disposal of hazardous materials on the land and in handling, storing, use, disposal and/or failure to properly remediate such toxic and hazardous substances.

b. The toxic and hazardous substances, including cancer causing agents, at issue in this case are known and proven hazardous substances.

c. As a proximate result of the exposure to toxic and hazardous substances, including cancer causing agents, Plaintiffs and the Overall Class Members have a significantly increased risk of contracting serious latent diseases, including, without limitation, cancer.

d. A monitoring procedure exists that makes early detection of these potential diseases possible.

e. The prescribed monitoring regiment is different from that normally recommended in the absence of exposure to toxic and hazardous substances.

f. The prescribed monitoring regiment is reasonable and appropriate according to contemporary medical and scientific principles.

g. A monitoring procedure exists that makes early detection of these potential diseases possible.

h. The prescribed monitoring regiment is different from that normally recommended in the absence of exposure to toxic and hazardous substances.

i. The prescribed monitoring regiment is reasonable and appropriate according to contemporary medical and scientific principles.

COUNT I

STRICT LIABILITY

179. Sherwin-Williams wrongful acts and omissions in releasing and discharging (or other conditions of pollution) toxic pollutants, hazardous substances and other contaminants onto the lands and water of the state of New Jersey, Borough of Gibbsboro in general and as is alleged in more detail above, was in violation of numerous environmental statutes in the State of New Jersey, including but not limited to the following:

a. Discharging (or other condition of pollution) of any pollutants or hazardous substances into or upon land (or water) in violation of N.J.S.A. 58:10, 23.11, N.J.S.A. 58:10, 46 to 50, N.J.S.A. 13:1K1 et seq., and N.J.S.A.13:1D 125 through 133 and;

. b. Failure to immediately remediate, contain, remove and abate the discharges in violation of applicable New Jersey and Federal law.

180. Plaintiffs are each a “person[s]” who may bring a cause of action for damages.

181. Plaintiffs have alleged damages resulting from Sherwin-Williams discharge of hazardous substances onto their land, as those terms are defined in N.J.S.A. 58:10-23.11 Appendix 1, and "environmental hazardous substances" on the environmental hazardous substance list adopted by the Federal Government pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);

182. Sherwin Williams is strictly liable for damages to Plaintiffs and the Class Members resulting from such discharges (or other conditions of pollution) covered by New Jersey Spill Compensation and Control Act, N.J.S. 58:10-23.11and Plaintiffs and the Class Members are not required to plead or prove negligence in any form or manner, because it is sufficient to plead and prove, as set forth in various paragraphs above, that the prohibited discharges or other polluting conditions occurred (See Exhibit C attached)

183. Sherwin Williams acts and omissions violate numerous New Jersey Department of Environmental Protection (NJDEP), as well as United States Environmental Protection Agency (UNEPA) standards as well as other state and federal standards adopted by the NJDEP including, inter alia, the New Jersey Spill Compensation and Control Act, N.J.S. 58:10-23.11.

COUNT II

NEGLIGENCE AND NEGLIGENCE PER SE

184. At all relevant times hereto, Defendant owed to Plaintiffs and Class Members who foreseeably could be injured by its negligence, a duty to exercise reasonable care in releasing, reclaiming, restoring, discharging (or other conditions of pollution), concentrating, freeing, or stockpiling toxic contaminants, including hazardous substances, that it knew, or should have known, could result in damage and injury to Plaintiffs, Class Members and their property.

185. Defendant also owed a duty of care to Plaintiffs and Class Members to exercise reasonable care in the use of contaminated land for residential and commercial uses, to include

living, working, and playing.

186. These duties to exercise reasonable care arose out of the common law of New Jersey, as well as relevant Federal and state environmental statutes and regulations, including Applicable Legal Standards.

187. Defendant breached its' duty, over a period of years, in at least the following respects:

a. Sherwin-Williams failed to adequately restore its manufacturing lands in a manner that returned the land to its original condition prior to ceasing manufacturing operations, as required by New Jersey law, statutes, and regulations.

b. Sherwin-Williams acted with knowledge of the widespread presence of contamination in the form of hazardous substances that became lands forming the Class Area, along with the knowledge of the health and environmental risks that these hazardous substances posed for those engaged in residential, commercial and recreational activities on these lands, and despite the fact that Sherwin-Williams continued manufacturing operations and eventually sold their land and ultimately profited by using these contaminated lands and placing them into commerce for private development.

c. Failing to safely and properly remove and dispose of the hazardous substances.

d. In failing to warn Plaintiff and Class Members of the contamination on, in, and around their properties, and the risks that it posed to them and to their families, and the likelihood that they were being exposed to carcinogenic substances.

188. As a result of Sherwin Williams acts and omissions, as detailed above, extensive contamination has existed, exists and will continue to exist and has been documented in the Class Area.

189. As a result of Defendant's misconduct as set forth herein, Plaintiffs and Class Members have suffered and continue to suffer damages, including, but not limited to, the loss of value to their property and the loss of the use and enjoyment of their property and an increased risk of serious latent injury/illness.

190. At all relevant times, Sherwin-Williams caused injury and damages to Plaintiffs and the Class Members and/or their property through acts and omissions actuated by actual malice and/or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by such acts or omissions.

191. Defendant, despite its knowledge of the serious health and environmental effects associated with exposure to such hazardous substances, transferred contaminated lands with knowledge that they would be developed for residential and/or commercial use that were unfit for residential or commercial purposes due to the presence of elevated levels of contamination in the form of hazardous chemicals, on, and around the land comprising the Class Area and subsequently failed to warn Plaintiffs, the Class Members, and the public of the dangers such activities posed.

192. Defendant, despite its knowledge of the serious health and environmental effects associated with hazard material exposure masked the true extent of contamination, thereby enabling the Defendant to avoid taking all appropriate steps to properly remediate the hazardous substances, on, and around the Class Area and to remediate and mitigate the dangers created by its development of contaminated land.

193. As a direct and proximate result of the Sherwin-Williams wrongful acts and omissions, Plaintiffs and Class Members properties have been and will continue to be contaminated and unfit for residential, commercial and routine contact.

194. As a direct and proximate result of the Defendant's wrongful acts and omissions, Plaintiffs and Class Members currently suffer an increased risk of serious latent disease, including a number of types of cancers that are associated with exposure to hazardous substances.

195. As a direct and proximate result of the Defendant's wrongful acts and omissions, Plaintiffs and Class Members currently suffer property damage, diminution in the value of their property, cleanup costs, loss of use and enjoyment of their property, serious injury and destruction of their community.

196. Because Defendant's acts and omissions violated the Applicable Legal Standards, referred to above, in addition to breaching the common-law duty of care, Defendant's acts and omissions constitute negligence per se.

197. Plaintiffs and Class Members seek to recover against the Defendant for property damage, including diminution of property values, the cost of remediation of properties, as well as the cost of periodic medical examinations necessary to detect the onset of physical harm that may be caused by the exposure to hazardous contaminants on and around Plaintiffs property.

COUNT III
FRAUD AND FRAUDULENT CONCEALMENT

198. Defendant concealed or failed to disclose material facts to Plaintiffs and Class Members, including, without limitation, that its former paint manufacturing lands contain elevated levels of hazardous contamination, including but not limited to arsenic, lead, dinoctyl, phthalate, dibenzofuran, pentachlorophenol, benzene, xylenes, phenols, aluminum, chromium, magnesium, pentachlorophenol, manganese, vanadium and zinc which it has known about over 40 years, and the elevated cancer and other adverse health risks posed by the presence of these hazardous substances in and around these residential and commercial properties.

199. Defendant knew or should have known about these material facts. Not only does Sherwin-Williams have extensive experience in the paint manufacturing industry, but it was expressly put on notice of the elevated hazardous substance levels on its former manufacturing lands in Gibbsboro, New Jersey by the NJDEP and the EPA in as early as 1975.

200. Defendant knew or intended that its concealment of, or failure to disclose, the material facts would induce the Plaintiffs to act. Defendant knew that if it disclosed the truth

regarding the elevated contamination levels, Plaintiffs and Class Members would not have worked, lived or visited Gibbsboro, New Jersey.

201. Defendant had a duty to disclose the material facts for several reasons. First, it is well established that Sherwin-Williams had a duty to disclose known defects to its land, namely elevated levels of hazardous substances, which it created by contaminating the Class Area and failing to properly restore the land in accordance with applicable law. In addition, when Defendant and/or Defendant's agents spoke in conversations to Plaintiffs and Class Members during brief encounters, as well as at a pre-scheduled meeting for residents of Gibbsboro on August 10, 2017 they had the duty to speak the entire truth, not to tell half-truths, and to prevent its words from misleading Plaintiffs and Class Members. And because Defendants had knowledge of material facts to which Plaintiffs and Class Members did not have access, it had a duty to disclose these facts.

202. Plaintiffs and Class Members detrimentally relied on Defendant's misinformation. If Plaintiffs and Class Members had known the true facts regarding the elevated levels hazardous substances on their residential and commercial properties, they would not have entered transactions to buy or lease the residential and/or commercial properties.

203. Defendant represented to Plaintiffs, Class Members, and the public that residential and commercial structures that have existed and that have been developed located on or near its manufacturing lands were, among other things, habitable, safe, high quality, good investments, good values, “the result of a depth of resources and an even deeper commitment to being a model corporate citizen,” and that they exhibited the “preservation of the natural environment.” These representations constitute false statements of material facts or, alternatively, misleading and partial half-truths that fail to disclose all material facts.

204. Defendant knew that these representations are false, given its extensive manufacturing operations and the notification of the unsafe elevated levels of hazardous substances from the NJDEP and the USEPA.

205. Consequently, Plaintiffs and Class Members relied on these misrepresentations, thereby causing them injury. Had Plaintiffs and Class Members known the truth, they would not

have entered any transactions at issue due to many concerns, primarily health related ones.

COUNT IV

NEGLIGENT MISREPRESENTATION

206. Defendant made false representations of material facts. Given that Defendant knew for decades that its paint manufacturing lands had elevated levels of hazardous substances, its affirmative statements of fact with Plaintiffs, Class Members, and the public constitute fraudulent misrepresentations.

207. Defendants represented to Plaintiffs, Class Members, and the public that the Sherwin-Williams Site and surrounding areas, and other residential and commercial developments located on its manufacturing lands were, among other things, habitable, safe, high quality, good investments, good values, "the result of a depth of resources and an even deeper commitment to being a model corporate citizen," and that they exhibited the "preservation of the natural environment." These representations constitute false statements of material facts, misleading statements and partial half-truths that fail to disclose all material facts.

208. Sherwin-Williams was negligent in making these statements because it should have known these representations were false, given its extensive experience in paint manufacturing operations and that the NJDEP and the USEPA clearly informed Sherwin-Williams of the unsafe elevated hazardous substance levels on its manufacturing lands.

209. Defendant intended to induce Plaintiffs and Class Members to rely on its misrepresentations.

210. Injury resulted to the Plaintiffs s and Class Members acting in justifiable reliance upon Defendant's misrepresentations. Had Plaintiffs and Class Members known the truth, they would not have entered any real estate transactions at issue.

COUNT V

PRIVATE NUISANCE

211. Defendant's past, present and/or continuing acts and/or omissions constitute a nuisance in that Defendant had used its property in a manner that has resulted in an unreasonable burden and interference on the Plaintiffs and the Class Members in the form of personal harm, inconvenience, annoyance and discomfort incidental to exposure and cleanup of hazardous substances and associated contaminants.

212. Defendant's past, present and/or continuing activities, acts and/or omissions on the property that they developed that now forms the Paintworks Corporate Center, and other residential and commercial developments constitute a private nuisance resulting in unreasonable interference with Plaintiffs and the Class Members' right to the exclusive use and enjoyment of their properties due to the presence of contamination in the form of hazardous and toxic substances contaminating the properties, surrounding their properties and the surrounding environment, thereby exposing Plaintiffs and the Class Members to hazardous and toxic substances and substantially interfering with Plaintiffs and Class Members free use and enjoyment of their properties.

213. Defendant's past, present and/or continuing activities, acts and/or omissions on the property that they manufactured paint and disposed of the by-produces of paint now forms the area referred to as the Sherwin-Williams Site, and the land constitute a private nuisance resulting in unreasonable interference with Plaintiffs and the Class Members' right to the exclusive use and enjoyment of their properties due to the presence of contamination in the form of hazardous and toxic substances contaminating the properties surrounding their properties and the surrounding environment, thereby substantially interfering with Plaintiffs and Class Members' use and enjoyment of their own properties.

214. Defendant's past, present and/or continuing acts and/or omissions, resulting in high levels of contamination in and on and/or failure to remove or properly investigate and remediate this hazardous contamination, and allowing such contamination to remain on

Plaintiffs' properties, the surrounding properties, and the surrounding environment, constitutes a nuisance in that Defendant has contaminated its property in a manner that has unreasonably interfered with Plaintiffs and Class Members' property interests, health and safety.

215. Defendant's past, present and/or continuing acts and/or omissions, resulting in high levels of hazardous contamination in and on and/or failure to remove or properly investigate and remediate this contamination, and allowing such contamination to remain on the private properties surrounding Plaintiffs properties constitutes a nuisance in that Defendant will now have to engage in extensive and disruptive remediation and removal of these contaminants that will result in unreasonable interference with Plaintiffs and Class Members'' use and enjoyment of their property interests.

216. Defendant's contamination presently impacts Plaintiffs and Class Members, causes a diminution in their property values, is a blight on Plaintiffs and Class Members' community, causes annoyance, interference and inconvenience and deprives Plaintiffs and Class Members of their free use and enjoyment of their property, including, but not limited to, the inability to fully use, enjoy and recreate on his outdoor spaces, freely perform certain work and repairs on their property; and requiring property to be dug up, excavated, handled with extreme caution and otherwise disrupted causing inconvenience and disruption. Plaintiffs and Class Members additionally suffer fear of adverse health effects, including cancer and other latent, serious illness.

217. In the alternative, Defendant's disposal of and/or failure to remove hazard contamination from the Class Area violates applicable standards and/or regulations, which constitutes a nuisance per se.

218. Defendant knew that the invasion of contaminants onto Plaintiffs and Class Members' properties was substantially certain to result from its actions and/or omissions, as aforesaid.

219. This interference with Plaintiffs' and the Class Members' use and enjoyment of their property is and will continue to be substantial, unreasonable, unwarranted and unlawful.

220. As a result of Defendant's wrongful acts and omissions, Plaintiffs and the Class

Members have suffered and will suffer exposure to hazardous substances, annoyance, inconvenience, discomfort, displacement, fear of adverse health effects and economic loss for which damages and medical monitoring are justified.

221. As a direct and proximate result of Defendant's misconduct, Plaintiffs and Class Members have suffered and will continue to suffer economic losses and the loss of value to their property and other damages.

222. The nuisance that Defendant created is a continuing nuisance in that it has continued and remains unabated.

223. Separate and apart from acting negligently, at all relevant times the Defendant caused injury and damages to the Plaintiffs, Class Members and/or their property through acts and omissions actuated by actual malice and/or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by such acts or omissions.

224. Defendant, despite its knowledge of the serious health and environmental effects associated with exposure to hazardous contaminants failed to properly investigate and remediate said contaminants from the surrounding environment, and had knowledge that the land had been, is, or would be developed into real estate for commercial and residential use at the same time as failing to warn purchasers and residents of the dangers of such contaminants.

225. Defendant, despite its knowledge of the serious health and environmental effects associated with exposure to such contaminants, masked the true extent of contamination, thereby enabling the Defendants to avoid taking all appropriate steps to properly remediate said contamination to mitigate its dangers in the Class Areas.

226. Defendant, despite its knowledge of the serious health and environmental effects associated with exposure to such contaminants, failed to properly remediate such contamination in the Class Area.

COUNT VI

STRICT LIABILITY – ABNORMALLY DANGEROUS ACTIVITY

227. Defendant, by contaminating and then failing to properly restore the Sherwin-

Williams Site and surrounding areas as to allow for residential and commercial use and without disclosure of the hazardous risk posed by this use of the land has engaged in an activity that is abnormally dangerous, ultra-hazardous, and inherently or intrinsically dangerous activities for which they are strictly liable to the Plaintiffs and Class Members.

228. Defendant's activities pose a high degree of risk of harm to Plaintiffs and Class Members. The likelihood that the harm that results from the Defendant's activities will be great is based upon the fact that the hazardous substance levels are significantly elevated above acceptable NJDEP and USEPA background levels and therefore these contaminants present serious health risks (including cancer).

229. Defendant's paint manufacturing operations and improper restoration of contaminated lands with actual knowledge that the property would be most likely be developed for commercial and/or residential use is abnormally dangerous and that danger cannot be eliminated through the use of reasonable care, as such development is inherently unreasonably dangerous. There is no safe way to house people on these lands that have not been properly treated or remediated and therefore the hazardous contamination levels pose unreasonably unsafe hazards.

230. Defendant's paint manufacturing operations and inadequate restoration of the waste areas and failure to properly investigate, delineate, remediate and warn Plaintiffs and the Class Members about the high hazardous substance levels in the Class Areas was neither a matter of common usage nor appropriate to the place where it was carried out.

231. Exposure to significantly elevated levels of hazardous substances leading to the increased risk of health impacts, including cancer, is a critical societal problem in New Jersey, and thus, the value of Defendant's activities, including its inadequate remediation, is substantially outweighed by the serious health and environmental and health problems caused by them.

232. As a direct and proximate result of Defendant's misconduct as set forth herein, Plaintiffs and Class Members have suffered and continue to suffer enhanced risk of future personal injury; economic losses, such as costs of medical monitoring; the loss of value to their property; and other damages as set forth herein.

233. Separate and apart from acting negligently, at all relevant times the Defendant caused injury and damages to the Plaintiffs, Class Members, and/or their property through acts and omissions actuated by actual malice and/or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by such acts or omissions.

234. Defendant, despite its knowledge of the serious health and environmental effects associated with exposure to radiation, failed to properly investigate and remediate said contaminants from the land while failing to warn residents, visitors and the public of the dangers of such contamination.

235. Defendant, despite its knowledge of the serious health and environmental effects associated with exposure to such contaminants, masked the true extent of contamination, thereby enabling it to avoid taking all appropriate steps to properly remediate the contamination or to mitigate dangers in the Class Areas.

236. Defendant, despite its knowledge of the serious health and environmental effects associated with exposure to the hazardous substances failed to properly remediate such contamination prior to development for commercial and/or residential use.

JURY TRIAL DEMAND AND PRAYER FOR RELIEF

Plaintiffs and Class Members hereby demand a trial by jury.

WHEREFORE, Plaintiffs and Class Members request that the Court enter an order or judgment against defendants as follows:

A. Enter an Order pursuant to Federal Rule 23 permitting this action to be maintained as a class action, Plaintiffs as the representative of the sub-classes and appointing Plaintiffs' counsel as counsel for such classes;

B. Enter judgment against Defendants for compensatory damages; the prompt testing,

assessment, excavation and removal of all hazardous wastes and related contaminants to levels otherwise representative of background levels from Plaintiffs and Class Members' properties; the cost of periodic medical examinations necessary to detect the onset of physical harm, including, serious latent injury and/or disease that may be caused by contaminants on and around Plaintiffs property; attorneys' fees, costs of suit as provided for by law; and such other relief as the Court may deem just and proper in favor of Plaintiffs and the Class Members against Sherwin-Williams for loss of property value, and for all other relief, in an amount to be proven at trial, as to which they may be entitled, including interest, expert fees and costs of this suit;

C. Enter an injunction requiring Sherwin-Williams to promptly and completely remediate hazardous chemical levels to, or below, NJDEP and USEPA background levels from the Plaintiffs and Class Members' properties;

D. Award prejudgment and post-judgment interest as provided by law;

E. Award punitive damages; and

F. Such other relief as this Court deems necessary, just and proper.

Dated: August 21, 2017

MITNICK LAW OFFICE, LLC

BY: _____

Craig R. Mitnick
Attorney for PLAINTIFFs

DEMAND FOR JURY TRIAL

PLAINTIFFs demand a trial by jury as to all claims so triable in this action.

Dated: August 21, 2017

MITNICK LAW OFFICE, LLC

BY: _____

Craig R. Mitnick
Attorney for PLAINTIFFs

CERTIFICATE OF SERVICE

I hereby certify that on August _____, 2017, a true and correct copy of the foregoing Class Action Complaint was served personally and electronically on all parties registered to receive electronic notice via the Court's CM/ECF system.

_____

CRAIG R. MITNICK, ESQ
MITNICK LAW OFFICE, LLC
35 Kings Highway East
Haddonfield, New Jersey 08033

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
BRAD LAFFERTY, et. al.

(b) County of Residence of First Listed Plaintiff CAMDEN COUNTY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
MITNICK LAW OFFICE, 35 KINGS HIGHWAY EAST HADDONFIELD, NJ 08033
(856) 427-9008

DEFENDANTS
SHERWIN-WILLIAMS COMPANY

County of Residence of First Listed Defendant CUYAHOGA COUNTY, OHIO
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☑ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☑ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☑ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*
Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☑ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
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- ☐ 441 Voting
- ☐ 442 Employment
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PRISONER PETITIONS

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FORFEITURE/PENALTY
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LABOR
- ☐ 710 Fair Labor Standards Act
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- ☐ 422 Appeal 28 USC 158
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- ☐ 861 HIA (1395ff)
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- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
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- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*: 28 U.S.C. 1332
Brief description of cause: OTHER PERSONAL INJURY

VII. REQUESTED IN COMPLAINT:
☑ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND $ IN EXCESS OF $5 MILLION
CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:
JUDGE _____ DOCKET NUMBER _____

DATE 8/22/17
SIGNATURE OF ATTORNEY OF RECORD Craig R. Mitnick

FOR OFFICE USE ONLY
RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

EXHIBIT A

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:	:	ADMINISTRATIVE ORDER ON CONSENT FOR REMOVAL ACTION
The Sherwin-Williams Company,	:	
Respondent.	:	U.S. EPA Region II
	:	CERCLA
	:	Index No. II-CERCLA-95-0112
United States Avenue Burn Site (AKA: Sherwin-Williams Burn Site)	:	Proceeding Under Section 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§9604, 9606(A), 9607 and 9622

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the U.S. Environmental Protection Agency ("EPA") and The Sherwin-Williams Company ("Respondent"). This Order provides for the performance of the removal action by Respondent and the reimbursement of response costs incurred by the United States in connection with the United Stated Avenue Burn Site (AKA: Sherwin-Williams Burn Site), located on United States Avenue in the Borough of Gibbsboro, Camden County, New Jersey (the "Site"), and defined in paragraph 8 herein. This Order requires the Respondent to conduct the removal action described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Site.

2. This Order is issued under the authority vested in the President of the United States by sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Administrators by EPA Delegation Nos. 14-14-A and 14-14-C.

3. EPA has notified the State of New Jersey of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. Respondent's participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that it will not contest the basis or validity of this Order or its terms.

5. The purpose of this action is to delineate the extent of contamination in and around the Site and to quickly take actions to limit the existing public health hazards and environmental impacts by the Site, if any.

II. PARTIES BOUND

6. This Order applies to and is binding upon EPA, and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.

7. Respondent shall provide a copy of this Order to each contractor and subcontractor approved and retained to perform the work required by this Order. Respondent shall be responsible for ensuring that their contractors and subcontractors perform the work contemplated herein in accordance with this Order. Respondent shall be responsible for any non-compliance with this Order by its contractors and subcontractors. This provision does not affect Respondent's rights against its contractors or subcontractors.

III. FINDINGS OF FACT

8. The Site is bordered by residential development to the north, and by woodlands to the south, east and west. The Site is located on United States Avenue, in and around Block 23, Lot 1, as depicted on tax maps for the Borough of Gibbsboro. A portion of the Site may also be located in adjacent blocks and lots, including along Haney Run.

9. The closest residence is approximately 200 feet north of the Site. This resident's yard abuts the Site with no apparent demarcation. An estimated 250 persons live within a 1/4 mile radius of the Site. The Paints Work Corporate Center, a business center, is situated across United States Avenue from the Site.

10. The Site and the adjoining area is reported by residents in the area to be frequently used for riding all-terrain vehicles and dirt bikes.

11. The White Sand Branch and Haney Run converge at the Site and flow through a culvert underneath United States Avenue into Bridgewood Lake and, subsequently, Millard Creek.

12. The United States Fish and Wildlife Service Wetlands Inventory Maps, indicate that sensitive ecosystems in and around these water bodies include palustrine forest, palustrine emergent wetland and palustrine scrub/shrub areas.

13. The Federal Emergency Management Agency's Flood Insurance Rate Maps indicate that the 100-year flood plain encompasses the Site.

14. Approximately 28 public water supply wells are located within four miles of the Site. Four of these wells are placed at depths less than 140 feet. Four other public water supply wells are reportedly present within one mile of the Site, the shallowest being 238 feet in depth. Over 89,000 persons use these wells. There is at least one home reportedly near the Site that derives potable water from private wells.

15. Respondent is a person as that term is defined at Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

16. Block 23, Lot 1 was purchased by John Lucas and Company, Inc. ("John Lucas and Company") around 1935. John Lucas and Company manufactured paint and associated products at its Gibbsboro plant, from 1852 to 1930. As part of its operations, John Lucas and Company stored, utilized, and generated hazardous substances as defined in Section 101(29) of CERCLA, 42 U.S.C. §9601(29).

17. An 1888 brochure of paint products offered by Lucas included Chrome Yellow, Chrome Green, White Lead, Red Lead, Cobalt Blue, and Zinc White, names which referred to the chemical content of the pigments. The brochure also contained Paris Green and Prussian Blue.

18. According to The Materials Handbook, a technical reference, chromium, lead, arsenic, cadmium, copper, barium and zinc were among the metals used to manufacture paint pigments.

19. Based on a report by the Gibbsboro Tercentennial Committee (the "GTC Report") Respondent "acquired control of John Lucas and Company, Incorporated" in 1930.

20. Based on the GTC Report, by April, 1934, Respondent "had acquired all of the assets of John Lucas and Company, Inc."

21. Based on the GTC Report, in January, 1936, "John Lucas and Company, Inc., was dissolved." Respondent retained the name of John Lucas and Company.

22. Respondent owned and/or operated a manufacturing plant located in the Borough of Gibbsboro from 1930 to 1978. As part of its operations, John Lucas and Company stored, utilized, and generated hazardous substances.

23. The 1949 Industrial Directory of New Jersey documents that Respondent manufactured paint, varnish, lacquers, dry colors and chemicals, at its Gibbsboro plant.

24. A Borough Council record dated February 26, 1957 indicated that John Lucas and Company maintained a dump in the Borough of Gibbsboro and leased a portion of this dump to the Borough of Gibbsboro.

25. The Borough Council record dated February 26, 1957 noted a letter of complaint noting the "deplorable condition" of the dump and stating that "it is on fire at all hours of the day emanating objectionable odors".

26. The Borough Council dated February 26, 1957 noted that the mayor stated that an investigation was made by the Department of Sanitation and members of John Lucas and Company, who stated "that the thinner must be burned immediately upon being placed on the dump since [not burning it] would [create] a worse fire hazard."

27. An Executive Board Meeting of the Gibbsboro Civic Association record dated March 13, 1957 noted that "the Borough of Gibbsboro has taken over operation of the dump.....and the paint company [John Lucas and Company] burns whatever amount of thinner is dumped there immediately in order to reduce fire hazard."

28. A Borough Council record dated May 28, 1957 noted a council motion to contact John Lucas and Company to close all car trails through the woods on United States Avenue beyond the dump to control dumping of trash and garbage in the woods.

29. A Borough Council record dated June 11, 1957 noted that a clerk reported that all car path entrances to the woods on United States Avenue have been blocked off by John Lucas and Company.

30. On February 8, 1993, NJDEP personnel conducted an inspection of the Site and recorded the following observations: a pile of burnt paint wastes which completely covered the north bank of White Sand Branch and extended 60 feet or more back from White Sand Branch on Block 23, Lot 1; paint wastes were found directly in White Sand Branch; recent tracks from an all-terrain vehicle were observed in the burnt waste pile which is approximately 200 feet from the nearest residence; adjacent to the burnt waste pile was other waste, including bottles, bicycles, bricks and other construction debris, indicating that people traverse the Site; an

auger boring advanced into the waste pile revealed a profile of mostly paint solids mixed with metal objects; ground water was encountered at approximately four feet; another burnt waste pile was detected adjacent to Haney Run on or near Block 25, Lot 1.

31. On May 20, 1994, the NJDEP collected samples at the Site. Those samples revealed high levels of lead (up to 13 percent), cadmium, and other heavy metals in the burnt waste pile. Based on the analysis of the samples taken May 20, 1994, metal contamination was also discovered in the waste pile adjacent to Haney Run, in stream sediments and in the waters of White Sand Branch and Haney Run. Xylene, ethyl benzene, and naphthalene were also detected in soil and sediment samples. Lead exceeded the NJDEP's chronic aquatic impact surface water standard in all surface water samples.

32. On November 22, 1994, the NJDEP issued a Directive and Notice to Insurers to the Sherwin Williams Company. The NJDEP directed Sherwin Williams to "clean up and remove the discharges at the Site by delineating the extent of heavy metal contamination at, and emanating from the Site and preventing direct human contact with the contamination through a removal or other methods."

33. By letter dated July 12, 1995, as revised on July 18, 1995, the NJDEP referred the matter to EPA. The NJDEP wrote that it views the presence of the hazardous materials at the Site to be a significant threat to the nearby population and to the environment, and that residential properties are located within 200 feet of the Site. As a result, nearby residences, the surface water, and ground water in the area, may be impacted.

34. Based on the above, the NJDEP requested that EPA sample, characterize and dispose of all hazardous substances stored on the Site so as to safeguard the local population, and perform any necessary investigatory and remedial work at the Site as deemed appropriate by EPA.

35. In mid-July, 1995, in satisfaction of the NJDEP directive, a contractor for the Respondent erected a chain-link fence at the Site.

36. According to the NJDEP, a delineation of the extent of contamination had not been conducted prior to erection of the fence.

37. On July 25, 1995, the Agency for Toxic Substances and Disease Registry ("ATSDR") produced an "ATSDR Record of Activity" which reports the ATSDR's findings upon evaluating the analytical data submitted by EPA for soils and sediments collected at the Site by the NJDEP and the Respondent.

38. The ATSDR Record of Activity contains the following findings:

a. Sediment samples taken from Haney Run on June 30, 1993, revealed Arsenic levels as high as 1,560 parts per million ("ppm"); Barium levels up to 17,600 ppm; Cadmium levels up to 15.6 ppm; and lead levels up to 2,330 ppm.

b. Surface soil samples and sediment samples taken from Haney Run and White Sand Branch on May 20, 1994. The soil samples revealed antimony levels up to 41.9 ppm; arsenic levels up to 43.7 ppm; barium levels up to 4,800 ppm; cadmium levels up to 607 ppm; total chromium levels up to 3,000 ppm; copper levels up to 868 ppm; lead levels up to 134,000 ppm; and zinc levels up to 120,000 ppm. The sediment samples revealed arsenic levels up to 235 ppm; barium levels up to 397 ppm; cadmium levels up to 3 ppm; and lead levels up to 2,510 ppm.

39. The ATSDR Record of Activity states that "Soil and sediment at the site are contaminated with metals (e.g. lead, arsenic, cadmium) at concentrations that pose a public health hazard"; that "Lead contamination is of particular concern because high concentrations (up to 13.4%) were found in bare surface soil in areas where children may play"; and that "Short-term exposures to these areas pose a public health hazard."

40. The ATSDR Record of Activity further states that sediment sampling results indicate "that contaminants have migrated off site and are present in sediment samples at levels of public health concern."

41. The Respondent and EPA have entered into this Order so as to avoid expensive and protracted litigation.

42. Respondent does not admit to these Findings of Fact.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

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

A. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. The contaminants found at the Site, as identified in the Findings of Fact above, include lead, cadmium, arsenic, chromium, copper, zinc, xylene, ethyl benzene, and naphthalene, all of which constitute a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

C. Respondent is a "person" as defined by Section 101(21) of CERCLA § 9607(a).

D. Respondent was the "owner" and/or "operator" of the Site at the time of disposal of hazardous substances at the Site as defined by Section 101(20), of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(A)(2).

E. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

F. The conditions present at the facility constitute an imminent and substantial endangerment to public health, welfare, or the environment. Factors that may be considered are set forth in Section 300.415(b)(2)(i) through (viii) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 CFR Part 300 ("NCP"). For the United States Avenue Burn Site, these factors include, but are not limited to, the following:

i. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;

ii. actual or potential contamination of drinking water supplies or sensitive ecosystems;

iv. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

v. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; and

vii. the availability of other appropriate federal or state response mechanisms to respond to the release.

G. The actual or threatened release of hazardous substances from the Site present an imminent and substantial endangerment to the public health, welfare, or the environment with the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

H. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

I. The Respondent does not admit to the above Conclusions of Law.

V. ORDER

44. The actions required by this Order are in the public interest, and are not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") 40 CFR Part 300 et seq., and will expedite effective response action and expensive and protracted litigation, in accordance with 42 U.S.C. §§9604(a)(1) and 9622(a).

45. Issuance of this Order does not require the prior written approval of the Attorney General of the United States, as stated by Section 122(h)(1) of CERCLA 42 U.S.C. §9622(h)(1).

46. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that Respondent shall comply with the provisions specified below, including but not limited to any and all attachments to this Order, and any and all documents incorporated by reference into this Order.

VI. WORK TO BE PERFORMED BY RESPONDENT

47. The activities Respondent agrees to perform include, but are not limited to, the following:

A. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondent shall perform the removal action required by this Order itself or retain (a) contractor(s) to perform the removal action. Respondent has retained Roy F. Weston, Inc. as the contractor. EPA has approved the contractor.

All activities required of Respondent under the terms of this Order shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, and local governments, and all work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

Respondent has designated Gordon Kuntz as a Project Coordinator, who shall be responsible for administration of all the Respondent's actions required by the Order. EPA has approved this designation. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be readily available during site work.

Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

EPA has designated Mr. Nicholas Magriples, CHMM of the Emergency and Remedial Response Division, Removal Action Branch, as On-Scene Coordinator (OSC). EPA and Respondent shall have the right, subject to the immediately preceding paragraph, to change their designated OSC or Project Coordinator. Respondent shall notify EPA one (1) business day before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

B. **Statement of Work**

Respondent shall perform, the actions listed below.

i. Delineate the extent of contamination by collecting samples at the Site, both inside and outside of the fence. This shall include both surface and subsurface soils including below the water table, and sediment.

ii. Physically limit with appropriate temporary barriers, to the extent practicable, migration of contaminants into the White Sand Branch, Haney Run, Bridgewood Lake and adjoining areas.

iii. Complete an engineering survey, using a properly licensed surveyor, including topographical contours of the Site, to aid in depicting the extent of contamination. All sample point elevations should be included in the survey.

iv. Adjust the existing fence line, as necessary, to cover the area of concern and to minimize the threat of direct contact by persons in the area.

v. Post warning signs on the fence, where appropriate.

These actions are necessary to contain the contamination, and minimize its further migration until further appropriate actions are conducted.

Respondent shall initiate the work required under the Statement of Work within five (5) business days of EPA's approval of the Work Plan.

B.1 Work Plan and Implementation

Within ten (10) business days after the effective date of this Order, the Respondent shall submit to EPA for approval a draft Work Plan to implement the Statement of Work. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order. The draft Work Plan shall also include a time schedule for performance of the specific tasks set forth above. The draft Work Plan shall also include B.2 and B.3, below:

B.2 Health and Safety Plan

Within ten (10) business days after the effective date of this Order, the Respondent shall submit for EPA approval a site-specific Health and Safety Plan ("HASP") that ensures the protection of the public health and safety during performance of on-site work under this Order. The HASP shall conform to the requirements of 29 CFR Part 1910.120 - Occupational Safety and Health Administration's (OSHA) Hazardous Waste Operations Standards, as well as EPA's Standard Operating Safety Guides (OSWER, 1988). If performance of any subsequent phase of the work required by this Order requires alteration of the HASP, Respondent shall submit to the EPA OSC, those amendments for review and approval.

B.3 Quality Assurance and Sampling Plan

Within ten (10) business days after the effective date of this Order, the Respondent shall submit for EPA approval a Quality Assurance Sampling Plan ("QASP") that ensures the establishment of data quality objectives, the collection of representative samples and the proper application of all analytical and quality assurance quality control ("QA/QC") procedures under this Order. The QASP shall be prepared in conformance with the latest edition of "Test Methods for Evaluating Solid Waste", (SW-846), and the EPA document entitled "EPA Requirements for Quality Assurance Project Plans For Environmental Data Operations" (EPA QA/R-5), formerly "Interim Guidelines and Specifications for Preparing Quality Assurance Plans" (QAMS-005/80).

The sampling plan shall also include:

a. a detailed map depicting all sampling locations;

b. the number and types of samples to be obtained at each location and the analyses to be performed;

c. a detailed schedule for the performance of the specific tasks set forth in the QASP; and

d. an overall management approach, including identification of contractors and subcontractors and their respective responsibilities for performance of the specified tasks set forth in the QASP.

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, QA/QC, data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance.

Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

C. Document Approvals and Modifications

EPA may approve, disapprove, require revisions to, or modify the draft Work Plan or any other plans, reports or items required to be submitted to EPA pursuant to this Order. If EPA disapproves or requires revisions, Respondent shall submit a revised draft Work Plan to EPA, with all associated plans, within five (5) business days of receipt of EPA's notification of the required revisions, unless a different period is specified in the notice or agreed to by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA-approved Work Plan. Respondent shall not commence or undertake any removal action on the site without prior EPA approval.

If any plans, reports or other items required to be submitted to EPA for approval, pursuant to this order, are disapproved by EPA, even after being resubmitted following Respondent's receipt of EPA's comments on the initial submittal, Respondent shall be deemed to be out of compliance with this Order; subject to Respondent's right to contest any such determination. If any resubmitted plans, reports or other items, or portions thereof, are disapproved by EPA, EPA may again direct Respondent to make the necessary modifications thereto, and/or EPA may unilaterally amend or develop the item(s) and recover the costs from Respondent of doing so. Respondent shall implement any such item(s) as amended or developed by EPA.

Modifications to any plan or schedule or Work Plan may be made in writing or by the OSC's oral direction. If the OSC makes an oral modification, he will memorialize it in writing within seven (7) calendar days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction.

As appropriate during the course of implementation of the actions required of Respondent pursuant to this Order, Respondent or its consultants or contractors, acting through the Project Coordinator, may confer with EPA concerning the required actions. Based upon new circumstances or new information not in the possession of EPA on the date of this Order, the Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved Work Plan. Only modifications approved by EPA in writing shall be deemed

effective. Upon approval by EPA, such modifications shall be deemed incorporated in this Order and shall be implemented by Respondent.

D. Reporting

Respondent shall make best efforts to assure that EPA receives a Progress Report no later than every ten (10) business days concerning actions undertaken pursuant to this Order, beginning the day after Respondent's receipt of EPA's approval of the Work Plan, and ending upon the termination of this Order, unless otherwise directed by the OSC. The Progress Reports shall be written and describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the development anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Respondent must submit copies of all work plans, reports, and any other documents required to be submitted to EPA under this Order by certified mail, return receipt requested or by overnight mail to the following address:

Attn: Nick Magriples, CHMM, OSC
U.S. Environmental Protection Agency
Region II - Removal Action Branch
2890 Woodbridge Avenue, Bldg. 209
Edison, NJ 08837-3679

Respondent shall also send one copy of the Work Plan to:

Attn: Carl Howard, Esq.
U.S. Environmental Protection Agency
Office of Regional Counsel
New Jersey Superfund Branch
290 Broadway, 17th Floor
New York, NY 10007-1866

If Respondent owns any portion of the Site, it shall, at least 30 calendar days prior to the conveyance of any interest in real property at the Site, give written notice that the property is subject to this Order to the transferee and written notice to EPA and the State of the transferee. Respondent agrees to make best efforts to require that its successor comply with the immediately preceding sentence and Section VIII - Access to Property and Information.

The Final Report referred to below and other documents, with the exception of the weekly Progress Report which may be signed by Respondent's Project Coordinator, submitted by Respondent to EPA

which purport to document Respondent's compliance with the terms of this Order, shall be signed by a responsible official of Respondent. For purposes of this paragraph, a responsible official is an official who is in charge of a principal business function.

E. Final Report

Within thirty-five (35) business days after completion of all removal actions required under this Order, including receipt of analytical data, the Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this order. The final report shall conform, at a minimum, with the requirements set forth in section 300.165 of the NCP entitled "OSC Report." The final report shall include:

i. a synopsis of all work performed under this Order;

ii. a detailed description of all EPA-approved modifications to the Sampling Plan and/or Work Plan which occurred during Respondent's performance of the work required under this Order;

iii. a presentation of the analytical results of all sampling and analyses performed;

iv. a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order;

v. a listing of quantities and types of materials removed off site or handled on site, if applicable;

vi. a discussion of removal and disposal options considered for those materials, if applicable;

vii. a listing of the ultimate destination of those materials, if applicable; and

viii. accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, permits).

The final report shall also include the following certification:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is 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.

F. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for seven years following completion of the removal actions required by this Order. At the end of this seven year period and 30 calendar days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this section at any time before expiration of the seven year period at the written request of EPA.

Analytical and other data specified in section 104(e)(7)(F) of CERCLA shall be claimed confidential by Respondent only to the extent permitted by, and my means of the procedures set forth at, 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

G. Off-Site Shipments

If necessary, all hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA and communicated in advance to Respondent, 42 U.S.C. Section 9621(d)(3), and the "Procedures for Planning and Implementing Off-Site Response Actions," (50 Fed. Reg. 49200, September 22, 1993). Regional Offices will provide information on the acceptability of a facility under section 121(d)(3) of CERCLA and the above directive.

Unless impracticable, prior notification of out-of-state waste shipments should be given in accordance with OSWER Directive 9330.2-07.

H. Compliance With Other Laws

Where any portion of the Work requires a federal or state permit or approval, Respondent shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, nor shall it be construed to be, a permit issued pursuant to any federal or state statute or regulation.

Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e),

42 U.S.C. §9621(e)(1) and 40 CFR Section 300.415(i). Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. §9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on the Site. In accordance with 40 CFR Section 300.415(i), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. (See "The Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 93360.3-02, August 1991).

I. Emergency Response and Notification of Releases

If any incident, or change in site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action. The Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC at EPA's Removal Action Branch at 908-906-6930 or, in the event of his/her unavailability, shall notify the Regional Duty Officer at 908-548-8730, the EPA Regional Emergency 24-hour telephone number, of the incident or site conditions. If Respondent fails to respond, EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

In addition, in the event of any release of a reportable quantity of a hazardous substance from the Site, Respondent shall immediately notify EPA's national response center at telephone number (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) calendar days after such release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by release and to prevent the reoccurrence of such release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and community Right-To-Know Act of 1986, 42 U.S.C. 11001 et seq.

VII. COMMUNITY RELATIONS

48. Respondent shall cooperate with EPA in providing information relating to the work required hereunder to the public. As requested by EPA, Respondent shall participate in the preparation of all appropriate information disseminated to the public; participate in public meetings which may be held or sponsored by

EPA to explain activities at or concerning the Site; and provide a suitable location for public meetings, as needed.

VIII. ACCESS TO PROPERTY AND INFORMATION

49. EPA and its designated representatives, including, but not limited to, employees, agents, contractor(s) and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Order. To the extent it has authority to do so, Respondent shall at all times permit EPA and its designated representatives full access to and freedom of movement at the Site and any other premises where Work under this Order is to be performed for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondent, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Order.

50. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain an access agreement(s) from the present owner(s) within ten (10) business days of the effective date of this Order for purposes of implementing the requirements of this Order. The term "best efforts" shall include such agreements that shall provide access not only for Respondent, but also for EPA and its designated representatives or agents to gain access onto property onto which access is needed. Such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. If such access agreements are not obtained by Respondent within the time period specified herein, Respondent shall immediately notify EPA of their failure to obtain access and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for the Respondent, may perform those response actions with EPA contractors at the property in question (and in such case, will provide Respondent an opportunity to be present), or may terminate the Order if Respondent can not obtain an access agreement(s). If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

51. Respondent shall provide EPA with access to all records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Order. All data, information and records created, maintained, or received by Respondent or their

contractor(s) or consultant(s) in connection with implementation of the work under this Order, including, but not limited to, contractual documents, invoices, receipts, work orders and disposal records shall, without delay, be made available to EPA upon request. EPA shall be permitted to copy all such documents. Respondent shall submit to EPA upon receipt, the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the Respondent's behalf, during implementation of this Order.

52. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statutes or regulations.

53. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent. Respondent shall notify EPA not less than three (3) business days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

IX. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

54. The OSC shall be responsible for overseeing the Respondent's implementation of this Order pursuant to an approved Work Plan. EPA, including the OSC and its agents and contractors, will conduct oversight of the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by EPA or the Respondent at the site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by OSC.

55. During the implementation of the requirements of this Order, Respondent and its contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the work being carried out or to be carried out by Respondent, including inspections at the Site.

X. REIMBURSEMENT OF COSTS

56. Respondent shall pay no more than thirty-five thousand dollars ($35,000), in the manner detailed below, for reimbursement of past response costs paid by the United States and consistent with the NCP. Past response costs are all costs, including, but not limited to, direct and indirect costs and interest, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred and/or paid with regard to the Site prior to September

19, 1995, and/or includes all costs relating to the sediment bioassay investigation at the Site. EPA shall provide Respondent with written notice of the precise amount due, and shall make best efforts to supply sufficient information to enable Respondent to review such costs, as provided in paragraph 58, below, and Respondent shall remit payment within twenty (20) days of such notice.

57. In addition, Respondent shall reimburse EPA for all future response costs relating to this Order, not inconsistent with the NCP, incurred by the United States. Respondent shall not be liable for "oversight costs". Oversight costs, for purposes of this Order only, shall mean that portion of future response costs incurred by EPA or an EPA contractor, after September 19, 1995, in monitoring Respondent's performance of the Work to determine whether such performance is consistent with the requirements of this Order, including costs incurred in reviewing or developing plans, reports and other items pursuant to this Order, as well as costs incurred in overseeing implementation of the Work required under this Order including sampling and monitoring costs, except as provided below.

a) Provided that Respondent has been given a reasonable opportunity to cure any defects in the work being performed pursuant to the Work Plan, noted by the OSC, and communicated to Respondent in writing, and the matter has not been decided in Respondent's favor in dispute resolution, if any, oversight costs shall not include, inter alia: (1) the costs of direct action by EPA to investigate, evaluate or monitor a release, threat of release, or a danger posed by such release or threat of release; (2) the costs of litigation or other enforcement activities; (3) the costs of determining the need for or taking direct response actions by EPA to conduct a removal action at the Site, including but not limited to the cost of activities by EPA pursuant to Section XXI - (Additional Removal Action), of this Order; (4) the cost of enforcing the terms of this Order, except for costs incurred in connection with Dispute Resolution pursuant to Section XI; (5) the cost of securing access under Section VIII; and (6) the cost of work performed by EPA under Section VI (Work To Be Performed By Respondent), of this Order.

58. Respondent and EPA agree that financial cost documentation as compiled by EPA Region II's Financial Management Branch shall serve as the basis for past costs payment demands by EPA. Such cost documentation may be subject to confidential treatment as determined by EPA. Respondent and EPA agree that EPA's certified Superfund Cost Organization & Recovery System ("SCORE$"), or such other summary as certified by EPA, shall serve as the primary basis for all future costs payment demands by EPA. EPA will make best efforts to provide Respondent with underlying cost data provided Respondent reviews and finds insufficient the SCORE$ report. Respondent shall not demand any additional documentation

beyond that specified in this paragraph as a prerequisite for making any payments demanded by EPA for past or future response costs incurred pursuant to this Order.

59. On a periodic basis, EPA shall submit to Respondent a bill for future response costs, if any. Respondent shall, within 30 calendar days of receipt of the bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substances Superfund," to the following address:

EPA - Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

Respondent shall simultaneously transmit a copy of the check to the addresses specified in Paragraph 47.B.5. Payments shall be designated as "Response Costs - **United States Avenue Burn Site**" and shall reference the payor's name and address, the EPA site identification number (GE), and the docket number of this Order.

60. In the event that the payment for future response costs are not made within 30 days of the Respondent's receipt of the bill, Respondent shall pay interest on the unpaid balance.

61. Interest is established at the rate specified in section 107(a) of CERCLA. The interest to be paid on past response costs shall begin to accrue on the effective date of the Order. The interest on future response costs shall begin to accrue on the date of the Respondent's receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section.

62. Respondent may dispute all or part of a bill for past or future response costs submitted under this Order, if Respondent alleges that EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the terms of this Order or the NCP.

63. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondent shall simultaneously transmit a copy of both checks to the OSC. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus

interest within five (5) business days after the dispute is resolved.

XI. DISPUTE RESOLUTION

64. The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

65. If the Respondent, in good faith, disagrees with a determination pursuant to Paragraph 47.C. (including EPA's determination concerning deliverables pursuant to paragraphs 92 and 93), or with a demand for past or future response costs pursuant to Section X, the Respondent shall notify EPA in writing of its objection(s) within five (5) business days of any such EPA action, unless the objection(s) have been informally resolved. Such written notification shall include the relevant facts upon which the dispute is based, analysis or opinion supporting Respondent's position, and all supporting documentation on which it relies.

66. EPA and Respondent shall within ten (10) business days from EPA's receipt of the Respondent's written objections attempt to resolve the dispute through formal negotiations (Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. EPA's decision regarding an extension of the Negotiation Period shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review. If an agreement is not reached at the conclusion of the Negotiation Period, within two (2) business days Respondent shall inform EPA that Respondent requests a determination by EPA's Division Director of the Emergency and Remedial Response Division, Region II (the "Director"). Within five (5) business days of the conclusion of the Negotiation Period, the parties shall exchange Written Statements of Position, and such Statements shall be given to the Director. The Director's written determination shall resolve the issue, but shall not constitute final agency action.

67. If a dispute and its resolution, as described in the paragraph above, cause a delay that makes it impossible for Respondent to meet a deadline set forth in or established pursuant to this Order, then that deadline shall be extended by EPA by a period of time not to exceed the delay resulting from the dispute and its resolution; PROVIDED that Respondent shall not be entitled to any such extension if the Director determines that Respondent's disagreement with EPA's position giving rise to the dispute is not in good faith or otherwise lacks a reasonable basis. Notwithstanding any of the foregoing, if Respondent requests an extension of a deadline as set forth in or established pursuant to this Order, and if EPA declines to grant an extension in response to such a request, any delay, caused

solely by the resolution of such a dispute shall not entitle Respondent to an extension of time.

68. Notwithstanding any of the foregoing, EPA will be the final arbiter of all disputes under this Order and the final arbiter as to the sufficiency and acceptability of all work conducted pursuant to this Order. However, nothing in this Section shall affect any rights that Respondent may have to judicial review, if any, of EPA's actions or determinations under this Order, and except as provided in Paragraphs 4 and 85, EPA and Respondent expressly reserve all rights and defenses that they may have pursuant to applicable law.

69. The decision of the Director shall be incorporated into and become an enforceable element of this Order upon Respondent's receipt of EPA's decision regarding the dispute. Following resolution of the dispute, as provided by this section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No EPA decision made pursuant to this section shall constitute a final agency action giving rise to judicial review prior to judicial action to enforce the terms of this Order.

XII. FORCE MAJEURE

70. Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of the Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increase cost of performance.

71. Respondent shall notify EPA orally within 36 hours after Respondent becomes or should have become aware of events which constitute a force majeure, and in writing within five (5) calendar days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall waive any claim of force majeure by the Respondent.

72. If EPA determines a delay in performance of a requirement under this order is or was attributable to a force majeure, the time period for performance of that requirement shall be deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform of complete other tasks required by the Order which are not directly affected by the force majeure.

XIII. ENFORCEMENT

73. Apart from a force majeure event as determined by EPA pursuant to Section XII, failure of Respondent to expeditiously and completely carry out the terms of this Order may result in EPA conducting the required actions, pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a).

74. Any failure by Respondent to perform fully any requirement of this Order, including, but not limited to, compliance with any terms of the EPA-approved Work Plan that is to be prepared pursuant to this Order, will be considered to be a violation of this Order. In such an event, EPA may elect to:

A. Demand that Respondent cease work under the Order;
B. Use federal funds to complete the work required by the Order; and/or
C. Take any other actions authorized under this Order, federal laws or regulations.

75. If Respondent fails, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Order, including the submittal and timely revision and resubmittal and implementation, if necessary, of all requirements pursuant to paragraphs 47, 92, and 93, and timely commencement of work, and such failure is not excused under the terms of the preceding paragraph, Respondent shall be liable as follows:

Days After Required Date	Penalty per Violation per Day
1 to 10 days	$750/day
11 to 25 days	$1,000/day
26 to 40 days	$2,000/day
41 days or more	$4,000/day

Respondent shall be liable to EPA for stipulated penalties in the amount of $500 per violation for each day during which Respondent fails to comply with all other requirements of this Order.

76. Penalties shall accrue as of the first day after the applicable deadline has passed, and shall continue to accrue until the noncompliance is corrected. Penalties shall accrue but need not be paid during the dispute resolution period. If

Respondent prevails, only those penalties found to be due and owing shall be paid, if any. If EPA prevails, then upon receipt of written demand by EPA, Respondent shall make payment to EPA within twenty-one (21) calendar days. Interest shall accrue on late payments as of the date of payment is due which is the date of the violation or act of non-compliance triggering the stipulated penalties.

77. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligations to complete the performance of the work required under this Order.

78. Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-five thousand dollars ($25,000) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. section 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. Section 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. Section 9606.

XIV. RESERVATION OF RIGHTS

79. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. section 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

XV. OTHER CLAIMS

80. By issuance of this Order, 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 shall not be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

81. Except as expressly provided in Section XVI- Covenant Not To Sue - nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under sections 106(a) and 107(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9607(a).

82. This Order does not constitute a preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent waives any claims to payment under sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. § 9606(b), 9611, and 9612, against the United States or the Hazardous Substances Superfund arising out of any action performed under this Order.

83. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XVI. COVENANT NOT TO SUE

84. Except as otherwise specifically provided in this Order, upon issuance of the EPA notice referred to in Section XXII - Notice of Completion, EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

85. Nothing in this Order shall constitute an admission by Respondent with respect to any factual finding or legal determination noted herein. However, Respondent agrees not to contest in any proceeding in any federal court after the effective date of this Order the authority of the Regional Administrator of EPA Region II to enter into this Order. Respondent reserves all legal remedies and defenses otherwise available under federal law.

86. The covenant not to sue in Paragraph 84 is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

XVII. CONTRIBUTION PROTECTION

87. With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. Section 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes the United States or the Respondent from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XVIII. INDEMNIFICATION

88. Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondent, Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between (any one or more of) Respondents, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. In addition, Respondent agrees 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 paragraph.

89. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between (any one or more of) Respondent(s) and any person for performance of work on or relating to implementation of this Order at the Site, including, but not limited to, claims on account of constructive delay.

XIX. INSURANCE

90. At least seven (7) calendar days prior to commencing any on-site work under this Order, the Respondent shall secure, and shall maintain for the duration of this Order, adequate comprehensive general liability insurance and automobile insurance. Within the same time period, the Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal

or lesser amount, then the Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XX. FINANCIAL ASSURANCE

91. Respondent shall demonstrate its ability to complete the work and to pay all claims that arise in connection with performance of the work by obtaining, and presenting to EPA for approval within fourteen (14) calendar days of the effective date of this Order, one of the following: (1) performance bond; (2) irrevocable letter of credit; (3) guarantee by a third party; (4) escrow account; or (5) internal financial information sufficient to satisfy EPA that Respondent has enough net assets to make it unnecessary to require additional financial assurances. EPA will make a determination of the adequacy of the financial assurance and communicate that determination to Respondent. If at any time EPA determines that such financial assurance is inadequate, Respondent shall, within twenty calendar days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other four forms of financial assurance listed in this Paragraph.

XXI. ADDITIONAL REMOVAL ACTION

92. If EPA determines that additional removal actions not included in the approved Work Plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within ten (10) business days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of this Order. Upon EPA's approval of the plan, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section VI.B.4. - Document Approvals and Modifications.

XXII. NOTICE OF COMPLETION

93. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide notice to the Respondent. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. The Respondent shall implement the

modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

XXIII. PUBLIC COMMENT

94. Final acceptance by EPA of Section X (Reimbursement of Costs) of this Order shall be subject to Section 122(i) of CERCLA, 42 U.S.C. Section 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. After consideration of any comments submitted during the thirty (30) day public comment period held pursuant to Section 122(i) of CERCLA, EPA may withhold consent to all or part of Section X of this Order if comments received disclose facts or considerations that indicate that Section X of this Order is inappropriate, improper or inadequate. Otherwise, Section X shall become effective when EPA issues notice to Respondent that the former is not withdrawing from this section of the Order.

XXIV. SEVERABILITY

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

XXV. EFFECTIVE DATE

96. This Order shall be effective three (3) calendar days after the Order is signed by the Regional Administrator of EPA as indicated below. All activities required pursuant to this Order with deadlines measured from the effective date shall be calculated from this effective date.

The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Order and to bind the party he/she represents to this document.

Agreed this 27th day of September, 1995.

By _____
Signature

Please Print or Type Name Louis E. Stellato

Title Vice President, General Counsel & Secretary

It is so ORDERED and Agreed this 29 day of September 1995.

BY: _____ DATE: 9/29/95
Jeanne M. Fox
Regional Administrator
Region II
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

EFFECTIVE DATE: 10-2-95

EXHIBIT B

Superfund Proposed Plan

U.S. Environmental Protection Agency, Region II

United States Avenue Burn Site
Operable Unit 2
Gibbsboro, New Jersey

July 2017

EPA ANNOUNCES PROPOSED PLAN

This Proposed Plan identifies the Preferred Alternative to address contaminated soil, sediment, and surface water at the United States Avenue Burn Superfund Site ("The Burn Site"). The Burn Site is located in Gibbsboro, New Jersey (Figure 1). The contamination is associated with the former Sherwin-Williams paint and varnish manufacturing plant located in Gibbsboro, New Jersey.

The Preferred Alternative calls for the excavation of sediment; and excavation and capping, as necessary, of soil. Excavated material will be disposed of offsite. Surface water will be monitored. Institutional controls will be implemented as needed. Groundwater contamination will be evaluated as a separate Operable Unit and addressed in a future Proposed Plan.

A comprehensive Remedial Investigation (RI) took place under a 1999 Administrative Order on Consent (AOC) with the Sherwin-Williams Company (Sherwin-Williams). The RI activities were conducted by Sherwin-Williams and were overseen by the U.S. Environmental Protection Agency (EPA). The RI included sampling of soil, sediment, surface water and groundwater throughout the Burn Site. The results of this investigation identified areas within the Burn Site where remedial action is required.

This Proposed Plan contains descriptions and evaluations of the cleanup alternatives considered for the Burn Site. This Proposed Plan was developed by EPA, the lead agency, in consultation with the New Jersey Department of Environmental Protection (NJDEP), the support agency. EPA, in consultation with NJDEP, will select a final remedy for contaminated soil, sediment, surface water after reviewing and considering all information submitted during the 30-day public comment period.

510561

MARK YOUR CALENDARS

PUBLIC COMMENT PERIOD
July 27 – August 25, 2017
EPA will accept written comments on the Proposed Plan during the public comment period.

PUBLIC MEETING
August 10, 2017 from 7:00 P.M. to 9:00 P.M.
EPA will hold a public meeting to explain the Proposed Plan and alternatives presented in the Feasibility Study. Oral and written comments will also be accepted at the meeting. The meeting will be held at the Gibbsboro Senior Center, 250 Haddonfield-Berlin Road, Gibbsboro, New Jersey 08026

For more information, see the Administrative Record at the following locations:

EPA Records Center, Region 2
290 Broadway, 18th Floor
New York, New York 10007-1866
(212) 637-4308
Hours: Monday-Friday – 9 A.M. to 5 P.M. by appointment

Gibbsboro Borough Hall/Library
49 Kirkwood Road
Gibbsboro, New Jersey 08026
For Library Hours:
http://www.gibbsborotownhall.com/index.php/library

M. Allan Vogelson Regional Branch Library – Voorhees
203 Laurel Road
Voorhees, New Jersey 08043
For Library Hours:
http://www.camdencountylibrary.org/voorhees-branch

Send comments on the Proposed Plan to:

Julie Nace, Remedial Project Manger
U.S. EPA, Region 2
290 Broadway, 19th Floor
New York, NY 10007-1866
Telephone: 212-637-4126
Email: nace.julie@epa.gov

EPA's website for the United States Avenue Burn Site is: https://www.epa.gov/superfund/us-avenue-burn

EPA, in consultation with NJDEP, may modify the Preferred Alternative or select another response action presented in this Plan based on new information or public comments. Therefore, the public is encouraged to review and comment on the alternatives presented in this Proposed Plan.

EPA is issuing this Proposed Plan as part of its community relations program under Section 117(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund) 42 U.S.C. 9617(a), and Section 300.435(c)(2)(ii) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This Proposed Plan summarizes information that can be found in greater detail in the Burn Site RI and Feasibility Study (FS) reports as well as other related documents contained in the Administrative Record. The location of the Administrative Record is provided on the previous page. EPA and NJDEP encourage the public to review these documents to gain a more comprehensive understanding of the site-related Superfund activities performed by Sherwin-Williams, under EPA and NJDEP oversight.

SITE DESCRIPTION

Three sites collectively make up what is commonly referred to as the "Sherwin-Williams Sites," which are located in areas of Gibbsboro and Voorhees, New Jersey. These sites are the *Sherwin-Williams/Hilliard's Creek Superfund Site* located in both Gibbsboro and Voorhees, the *Route 561 Dump Site* in Gibbsboro and the *United States Avenue Burn Superfund Site* in Gibbsboro (Figure 2). The Sites represent source areas from which contaminated soil and sediment have migrated, predominantly through natural processes, to downgradient areas within Gibbsboro and Voorhees.

Sherwin-Williams/Hilliards Creek Superfund Site: The Sherwin-Williams/Hilliards Creek Superfund Site includes the Former Manufacturing Plant area, Hilliards Creek and Kirkwood Lake. The Former Manufacturing Plant area of the Sherwin-Williams/Hilliards Creek Superfund Site is approximately 20 acres in size and is comprised of commercial structures, undeveloped land and the southern portion of Silver Lake. The Former Manufacturing Plant area extends from the south shore of Silver Lake in Gibbsboro, New Jersey, and straddles the headwaters of Hilliards Creek. Hilliards Creek is formed by the outflow from Silver Lake. The outflow enters a culvert beneath a parking lot at the Former Manufacturing Plant and resurfaces on the south side of Foster Avenue, Gibbsboro. From this point, Hilliards Creek flows in a southerly direction through the Former Manufacturing Plant area and continues downstream through residential and undeveloped areas. At approximately one mile from its origin, Hilliards Creek empties into Kirkwood Lake. Kirkwood Lake is approximately 25 acres, located in Voorhees, New Jersey with residential properties lining its northern shore.

Route 561 Dump Site: The Route 561 Dump Site is located approximately 700 feet to the east of the Former Manufacturing Plant area. It includes retail businesses, a portion of a residential area, wooded vacant lots and a small creek. A fenced portion of the Route 561 Dump Site is located at the base of an earthen dam that forms Clement Lake. White Sand Branch is a small creek which originates at the dam and flows in a southwest direction for approximately 1,650 feet where it enters the fenced portion of the Burn Site.

United States Avenue Burn Superfund Site: The fenced portion of the Burn Site and its associated contamination is approximately thirteen acres in size and encloses the remaining 400 feet of White Sand Branch. A 500-foot portion of a small creek, Honey Run Brook, enters the Burn Site where it joins White Sand Branch before it passes beneath United States Avenue and enters Bridgewood Lake in Gibbsboro. The six-acre Bridgewood Lake empties through a culvert beneath Clementon Road and forms a 400-foot long tributary that joins Hilliards Creek at a point approximately 1,000 feet downstream from the Former Manufacturing Plant area.

SITE HISTORY

The former paint and varnish manufacturing plant property in Gibbsboro, New Jersey, was developed in the early 1800s as a saw mill, and later as a grain mill. In 1851, John Lucas & Co., Inc. (Lucas), purchased the property and converted the grain mill into a paint and varnish manufacturing facility that produced oil-based paints, varnishes and lacquers. Sherwin-Williams purchased Lucas in the early 1930s and expanded operations at the facility. Historic features at the Former Manufacturing Plant included wastewater lagoons,

above-ground storage tanks, a railroad line and spur, drum storage areas, and numerous production and warehouse buildings. The facility was closed in 1977 and was sold to a developer in 1981.

In 1978, after plant operations closed, NJDEP directed Sherwin-Williams to excavate and properly dispose of the waste material remaining in the lagoons. During the 1980s, NJDEP entered into several administrative orders with Sherwin-Williams to oversee the characterization of contaminated groundwater and a petroleum-like seep in the Former Manufacturing Plant area. During the 1990s, NJDEP discovered two additional source areas, the Route 561 Dump Site and the Burn Site. Contamination in both areas are attributable to historic dumping activities associated with the Former Manufacturing Plant.

In the mid-1990s, enforcement responsibilities for the Dump Site and the Burn Site were transferred from NJDEP to EPA. Under an AOC with EPA, Sherwin-Williams was directed to further characterize and delineate the extent of contamination associated with these areas and to fence them off to minimize the potential for human exposure. EPA proposed the Dump Site to the National Priorities List (NPL) in 1998[1]. The Burn Site was added to the NPL in 1999.

In 1998, EPA sampled the upper portions of Hilliards Creek and several residential properties. Contaminants (mainly lead and arsenic) were detected in these soil and sediment samples. EPA then entered into two additional AOCs with Sherwin-Williams in 1999. Under the first AOC, Sherwin-Williams conducted additional sampling of Hilliards Creek and Kirkwood Lake to further characterize the extent of contamination. This sampling, which concluded in 2003, included residential properties along Hilliards Creek and Kirkwood Lake. The second AOC, signed in September 1999, required Sherwin-Williams to conduct a Remedial Investigation/Feasibility Study (RI/FS) for the Route 561 Dump Site, the Burn Site and Hilliards Creek. The Sherwin-Williams/Hilliards Creek Site, which includes the Former Manufacturing Plant (FMP) area, Hilliards Creek and Kirkwood Lake, was added to the NPL in 2008.

SITE CHARACTERISTICS OF THE BURN SITE

The Burn Site is comprised of undeveloped properties, woodlands, wetlands and two small creeks. It has been subdivided into areas based on different phases of the investigation. These subdivisions are described below and shown on Figure 3.

Burn Site Fenced Area. The Burn Site Fenced Area is located on the east side of United States Avenue and is comprised of 12.7 acres surrounded by an eight-foot chain link fence. Sherwin-Williams installed the fence around the site in September 1995 pursuant to an EPA Administrative Order on Consent.

Burn Area. The Burn Area is approximately 0.4 acres of fenced area located within the northwest corner of the Burn Site Fenced Area. Historic burning of combustible waste, such as paint waste, spent solvents, empty pigment bags and broken pallets, was conducted in this area. This area was fenced by Sherwin-Williams in July 1995 pursuant to an NJDEP directive.

Landfill Area. The Landfill Area is located in the southern portion of the Burn Site Fenced Area. Material dredged from plant wastewater lagoons and facility trash were deposited in disposal pits within this area. Disposal activities in the Landfill Area were also conducted by the municipality which leased the property from Sherwin-Williams for that purpose. The majority of the sludge material was removed from the Landfill Area in 1979 pursuant to an NJDEP Administrative Order.

White Sand Branch. This is a small stream with headwaters originating at Clement Lake. It flows through the Route 561 Dump Site and along the south side of the Vacant Lot before it enters the northeast corner of the Burn Site. From there, it flows across the

[1] The *National Priorities List* (NPL) is the list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States and its territories. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation. At some sites proposed for the NPL, EPA has entered into an enforcement agreement with a private party prior final placement on the NPL, whereby the private party agrees to proceed with Superfund investigations or cleanup at the site. In certain circumstances (including at the Dump Site), EPA has elected not to finalize the NPL listing as long as Superfund work proceeds in accordance with the enforcement agreement, but EPA maintains the site as "proposed" so that it can be quickly finalized on the NPL if conditions change.

northern portion of the Burn Site and joins Honey Run just east of U.S. Avenue, and discharges through a culvert beneath U.S. Avenue into Bridgewood Lake.

Honey Run. This is a small stream that runs from the southeastern corner of the Burn Site to the point where it joins White Sand Branch and discharges into Bridgewood Lake.

Railroad Track Area. This is the railroad track and the area between the railroad track and Bridgewood Lake, located west of U.S. Avenue. This area commences at the northern end of Bridgewood Lake and extends 600 feet to the south.

Summary of Burn Site Investigations

Pre-Remedial Investigation Activities
The investigations at the Burn Site were conducted in several phases. NJDEP investigated the Landfill Area in 1975 and in 1978 issued an Administrative Order for Sherwin-Williams to remove sludge and contaminated soil from the Landfill Area. Sherwin-Williams removed the majority of the waste in 1979.

In 1991 and 1992, Sherwin-Williams, under NJDEP direction, conducted an investigation of the Landfill Area of the Burn Site. This investigation was conducted as part of a larger investigation of the FMP.

In 1993, Sherwin-Williams conducted an additional phase of investigation of the FMP that included further sampling of the former Landfill Area. In addition, NJDEP conducted a site investigation within what is now termed the Burn Site Fenced Area in 1994, during which soil samples were collected from within the Burn Area, north of the Burn Area, and north of the Landfill Area, near Honey Run. Sediment and surface water samples were also collected along White Sand Branch and Honey Run.

In 1995, pursuant to an AOC with the EPA, Sherwin-Williams conducted an investigation of the Burn Site Fenced Area. A fence surrounding the Burn Site Fenced Area was installed in June 1995 as part of the EPA AOC. The 1995 investigation consisted of soil, sediment, and groundwater sampling.

In 1996, in response to a letter from EPA, Sherwin-Williams conducted soil sampling of the Railroad Track Area. Based on these results, the EPA issued a Unilateral Administrative Order to Sherwin-Williams to conduct a soil removal action in this area. The soil removal was conducted in 1997. Approximately 2,000 tons of soil and debris and 4,500 gallons of liquid (primarily rain water) were removed and disposed off-site.

Summary of the Remedial Investigation

The full results of the RI can be found in the Burn Site Remedial Investigation Report (February 2017) which is part of the Administrative Record.

RI sampling of soil, sediment and surface water by Sherwin-Williams, under EPA oversight, began in 2005 and continued to 2008. Additional groundwater sampling was conducted in 2010 and 2011 and supplemental sampling for the Baseline Ecological Risk Assessment took place in 2015.

Beginning in 2005, the RI for the Burn Site, which included all of the six subareas, was conducted in sequential phases; the scopes of later sampling phases were based on the results of prior phases of investigation.

The results of sample analyses were screened to determine if the levels of contamination posed a potential harm to human health and/or the environment. This was done by comparing the measured values of contaminants to standards that are protective of human health or ecological receptors.

The soil sample analytical results were compared to NJDEP's Residential Direct Contact Soil Remediation Standards (RDCSRS) referred to hereafter as residential cleanup goals, and the Non-residential Direct Contact Soil Remediation Standards (NRDCSRS), referred to hereafter as non-residential cleanup goals, depending on the zoning and land use. The sediment sample analytical results were compared to the lowest effect levels for ecological receptors and surface water results were compared to the New Jersey Surface Water Quality Standards (NJSWQS) for Fresh Water. In addition, a human health risk assessment and an ecological risk assessment were conducted to determine if levels of contaminants exceeded EPA's acceptable risk range. Explanations of the results of the human

health and ecological risk assessments are explained in separate sections later in this document.

The results of the RI showed that lead and arsenic are the major contaminants of concern in all media tested throughout the Burn Site. Other contaminants were also found and they were generally co-located with lead and arsenic.

Soil:

Soil samples were taken from over 200 sample locations from the ground surface to depths of approximately 34 feet.

Lead and arsenic are the main contaminants of concern and were found most frequently and at the greatest concentrations above the NJDEP RDCSRS. Other contaminants that were found in the soil above the standard include pentachlorophenol, hexavalent chromium and other metals, polychlorinated biphenyls (PCBs), and polycyclic aromatic hydrocarbons (PAHs). These other contaminants were found less frequently and are co-located with lead and arsenic therefore they would be addressed with the cleanup goals for lead and arsenic. Based on the sampling results and comparison of that data to the NJDEP RDCSRS, lead and arsenic were identified as the main contaminants of concern in the soil.

The most highly contaminated soil was found at three locations within the Burn Site Fenced Area. These locations are the Landfill Area, White Sand Branch floodplain and the Burn Area. It is likely that there is contamination under United States Avenue since soil contamination was found in samples on both sides of United States Avenue between the Burn Site Fenced Area and the Railroad Track Area.

Contamination in soil is generally found at depths up to 8 feet but can be found in areas up to 28.5 feet deep. The concentration of lead in soils range from less than the NJDEP residential standard of 400 milligrams/kilogram (mg/kg) to levels exceeding over 20,000 mg/kg in the three areas with the highest contamination (Landfill, White Sand Branch Floodplain and the Burn Area). The concentration of arsenic in soil ranges from less than the NJDEP residential standard of 19 mg/kg to levels exceeding 1,000 mg/kg in the Burn Area.

WHAT ARE THE "CONTAMINANTS OF CONCERN" (COCs)?

EPA has identified two metals as the primary contaminants of concern at the Burn Site that pose the greatest potential risk to human health and the environment.
The primary contaminants of concern at the US Avenue Burn Site are lead and arsenic.

Lead: Lead was historically used as a pigment in paint. As a pigment, lead II chromate "chrome yellow" and lead II carbonate "white lead" being the most common. Lead is hazardous. At high levels of exposure lead can cause nervous system damage, stunted growth, kidney damage, and delayed development. Lead is considered a possible carcinogen.

Arsenic: Arsenic compounds began to be used in agriculture as ingredients in insecticides, rodenticides, herbicides, wood preservers and pigments in paints. Long-term exposure to high levels of inorganic arsenic (e.g. through drinking-water and food) are usually observed in the skin, and include pigmentation changes and skin lesions. Often, prolong exposure can lead to skin cancer. In addition to skin cancer, long-term exposure may lead to cancers of the bladder and lungs.

Sediment:

Sediment samples were taken from more than 30 locations in Honey Run within the Fenced Area and to the southeast outside the Fenced Area and the entirety of White Sand Branch located within the Fenced Area.

Lead and arsenic were found most frequently and at the greatest concentrations above the NJDEP lowest effect levels for ecological receptors of 31 mg/kg for lead and 6 mg/kg for arsenic. Contaminants in sediment that exceed the lowest effect level criteria generally require further evaluation. Other constituents found above this criterion were cadmium, chromium, copper, cyanide, mercury and zinc, PAHs, pesticides and PCBs. These other constituents were found less frequently and are co-located with lead and arsenic.

Lead and arsenic exceedances were found in sediment throughout Honey Run and White Sand Branch. The concentration of lead varies from below the lowest effect level for ecological receptors to 11,000 mg/kg. The arsenic levels varied from below the lowest effects

level for ecological receptors to over 500 mg/kg. For both metals, the highest values were found just south of the Burn Area.

Surface Water:

Surface water samples were collected from eight locations in the Burn Site Fenced Area and in Honey Run from the southeastern portion of the creek located outside of the Fenced Area. Analyses of the surface water showed exceedances of the NJSWQS for Fresh Water for aluminum, iron, zinc, cyanide, arsenic, lead, and cadmium. As with the other media, lead is the main contaminant of concern.

The concentrations of metals in surface water were compared to the NJSWQS for Fresh Water of 5.4 micrograms/Liter (µg/L) for lead and 150 µg/L for arsenic. The total lead and total arsenic values varied from below the NJSWQS for Fresh Water to over 33.5 µg/L for total lead and over 514 µg/L for total arsenic. The highest concentrations in surface water were found just west of where White Sand Branch meets Honey Run within the Burn Site Fenced Area.

SCOPE AND ROLE OF OPERABLE UNIT

Due to the complexity of multiple sites and varying land uses, EPA is addressing the cleanup of the Sherwin-Williams sites in several phases called operable units. Operable Unit 1 (OU1) consists of the Residential Properties associated with each of the three Sherwin-Williams Sites that are to be remediated in accordance with the Record of Decision which was signed in September 2015.

This Proposed Plan addresses Operable Unit 2 (OU2) of the Burn Site which consists of soil, sediments, and surface water. The soil located beneath United States Avenue will not removed as the road acts a protective cap and this is protective of human health.

Groundwater contamination will be evaluated as a separate Operable Unit and addressed in a future Proposed Plan.

PRINCIPAL THREAT WASTE

Although lead and arsenic in soil and sediment act as sources to surface water contamination and contribute to groundwater contamination, these sources are not highly mobile and are not considered principal threat wastes at this Site.

WHAT IS A "PRINCIPAL THREAT"?

The NCP establishes an expectation that EPA will use treatment to address the principal threats posed by a site wherever practicable (NCP Section 300.430(a)(1)(iii)(A)). The "principal threat" concept is applied to the characterization of "source materials" at a Superfund site. A source material is material that includes or contains hazardous substances, pollutants or contaminants that act as a reservoir for migration of contamination to ground water, surface water or air, or acts as a source for direct exposure. Contaminated ground water generally is not considered to be a source material; however, Non-Aqueous Phase Liquids (NAPLs) in ground water may be viewed as source material. Principal threat wastes are those source materials considered to be highly toxic or highly mobile that generally cannot be reliably contained, or would present a significant risk to human health or the environment should exposure occur. The decision to treat these wastes is made on a site-specific basis through a detailed analysis of the alternatives using the nine remedy selection criteria. This analysis provides a basis for making a statutory finding that the remedy employs treatment as a principal element.

SUMMARY OF SITE RISKS

As part of the RI/FS, a baseline risk assessment consisting of a human health risk assessment (HHRA) and a baseline ecological risk assessment (BERA) were conducted to estimate current and future effects of contaminants on human health and the environment. A baseline risk assessment is an analysis of the potential adverse human health and ecological effects caused by hazardous substance exposure in the absence of any actions to control or mitigate these exposures under current and future site uses.

In the HHRA, cancer risk and noncancer health hazard estimates are based on current and future reasonable maximum exposure scenarios. They were developed by taking into account various health protective estimates about the concentrations, frequency and duration of an individual's exposure to chemicals selected as contaminants of concern (COCs), as well as the toxicity of these contaminants.

For the ecological risk assessment, representative ecological receptors were identified for each exposure area. Measurement and assessment endpoints were developed during the BERA to identify those receptors and areas where unacceptable risks are present.

WHAT IS RISK AND HOW IS IT CALCULATED?

A Superfund baseline human health risk assessment is an analysis of the potential adverse health effects caused by hazardous substance releases from a Site in the absence of any actions to control or mitigate these under current and future-land uses. A four-step process is utilized for assessing site-related human health risks for reasonable maximum exposure scenarios.

Hazard Identification: In this step, the contaminants of concern (COCs) at the Site in various media (*i.e.*, soil, groundwater, surface water, and air) are identified based on such factors as toxicity, frequency of occurrence, and fate and transport of the contaminants in the environment, concentrations of the contaminants in specific media, mobility, persistence, and bioaccumulation.

Exposure Assessment: In this step, the different exposure pathways through which people might be exposed to the contaminants identified in the previous step are evaluated. Examples of exposure pathways include incidental ingestion of and dermal contact with contaminated soil and ingestion of and dermal contact with contaminated groundwater. Factors relating to the exposure assessment include, but are not limited to, the concentrations in specific media that people might be exposed to and the frequency and duration of that exposure. Using these factors, a "reasonable maximum exposure" scenario, which portrays the highest level of human exposure that could reasonably be expected to occur, is calculated.

Toxicity Assessment: In this step, the types of adverse health effects associated with chemical exposures, and the relationship between magnitude of exposure and severity of adverse effects are determined. Potential health effects are chemical-specific and may include the risk of developing cancer over a lifetime or other non-cancer health hazards, such as changes in the normal functions of organs within the body (*e.g.*, changes in the effectiveness of the immune system). Some chemicals are capable of causing both cancer and non-cancer health hazards.

Risk Characterization: This step summarizes and combines outputs of the exposure and toxicity assessments to provide a quantitative assessment of Site risks for all COCs. Exposures are evaluated based on the potential risk of developing cancer and the potential for non-cancer health hazards. The likelihood of an individual developing cancer is expressed as a probability. For example, a 10^{-4} cancer risk means a "one in ten thousand excess cancer risk;" or one additional cancer may be seen in a population of 10,000 people as a result of exposure to Site contaminants under the conditions identified in the Exposure Assessment. Current Superfund regulations for exposures identify the range for determining whether remedial action is necessary as an individual excess lifetime cancer risk of 10^{-4} to 10^{-6}, corresponding to a one in ten thousand to a one in a million excess cancer risk.

For non-cancer health effects, a "hazard index" (HI) is calculated. The key concept for a non-cancer HI is that a "threshold" (measured as an HI of less than or equal to 1) exists below which non-cancer health hazards are not expected to occur. The goal of protection is 10^{-6} for cancer risk and an HI of 1 for a non-cancer health hazard. Chemicals that exceed a 10^{-4} cancer risk or an HI of 1 are typically those that will require remedial action at the Site.

The site was divided into specific exposure areas that differed for the human health risk assessment and the ecological risk assessment.

For the human health risk assessments, the Burn Site was divided into five exposure areas. These exposure areas include the Burn Area, Burn Site Fenced Area, Landfill Area, Railroad Track Area and South Burn Site Area.

For the baseline ecological risk assessment, the Burn Site was evaluated based upon four defined ecological exposure areas: Burn Site West, Burn Site East, White Sand Branch and Honey Run Brook.

Human Health Risk Assessment

As part of the RI/FS, a baseline human health risk assessment was conducted to estimate current and future effects of contaminants on human health and the environment. A baseline human health risk assessment is an analysis of the potential adverse human health effects caused by hazardous-substance exposure in the absence of any actions to control or mitigate these exposures under current and future land uses.

A four-step human health risk assessment process was used for assessing Site-related cancer risks and noncancer health hazards. The four-step process is comprised of: Hazard Identification of Chemicals of Concern (COCs), Exposure Assessment, Toxicity Assessment, and Risk Characterization (see adjoining box "What is Risk and How is it Calculated" for more details on the risk assessment process).

The Burn Site and associated exposure areas include a mix of residential and office/residential zoning. For the purposes of the HHRA, the Burn Site was divided into five separate exposure areas. These exposure areas are geographic designations created for the risk assessment in order to define areas with similar anticipated current and future land use or similar levels of contamination. The Burn Site exposure areas are shown in Figure 4 and include the following: Burn Area, Burn Site Fenced Area, Landfill Area, the Railroad Track Area, and South Burn Site Area. Two streams, White Sand Branch and Honey Run Brook, run through portions of the Burn Site. Exposure to sediment and surface water from these streams were assessed separately from each other, as part of the exposure area which they run through.

The majority of the Site is currently unused/vacant. A fence surrounding the Burn Area, Burn Site Fenced Area, and Landfill Area currently restricts access to these portions of the site, therefore all the receptor populations evaluated at these exposure areas were assumed to be future scenarios. Access to the Railroad Track Area and the South Burn Site Area are not restricted; exposure to these areas for passive

recreational activities such as walking, was considered for the current timeframe (adolescent and adult recreator). Since the future use of the site is largely unknown, the HHRA conservatively assumed that each exposure area could be developed for either commercial or residential use. As such, the following future receptor populations and routes of exposure were considered on all exposure areas of the Site:

- Adult Utility Worker and Construction Worker: incidental ingestion, dermal contact and inhalation of particulates and volatiles released from surface and subsurface soils; dermal contact with shallow groundwater.
- Adult Outdoor worker: incidental ingestion, dermal contact and inhalation of particulates and volatiles released from surface soils.
- Adolescent and Adult Recreator: incidental ingestion, dermal contact and inhalation of particulates and volatiles released from surface soils; incidental ingestion and dermal contact of sediments along with dermal contact with surface water while wading in White Sand Branch and Honey Run Brook.
- Child and Adult Resident: incidental ingestion, dermal contact and inhalation of particulates and volatiles released from surface soils; ingestion, dermal contact and inhalation of vapors during showering and bathing from sitewide groundwater; incidental ingestion and dermal contact of sediments along with dermal contact with surface water while wading in White Sand Branch and Honey Run Brook.

For COCs other than lead, two types of toxic health effects were evaluated in the risk assessment: cancer risk and noncancer hazard. Calculated cancer risk estimates for each receptor were compared to EPA's target risk range of 1x10-6 (one-in-one million) to 1x10-4 (one-in-ten thousand). The calculated noncancer hazard index (HI) estimates were compared to EPA's target threshold value of 1.

The total cancer and noncancer risk hazard estimates for all receptors summed across all pathways and media are summarized in Table 1. For overall completeness, exposure to sitewide groundwater was evaluated in the HHRA for the Site. However, since groundwater is not being addressed as part of this decision document, the result of the risk assessment associated with exposure to groundwater is not summarized below.

Summary of the Human Health Risk Assessment

This section provides an overview of the human health risks from the major COCs. A complete discussion of all risks from the Burn Site can be found in the Human Health Risk Assessment which is contained in the Administrative Record.

Surface Soil

Risks and hazards were evaluated for potential current and future exposure to surface soil on each exposure area. Table 1-1 below summarizes the receptor populations in each exposure area that were found to exceed EPA's cancer risk range and/or noncancer threshold criteria. COCs in surface soil varied per exposure area and the receptor populations evaluated. For the Burn Area, arsenic accounted for the majority of the risk and hazard; additional metals that contributed to elevated hazard estimates at the Burn Area included cadmium, copper, manganese, and zinc. The main COCs in the Burn Site Fenced Area were arsenic and hexavalent chromium.

Table 1-1: Summary of hazard and/or risk exceedances for surface soil by exposure area

Receptor	Hazard Index	Cancer Risk
Burn Site Fenced Area		
Future Resident (child/adult)	9	5.2E-04
The COCs in surface soil at the Burn Site Fenced Area were arsenic and hexavalent chromium.		
Burn Area		
Future Outdoor Worker	19	2.1E-03
Future Adolescent Recreator	20	9.5E-04
Future Adult Recreator	13	1.4E-03
Future Resident (child/adult)	251	1.0E-02
The COCs in surface soil at the Burn Area varied by receptor but included: arsenic and other metals.		

Surface and Subsurface Soil

Exposure to surface and subsurface soil by a future construction and utility worker present at each exposure area of the Burn Site were considered. As shown in Table 1-2, only the Burn Site Fenced Area and Burn Area were associated with cancer and noncancer estimates that exceeded EPA's threshold criteria. Arsenic was identified as the main COC for surface and subsurface soils at the Burn Site Fenced Area and Burn Area. In addition to arsenic, the presence of manganese also contributed to elevated hazard estimates for the construction worker on the Burn Area.

Table 1-2: Summary of hazard and/or risk exceedances for surface/subsurface soil by exposure area

Receptor	Hazard Index	Cancer Risk
Burn Site Fenced Area		
Future Construction Worker	3	1.3E-05
The COC for surface/subsurface soil at the Burn Site Fenced Area was arsenic.		
Burn Area		
Future Utility Worker	4	6.0E-04
Future Construction Worker	102	6.0E-04
The COCs in surface/subsurface soil at the Burn Area varied by receptor but included: arsenic and manganese.		

Burn Site Suspect Material

Cancer risk and noncancer hazard was calculated for an adult and child resident who may come into contact with a solid material which was found on portions of the Burn Site. One sample of this material was analyzed and used to evaluate potential risks through direct contact exposures. Results of the risk assessment are summarized in Table 1-3. Pentachlorophenol was identified as the sole COC for the Burn Site suspect material.

Table 1-3: Summary of hazard and risk exceedances for the Burn Site Suspect Materials

Receptor	Hazard Index	Cancer Risk
Burn Site Suspect Material		
Future Resident (child/adult)	29	6.6E-03
The COC for the Burn Site Suspect Material was pentachlorophenol.		

Surface Water and Sediment

Exposure to surface water and sediments of the White Sand Branch and Honey Run Brook by future child and adult residents, along with future adolescent and adult recreator who may wade in these shallow streams were evaluated on the exposure areas which they run through. Results of the HHRA found that exposure to surface water and sediment did not exceed EPA's cancer risk range or noncancer threshold for any receptor evaluated. Therefore, there were no COCs identified in the surface water or sediment of White Sand Branch and Honey Run Brook.

Lead Results

Since there are no published quantitative toxicity values for lead, it is not possible to evaluate cancer and non-cancer risk estimates from lead using the same methodology as for the other COCs. Consistent with EPA guidance, exposure to lead was evaluated separately from the other contaminants using appropriate blood lead modeling. The results of the lead risk evaluation conducted in the HHRA are summarized in Table 2.

The risk reduction goal considered in the HHRA was to limit the probability of a child's target blood lead level exceeding 10 micrograms per deciliter (µg/dL) to 5% or less. Since the HHRA was finalized, new scientific information has come to light which indicates that adverse health effects are evident at lower blood lead levels. To ensure that the proposed soil remedy is protective of human health, the lead cleanup goal selected for the site is based on an updated Regional risk reduction goal to limit the probability of a child's blood lead level exceeding 5 µg/dL to 5 % or less.

With the exception of the South Burn Site exposure area, lead was identified as a COC throughout the various exposure areas of the Burn Site for the child resident and construction worker. For a child resident, exposure to lead in various media including surface soil, sediment and/or groundwater resulted in predicted blood lead probabilities ranging from 92% to 100% exceeding the target blood lead level (BLL). The predicted probabilities of exceeding the target BLL for the construction worker exposed to surface and subsurface soils ranged from 8% to 100%. In addition, lead risks from exposure to surface soil by a recreator, adult resident and outdoor worker on the BA and adult resident on the RR area exceed the risk reduction goal (i.e., the probability of exceeding the target BLL was greater than 5% for these receptor populations). Lead was also identified as a COC for direct contact exposures with the Burn Site Suspect Material. In summary, as shown in Table 2, lead was identified as a COC for at least one receptor within the Burn Site Fenced, Landfill, Burn, and Railroad Track exposure areas.

Summary Conclusions of the HHRA

In summary, with the exception of the South Burn Site, exposure to metals in surface soils, subsurface soils, and sediments found at various exposure areas of the Burn Site were found to exceed EPA's threshold criteria. In general, arsenic and/or lead were the main COCs; however, exposure to other metals were also identified as exceeding cancer risk and noncancer hazard estimates at some of the exposure areas evaluated (e.g. hexavalent chromium at the Burn Site Fenced Area).

Based on the results of the human health risk assessment a remedial action is necessary to protect public health, welfare and the environment from actual or threatened releases of hazardous substances.

Ecological Risk Assessment

A baseline ecological risk assessment was conducted to evaluate the potential for ecological risks from the presence of contaminants in surface soil, sediment, surface water and groundwater. Media concentrations were compared to ecological screening values as an indicator of the potential for adverse effects to ecological receptors by habitat type.

Exposure to both terrestrial wildlife in the upland exposure areas (Burn Site East and Burn Site West) through ingestion of contaminated soil and biota, and exposure of aquatic wildlife to contaminants in the White Sand Branch and Honey Run Brook exposure areas through ingestion of contaminated sediment, surface water and biota were evaluated. Biological data were collected (benthic invertebrates, fish and soil invertebrates) to assist in understanding site-specific bioaccumulation rates and subsequent exposure to upper trophic level receptors. In addition, COC concentrations and biological responses (sediment toxicity) were evaluated to understand potential community level impacts associated with sediment COCs. The drivers of ecological risk were lead, arsenic, chromium and zinc.

A complete summary of all exposure scenarios and ecological receptor groups may be found in the baseline ecological risk assessment (BERA) which is part of the Administrative Record.

Summary of the Baseline Ecological Risk Assessment

The BERA provided evidence that COCs, primarily arsenic, lead, chromium and zinc are present in both aquatic and terrestrial environments within several portions of the Burn Site and pose unacceptable ecological risk to wildlife receptors. The greatest potential for exposure and unacceptable risks to the aquatic community are indicated for localized elevated areas of arsenic, lead and zinc in White Sand Branch near the Burn Area, with much lower exposures and risks in Honey Run Brook. Overall, terrestrial wildlife risks are driven by elevated concentrations detected near the Burn Area in the Burn Site East and the northern portion of the Railroad Track Site in the Burn Site West. COC concentrations and risk decreases significantly with distance from these areas. Insectivorous wildlife (the American Robin and Short-Tailed Shrew) were identified as the wildlife receptors with the highest predicted exposures and hazard quotients in the terrestrial area of the Burn Site. Similarly, the Spotted Sandpiper was identified as the receptor with the highest exposure and hazard quotient associated with the aquatic community in White Sand Branch.

Based on the results of the ecological risk assessment a remedial action is necessary to protect the environment from actual or threatened releases of hazardous substances.

Based on the full risk assessment, it is EPA's current judgment that the Preferred Alternatives identified in this Proposed Plan are necessary to protect public health or the environment from actual or threatened releases of hazardous `substances into the environment.

REMEDIAL ACTION OBJECTIVES

The following remedial action objectives (RAOs) for contaminated media address the human health and ecological risks at the Burn Site:

Soil

- Prevent potential current and future unacceptable risks to human and ecological receptors resulting from uptake of soil contaminants by plants, ingestion of contaminated soils and food items by humans and ecological receptors, and direct contact with contaminated soils.

- Minimize migration of site-related contaminants in the soil to sediment, surface water and groundwater.

Sediment

- Prevent potential current and future unacceptable risks to ecological receptors resulting from uptake of sediment contaminants by plants, ingestion of contaminated sediments by humans and ecological receptors and direct contact with contaminated sediments.

- Minimize migration of site-related contaminants from the sediment to surface water.

To achieve RAOs, EPA has selected soil and sediment cleanup goals for the major COCs. The soil cleanup goals for the COCs are consistent with New Jersey human health direct contact standards or ecological risk-based goals.

The Burn Site is comprised of undeveloped properties that are zoned for office and residential development, and wetlands. Both areas currently contain ecological habitat. To meet the RAOs, specific soil cleanup goals listed below apply to different areas or land uses of the Site.

Soil ecological cleanup goals are based on the most sensitive terrestrial wildlife receptors and apply to the top foot of soil at all properties in the Burn Site that contain ecological habitat. Residential zoned properties contain ecological habitat. As a result, the ecological cleanup goals apply to the top foot of soil and residential cleanup goals apply through the remaining soil depth.

The soil and sediment cleanup goal for arsenic will be based on the ecological goal and will equal the background value of 19 mg/kg (that is also the NJDEP Residential Direct Contact Soil Remediation Standard).

The soil cleanup goals for lead in the top foot of soil is the ecological cleanup goal of 213 mg/kg since this value is lower than the human health direct contact cleanup goal of 400 mg/kg. The soil cleanup goal for lead below one foot in depth is the human health cleanup goal of 400 mg/kg. Additionally, to achieve the risk reduction goal established for the Site, which is to limit the probability of a child's blood lead level exceeding 5 µg/dL to 5% or less, the average lead concentration across the surface of the remediated area must be at or below 200 mg/kg.

The sediment cleanup goal for lead is the ecological cleanup goal of 213 mg/kg that is based on the most sensitive wildlife receptor.
Site-specific impact to groundwater levels for unsaturated soil will be determined during remedial design. Saturated soil that contains lead at levels exceeding 1000 mg/kg are considered source areas to groundwater contamination.

The cleanup goals for the Burn Site are as follows:

Soil:

Arsenic:

- Non-residential cleanup goal: 19 mg/kg
- Residential cleanup goal: 19 mg/kg
- Ecological cleanup goal: 19 mg/kg

Lead:

- Residential cleanup goal: 400 mg/kg
- Ecological cleanup goal: 213 mg/kg

Sediment:

Arsenic: 19 mg/kg
Lead: 213 mg/kg

SUMMARY OF REMEDIAL ALTERNATIVES

CERCLA requires that each selected remedy be protective of human health and the environment, be cost effective, comply with other statutory laws, and utilize permanent solutions and alternative treatment technologies and resource recovery alternatives to the maximum extent practical. In addition, the statute includes a preference for the use of treatment as a principal element for the reduction of toxicity, mobility, or volume of the hazardous substances.

Potential technologies applicable to soil or sediment remediation were identified and screened by effectiveness, implementability, and cost criteria, with emphasis on effectiveness. Those technologies that passed the initial screening were then assembled into remedial alternatives.

For the soil and sediment alternatives, the proposed depths of excavation are based on the soil boring data taken during the RI. These depths were used to estimate the quantity of soil to be removed and the associated costs. The actual depths and quantity of soil to be removed will be finalized during design and implementation of the selected remedy. Full descriptions of each proposed remedy can be found in the FS which is part of the Administrative Record.

The time frames below are for construction and do not include the time to negotiate with the responsible parties, design a remedy or the time to procure necessary contracts. Five-year reviews will be conducted as a component of the alternatives that would leave contamination in place above levels that allow for unlimited use and unrestricted exposure.

For all soil and sediment alternatives, the Present Worth Cost includes the periodic present worth cost of five-year reviews.

Soil Alternatives:

Alternative 1 - No Action

Capital Cost: *$0*
Annual O&M Cost: *$0*
Present Worth Cost: *$0*
Timeframe: *0 years*

The NCP requires that a "No Action" alternative be evaluated to establish a baseline for comparison with other remedial alternatives. Under this alternative, no action would be taken to remediate the contaminated soil at the Burn Site.

Alternative 2 – Institutional Controls and Monitoring

Capital Cost: *$319,000*
Annual O&M Cost: *$8,250*
Present Worth Cost: *$563,790*
Time Frame including O&M: *30 years*

This alternative would use Institutional Controls, such as deed notices, to prevent exposure to site contaminants and monitoring to assess any change in contaminant conditions over time. The existing fences in and around the Burn Site Area would be maintained, and a new fence would be installed around the Railroad Track Area. Five-year reviews would be conducted since contamination would remain above levels that allow for unlimited use and unrestricted exposure.

Alternative 3 – Capping and Institutional Controls

Capital Cost:	*$6,221,305*
Annual O&M Cost:	*$22,000*
Present Worth Cost:	*$6,636,719*
Construction Time Frame:	*5 months*

This alternative would use soil or asphalt covers as the primary method to prevent exposure to contaminants in site soils. Two feet of soil would be excavated to allow the installation of a two-foot soil cap to prevent contact with soils that exceed the soil cleanup goals.

Approximately 9,500 cubic yards of soil would be excavated to accommodate a cap. The excavated soil would be transported to an appropriate disposal facility.

Institutional controls, such as a deed notice, would be required on all properties where residential soil standards are not met. Five-year reviews would be conducted since contamination would remain above levels that allow for unlimited use and unrestricted exposure.

Alternative 4 – Excavation, Capping and Institutional Controls

Capital Cost:	*$18,723,716*
Annual O&M Cost:	*$22,000*
Present Worth Cost:	*$19,139,131*
Construction Timeframe:	*8 months*

The Burn Site consists of both residential and non-residential (United States Avenue) zoned areas. In this alternative, soil within the Burn Site that exceeds the residential cleanup goals, would be removed to approximately ten feet. Soil located below ten feet that exceeds the cleanup goals would be capped with clean soil. Remaining unsaturated soil that exceed site-specific impact-to-groundwater values would receive an impermeable cap. The impermeable cap would be expected to minimize surface water percolation through the soil thereby reducing the impact on groundwater. Several areas of saturated soil within the Site that are a source of groundwater contamination would be removed. Soil removal in these portions of the Site is estimated to extend to 12 feet. Removal of saturated soil that acts as a source of groundwater contamination would also result in areas of deep excavation, between four to twelve feet.

For the non-residential zoned area (United States Avenue), soil would not be removed and the asphalt roadway would serve as a cap, and institutional controls would be established to prevent exposure.

Institutional controls, such as deed notices, would be required for all residential areas and United States Avenue where residential standards are not met. Five-year reviews would be conducted since contamination would remain above levels that allow for unlimited use and unrestricted exposure.

Approximately 60,000 cubic yards of soil would be removed under this alternative.

Alternative 5 -- Excavation and Institutional Controls

Capital Cost:	*$26,037,848*
Annual O&M:	*$4,950*
Present Worth Cost:	*$26,241,689*
Construction Timeframe:	*10 months*

The Burn Site consists of both residential and non-residential (United States Avenue) zoned areas. In this alternative, all soils exceeding the residential cleanup goals located within residentially zoned area would be removed. Any remaining soil that exceeds ecological cleanup goals in the top foot of soil outside the footprint of the residential soil cleanup goal excavation would also be removed.

Since all the accessible contaminated soils would be removed from excavated areas, no capping would be necessary in the excavated areas. There would be no need for a soil cap as all soils that exceed residential cleanup goals would be removed. There would also be no need for an impermeable cap to protect groundwater, as all unsaturated soil that exceed site-specific impact-to-groundwater values would be excavated. Soil removal in these portions of the Site is estimated to extend to 18 feet.

For the non-residential zoned area (United States Avenue), soil would not be removed and the asphalt roadway would serve as a cap, and institutional controls

would be established to minimize the potential for exposure.

Approximately 76,000 cubic yards of soil would be removed under this alternative.

Institutional controls, such as a deed notice, would be required on all properties where residential standards are not met. Five-year reviews would be conducted since contamination would remain above levels that allow for unlimited use and unrestricted exposure.

Common Elements: Surface Water

Surface water monitoring is included as part of each remedial alternative except for No Action. Monitoring would be conducted on a quarterly basis to assess any changes in contaminant conditions over time. It is expected that removal of sediment, combined with soil removal, and/or capping will result in a decrease of surface water contaminants to levels below NJSWQS. If monitoring indicates that contamination levels have not decreased to below the NJSWQS, EPA may require an action in the future.

Sediment Alternatives:

Alternative 1 – No Action

Capital Cost:	*$0*
Annual O&M Cost:	*$0*
Present Worth Cost:	*$0*
Timeframe:	*0 years*

The NCP requires that a "No Action" alternative be evaluated to establish a baseline for comparison with other remedial alternatives. Under this alternative, no action would be taken to remediate the contaminated sediment at the Burn Site.

Alternative 2 – Institutional Controls and Monitored Natural Recovery

Capital Cost:	*$229,680*
Annual O&M Cost:	*$11,000*
Present Worth Cost:	*$508,595*
Timeframe including O&M:	*30 years*

Under this alternative, no removal or capping of sediment would be conducted and exposure to contaminants would not be prevented. Periodic monitoring would be performed to determine if contaminant concentrations in surface sediment were declining to a level that is protective of ecological receptors. Institutional controls, such as a deed notice, would be required since contaminants remain above unrestricted levels. Five-year reviews would be conducted since contamination would remain above levels that allow for unlimited use and unrestricted exposure.

Alternative 3 – Dredging, Capping and Natural Recovery

Capital Cost:	*$1,628,905*
Annual O&M Cost:	*$27,500*
Present Worth Cost:	*$2,112,570*
Construction Timeframe:	*3 months*

Under this Alternative, up to one foot of sediment containing contaminants at concentrations exceeding the ecological cleanup goals would be removed from White Sand Branch and Honey Run. In areas where one foot of sediment is removed to meet the ecological cleanup goals, natural sedimentation would be allowed to restore the stream to its previous elevation. A cap would be installed on areas of the stream where levels of contaminants exceeding the cleanup goals remain after excavation. The cap would consist of six inches of sand, covered by three inches of stone that would act as an armoring layer. Natural sedimentation would then fill in above the armoring layer and reestablish the previous elevation of the stream. Approximately 350 cubic yards of sediment would be removed under this alternative.

A minimum of five years of sampling would take place to confirm that restoration was successful and that contaminant levels remain below the cleanup goals.

Five-year reviews would be conducted since contamination would remain above levels that allow for unlimited use and unrestricted exposure.

Alternative 4 –Dredging

Capital Cost:	*$1,574,335*
Annual O&M Cost:	*$0*
Present Worth Cost:	*$1,716,751*
Construction Timeframe:	*4 months*

This alternative consists of removal of all sediment with site-related contaminants exceeding ecological cleanup goals from White Sand Branch beginning at the northeast corner of the Burn Site Fenced Area and extending to the location where White Sand Branch combines with Honey Run, from two sections of Honey Run. Sediment in the sections of Honey Run where COC were not detected above cleanup goals would undergo additional sampling during design to determine if sediment removal is needed in these sections. No capping of sediments would be necessary since all sediment exceeding the cleanup goals would be removed. Areas where sediment is removed would be backfilled with clean material and the area restored.

It is estimated that 825 cubic yards of sediment would be removed under this alternative. A minimum of five years of monitoring would be conducted to ensure that the concentration of contaminants in the sediments remain below the cleanup goals. Because no contamination would remain above unrestricted levels, five-year reviews would not be required.

EVALUATION OF ALTERNATIVES

The NCP lists nine criteria that EPA uses to evaluate the remedial alternatives individually and against each other to select a remedy. This section of the Proposed Plan profiles the relative performance of each alternative against the nine criteria, noting how it compares to the other options under consideration. Seven of the nine evaluation criteria are discussed below. The final two criteria, "State Acceptance" and "Community Acceptance" are discussed at the end of the document. A detailed analysis of each of the alternatives is in the FS report.

THE NINE SUPERFUND EVALUATION CRITERIA

1. Overall Protectiveness of Human Health and the Environment evaluates whether and how an alternative eliminates, reduces, or controls threats to public health and the environment through institutional controls, engineering controls, or treatment.

2. Compliance with Applicable or Relevant and Appropriate Requirements (ARARs) evaluates whether the alternative meets federal and state environmental statutes, regulations, and other requirements that pertain to the site, or whether a waiver is justified.

3. Long-term Effectiveness and Permanence considers the ability of an alternative to maintain protection of human health and the environment over time.

4. Reduction of Toxicity, Mobility, or Volume (TMV) of Contaminants through Treatment evaluates an alternative's use of treatment to reduce the harmful effects of principal contaminants, their ability to move in the environment, and the amount of contamination present.

5. Short-term Effectiveness considers the length of time needed to implement an alternative and the risks the alternative poses to workers, the community, and the environment during implementation.

6. Implementability considers the technical and administrative feasibility of implementing the alternative, including factors such as the relative availability of goods and services.

7. Cost includes estimated capital and annual operations and maintenance costs, as well as present worth cost. Present worth cost is the total cost of an alternative over time in terms of today's dollar value. Cost estimates are expected to be accurate within a range of +50 to -30 percent.

8. State/Support Agency Acceptance considers whether the State agrees with the EPA's analyses and recommendations, as described in the RI/FS and Proposed Plan.

9. Community Acceptance considers whether the local community agrees with EPA's analyses and preferred alternative. Comments received on the Proposed Plan are an important indicator of community acceptance.

Evaluation of Soil Alternatives

1. Overall Protection of Human Health and the Environment

Alternative 1, No Action, would not be protective of human health or the environment since it does not include measures to prevent exposure to contaminated soil.

Alternative 2 would protect human health by restricting

access to the contaminated soil through use of institutional controls, but such controls would not be protective of ecological receptors. It also would not address the source of groundwater contamination or prevent migration of soil contaminants to the surface water.

Alternatives 3, 4 and 5 provide an increasing progression of control of contaminated soil through a combination of excavation and capping. However, Alternative 3 would not completely control migration of soil contaminants at depth to groundwater since only shallow soil would be removed. In addition, Alternative 3 would not address sources of groundwater contamination in deep saturated soils that would be removed in Alternatives 4 and 5.

2. Compliance with Applicable or Relevant and Appropriate Requirements (ARARs)

Actions taken at any Superfund site must meet all applicable or relevant and appropriate requirements under federal and state laws or provide grounds for invoking a waiver of those requirements.

Alternative 1 and Alternative 2 would not meet chemical-specific ARARs.

Alternatives 4 and 5 would be in compliance with chemical-specific ARARs by removing contaminated soil both in the shallow and deep zones and through capping.

Action-specific ARARs would be met by Alternatives 3 through 5 during the construction phase by proper design and implementation of the action including disposal of excavated soil at the appropriate disposal facility.

3. Long-Term Effectiveness and Permanence

Alternatives 1 and 2 would not provide long-term effectiveness or permanent protection to ecological receptors, groundwater or surface water because the soil contaminants would remain uncontrolled.

Alternative 3 does not provide as great a degree of long-term effectiveness and permanence in controlling sources of groundwater contamination when compared to Alternatives 4 and 5 because deep saturated soil contamination that acts as a source to groundwater contamination will not be removed from the Burn Site Fenced Area.

By removing contaminants exceeding the cleanup goals from the White Sand Branch and Honey Run flood plain, and removing contaminated soil to a deeper depth, Alternative 4 would achieve a greater degree of long-term protectiveness and permanence than Alternative 3. In addition, Alternative 4 would require capping on portions of the Burn Site Fenced Area. Alternative 5 offers the greatest degree of long-term permanence by removing almost all contaminants and relying the least on capping.

4. Reduction of Toxicity, Mobility, or Volume through Treatment

Alternatives 1 and 2 would not reduce the toxicity, mobility or volume of soil contaminants since no material will be removed or capped.

For the soil alternatives that involve removal and/or capping of soil, there is no treatment of the contaminants and therefore, no reduction in toxicity. Removal of the contaminated soil would decrease the volume of contaminants at the Site and capping would decrease contaminant mobility. The excavated material would be transferred to a landfill without treatment and therefore the overall reduction of toxicity mobility or volume through treatment would not be achieved. The amount of contamination removed or capped increases progressively from Alternatives 3 to 5. Alternative 5 would leave the least amount of contamination on the Site, but would not reduce the toxicity mobility or volume of contaminants any more than the other alternatives.

5. Short-Term Effectiveness

Short-term effectiveness considers the effects the implementation of an alternative will have on the community, workers and the environment and the amount of time until an alternative effectively protects human health and the environment.

Alternatives 1 and 2 do not present any short-term risks to site workers or the environment because they do not include active remediation work.

Under Alternatives 3 through 5, potential adverse short-term effects to the community include increased traffic, noise, and road closures.

Risks to site workers, the community and the environment include potential short-term exposure to contaminants during excavation of soil. Potential exposures and environmental impacts associated with dust and runoff would be minimized with proper installation and implementation of dust and erosion control measures and monitoring. Portions of the Site, such as Honey Run and White Sand Branch, consist of large areas of wetlands. Under Alternatives 3 through 5, it would be necessary to remove trees and vegetation as well as disrupt the small streams and associated wildlife.

Alternatives in which the largest quantity of soil is removed would have the greatest area of impact, would require the longest period of time to complete, and would have the highest potential for short–term adverse effects. Alternatives 3, 4 and 5 would take 5, 8, and 10 months, respectively, to complete. Among Alternatives 3 through 5, Alternative 3 would take the shortest time to achieve protection of human health and the environment and would, therefore, have the lowest potential for short-term adverse effects. Alternative 5 would take the longest time to implement and would have the highest potential for short-term adverse effects.

6. Implementability

Because Alternatives 1 and 2 would not entail any construction, they would be easily implemented.

Alternatives 3 through 5 have common implementability issues related to the removal of contaminated soil and installation of the caps. These include short-term traffic disruption on United States Avenue. The amount of disruption depends on the location of the contaminated soil, the amount of soil removed and the amount of time it takes for removal.

The increased volume of soil removal associated with Alternative 4 and 5 increases the implementation difficulties compared to Alternative 3.

In Alternatives 4 and 5, deep excavations to remove groundwater source areas in the Burn Site Fenced Area present implementability challenges. Alternative 5 presents greater implementability challenges than Alternative 4 due to the additional volume of soil to be removed.

In general, the amount of soil to be removed and area to be capped increases from Alternatives 3 to 5. Therefore, alternative 3 is the easiest to implement and alternatives 4 and 5 would be more difficult to implement.

7. Cost

The total estimated present worth costs increase with the amount of material removed. The estimated costs are $0 for Alternative 1, $563,790 for Alternative 2, $6,636,719 for Alternative 3, $19,139,131 for Alternative 4, and $26,241,689 for Alternative 5.

Evaluation of Sediment Alternatives

1. Overall Protection of Human Health and the Environment

Alternative 1 is not protective of human health or the environment because no action would be taken to address sediment contamination.

Alternative 2 would use institutional controls to protect human health by restricting access to the contaminated sediment during the time it takes for natural recovery. However, institutional controls would not be protective of ecological receptors because they do not control wildlife access. In addition, the amount of time to achieve natural recovery would be unacceptably long.

Alternative 3 would be protective because one foot of contaminated sediment would be removed and the remaining contaminated sediment would be capped.

Alternative 4 would be protective because sediment contamination above the cleanup goals would be removed.

2. Compliance with Applicable or Relevant and Appropriate Requirements (ARARs)

Sediment cleanup goals are risk-based and, therefore, there are no chemical-specific ARARs. Alternatives 3 and 4 which require remedial action would comply with action and location specific ARARs that apply to

remediation and filling in floodplains, work in wetland areas, waste management, and storm water management.

3. Long-Term Effectiveness and Permanence

Alternatives 1 and 2 would allow existing contamination, and ecological exposures and risks to continue while natural recovery occurs. Natural recovery alone will not reduce surface sediment concentrations to levels that are protective of ecological receptors.

The cap associated with Alternative 3 would be installed in Honey Run and White Sand Branch. This alternative would be effective in maintaining protection of human health and the environment in the capped section of the water body. Such protectiveness would be permanent as long as the cap remains in place. This alternative would require more maintenance to ensure long-term effectiveness.

Alternative 4 would remove all sediment contamination from the small streams within White Sand Branch and portions of Honey Run. Alternative 4 would be more effective and have a higher degree of permanence than Alternative 3 since all contaminated sediment would be removed under Alternative 4.

4. Reduction of Toxicity, Mobility, or Volume through Treatment

The major contamination in sediment at the Site is due to the presence of metals. All the alternatives, except No Action, involve removal and/or capping of the sediment. There is no treatment of the contaminants and, therefore, no reduction of toxicity. Removal of the contaminated sediment would decrease the volume and capping would decrease the mobility of any contamination at the Site. The excavated sediment would be transferred to a landfill without treatment.

Since removal and containment are the technologies that will be used for the remediation of sediment, none of the alternatives provide reduction of toxicity, mobility, or volume through treatment.

5. Short-Term Effectiveness

Alternatives 1 and 2 do not present any short-term risks to the community, site workers or the environment because these alternatives do not include any active remediation work.

Alternatives 3 and 4 involve excavation and thus have potential for short-term adverse effects. Potential risks posed to site workers, the community and the environment during implementation of each of the sediment alternatives could be due to wind-blown or surface water transport of contaminants. Any potential impacts associated with dust and runoff would be minimized through proper installation and implementation of dust and erosion control measures. The areas would be monitored throughout the construction.

The potential risk of sediment release could increase with Alternatives 3 and 4 due to removal of existing vegetation. There is little difference in the implementation time from the shortest (three months) to the longest (four months). Therefore, Alternatives 3 and 4 are equal in terms of short-term effectiveness.

6. Implementability

Sediment Alternatives 1 and 2 would not include any construction, and therefore they would be easily implemented.

Alternatives 3 and 4 require sediment removal and face similar implementability challenges. Such challenges include access to low lying saturated areas, control of surface water flow, controlling intrusion of groundwater into excavation areas, streambed stabilization and wetland restoration.

The implementability challenges increase with the length of White Sand Branch and Honey Run to be remediated and volume of sediment to be removed. Alternative 3 calls for the least amount of sediment removal and therefore presents the least amount of implementability challenges among the alternatives. In contrast, Alternative 4 poses the greatest implementability challenges since it requires the largest remediation area and involves deeper removal of sediment.

7. Cost

The total estimated present worth costs are $0 for

Alternative 1, $508,595 for Alternative 2, $2,112,570 for Alternative 3 and $1,716,751 for Alternative 4.

PREFERRED ALTERNATIVE

The preferred soil alternative for cleanup of the Burn Site is Alternative 4, Excavation, Capping and Institutional Controls. For the sediment, the preferred alternative is Alternative 4, Excavation. As discussed above, the surface water will be monitored to determine the effectiveness of the implemented soil and sediment remedies. Together, these three elements comprise EPA's Preferred Alternative.

Soil:
The Preferred Soil Alternative 4 (Figure 5) involves excavation, capping, and off-site disposal of soil. The major components of the Preferred Soil Alternative include:

- Excavation, transportation and disposal of 60,000 cubic yards of contaminated soil;
- Excavation of soil to depths ranging from 2 feet to 12 feet.
- Installation of engineering controls;
- Restoration and revegetation of White Sand Branch and Honey Run flood plain; and
- Institutional controls, such as a deed notice, to prevent exposure to residual soil that exceed levels that allow for unrestricted use.

This alternative would remove soil within the saturated zones that contribute contaminants to groundwater. By removing these saturated soils, the concentrations of contaminants in groundwater that exceed ground water quality standards (GWQS) is anticipated to be reduced.

All surface soil (to a depth of one foot) within the ecological areas of the Burn Site will be removed if concentrations of contaminants are greater than the ecological cleanup goals.

In all other areas within the Burn Site except under United States Avenue, soil will be removed to meet residential standards at depths ranging from two feet to twelve feet. Soil beneath United States Avenue will remain under the paving which will serve as a cap.

Soil Alternative 4 was chosen because it has fewer uncertainties in addressing the source areas compared to Alternative 3 and will provide an equivalent degree of protection as Soil Alternative 5.

The Preferred Soil Alternative was selected over other alternatives because it is expected to achieve substantial and long-term risk reduction through off-site disposal, and is expected to allow the Site to be used for its reasonably anticipated future land use, which is commercial/residential. The Preferred Soil Alternative reduces the risk within a reasonable time frame, at a cost comparable to other alternatives and provides for long-term reliability of the remedy.

The Preferred Soil Alternative would achieve cleanup goals that are protective for residential use on floodplain soils adjoining White Sand Branch. Though the remedy would be protective, it would not achieve levels that would allow for unrestricted use and therefore, institutional controls, such as deed notices would be required. Five-year reviews would be conducted since contamination would remain above levels that allow for unlimited use and unrestricted exposure.

Sediment:
The Preferred Sediment Alternative 4 (Figure 6) includes excavation of sediment with contaminant levels greater than the cleanup goals from Honey Run and White Sand Branch. The major components of the Preferred Sediment Alternative include:

- Construction of a stream diversion system to allow access to sediments;
- Excavation, transportation and disposal of 825 cubic yards of contaminated sediment;
- Dewatering and processing of excavated sediment; and
- Stream bank and revegetation and restoration.

Approximately three feet of sediment would be removed from White Sand Branch, beginning at the northeast corner of the Burn Site Fenced Area and extending to the location where White Sand Branch combines with Honey Run. Another three feet of sediment would be removed from Honey Run in the southeastern portion of the Site within areas that exceed cleanup goals. Under Sediment Alternative 4, additional sampling during design would determine the extent of sediment excavation within Honey Run.

After remediation of sediment, the stream banks, riparian zone and wetlands would be monitored for a period of five years to assure successful restoration of these areas.

The Preferred Sediment Alternative was selected over other alternatives because it is expected to achieve substantial and long-term risk reduction through off-site disposal of sediment by reducing contaminant levels in White Sand Branch and Honey Run. The Preferred Sediment Alternative 4 reduces risk within a reasonable timeframe, at a cost comparable to the other alternatives and provides for long-term reliability of the remedy.

Surface Water:
Surface water monitoring would be conducted on a quarterly basis to assess any changes in contaminant conditions over time. It is expected that removal of contaminated sediment, combined with soil removal, and/or capping will result in a decrease of surface water contaminants to levels below NJSWQS. If monitoring indicates that contamination levels have not decreased to below the NJSWQS, EPA may require an action in the future.

The Preferred Alternatives are believed to provide the best balance of tradeoffs among the alternatives based on the information available to EPA at this time. EPA believes the Preferred Alternatives would be protective of human health and the environment, would comply with ARARs, would be cost-effective and would utilize permanent solutions. The selected alternatives may change in response to public comment or new information. The total present worth cost for both the soil and sediment preferred alternatives is $20,855,882.

Consistent with EPA Region 2's Clean and Green policy, EPA will evaluate the use of sustainable technologies and practices with respect to implementation of a selected remedy.

State Acceptance

The state of New Jersey concurs with the preferred alternatives of sediment and soil removal including off-site soil disposal. However, the state cannot concur with the capping and institutional control component of the preferred soil alternative unless property owners provide their consent to the placement of a cap and a deed notice.

Community Acceptance

Community acceptance of the Preferred Alternatives will be evaluated after the public comment period ends and will be described in the Record of Decision. Based on public comment, the Preferred Alternatives could be modified from the version presented in this proposed plan. The Record of Decision is the document that formalizes the selection of the remedy for a site.

COMMUNITY PARTICIPATION

EPA provided information regarding the cleanup of the Burn Site through meetings, the Administrative Record file for the Burn Site and announcements published in the local newspaper. EPA encourages the public to gain a more comprehensive understanding of the Site and the RI activities that have been conducted at them.

The dates for the public comment period; the date, the location and time of the public meeting; and the locations of the Administrative Record file are provided on the front page of this Proposed Plan.

For further information on EPA's Preferred Alternative for the United States Avenue Burn Site contact:

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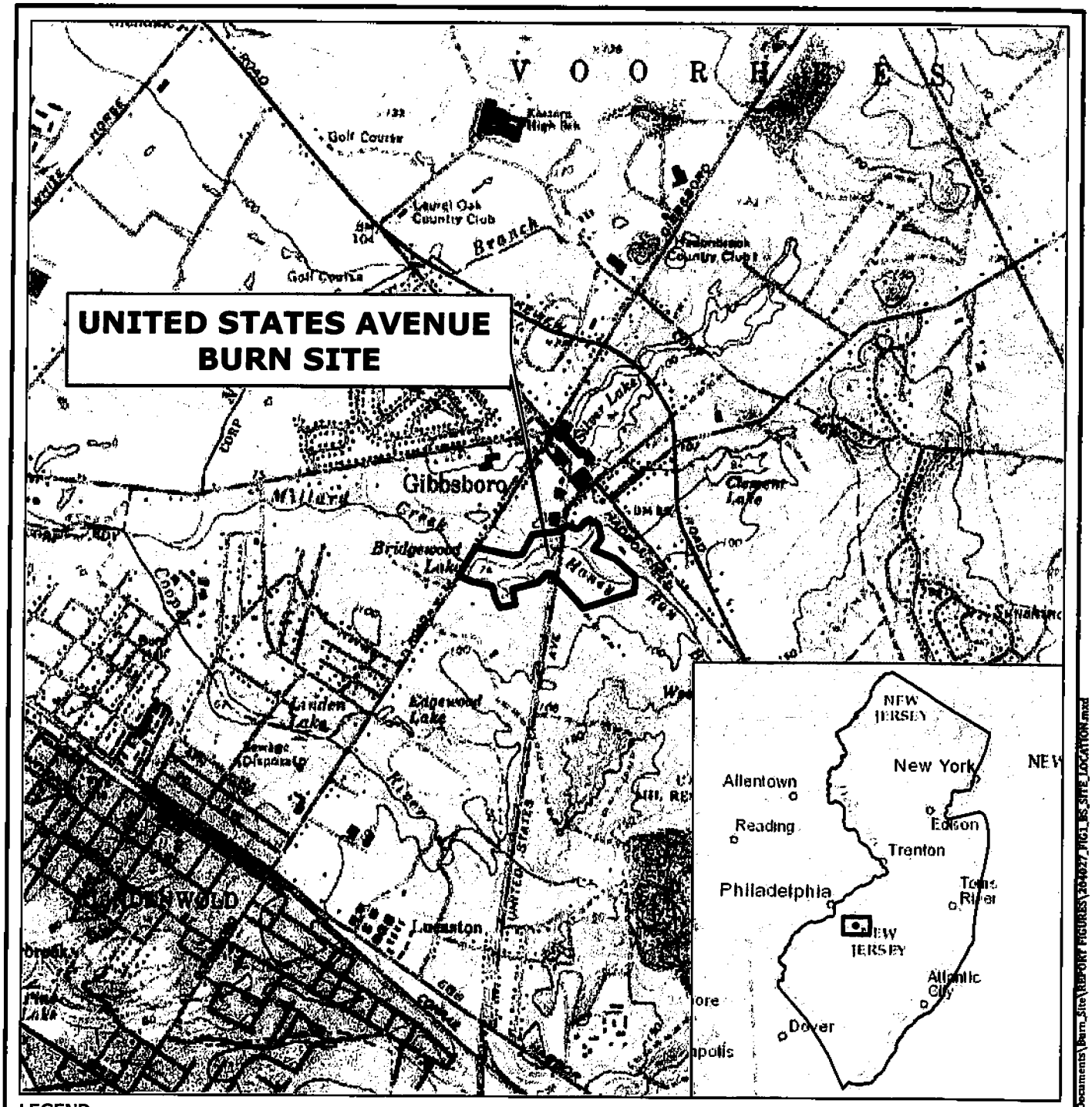

LEGEND

SITE BOUNDARY

STATE PLANE COORDINATES (NAD83)
N 364543.977 , E 361661.885

SOURCE:
1. SOURCES: ESRI, HERE, DELORME, INTERMAP, INCREMENT P CORP., GEBCO, USGS, FAO, NPS, NRCAN, GEOBASE, IGN, KADASTER NL, ORDNANCE SURVEY, ESRI JAPAN, METI, ESRI CHINA (HONG KONG), SWISSTOPO, MAPMYINDIA, © OPENSTREETMAP CONTRIBUTORS, AND THE GIS USER COMMUNITY
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0 2,000 4,000

SCALE: 1 " = 2,000 '

TITLE:
FIGURE 1
SITE LOCATION MAP

LOCATION:
UNITED STATES AVENUE BURN SITE
GIBBSBORO, CAMDEN COUNTY,
NEW JERSEY

DATE:
01/17/2017

FILENAME:
204027_FIG1_BS_SITE_LOCATION.mxd

THE ELM GROUP
345 WALL STREET, PRINCETON, NEW JERSEY 08540
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G:\204027_Sherwin-Williams_Gibbsboro\DATA_MNGT\GIS\Map_Documents\Burn_Site\REPORT FIGURES\204027_FIG1_BS_SITE_LOCATION.mxd

LEGEND

SITE AREAS
WATER BODIES
STREAM CHANNEL

SOURCE:
1.SOURCE: ESRI, DIGITALGLOBE, GEOEYE, EARTHSTAR GEOGRAPHICS, CNES/AIRBUS DS, USDA, USGS, AEX, GETMAPPING, AEROGRID, IGN, IGP, SWISSTOPO, AND THE GIS USER COMMUNITY</ACP>
2. NJDEP OPEN WATER AREA OF CAMDEN COUNTY, NEW JERSEY 1986, DEPARTMENT OF ENVIRONMENTAL PROTECTION, 1998.

0 1,000 2,000
SCALE: 1" = 1,000'

TITLE:
FIGURE 2
SHERWIN-WILLIAMS GIBBSBORO SITE LOCATION MAP

LOCATION:
UNITED STATES AVENUE BURN SITE
GIBBSBORO, CAMDEN COUNTY, NEW JERSEY

DATE: 01/17/2017

FILENAME: 204027_FIG2_SW_SITE_LOCATION_MAP.mxd

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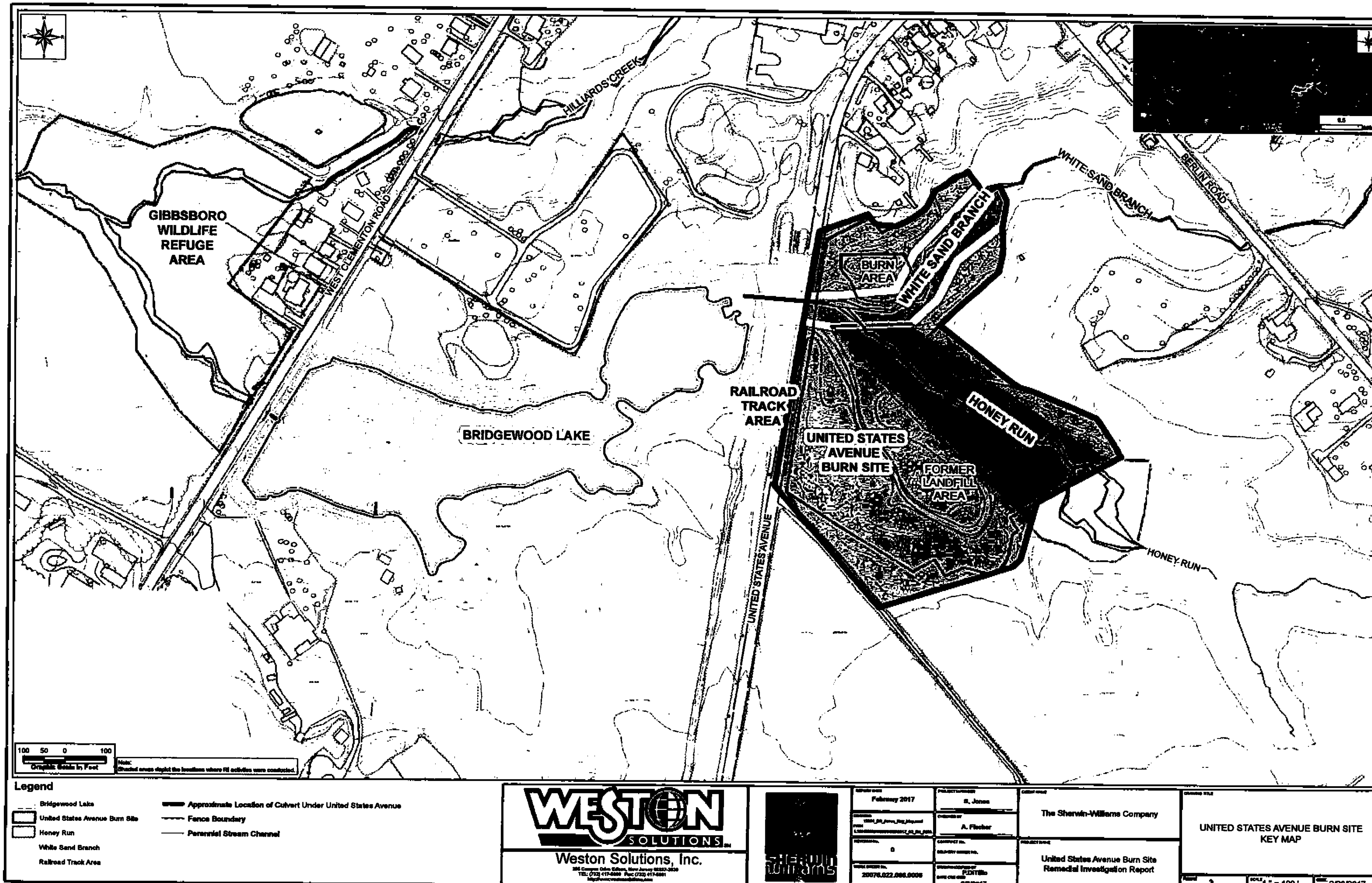
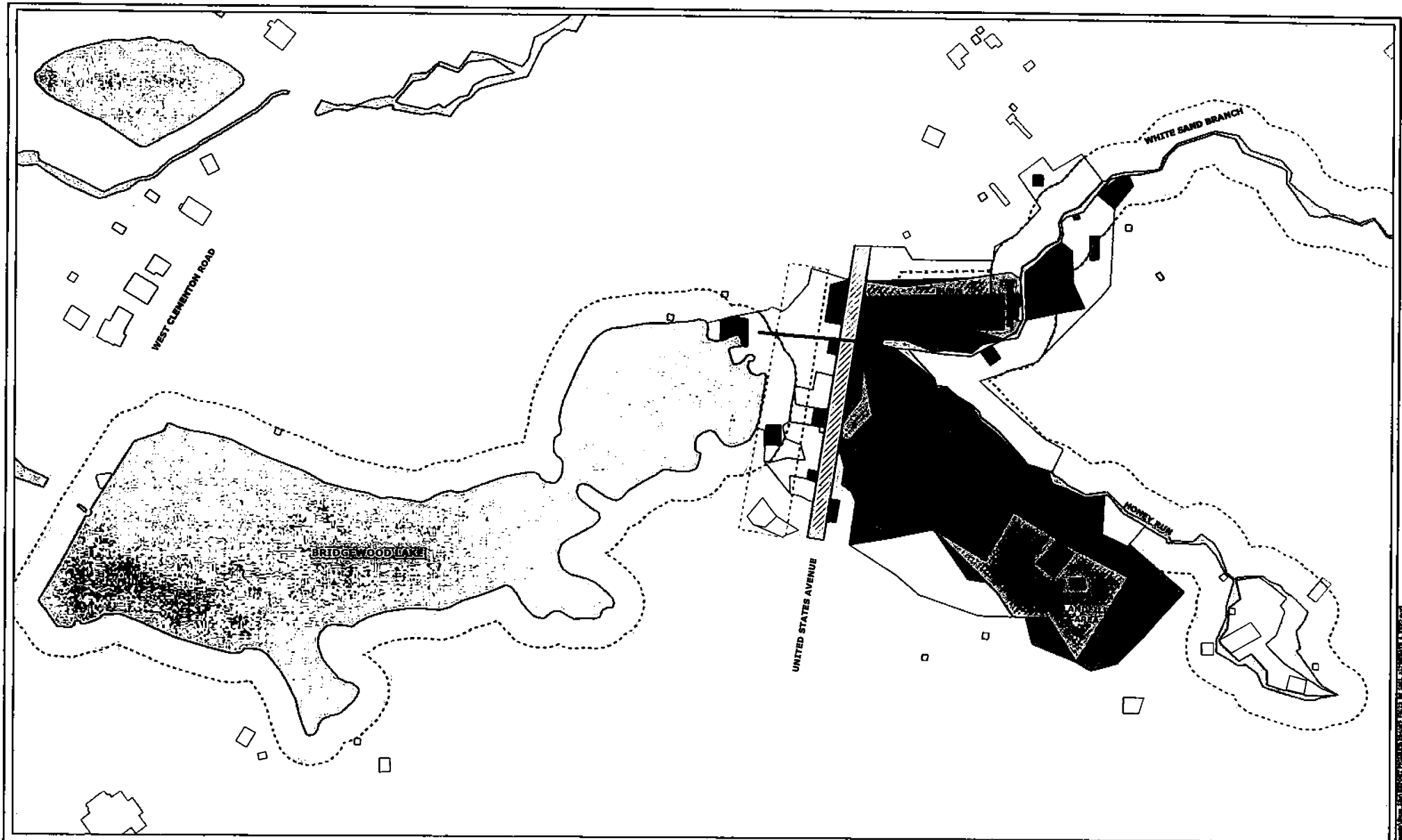

GIBBSBORO WILDLIFE REFUGE AREA
HILLIARDS CREEK
WEST CLEMENTON ROAD
BRIDGEWOOD LAKE
RAILROAD TRACK AREA
UNITED STATES AVENUE
UNITED STATES AVENUE BURN SITE
BURN AREA
WHITE SAND BRANCH
HONEY RUN
FORMER LANDFILL AREA
BERLIN ROAD
100 50 0 100
Graphic Scale in Feet
Legend
Bridgewood Lake
United States Avenue Burn Site
Honey Run
White Sand Branch
Railroad Track Area
Approximate Location of Culvert Under United States Avenue
Fence Boundary
Perennial Stream Channel
WESTON SOLUTIONS
Weston Solutions, Inc.
February 2017
S. Jones
A. Fischer
0
20076.022.066.0006
P.DiTillo
2/3/2017
The Sherwin-Williams Company
United States Avenue Burn Site Remedial Investigation Report
UNITED STATES AVENUE BURN SITE KEY MAP
3
1" = 100'
2/28/2017

FIGURE 4
Burn Site Exposure Areas
Gibbstown, New Jersey
GRADIENT
Date: 1/21/2015
NOTES:
1) All site features and locations are approximate.
2) The original figure was produced in color.
Significant information will be lost if copied in black and white.
SOURCE:
1) Weston, 2011.
0 75 150 Feet
LEGEND
Surface Water
Sediment
Monitoring Well
Soil Boring
Fence Line
Landfill Area
Burn Site Exposure Areas
Burn Area
Burn Site Fenced Area
Landfill Area
Railroad Track Area
South Burn Site Area
BURN AREA
LANDFILL AREA
Walking Trail
UNITED STATES AVE
Bike Trail
WEST CLEMENTON ROAD
Cemetery
Cemetery
N



LEGEND

- PUBLIC ACCESS AREA
- RIPARIAN BUFFER (50 FEET)
- FENCE BOUNDARY
- AREAS TO BE CAPPED TO ADDRESS RDCSRS
- APPROXIMATE LOCATION OF CULVERT BENEATH U.S. AVENUE

REMOVAL AREAS

- 2 FT EXCAVATION DEPTH
- 4 FT EXCAVATION DEPTH
- 6 FT EXCAVATION DEPTH
- 8 FT EXCAVATION DEPTH
- 10 FT EXCAVATION DEPTH
- 12 FT EXCAVATION DEPTH

NOTES:
1.IN THE ECOLOGICAL HABITAT AREAS ALONG WHITE SAND BRANCH, HONEY RUN AND BRIDGEWOOD LAKE SURFICIAL SOIL (TOP 1 FOOT) EXCEEDING THE SOIL PRGS WOULD BE REMOVED. SUBSURFACE SOIL (DEEPER THAN 1 FOOT) EXCEEDING THE RDCSRS IN THESE AREAS WOULD ALSO BE REMOVED.
2.WEST OF U.S. AVENUE, SOIL OUTSIDE OF THE ECOLOGICAL HABITAT AREAS THAT EXCEEDS THE RDCSRS WOULD BE REMOVED.
3.ON THE BURN SITE SOIL OUTSIDE OF THE ECOLOGICAL HABITAT AREAS THAT EXCEEDS THE RDCSRS WOULD BE REMOVED TO THE DEPTH OF 6 FEET. LIMITED AREAS OF SATURATED SOIL THAT REPRESENT SOURCES OF GROUNDWATER CONTAMINATION FROM 6 TO 12 FEET WOULD BE REMOVED. SOIL AREAS WITH CONCENTRATIONS REMAINING IN PLACE EXCEEDING THE RDCSRS WILL BE CAPPED.

SOURCE:
1.BASEMAP, WESTON SOLUTIONS, 2016

0 100 200
SCALE: 1 " = 100 '

TITLE: FIGURE 5
SOIL ALTERNATIVE 4 – SOIL REMOVAL FOR HUMAN HEALTH AND ECOLOGICAL PROTECTION, GROUNDWATER SOURCE CONTROL, CAPPING AND INSTITUTIONAL CONTROLS

LOCATION:
UNITED STATES AVENUE BURN SITE
GIBBSBORO, CAMDEN COUNTY
NEW JERSEY

DATE: 06/28/2017

FILENAME: 294027_FIG23_ES_SOIL_ALTERNATE_4_REV2.mxd

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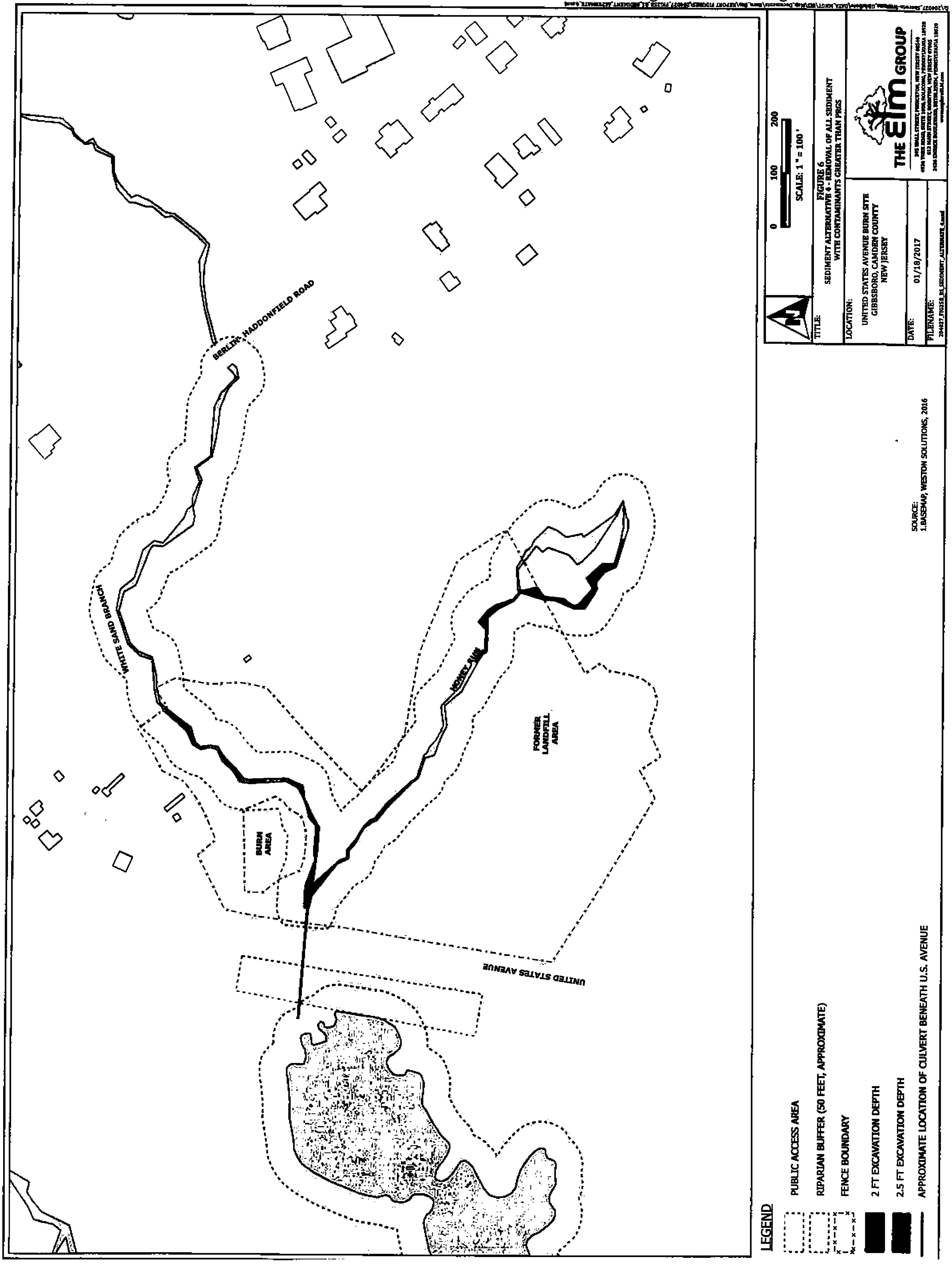
BERLIN - HADDONFIELD ROAD
WHITE SAND BRANCH
HONEY RUN
FORMER LANDFILL AREA
BURN AREA
UNITED STATES AVENUE
LEGEND
PUBLIC ACCESS AREA
RIPARIAN BUFFER (50 FEET, APPROXIMATE)
FENCE BOUNDARY
2 FT EXCAVATION DEPTH
2.5 FT EXCAVATION DEPTH
APPROXIMATE LOCATION OF CULVERT BENEATH U.S. AVENUE
SOURCE:
1.BASEMAP, WESTON SOLUTIONS, 2016
0 100 200
SCALE: 1 " = 100 '
TITLE:
FIGURE 6
SEDIMENT ALTERNATIVE 4 - REMOVAL OF ALL SEDIMENT
WITH CONTAMINANTS GREATER THAN PRGS
LOCATION:
UNITED STATES AVENUE BURN SITE
GIBBSBORO, CAMDEN COUNTY
NEW JERSEY
DATE:
01/18/2017
FILENAME:
THE elm GROUP

Table 1 Summary of Total Cancer Risks and Non-Cancer Hazards by Exposure Area

Exposure Area	Utility Worker		Construction Worker		Outdoor Worker		Adolescent Recreator		Adult Recreator	
	Total Excess Lifetime Cancer Risk	Non-Cancer Hazard	Total Excess Lifetime Cancer Risk	Non-Cancer Hazard	Total Excess Lifetime Cancer Risk	Non-Cancer Hazard	Total Excess Lifetime Cancer Risk	Non-Cancer Hazard	Total Excess Lifetime Cancer Risk	Non-Cancer Hazard
BFA	2E-05	0.1	2E-05	**3**	6E-05	0.9				
BFA + HRB							4E-05	0.9	4E-05	0.6
BFA + WSB							5E-05	**1.1**	7E-05	0.8
LF	5E-06	0.1	5E-06	**2**	8E-06	0.3	4E-06	0.3	6E-06	0.2
BA	**6E-04**	**4**	**6E-04**	**102**	**2E-03**	**19**	**1E-03**	**20**	**1E-03**	**13**
SBS	4E-07	0.01	4E-07	0.4	3E-06	0.1	3E-06	0.1	4E-06	0.08
RR	8E-07	0.03	8E-07	0.8	6E-06	**1.2**	5E-06	0.9	4E-06	0.8

Exposure Area	Resident (All Media)			Resident (Soil Only)		
	Total Excess Lifetime Cancer Risk	Non-Cancer Hazard, Child	Non-Cancer Hazard, Adult	Total Excess Lifetime Cancer Risk	Non-Cancer Hazard, Child	Non-Cancer Hazard, Adult
BFA + HRB	**4E-02**	**375**	**309**	**5E-04**	**9**	**3**
BFA + WSB	**4E-02**	**376**	**309**	**5E-04**	**9**	**3**
LF	**3E-02**	**369**	**308**	5E-05	**4**	**1**
BA	**4E-02**	**616**	**348**	**1E-02**	**251**	**42**
BSSM	**7E-03**	**29**	**4**	**7E-03**	**29**	**4**
SBS	**3E-02**	**367**	**307**	2E-05	**2**	0.2
RR	**3E-02**	**372**	**312**	9E-05	**7**	**5**

Notes:

BOLD – Cancer Risk > 1 x 10^{-4} or Hazard Index > 1.

Blank – Receptor not evaluated in this exposure area.

Table 2 Summary of Lead Risks

Exposure Area	Exposed Media	Receptor	Lead EPC (mg/kg)	Child Lead Risk includes Groundwater Lead EPC[1]		Child Lead Risk includes IEUBK Default Water Conc.[2]	
				GM BLL (µg/dL)	Predicted Probability of BLL > 10 µg/dL (%)	GM BLL (µg/dL)	Predicted Probability of BLL > 10 µg/dL (%)
BFA + HRB	Soil (0-2 ft bgs) + Sediment (0-0.5 ft bgs)	Recreator	888	1.9	0.1%		
BFA + HRB	Soil (0-2 ft bgs) + Sediment (0-0.5 ft bgs)	Adult Resident	888	3.0	1%		
BFA + HRB	Soil (0-0.5 ft bgs) + Sediment (0-0.5 ft bgs)	Child Resident	573	21	**94%**	5.9	**13%**
BFA + WSB	Soil (0-2 ft bgs) + Sediment (0-0.5 ft bgs)	Recreator	1,449	2.4	0.5%		
BFA + WSB	Soil (0-2 ft bgs) + Sediment (0-0.5 ft bgs)	Adult Resident	1,129	3.6	3%		
BFA + WSB	Soil (0-0.5 ft bgs) + Sediment (0-0.5 ft bgs)	Child Resident	814	22	**95%**	7.7	**28%**
BFA	Soil (0-10 ft bgs)	Utility Worker	2,153	1.3	0.01%		
BFA	Soil (0-10 ft bgs)	Construction Worker	2,153	8.1	**29%**		
BFA	Soil (0-2 ft bgs)	Outdoor Worker	888	2.3	0.4%		
LF	Soil (0-2 ft bgs)	Recreator	653	1.6	0.06%		
LF	Soil (0-2 ft bgs)	Adult Resident	653	2.5	1%		
LF	Soil (0-0.5 ft bgs)	Child Resident	957	22	**95%**	8.6	**38%**
LF	Soil (0-10 ft bgs)	Utility Worker	4,055	1.5	0.04%		
LF	Soil (0-10 ft bgs)	Construction Worker	4,055	14	**67%**		
LF	Soil (0-2 ft bgs)	Outdoor Worker	653	2.0	0.2%		
BA	Soil (0-2 ft bgs)	Recreator	31,224	32	**96%**		
BA	Soil (0-2 ft bgs)	Adult Resident	31,224	73	**100%**		
BA	Soil (0-0.5 ft bgs)	Child Resident	55,600	Note 3	**100%**	Note 3	**100%**
BA	Soil (0-10 ft bgs)	Utility Worker	22,020	3.9	4%		
BA	Soil (0-10 ft bgs)	Construction Worker	22,020	73	**100%**		
BA	Soil (0-2 ft bgs)	Outdoor Worker	31,224	47	**99%**		
BSSM	Suspect Material	Adult Resident	783	2.8	1%		
BSSM	Suspect Material	Child Resident	783	21	**95%**	7.4	**26%**
RR	Soil (0-2 ft bgs)	Recreator	2,015	3.0	1%		
RR	Soil (0-2 ft bgs)	Adult Resident	2,015	5.6	**12%**		
RR	Soil (0-0.5 ft bgs)	Child Resident	298	19	**92%**	3.6	**1%**
RR	Soil (0-10 ft bgs)	Utility Worker	1,203	1.2	0.006%		
RR	Soil (0-10 ft bgs)	Construction Worker	1,203	5.0	**8%**		
RR	Soil (0-2 ft bgs)	Outdoor Worker	2,015	4.0	4%		

Notes:

BLL – Blood Lead Level; EPC – Exposure Point Concentration; ft bgs – Feet Below Ground Surface; GM – Geometric Mean; IEUBK – Integrated Exposure Uptake Biokinetic Model.

BOLD – Predicted probability > 5%.

(1) The sitewide groundwater EPC is 320 µg/L.

(2) The default drinking water concentration used by the IEUBK model is 4 µg/L.

(3) The EPC is outside of the range of values for which the IEUBK has been calibrated and validated; thus, the model will not estimate a BLL. Based on other results for other exposure areas, the probability is estimated as 100%.

Court Name: USDC, District of New Jersey

Division: 1
Receipt Number: CAM003995
Cashier ID: dramsey
Transaction Date: 08/22/2017
Payer Name: MITNICK LAW OFFICE

CIVIL FILING FEE
For: MITNICK LAW OFFICE
Amount: $400.00

Paper Check Conversion
Check/Money Order Num: 1423
Amt Tendered: $400.00

Total Due: $400.00
Total Tendered: $400.00
Change Amt: $0.00

LAFFERTY V. SHERWIN-WILLIAMS

"Only when bank clears the check, money order, or verifies credit of funds is the fee or debt officially paid or discharged. A $53 fee will be charged for any payment which is returned or denied for insufficient funds."