

**UNITED STATES**  
**ENVIRONMENTAL PROTECTION AGENCY**  
**REGION III**

IN THE MATTER OF:

United States General Services  
Administration

RESPONDENT

Southeast Federal Center  
2<sup>nd</sup> and M Streets, S.E.  
Washington, D.C. 20407

FACILITY

) ADMINISTRATIVE ORDER ON  
) CONSENT  
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) U.S. EPA Docket Number:  
) RCRA-03-2014-0237TH (7003)  
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) Proceeding under Section  
) 7003 of the Resource  
) Conservation and Recovery  
) Act, as amended, 42 U.S.C.  
) § 6973

**ADMINISTRATIVE ORDER ON CONSENT**

This Administrative Order on Consent (Consent Order) is entered into by the United States Environmental Protection Agency (EPA) and the United States General Services Administration (GSA or Respondent). This Consent Order provides for the performance of the Work as set forth in Section VI, "Work to be Performed," of this Consent Order. Having agreed to this Consent Order, Respondent shall perform the Work in accordance with this Consent Order, plans, standards, specifications and schedules set forth herein and/or developed by Respondent and approved by EPA pursuant to this Consent Order. EPA and GSA ("Parties") mutually acknowledge and agree that all work undertaken pursuant to, in furtherance of, and/or in satisfaction of any and all requirements of this Consent Order may be undertaken in phases or on a parcel by parcel basis ("Sequential Remediation"). Therefore, the Parties do not anticipate that the entirety of the Remaining Facility, as more fully described in Section IV., below, will be remediated at the same time. The Parties further agree that in the Sequential Remediation, GSA shall propose the boundaries of the individual parcel(s) to be remediated ("Remediation Parcel(s)"). If and when EPA determines that the work required by this Consent Order at a Remediation Parcel has been satisfactorily completed pursuant to the terms of this Consent Order, EPA will issue a notice pursuant to section XXIV, "TERMINATION AND SATISFACTION." It is therefore ordered and agreed that:

## **I. JURISDICTION**

A. This Consent Order is issued pursuant to the authority vested in the Administrator of EPA (the Administrator) by Section 7003 of the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. Section 6973. The authority vested in the Administrator has been delegated to the EPA Regional Administrators by EPA Delegation No. 8-22-C, dated March 20, 1985, and further delegated to the Director of the Waste and Chemicals Management Division, now known as the Land and Chemicals Division, on November 4, 2004.

B. On March 22, 1985, EPA granted the District of Columbia (the District) authorization to operate a state hazardous waste program in lieu of the Federal program, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and has since approved revisions to that program. The District, however, does not have RCRA Section 7003, 42 U.S.C. § 6973, authority. The District has been given notice of the issuance of this Consent Order pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

C. This Consent Order is issued to GSA with respect to certain portions of the Southeast Federal Center (Facility), hereinafter referred to as the Remaining Facility, as more fully described in Section IV., below. GSA agrees to comply with this Consent Order and agrees not to contest EPA's jurisdiction to issue this Consent Order and to enforce its terms.

## **II. PARTIES BOUND**

A. This Consent Order shall apply to and be binding upon EPA and Respondent and their respective successor departments, agencies, or instrumentalities.

B. No change in ownership of any property covered by this Consent Order, or in the status of Respondent, shall in any way alter, diminish, or otherwise affect Respondent's obligations and responsibilities under this Consent Order.

C. Respondent shall provide a copy of this Consent Order to all supervisory personnel, contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within seven (7) calendar days of the effective date of this Consent Order or date of such retention, whichever is later. All contracts, agreements or other arrangements with such persons shall require such persons to conduct or monitor the work in accordance with the requirements of this Consent Order. Notwithstanding the terms of any such contract, agreement or arrangement, Respondent is responsible for complying with this Consent Order and for ensuring that all such persons perform such work in accordance with this Consent Order.

D. In the event of any change in Respondent's ownership or operation of the Remaining Facility or any portion thereof, Respondent shall notify EPA in writing of the nature of any such change no later than fifteen (15) calendar days after the effective date of such change. In addition, Respondent shall provide a copy of this Consent Order to any successor to Respondent and/or to the Facility at least fifteen (15) calendar days prior to the effective date of such change.

Nothing stated in this paragraph II.D shall relieve Respondent from complying with the terms and conditions of this Consent Order in the time and manner specified herein. Not later than fifteen (15) calendar days after any transfer of any portion of the Remaining Facility by Respondent, Respondent shall submit copies of the transfer documents to EPA.

### **III. STATEMENT OF PURPOSE**

In entering into this Consent Order, the mutual objectives of EPA and Respondent are: (1) to perform Interim Measures (IM) to prevent or mitigate any threats to human health or the environment relating to the Remaining Facility; (2) to perform a Corrective Measures Study (CMS) to identify and evaluate alternatives for corrective action necessary to clean up contaminated media to levels protective of human health and the environment relating to the Remaining Facility and (3) to implement the corrective measure(s) selected by EPA in a Final Decision and Response to Comments (FDRTC) relating to the Remaining Facility.

### **IV. FINDINGS OF FACT**

EPA makes the following findings, to which Respondent neither admits nor denies:

- A. The Facility is generally known as Southeast Federal Center (Facility) and consists of approximately 42 acres, bordered by a seawall on the Anacostia River to the South, M Street to the North, the Washington Navy Yard to the East, and First Street to the West.
- B. GSA previously conveyed certain portions of the Facility respectively known as the U.S. DOT Parcel, Parcel D, Parcel M, Parcel K, and Parcel P (collectively referred to herein as the Previously Conveyed Portions of Facility).
- C. The Previously Conveyed Portions of Facility are not subject to this Consent Order. This Consent Order pertains to those portions of the Facility of which GSA is the fee simple owner as of the Effective Date of this Consent Order. The portions of the Facility to which this Consent Order applies are collectively referred to herein as the Remaining Facility. See Attachment A for a map showing the Remaining Facility.
- D. The Remaining Facility is owned by the United States and is under the jurisdiction, custody, and control of GSA.
- E. GSA is an agency of the United States Government operating a facility within the District of Columbia. GSA is subject to the requirements of RCRA pursuant to Section 6001 of RCRA, 42 U.S.C. Section 6961, in the same manner as a person as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
- F. The Facility was formerly a part of the Washington Navy Yard (WNY). The WNY is currently owned by the United States Department of the Navy (Navy).
- G. From 1799 until the late 1800's, the Facility was used for shipbuilding and repair.

Activities shifted to ordnance production from the late 1800's to WWII. During this time, WNY expanded and industrialized, producing Naval guns, but not munitions. By 1961, shipbuilding had ceased and the Facility was being used for administrative purposes. By 1962, all ordnance production had ceased. Over the life of the Facility, there were foundries; boiler maker, machine, plating, welding and paint shops; train and Government vehicle motor pool facilities; fuel oil and waste oil storage areas; metal cooling and cleaning pits; scrap metal and coal storage areas; and electrical transformers.

H. In 1963, the Navy transferred the Facility to GSA for redevelopment. After 1963, the Facility housed administrative and light industrial operations, warehouses, storage facilities and laboratories, most of which closed in 1998.

I. The primary contaminants generated during the Navy's operations at the Facility were volatile organic compounds (VOCs), polyaromatic hydrocarbons (PAHs) which are classified as semi-volatile organics (SVOCs), polychlorinated biphenyls (PCBs), and metals in soil; SVOCs; and petroleum hydrocarbons, naphthalene and metals in groundwater.

J. In 1999, EPA and GSA entered into a Final Administrative Order on Consent (1999 Order), Docket No. RCRA III-019-AM, under Section 3013 of RCRA, 42 U.S.C. Section 6934. The 1999 Order required GSA to perform, among other work, a RCRA Facility Investigation (RFI) to determine the nature and extent of any releases of hazardous waste at or from the Facility. EPA approved GSA's RFI Report in July 2008.

K. Pursuant to the Southeast Federal Center Public-Private Development Act of 2000 (Public Law 106-407; 114 Stat. 1758) (the SEFC Act), GSA was authorized and directed to dispose of the Facility for private development and revitalization.

L. EPA issued a Final Decision and Response to Comments (FDRTC) for each of the following parcels: U.S. DOT Parcel (July 14, 2005), Parcel M (February 24, 2010), Parcel P (August 26, 2010), Parcel K (December 20, 2011) and Parcel D (June 28, 2012), all of which are Previously Conveyed Portions of the Facility and are not subject to this Consent Order.

M. Upon the Effective Date of this Consent Order, EPA shall deem Respondent to have satisfied the terms of the 1999 Order and the 1999 Order shall be terminated except for Respondent's obligation to comply with all of the continuing obligations under the 1999 Order including, but not limited to, Sections XI ("RECORD PRESERVATION"), XVII ("RESERVATION OF RIGHTS"), XVIII ("OTHER CLAIMS"), XIX ("OTHER APPLICABLE LAWS"), and XX ("NOTICE OF NON-LIABILITY OF EPA").

## **V. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, the Conclusions of Law set forth in this Section V, and upon EPA's review of information set forth in the Administrative Record which supports the issuance of this Consent Order, EPA has made the following determinations, to which Respondent neither admits or denies:

- A. GSA is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
- B. VOCs, SVOCs, metals, PCBs, petroleum hydrocarbons, and MTBE are solid wastes as defined in Section 1004(27) of RCRA, U.S.C. Section 6903(27), and/or hazardous wastes as defined in Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5), within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.
- C. The conditions at the Remaining Facility meet the jurisdictional elements of Section 7003 of RCRA, 42 U.S.C. § 6973.
- D. The actions required by this Consent Order are necessary to protect human health and the environment.

## **VI. WORK TO BE PERFORMED**

- A. EPA acknowledges that Respondent may have completed some of the tasks required by this Consent Order and may have available some of the information and data required by this Consent Order. This previous work, including work done under the 1999 Order, may be used to meet the requirements of this Consent Order, upon submission to and formal approval by EPA in the manner prescribed herein.
- B. All work undertaken pursuant to this Consent Order shall be developed and performed, as appropriate and approved by EPA, in accordance with: the Scope of Work for Interim Measure(s); the Scope of Work for a RCRA Facility Investigation; the Scope of Work for a Corrective Measures Study; the Scope of Work for Corrective Measures Implementation, the Scope of Work for Health and Safety Plan; and RCRA, its implementing regulations and relevant EPA guidance documents. The foregoing Scopes of Work and relevant guidance are available at: [http://www.epa.gov/reg3wcmd/ca/ca\\_resources.htm](http://www.epa.gov/reg3wcmd/ca/ca_resources.htm), and are incorporated herein by reference.
- C. "Days" as used herein shall mean "calendar" days unless specified otherwise.
- D. Pursuant to Section 7003 of RCRA, 42 U.S.C. Section 6973, Respondent agrees to and is hereby ordered to finance and perform the following work in the manner and by the dates specified herein:

### **1. INTERIM MEASURES (IM)**

- a. Commencing on the Effective Date of this Consent Order and continuing thereafter, in the event Respondent identifies an immediate or potential threat to human health and/or the environment at or from the Remaining Facility, or discovers new releases of solid wastes or hazardous wastes at or from the Remaining Facility not previously identified, Respondent shall notify the EPA Project Coordinator orally within forty-eight (48) hours of such identification or discovery and notify EPA in writing within three (3) calendar days of discovery summarizing the nature and extent of such release and/or the immediacy and magnitude of the potential threat(s) to human health

and/or the environment. Upon written request of EPA, Respondent shall submit to EPA an IM Workplan in accordance with the IM Scope of Work. If EPA determines that immediate action is required, the EPA Project Coordinator may orally authorize Respondent to act prior to EPA's receipt of the IM Workplan. Upon receipt of EPA approval of the IM Workplan, Respondent shall implement the EPA-approved IM Workplan in accordance with the terms and conditions set forth therein.

b. Commencing on the Effective Date of this Consent Order and continuing thereafter, if EPA identifies an immediate or potential threat to human health and/or the environment at or from the Remaining Facility, or discovers new releases of solid wastes, hazardous wastes and/or hazardous constituents at or from the Remaining Facility not previously identified, EPA will notify Respondent in writing. Within twenty (20) days of receiving EPA's written notification, Respondent shall submit to EPA an IM Workplan in accordance with the IM Scope of Work that identifies interim measures which will mitigate or eliminate the threat. If EPA determines that immediate action is required, the EPA Project Coordinator may require Respondent to act prior to Respondent's receipt of EPA's written approval.

c. Each IM Workplan required herein shall ensure that the interim measures are designed to mitigate or eliminate immediate or potential threat(s) to human health and/or the environment, and should be consistent with the cleanup objectives of, and contribute to the performance of the corrective measures selected by EPA in an FDRTC and any other long-term corrective measure(s) which may, in the future, be required at the Remaining Facility.

d. Each IM Workplan required herein shall be prepared in accordance with the IM Scope of Work and shall include the following sections as appropriate and approved by EPA: Interim Measures Objectives, Data Collection Quality Assurance, Data Management, Design Plans and Specifications, Operation and Maintenance, Project Schedule, Interim Measures Construction Quality Assurance, and Reporting Requirements.

e. Concurrent with submission of each IM Workplan required herein, Respondent shall submit a new, or reference an EPA-accepted IM Health and Safety Plan, that is in accordance with the Health and Safety Plan Scope of Work.

f. The provisions of this Subsection D.1. shall only apply to such portions of the Remaining Facility that have not yet been issued a notice pursuant to Section XXIV of this Consent Order.

## 2. CORRECTIVE MEASURES STUDY

a. Within ninety (90) calendar days of the Effective Date of this Consent Order, Respondent shall submit to EPA for approval a Draft Corrective Measures Study (CMS) Report for the Remaining Facility. The CMS Report shall be developed in accordance with the CMS Scope of Work, as appropriate, and approved by EPA.

b. Within sixty (60) calendar days of receipt of EPA's comments on the Draft CMS Report, Respondent shall submit to EPA the Final CMS Report, revised to respond to all comments received from and/or remedy all deficiencies identified by EPA on the Draft CMS Report.

### 3. PUBLIC COMMENT AND PARTICIPATION

a. After approval of the CMS Report, EPA will make the Administrative Record (AR) for the Remaining Facility, a description of EPA's proposed corrective measure(s) if any are proposed by EPA, and EPA's justification for proposing selection of such corrective measure(s) (Statement of Basis or SB) available to the public for review and comment for at least thirty (30) calendar days.

b. Following the public review and comment period, EPA will issue a Final Decision and Response to Comments (FDRTC) in which it will describe the corrective measure(s) selected for the Remaining Facility. If the corrective measure(s) selected by EPA after consideration of public comments differs significantly from the corrective measure(s) recommended in the SB, EPA will explain in the FDRTC the basis for such difference.

c. The AR supporting the FDRTC will be available for public review at 1650 Arch Street, Philadelphia, Pennsylvania, on Mondays through Fridays, from 9:00 a.m. to 4:00 p.m., by contacting the EPA Project Coordinator, Barbara Smith, at (215) 814-5786.

### 4. CORRECTIVE MEASURES IMPLEMENTATION

#### a. Final Decision and Response to Comments

Upon issuance of the FDRTC for the Remaining Facility, such FDRTC shall be incorporated into and become enforceable under this Consent Order.

#### b. Corrective Measures Implementation (CMI) Workplan and Design

(1) GSA represents that it has, pursuant to and in furtherance of the SEFC Act (defined in Section IV.11, above), entered into a development agreement with Forest City SEFC, LLC ("Master Developer") pursuant to which (A) Master Developer or its designees will acquire (by deed or long term ground lease) and develop separate portions of the Remaining Facility on a parcel by parcel basis, and (B) other portions of the Remaining Facility not described in item (A) above will on a parcel by parcel basis be improved with public improvements (e.g. roads) and dedicated to the District of Columbia for public use. As described in the opening paragraph of this Consent Order, each of such separate portions of the Remaining Facility described in the foregoing items (A) and (B) shall be referred to as a "Remediation Parcel" in this document.

(2) For each Remediation Parcel, in accordance with the schedule submitted under Section VI.D.5.c., below, Respondent shall submit to EPA for approval a

Corrective Measures Implementation (CMI) Workplan and a CMI Design Report, if required by EPA, for implementation of the corrective measure(s) applicable to such Remediation Parcel selected in the FDRTC. The CMI Workplan and CMI Design Report, if required by EPA, shall be developed in accordance with the Scope of Work for CMI.

- a) For Remediation Parcels that require land and/or groundwater use restrictions as part of the implementation of the corrective measure(s) selected by the FDRTC, the Respondent shall include, as part of the CMI Workplan, an Institutional Controls Implementation and Assurance Plan (“IC Plan”). The IC Plan(s) will establish, document, and report the methods that will be used to implement and monitor compliance with the land and/or groundwater use restrictions and ensure that they remain in place and effective and run with the land. In addition, the IC Plan shall provide that the deed restriction or covenant, as applicable (as determined in accordance with subsection (e) below), implementing the land and/or groundwater use restrictions shall contain the following provisions:
    - i. Within 30 days of a written request by EPA, the then current owner of a Remediation Parcel shall submit to EPA, written documentation stating whether or not the land and/or groundwater use restrictions are being complied with.
    - ii. Within 30 days after the then current owner of a Remediation Parcel becomes aware of any noncompliance with the land and/or groundwater use restrictions, the then current owner of such Remediation Parcel shall submit to EPA written documentation describing the noncompliance.
    - iii. Within 30 days after the transfer of a Remediation Parcel, (but not including the initial transfer of the Remediation Parcel by GSA to Master Developer or its designees), the then current owner shall submit to EPA written documentation describing the compliance status with the land and/or groundwater use restrictions at the time of transfer.
- (3) Within thirty (30) calendar days of receipt of EPA approval of a CMI Workplan and a CMI Design Report (if applicable) for a Remediation Parcel, Respondent shall implement the EPA-approved CMI Workplan and CMI Design Report in accordance with the schedule included in the CMI Workplan and CMI Design



Report. Any requests for changes to the schedule shall be included in the quarterly progress reports submitted by Respondent to EPA pursuant to subparagraph VI.D.5.c. of this Consent Order.

c. Corrective Measure Construction

- (1) For all corrective measures selected in the FDRTC pertaining to the Remaining Facility and that require construction, Respondent shall commence and complete construction of such corrective measure(s) in accordance with the Scope of Work for the CMI and the schedules and specifications set forth in the EPA-approved CMI Workplan and CMI Design Report.
- (2) Within forty-five (45) calendar days of completing the construction of such corrective measure(s) on a Remediation Parcel, Respondent shall submit to EPA for approval a CMI Completion Report. The CMI Completion Report shall be developed in accordance with the Scope of Work for CMI and shall describe activities performed during construction, provide actual specifications of the implemented remedy, and provide a preliminary assessment of CMI performance on the Remediation Parcel. For any Remediation Parcel for which the EPA-approved CMI Workplan requires an active, ongoing engineering control (as described in paragraph (3) below), the CMI Completion Report will include a certification that any such active, ongoing engineering control is operating properly and successfully as of the date of the CMI Completion Report and shall set forth all of the requirements, procedures and testing benchmarks for ongoing implementation and, if applicable, termination of such ongoing engineering control.
- (3) EPA shall determine, on the basis of the CMI Completion Report and any other relevant information, whether the constructed corrective measure(s) on a Remediation Parcel is consistent with the EPA-approved CMI Workplan and CMI Design Report for such Remediation Parcel. If EPA determines that the constructed corrective measure(s) is consistent with the EPA-approved CMI Workplan and CMI Design Report, and that the constructed corrective measures have achieved or are achieving all of the requirements set forth in the FDRTC and the performance criteria established in the CMI Workplan and CMI Design Report for the Remediation Parcel, EPA shall approve the CMI Completion Report for the Remediation Parcel. Attachment B to this Consent Order includes model language that EPA anticipates using for its CMI Completion Report approvals. The Attachment B form of CMI Completion Report Approval when issued shall constitute the “written notice” referred to in Article XXIV for all Remediation Parcels (including Remediation Parcels subject to land and/or groundwater use restrictions) for which the EPA-approved CMI Workplan did not require any ongoing, active engineering controls. For the avoidance of doubt, any passive engineering controls, such as, by way of example and not limitation,

maintenance of caps, retaining walls, containment walls, similar fixtures and the like, shall be considered land and/or groundwater use restrictions as that term is used in this Consent Order rather than ongoing, active engineering controls, and such passive engineering controls shall (as with the land and/or groundwater use restrictions) be binding upon a Remediation Parcel through the deed restriction or covenant, however applicable (as determined in accordance with subsection (e) below). For any Remediation Parcel for which the EPA-approved CMI Workplan requires an ongoing, active engineering control (such as a so-called groundwater pump and treat system), the Attachment B form of Completion Report Approval shall not, when issued, constitute the “written notice” referred to in Article XXIV for such Remediation Parcel, but said Completion Report Approval shall, in such instance, set forth all of the requirements, procedures and testing benchmarks for ongoing implementation and, if applicable, termination of such ongoing engineering control, and shall contain agreement by EPA (supported by the certification in the CMI Completion Report described in paragraph (2) above) that as of the date of issuance of the Completion Report Approval said ongoing, active engineering control is operating properly and successfully. Respondent shall request EPA’s approval of the cessation of any active, ongoing engineering controls. Upon such time that EPA approves the cessation of any active, ongoing engineering control, EPA shall issue an updated Completion Report Approval which when issued will constitute the “written notice” referred to in Article XXIV for the subject Remediation Parcel.

- (4) If EPA determines that the constructed corrective measure(s) is inconsistent with the EPA-approved CMI Workplan and CMI Design Report, and/or that the constructed corrective measure(s) have not achieved or are not achieving all of the requirements set forth in the FDRTC and the performance criteria established in the CMI Workplan and CMI Design Report, EPA shall notify Respondent in writing of those activities that must be undertaken on the Remediation Parcel to complete the corrective measure(s) requirements and shall set forth a schedule for the completion of those activities. Respondent shall complete the activities in accordance with the schedule set forth in the EPA notification.

d. CMI Assessment Reports

- (1) No later than five years after the Effective Date of this Consent Order and every five (5) years thereafter until Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed, Respondent shall submit a CMI Five-Year Assessment Report. Such Report shall contain an evaluation of the past and projected future effectiveness of the corrective measure(s) in achieving the requirements set forth in the FDRTC and the performance criteria established in the CMI Workplans and CMI Design Reports.

Such notice reporting requirements shall be in effect as to all Remediation Parcels that have not yet received a notice pursuant to Section XXIV, "TERMINATION AND SATISFACTION."

- (2) Respondent may, as part of a CMI Five-Year Assessment Report, request that EPA select, for the purposes of this Consent Order, an alternative and/or supplemental corrective measure(s) for portions of the Remaining Facility that have not yet received a notice pursuant to Section XXIV, "TERMINATION AND SATISFACTION."
- (3) In the event EPA selects an alternative and/or supplemental corrective measure(s) for portions of the Remaining Facility that have not yet received a notice pursuant to Section XXIV, "TERMINATION AND SATISFACTION," either in response to a request by Respondent pursuant to Section VI.D.4.d.(2), immediately above, or on its own initiative, EPA may provide Respondent with a period of thirty (30) calendar days from the date Respondent receives written notice from EPA of the selection of an alternative and/or supplemental corrective measure(s) within which to reach an agreement with EPA regarding performance of the alternative and/or supplemental corrective measure(s) in lieu of, or in addition to, the corrective measures. Any such agreement between EPA and Respondent shall be incorporated into and become enforceable under this Consent Order and Respondent shall implement the activities required under any such agreement in accordance with any schedule and provisions contained therein.
- (4) Nothing in Section VI.D.4.d.(3), immediately above, shall limit EPA's authority to implement or require performance of alternative and/or supplemental corrective measure(s) or to take any other appropriate action under RCRA, 42 U.S.C. §§ 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq.* (CERCLA), or any other legal authority, including the issuance of a unilateral administrative order.

e. Institutional Controls

- (1) For each Remediation Parcel for which EPA selected land and/or groundwater use restrictions in the FDRTC and that GSA conveys by deed within the timeframe determined in the CMI Workplan, GSA shall include in such deed the applicable land and/or groundwater use restrictions. Such restrictions shall be binding upon the transferee and its subsequent successors and assigns, and such deed shall state that EPA is a third-party beneficiary of and is entitled to enforce such restrictions.
- (2) For each Remediation Parcel for which EPA selects land and/or groundwater use restrictions in the FDRTC and that GSA does not convey by deed within the timeframe determined in the CMI Workplan, GSA shall submit to EPA for review and approval a draft Environmental Covenant (Covenant) including the relevant

land and/or groundwater use restrictions. The Covenant shall be prepared pursuant to the District of Columbia Uniform Environmental Covenants Act of 2006, D.C. Code Section 8-671 (UECA). Within sixty (60) days of EPA's written approval of the Covenant, GSA shall record the Covenant in the chain of title for the portion of the Facility. Within sixty (60) days of recording the Covenant, GSA shall provide EPA with a certified copy of the original recorded Covenant showing the clerk's recording stamps.

## 5. SUBMISSIONS/EPA APPROVAL/ADDITIONAL WORK

a. EPA will review Respondent's IM, CMS and CMI Workplans; CMI Design Report(s); CMI Completion Report(s); CMI Five-Year Assessment Report(s); and any other documents submitted pursuant this Consent Order (Submission). After review of any Submission, EPA will in writing: (a) approve, in whole or in part, the Submission; (b) approve the Submission upon specified conditions; (c) disapprove, in whole or in part, the Submission, directing that Respondent modify the Submission; or (d) any combination of the above, with the exception of progress reports. In the event of EPA's disapproval, in whole or in part, EPA shall specify in writing any deficiencies in the Submission. Such disapproval shall not be subject to the dispute resolution procedures of Section XVI, below.

b. Within thirty (30) calendar days of receipt of EPA's comments on the Submission, or fifteen (15) calendar days in the case of an IM Workplan, Respondent shall submit to EPA for approval a revised Submission, which responds to any comments received and/or corrects any deficiencies identified by EPA. In the event that EPA disapproves of the revised Submission, Respondent may invoke the dispute resolution procedures of Section XVI, below. In the event EPA disapproves the revised Submission, EPA reserves the right to revise such Submission and to exercise any rights that it may have under RCRA, CERCLA, and any other applicable law. Respondent reserves the right to defend against any such action brought by EPA. Any Submission approved or revised by EPA under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.

c. Commencing on the Effective Date of this Consent Order, Respondent shall provide EPA with quarterly progress reports throughout the period that this Consent Order is effective. The progress reports shall contain the information required in the relevant Scope(s) of Work attached hereto. The progress reports shall also contain a schedule setting forth the date(s) on which Respondent anticipates submitting for each Remediation Parcel a CMI Workplan and CMI Design Report, if required by EPA, to EPA for review and approval as referenced in Section VI.D.4.b.(2).

d. One copy of each Submission required by this Consent Order shall be sent to the EPA Project Coordinator designated pursuant to Section XIII, "PROJECT COORDINATORS," and to the Washington, D.C. representative designated in Section

#### XIV, "NOTIFICATION."

e. All work performed pursuant to this Consent Order shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste site remediation. Within ten (10) calendar days after the effective date of this Consent Order, Respondent shall submit to EPA, in writing, the name, title, and qualifications of an engineer or geologist and of contractors or subcontractors to be used in carrying out the terms of this Consent Order. Notwithstanding Respondent's selection of an engineer, geologist, contractor or subcontractor, nothing herein shall relieve Respondent of its obligation to comply with the terms and conditions of this Consent Order. EPA shall have the right to disapprove at any time the use of any professional engineer, geologist, contractor or subcontractor selected by Respondent. EPA's disapproval shall not be subject to review under Section XVI, "DISPUTE RESOLUTION," of this Consent Order or otherwise. Within fifteen (15) calendar days of receipt from EPA of written notice disapproving the use of any professional engineer, geologist, contractor or subcontractor, Respondent shall notify EPA, in writing, of the name, title and qualifications of the proposed personnel who will replace the personnel disapproved by EPA. Respondent shall notify EPA within ten (10) days prior to changing voluntarily its engineer or geologist, and/or contractors or subcontractors to be used in carrying out the terms of this Consent Order, and shall submit to EPA in writing, the name, title, and qualifications of such person(s). EPA shall have the right to disapprove any replacement personnel or change in personnel at any time. EPA's disapproval shall not be subject to review under Section XVI, "DISPUTE RESOLUTION," of this Consent Order or otherwise.

f. EPA may determine that certain tasks and deliverables including, but not limited to, investigatory work or engineering evaluation require additional work. These tasks and deliverables may or may not have been in the IM Workplan(s), CMS Report(s) or CMI Workplan(s). If EPA determines that such additional work is necessary, EPA shall request, in writing, that Respondent perform the additional work and shall specify the reasons for EPA's determination that additional work is necessary. Within thirty (30) calendar days after the receipt of such request, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work EPA has requested. In the event that Respondent agrees to perform the additional work, this Consent Order shall be modified in accordance with Section XXII, "SUBSEQUENT MODIFICATION," below, and such work shall be performed in accordance with this Consent Order. In the event Respondent declines or fails to perform the additional work, EPA reserves the right to order Respondent to perform such additional work; to perform such additional work itself and to seek to recover from Respondent all costs of performing such additional work; and to disapprove of the IM or CMI Workplan and/or the CMS or CMI Reports.

g. Any reports, plans, specifications, schedules, other submissions and attachments required by this Consent Order are, upon written approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, other submissions, and attachments shall be considered a

violation of this Consent Order and shall subject Respondent to the stipulated penalty provisions included in Section XV, "DELAY IN PERFORMANCE/STIPULATED PENALTIES."

## **VII. QUALITY ASSURANCE**

A. Throughout all sample collection and analysis activities, Respondent shall use EPA-approved quality assurance, quality control, and chain-of-custody procedures, as specified in the EPA-approved Data Collection and Quality Assurance Plan. Respondent shall only use laboratories that have a documented quality system that complies with the "Uniform Federal Policy for Quality Assurance Project Plans" (March 2005), and the "EPA Requirements for Quality Management Plans for Environmental Data Operations (QA/R-5)" (EPA/240/B-01/003, March 2001), or equivalent documentation as determined by EPA. In addition, Respondent shall:

1. Ensure that the laboratories it uses for analyses perform such analyses according to the EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846, November 1986) or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall submit all analytical protocols to be used for analyses to EPA for approval at least thirty (30) calendar days prior to the commencement of analyses and shall obtain EPA approval prior to the use of such analytical protocols.
2. Ensure that laboratories it uses for analyses participate in a quality assurance/quality control (QA/QC) program equivalent to that which is followed by EPA. As part of such a program, and upon request by EPA, such laboratories shall perform analyses of samples provided by EPA to demonstrate the quality of the analytical data. If EPA determines that there are deficiencies in a laboratory's performance or the quality of the analytical data, Respondent shall submit a plan to address the deficiencies and EPA may require resampling and additional analysis.
3. Inform the EPA Project Coordinator at least fourteen (14) calendar days in advance of any laboratory analysis regarding which laboratory will be used by Respondent and ensure that EPA personnel and EPA authorized representatives have reasonable access to the laboratories and personnel used for analysis. In the event of an unscheduled need for laboratory analysis (such as might arise during the course of remediation), Respondent shall notify EPA within three (3) days of determining there is a need to conduct laboratory analysis and identify the previously approved laboratory that will conduct the analysis.
4. EPA reserves the right to require a change in laboratories for reasons which may include, but shall not be limited to, QA/QC, performance, conflict of interest, or confidential agency audit information. In the event EPA requires a laboratory change, Respondent shall propose two alternative laboratories within thirty (30) calendar days.

Once EPA approves of an alternative laboratory, Respondent shall select an EPA-approved alternative and ensure that laboratory service shall be made available within fifteen (15) calendar days. EPA's decision to require a change in laboratories shall not be subject to the dispute resolution procedures of Section XVI, below.

### **VIII. PUBLIC REVIEW OF ADMINISTRATIVE RECORD**

A. The Administrative Record supporting the issuance of this Consent Order will be available for public review on Mondays through Fridays, from 9:00 a.m. to 4:00 p.m., by contacting the EPA Project Coordinator, Ms. Barbara Smith, at:

U.S. Environmental Protection Agency  
Region III (3LC20)  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029  
Telephone: 215-814-5786

B. The Index to the Administrative Record supporting the issuance of this Consent Order is set forth in Attachment C.

### **IX. PUBLIC COMMENT**

A. After Respondent signs this Consent Order, EPA shall announce the availability of this Consent Order to the public for review and comment. EPA shall accept comments from the public for a period of thirty (30) calendar days after such announcement. If sufficient interest warrants, as determined by EPA, a public meeting will be held. At the end of the comment period, EPA shall review all comments received during the above-described comment period and/or at such public meeting, and shall either:

1. determine that the Consent Order should be made effective in its present form in the manner set forth in Section XXVI, "EFFECTIVE DATE," below, or
2. determine that modification of the Consent Order is necessary, in which case EPA shall notify Respondent in writing as to the nature of all required changes. If Respondent agrees to the modification, the Consent Order shall be so modified and shall become effective in the manner set forth in Section XXVI, "EFFECTIVE DATE," below.

B. In the event that the parties are unable to agree on modifications required by EPA as a result of public comment, this Consent Order shall be withdrawn by EPA. In such an event, EPA reserves the right to take such action as may be necessary to protect public health and the environment, including but not limited to, issuance of a subsequent order to Respondent or any other person in connection with the Facility under Section 7003 of RCRA.

## **X. ON-SITE AND OFF-SITE ACCESS**

A. Commencing on the Effective Date of this Consent Order, and continuing thereafter, Respondent shall provide to EPA and its employees, agents, consultants, contractors and other authorized and/or designated representatives, for the purposes of conducting and/or overseeing the Work required by this Consent Order, or by any approved Workplan prepared pursuant hereto, access to the Remaining Facility wherein Work must be undertaken. Such access shall permit EPA and its employees, agents, consultants, contractors and other authorized and designated representatives to conduct all activities described in Section X.C. of this Consent Order.

B. To the extent that property wherein Work required by this Consent Order must be undertaken is presently owned or controlled by parties other than the Respondent, the Respondent shall use its best efforts to obtain site access agreements from the present owners. Best efforts shall include, but not be limited to, agreement to reasonable conditions for access and/or the payment of reasonable fees. EPA in its sole discretion shall determine whether Respondent has used its best efforts to obtain site access agreements. Such access agreements shall be finalized as soon as practicable but no later than thirty (30) calendar days after receiving EPA's written approval to proceed. Such agreements shall provide reasonable access for the Respondent and its employees, agents, consultants, contractors and other authorized and designated representatives to conduct the work, and for EPA and its designated representatives to conduct the activities outlined in paragraph X.C, below. In the event that any property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall notify EPA at that time, in writing, of all its efforts to obtain access and the circumstances of the failure to obtain such access. If, after using its best efforts as provided above, Respondent has failed to obtain access, Respondent shall utilize its authority to issue an administrative order providing for such access as may be required or shall refer the access issue to the Department of Justice. Such referral shall request a judicial order providing for such access as may be required, including seeking access on behalf of EPA and its designated representatives. EPA may assist in obtaining access as appropriate.

C. In accordance with law and regulation, as appropriate, EPA and its employees, agents, contractors, consultants and other authorized and designated representatives shall have the authority to enter and freely move about the location where the corrective measures and/or Work is being performed at all reasonable times for the purposes of, inter alia: inspecting Work required by this Consent Order, or by any EPA-approved workplan prepared pursuant hereto, records, operating logs and contracts related to the Remaining Facility; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents and other writings, including all sampling and monitoring data, in any way pertaining to the Work. EPA, its contractors and oversight officials shall notify Respondent of their presence on the Facility by presenting their credentials.



D. Notwithstanding any provision of this Consent Order, EPA retains all of its access and information-gathering authorities and rights under RCRA and any other applicable statute and regulation.

## **XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

A. Respondent shall submit to EPA the raw data and the validated results of all sampling and/or tests or other data generated by, or on behalf of, Respondent in accordance with the requirements of this Consent Order and the Attachments appended hereto and incorporated herein. This requirement to submit data shall not apply to additional sampling required by disposal facilities.

B. Respondent shall notify EPA, in writing, at least fourteen (14) calendar days in advance of any field activities, including but not limited to, well drilling, installation of equipment, or sampling. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Order. Nothing in this Consent Order shall limit or otherwise affect EPA's authority to collect samples pursuant to applicable law, including, but not limited to, RCRA and CERCLA.

C. Respondent may assert a business confidentiality claim covering all or part of any information submitted to EPA pursuant to this Consent Order in the manner described in 40 C.F.R. Section 2.203(b). Any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made in accordance with 40 C.F.R. Section 2.204(e)(4). Information subject to a confidentiality claim shall be disclosed only to the extent allowed by, and in accordance with, the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondent. Respondent shall not assert any confidentiality claim with regard to any physical, sampling, monitoring, or analytical data.

D. If Respondent wishes to assert a privilege with regard to any document which EPA seeks to inspect or copy pursuant to this Consent Order, Respondent shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the author's name and title; (4) the name and title of each addressee and recipient; (5) a description of the contents; and (6) the privilege asserted by Respondent. For the purposes of this Consent Order, privileged documents are those documents exempt from discovery from the United States under the Federal Rules of Civil Procedure. No documents, reports or other information created or generated pursuant to the requirements of this Consent Order shall be withheld on the grounds that they are privileged and Respondent shall not assert a privilege with regard to analytical, sampling and monitoring data.

## **XII. RECORD PRESERVATION**

A. Respondent agrees that it shall preserve, during the pendency of this Consent Order and for a minimum of at least six (6) years after its termination, all data, records and documents in its possession or in the possession of its divisions, officers, directors, employees, agents, contractors, successors, and assigns which relate in any way to this Consent Order or to hazardous waste management and/or disposal at the Remaining Facility. After six (6) years, Respondent shall notify EPA that such records are available to EPA for inspection or shall provide copies of such records to EPA. Respondent shall notify EPA at least thirty (30) calendar days prior to the proposed destruction of any such records, and shall provide EPA with a reasonable opportunity to inspect, copy and/or take possession of any such records. Respondent shall not destroy any record to which EPA has requested access for inspection and/or copying until EPA has obtained such access or withdrawn its request for such access. Nothing in this Section XII shall in any way limit the authority of EPA under Section 3007 of RCRA, 42 U.S.C. Section 6927, or any other access or information-gathering authority.

B. All documents pertaining to this Consent Order shall be stored by Respondent at its headquarters or regional office in the District of Columbia or at any successor headquarters offices.

## **XIII. PROJECT COORDINATORS**

A. EPA hereby designates Barbara Smith as the EPA Project Coordinator. Respondent hereby designates as Respondent's Project Coordinator: Ms. Kelly Holland, Industrial Hygienist, GSA National Capital Region (NCR), 301 7th St. SW, Washington, DC 20407. Respondent's legal counsel shall not serve as Respondent's Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of their respective agency's obligations and responsibilities under this Consent Order. The EPA Project Coordinator will be EPA's primary designated representative at the Remaining Facility. To the maximum extent possible, all communications between Respondent and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.

B. Each party agrees to provide at least seven (7) calendar days written notice to the other party prior to changing Project Coordinator.

C. If EPA determines that conditions or activities at the Remaining Facility, whether or not in compliance with this Consent Order, have caused or may cause a release or threatened release of solid wastes, hazardous wastes, hazardous constituents, hazardous substances, pollutants or contaminants which threaten or may pose a threat to the public health or welfare or to the environment, EPA may direct that Respondent stop further implementation of this Consent Order for such period of time as may be needed to abate any such release or threatened release and/or to undertake any action which EPA determines is necessary to abate such release or threatened release.

D. The absence of the EPA Project Coordinator from the Remaining Facility shall not be cause for the delay or stoppage of work.

#### **XIV. NOTIFICATION**

A. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Consent Order shall be in writing and shall be sent as follows:

1. Two copies of all documents to be submitted to EPA shall be sent to:

Ms. Barbara Smith (3LC20)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

2. Documents to be submitted to Respondent shall be sent to:

U.S. General Services Administration – National Capital Region  
301 7<sup>th</sup> Street, SW - Room 2080  
Washington DC 20407  
Attn: Ms. Kelly Holland

3. One copy of all documents to be submitted to EPA shall also be sent to:

Forest City SEFC, LLC  
301 Water Street, SE  
Suite 201  
Washington, DC 20003  
Attn: Ramsey Meiser

4. One copy of all documents to be submitted to EPA shall also be sent to:

Ms. Mary Begin, Chief  
Hazardous Materials Branch  
Toxic Substances Division  
District Department of the Environment  
Government of the District of Columbia  
1200 First Street, NE, 5<sup>th</sup> Floor  
Washington, DC 20002

B. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Consent Order which discusses, describes, demonstrates, or supports

any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Order shall be certified by a duly authorized representative of Respondent. A person is a "duly authorized representative" only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying, whether on an acting or permanent basis, a named position); and (c) the written authorization is submitted to the Project Coordinator designated by EPA pursuant to Section XIII (PROJECT COORDINATORS) of this Consent Order.

C. The certification required by paragraph B, above, shall be in the following form:

I certify that the information contained in or accompanying this **[type of submission]** is true, accurate, and complete.

As to [the/those identified portion(s)] of this **[type of submission]** for which I cannot personally verify **[its/their]** accuracy, I certify under penalty of law that this **[type of submission]** and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

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

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

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

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

A. Unless there has been a written modification of a compliance date by EPA, or EPA has determined that there is an excusable delay caused by a force majeure event as defined below in Section XVII, in the event that Respondent fails to comply with any requirement set forth in this Consent Order, Respondent shall pay stipulated penalties, as set forth below, upon receipt of written demand by EPA. Compliance by Respondent shall include commencement or completion, as appropriate, of any activity, plan, study or report required by this Consent Order in an acceptable manner and within the specified time schedules in and approved under this Consent Order. Stipulated penalties shall accrue as follows:

1. For failure to commence, perform or complete work as prescribed in this Consent Order: \$1,000 per day for one to seven days or part thereof of noncompliance, and \$3,000 per day for each day of noncompliance, or part thereof, thereafter;
2. For failure to comply with the provisions of this Consent Order after receipt of notice of noncompliance by EPA: \$1,000 per day for one to seven days or part thereof of noncompliance, and \$3,000 per day for each day of noncompliance, or part thereof, thereafter; in addition to any stipulated penalties imposed for the underlying noncompliance;
3. For failure to submit deliverables as required by this Consent Order, or for failure to comply with this Consent Order not described in subparagraphs 1 and 2 above: \$750 per day for one to seven days or part thereof of noncompliance, and \$1,500 per day for each day of noncompliance, or part thereof, thereafter.

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

C. All penalties owed to EPA under this Section XV shall be due within thirty (30) calendar days of receipt of a demand for payment unless Respondent invokes the dispute resolution procedures under Section XVI, below. Such notification shall describe the noncompliance and shall indicate the amount of penalties due.

D. All penalty payments shall be made by certified or cashier's check payable to the Treasurer of the United States of America and shall be remitted to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region III  
P.O. Box 360515  
Pittsburgh, Pennsylvania 15251-6515

All payments shall reference the name of the Facility, Respondent's name and address, and the EPA Docket Number of this Consent Order. Copies of the transmittal of payment shall be sent simultaneously to the EPA Project Coordinator at the address specified in Section XV of this Consent Order and the Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

E. Respondent may dispute EPA's demand for payment of stipulated penalties for any alleged violation of this Consent Order by invoking the dispute resolution procedures below

under Section XVI. Stipulated penalties shall continue to accrue, but need not be paid, for any alleged noncompliance which is the subject of dispute resolution during the period of such dispute resolution. To the extent that Respondent does not prevail upon resolution of the dispute, Respondent shall remit to EPA within seven (7) calendar days of receipt of such resolution any outstanding penalty payment, in the manner described above in Paragraph D of this Section. To the extent Respondent prevails upon resolution of the dispute, no penalties shall be payable. In the event that Respondent prevails in part, penalties shall be due on those matters in which Respondent did not prevail.

F. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Respondent's obligation to comply with the requirements of this Consent Order.

G. The stipulated penalties set forth in this Section XV shall not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Order.

H. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Order.

## **XVI. DISPUTE RESOLUTION**

A. If a dispute arises under this Consent Order, the procedures of this Section ("DISPUTE RESOLUTION") shall apply. The Parties shall make reasonable efforts to informally, diligently and in good faith work together to resolve disputes at the Project Manager or immediate supervisor level.

B. If Respondent disagrees, in whole or in part, with any EPA disapproval, modification or other decision or directive made by EPA pursuant to this Consent Order, Respondent shall notify EPA in writing of its objections, and the basis therefore, within thirty (30) calendar days of receipt of EPA's disapproval, decision or directive. Such notice shall set forth the specific points of the dispute, the position which Respondent asserts should be adopted as consistent with the requirements of this Consent Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. EPA and Respondent shall have an additional thirty (30) calendar days from the receipt by EPA of the notification of objection, during which time representatives of EPA and Respondent may confer in person or by telephone to resolve any disagreement. In the event that resolution is not reached within this thirty (30) calendar day period, EPA will furnish to Respondent, in writing, its decision on the pending dispute. Said written decision shall state the basis and rationale for the decision.

C. In the event that the parties cannot resolve a dispute under the informal procedures set forth in the preceding Section XVI.A, within thirty (30) calendar days after its receipt of EPA's Decision as set forth in Section XVI.A above, Respondent must submit to EPA a written statement of its position ("Statement of Position") on the matter in dispute, including but not

limited to, any factual data analysis or opinion supporting that position and any supporting documentation relied upon by Respondent. After receipt of Respondent's Statement of Position, EPA will serve upon Respondent its Statement of Position. If the Parties are unable to reach an agreement after an additional thirty (30) calendar days, the dispute will be referred to the Director of the Land and Chemicals Division, EPA Region III, who will issue a decision resolving the dispute.

D. The invocation of formal dispute resolution procedures under this Section XVI shall not excuse, toll or suspend any obligation or deadline in any way of Respondent under this Consent Order, not directly in dispute, unless EPA determines otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Order. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV.

E. If EPA and Respondent reach agreement on the dispute at any stage, the agreement shall be set forth in writing and shall, upon signature of both parties, be incorporated into and become an enforceable part of this Consent Order.

F. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA, including, without limitation, decisions of the Director of the Land and Chemicals Division, Region III, pursuant to this Consent Order, shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel Respondent's compliance with this Consent Order.

## **XVII. FORCE MAJEURE AND EXCUSABLE DELAY**

A. Respondent shall perform the requirements of this Consent Order in the manner and within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. Respondent shall have the responsibility of providing sufficient documentation to support its burden of proving that a force majeure event caused the prevention or delay of performance. For purposes of this Consent Order, a force majeure is defined as any event arising from causes beyond the control of Respondent, or any entity controlled by Respondent or Respondent's contractors, which delays or prevents performance of any obligation under this Consent Order despite Respondent's best efforts to fulfill the obligation. The requirement that the Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to address the effects of any potential force majeure event: (1) as it is occurring, and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Force majeure does not include financial inability to complete the work, increased cost of performance, changes in Respondent's business or economic circumstances, inability to attain media cleanup standards, or failure to obtain federal, state, or local permits unless Respondent has made timely and complete applications thereof and has

exercised reasonable care to obtain such permit(s).

B. In the event of a delay due to an event beyond the control of Respondent, which Respondent claims is properly understood to be a force majeure event under the definition of force majeure established herein, Respondent shall notify EPA, in writing, within thirty (30) calendar days after it becomes or reasonably should have become aware of the delay caused by the force majeure event.

Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of Section XVII shall constitute a waiver of Respondent's right to assert a force majeure claim with respect to such event. In addition to the above notification requirements, Respondent shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Consent Order after it becomes or should have become aware of any event which may delay such compliance.

C. If EPA determines that there is excusable delay because the failure to comply or delay has been or will be caused by a force majeure, the time for performance of that requirement of this Consent Order may be extended, upon EPA approval, for a period equal to the delay resulting from such force majeure. This shall be accomplished through an amendment to this Consent Order pursuant to Section XXII. Such an extension shall not alter the schedule for performance or completion of any other tasks required by this Consent Order, unless these tasks are also specifically altered by amendment of the Consent Order. In the event that EPA and Respondent cannot agree that any delay or failure has been or will be caused by a force majeure, or if there is no agreement on the length of the extension, Respondent may invoke the dispute resolution procedures set forth in Section XVI.

## **XVIII. RESERVATION OF RIGHTS**

A. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of Work performed by Respondent pursuant to this Consent Order, to require that Respondent correct and/or re-perform any Work disapproved by EPA, and to request that Respondent perform tasks in addition to those stated in the Scope(s) of Work, Workplan(s), or this Consent Order.

B. GSA expressly reserves all rights and defenses that it may have in connection with this Consent Order or under RCRA, CERCLA, or any other statutory, regulatory or common law.

C. Notwithstanding any other provisions of this Consent Order, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such



wastes, on, at, or from the Remaining Facility, in accordance with RCRA, CERCLA and any other applicable statute or regulation, including but not limited to the right to bring enforcement action under RCRA, CERCLA, and any other applicable statute or regulation.

D. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law authority. This Consent Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law authority.

E. Respondent expressly waives its opportunity to confer with the EPA Administrator under § 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of law or fact set forth in this Consent Order.

F. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligation to comply with RCRA or any other applicable local, state, or federal law and regulation.

G. The signing of this Consent Order and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action pursuant to Section 7003 of RCRA, 42 U.S.C. Section 6973, or any other authority, should EPA determine that such action is warranted.

H. This Consent Order is not intended to be, nor shall it be construed as, a permit. Respondent acknowledges and agrees that EPA's approval of the Work, Workplans and/or Reports does not constitute a warranty or representation that the Work, Workplans and/or Reports will achieve the required cleanup or performance standards. This Consent Order does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permit or approval.

I. EPA reserves the right to perform any portion of the Work consented to herein or any additional site characterization, feasibility study, and response/corrective actions it deems necessary to protect public health or welfare or the environment. EPA may exercise its authority under RCRA, CERCLA or any other authority to undertake or require the performance of response actions at any time. EPA reserves the right to seek reimbursement from Respondent for costs incurred by the United States in connection with any such response actions. Notwithstanding compliance with the terms of this Consent Order, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA.

J. EPA reserves whatever rights it may have under CERCLA or any other law, or in equity, to recover from Respondent any costs incurred by EPA in overseeing the implementation of this Consent Order.

K. Respondent retains its right to assert claims against any third party with respect to the Remaining Facility.

### **XIX. OTHER CLAIMS**

Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation, or other entity for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any solid waste, hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Remaining Facility.

### **XX. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Respondent shall obtain or require its authorized representatives to obtain all permits and approvals necessary under such laws and regulations.

### **XXI. NOTICE OF NON-LIABILITY OF EPA**

EPA shall not be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Consent Order.

### **XXII. SUBSEQUENT MODIFICATION**

A. Except as provided in Paragraph C of this Section XXII below, this Consent Order may be amended only by mutual agreement of EPA and Respondent. Any such amendment shall be in writing, shall be signed by an authorized representative of each party, shall have as its effective date the date on which it is signed by EPA, and shall be incorporated into this Consent Order.

B. Minor modifications in the studies, techniques, procedures, designs or schedules utilized in carrying out this Consent Order and necessary for the completion of the project may be made by written agreement of the Project Coordinators. Such modifications shall be incorporated by reference into and be enforceable pursuant to this Consent Order and have as an effective date the date on which the agreement is signed by the EPA Project Coordinator.

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

### **XXIII. SEVERABILITY**

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

### **XXIV. TERMINATION AND SATISFACTION**

The provisions of this Consent Order may be deemed satisfied on a Remediation Parcel by Remediation Parcel basis. Provisions shall be deemed satisfied as to a Remediation Parcel upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed as to such Remediation Parcel. This notice shall not, however, terminate Respondent's obligation to comply with, or affect EPA's authority to seek stipulated penalties for violations of any of Respondent's continuing obligations hereunder including, but not limited to, the IC Plan(s) developed pursuant to Subsection VI.D.4.b.(2)a, Sections XII, "RECORD PRESERVATION", XVIII, "RESERVATION OF RIGHTS", XIX, "OTHER CLAIMS", and XX, "OTHER APPLICABLE LAWS."

### **XXV. ATTORNEY FEES**

The Respondent shall bear its own costs and attorney fees.

### **XXVI. FUNDING**

A. It is the expectation of the Parties to this Consent Order that all obligations of GSA arising under this Consent Order will be fully funded. GSA agrees to seek sufficient funding through its budgetary process to fulfill its obligations under this Consent Order.

B. Any requirement for the payment or obligation of funds, including stipulated penalties, by GSA established by the terms of this Consent Order shall be subject to the availability of appropriated funds. No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

C. Should GSA determine that there is an appropriations shortfall such that it cannot meet the requirements of this Consent Order, GSA will inform EPA within ten (10) days of making that determination. Within thirty (30) days thereafter, GSA and EPA will discuss whether re-scoping or implementing cost-saving measures would address the shortfall. If re-scoping or cost-saving measures are not sufficient to offset the appropriations shortfall such that the schedule to meet the requirements of this Consent Order should be modified, GSA and EPA shall discuss these changes for a modified schedule within sixty (60) days of GSA's original determination that there is a shortfall. Within forty-five (45) days of the discussion, GSA shall submit a revised schedule to EPA for approval.

#### **XXVII. EFFECTIVE DATE**

This Consent Order shall be effective when EPA signs this Consent Order after the public comment period as specified in Section IX, "PUBLIC COMMENT," above. Within 2 business days of signing this Consent Order, EPA will provide Respondent with a copy of the signature page of this Consent Order signed by the Director of the Land and Chemicals Division. The undersigned representative of Respondent certifies that it is fully authorized to enter into the terms and conditions of this Consent Order and to bind Respondent to this document.

Agreed this \_\_\_\_ day of \_\_\_\_\_, 2014.

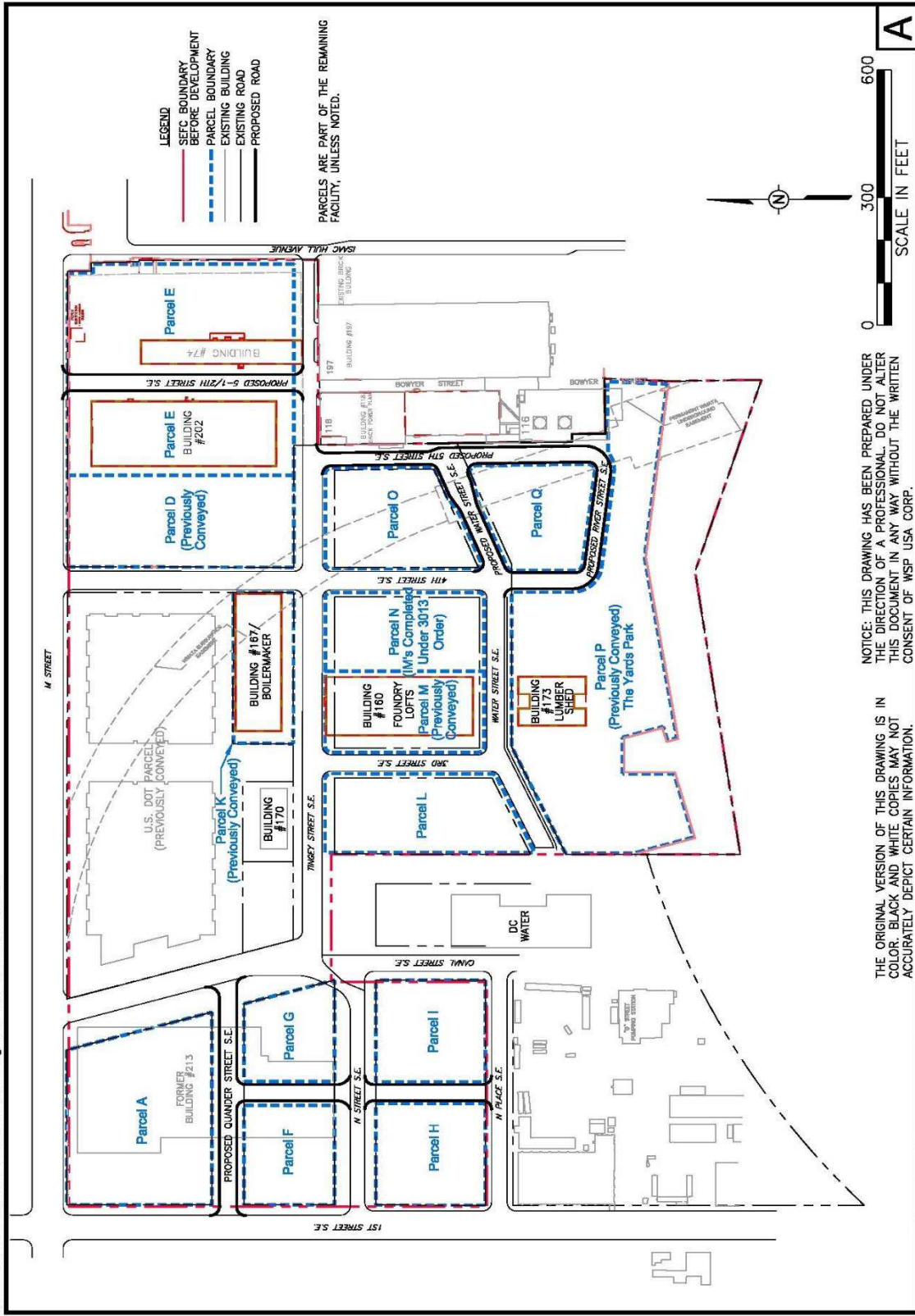
By: \_\_\_\_\_  
Darren J. Blue  
Regional Commissioner  
Public Buildings Service

It is so ORDERED and Agreed this \_\_\_\_ day of \_\_\_\_\_, 2014.

By: \_\_\_\_\_  
John A. Armstead  
Director  
Land and Chemicals Division  
Region III, U.S. Environmental Protection Agency

EFFECTIVE DATE: \_\_\_\_\_

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<b>WSP</b> WSP USA Corp. 11190 Sunrise Valley Drive, Suite 300 Reston, Virginia 20191 (703) 708-6500 www.wspgroup.com/usa		<b>Attachment A</b>  <b>SITE LAYOUT</b>		<b>SOUTHEAST FEDERAL CENTER</b> <b>WASHINGTON, D.C.</b>  PREPARED FOR <b>FOREST CITY WASHINGTON</b>	
Drawn By: EGC		Checked:		Approved: <i>JS</i> 7/23/2014	
				DWG Name: 00023582-013	

## ATTACHMENT B

### FORM OF COMPLETION REPORT APPROVAL TO BE PROVIDED BY EPA

#### COMPLETION REPORT APPROVAL

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##### I. BACKGROUND.

The United States Environmental Protection Agency (“EPA”) and The United States of America, acting by and through the Administrator of General Services and authorized representatives (“GSA”), entered into that certain Administrative Order on Consent, U.S. EPA Docket Number: RCRA-03-2014-0237TH (7003) (the “Consent Order”) with respect to a certain parcel of real property known as “Southeast Federal Center” and defined in the Consent Order as the “Remaining Facility.”

Pursuant to and in accordance with the Consent Order, EPA approved a CMS Report (as defined in the Consent Order) for the entirety of the Remaining Facility pursuant to that certain Final Decision and Response to Comments (the “FDRTC”) EPA issued on \_\_\_\_\_, 20\_\_.

On \_\_\_\_\_, 20\_\_, pursuant to the terms of the Consent Order, EPA approved a CMI Workplan [and CMI Design Report]<sup>1</sup> for a portion of the Remaining Facility known as “Parcel \_\_\_\_\_” and more particularly described on Exhibit A hereto (the “Subject Parcel”) for implementation on the Subject Parcel of the corrective measures selected for the Subject Parcel in the FDRTC.

Capitalized terms used but not defined in this Completion Report Approval shall have the meanings as set forth in the Consent Order.

##### II. COMPLETION.

On \_\_\_\_\_, 20\_\_, GSA, submitted to EPA a CMI Completion Report with respect to the Subject Parcel. By this document, EPA hereby approves the CMI Completion Report with respect to the Subject Parcel.

Subject to the land and/or groundwater use restrictions described in the CMI Workplan for the Subject Parcel as described in Exhibit A attached hereto (which restrictions shall, as set forth in the Consent Order, be documented by a restrictive covenant contained in any deed of the Subject Parcel by GSA or by an Environmental Covenant pursuant to the District of Columbia Uniform Environmental Covenants Act of 2006 if the Subject Parcel is ground leased by GSA), as of the date set forth below, EPA hereby agrees as follows:

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<sup>1</sup> Add bracketed language only if applicable to the Subject Parcel.

- (1) GSA has fully and finally completed the corrective measures set forth in the CMI Workplan [and CMI Design Report]<sup>2</sup> for the Subject Parcel, and there are no further actions required of GSA (or its successors and assigns, including grantees or lessees of the Subject Parcel) with respect to the Subject Parcel under the Consent Order, the CMS Report, the FDRTC, [or]<sup>3</sup> the CMI Workplan [or the CMI Design Report]<sup>4</sup> for the Subject Parcel [except for the following ongoing, active engineering controls, which are as of the date hereof operating properly and successfully:]<sup>5</sup> \_\_\_\_\_; and
- (2) [This Completion Approval Report constitutes, with respect to the Subject Parcel, the “written notice from EPA” referred to in section XXIV of the Consent Order, “TERMINATION AND SATISFACTION,” that GSA has satisfactorily completed the requirements of the Consent Order with respect to the Subject Parcel.]<sup>6</sup>

### III. RELIANCE.

GSA and its successors and assigns, including grantees or lessees of the Subject Parcel, shall be entitled to rely on this Completion Report Approval.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

#### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: \_\_\_\_\_

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

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

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<sup>2</sup> Add bracketed language only if applicable to the Subject Parcel.

<sup>3</sup> Add bracketed language if there is no CMI Design Report applicable to the Subject Parcel.

<sup>4</sup> Add bracketed language only if applicable to the Subject Parcel.

<sup>5</sup> Add bracketed language only if applicable to the Subject Parcel. If applicable insert specific list of ongoing active engineering controls required for the Subject Parcel including specific description of ongoing testing and operational standards and benchmarks, including termination standards.

<sup>6</sup> This bracketed language will not be included for parcels that require active, ongoing engineering controls.

## **Attachment C**

### **Index to the Administrative Record Southeast Federal Center Washington, DC**

1. United States Environmental Protection Agency (EPA), *RCRA §3013 Final Administrative Order on Consent with United States General Services Administration (GSA), Docket No. RCRA III-019-AM*, signed July 14, 1999.
2. URS Group, Inc., *Description of Current Conditions and Summary of Interim Measures/Site Stabilization, Southeast Federal Center, Washington, D.C.*, April 16, 2001.
3. URS Group, Inc., *RCRA Facility Investigation Work Plan, Southeast Federal Center Washington, D.C.*, April 16, 2001.
4. URS Group, Inc., *RCRA Facility Investigation, 44-Acre Parcel, SEFC, Washington, DC (with Revisions)*, June 16, 2004.
5. WSP Environmental Strategies, LLC, *Human Health Risk Assessment Work Plan, SEFC, Forest City Washington, D.C.*, October 26, 2006.
6. WSP Environmental Strategies, LLC, *SEFC Soil Management Plan*, November 9, 2006.
7. WSP Environmental Strategies, LLC, *Phase I Infrastructure Parcel Interim Measures Workplan*, March 26, 2007.
8. EPA approval letter to GSA dated July 17, 2008 for *RCRA Facility Investigation, 44-Acre Parcel, SEFC, Washington, DC (with Revisions)*.
9. EPA Final Decision and Response to Comments documents for the following Parcels: *Department of Transportation Parcel* (July 14, 2005); *Parcel M/Building 160* (February 24, 2010); *Parcel P (Park)* (August 26, 2010); *Parcel K/Building 167* (December 20, 2011); *Parcel D* (June 28, 2012).