



west virginia department of environmental protection

Office of Environmental Remediation
601 57th Street SE
Charleston, WV 25304
Phone: 304-926-0455

Jim Justice, Governor
Austin Caperton, Cabinet Secretary
dep.wv.gov

August 14, 2017

Certified Mail #91-7199-9991-7037-7329-2374

Mr. Ron Slonaker
Jefferson Orchards, Inc.
365 Granny Smith Lane
Kearneysville, WV 25442

Re: Voluntary Remediation Agreement, VRP Project #17031
Jefferson Orchards, Inc., Kearneysville, Jefferson County

Dear Mr. Slonaker:

Enclosed please find your copy of the signed and executed Voluntary Remediation Agreement for the subject site located in Kearneysville, West Virginia. Please include a copy of the agreement in the established public repository.

We look forward to your continued participation in the program, with the common goal of securing a Certificate of Completion for the site. In this manner, the property will remain in productive and protective use for the citizens of our state.

If you have any questions, I can be contacted by phone at 304-926-0499, ext. 1268 or email at john.m.meeks@wv.gov. Thank you for your participation in the Voluntary Remediation Program.

Sincerely,



John M. Meeks, PG, LRS
Project Manager

Enclosure

cc: David Connelly, LRS
WVDEP File #17031
ec: Erin Brittain, Program Manager, WVDEP/OER

WEST VIRGINIA VOLUNTARY REMEDIATION AGREEMENT FOR INVESTIGATION AND REMEDIATION ACTIVITIES

I. INTRODUCTION

1. The West Virginia Department of Environmental Protection (WVDEP), by its Secretary, and Jefferson Orchards, Inc. (“Applicant”) hereby enter into this Voluntary Remediation Agreement (“Agreement”) pursuant to the Voluntary Remediation and Redevelopment Act, W.Va. Code §22-22-1 et seq. (“the Act”), for the purpose of investigating and remediating the property that is subject of this Agreement (“the Site”).

II. JURISDICTION

2. This Agreement is entered into by and between the WVDEP, by its Secretary, and Jefferson Orchards, Inc., Applicant, pursuant to W.Va. Code §22-22-7.
3. The parties agree to the following terms and conditions as satisfying the requirements of the Act for the investigation and remediation of the Site. Applicant reserves all rights under common law, the West Virginia Code, and federal statutes to seek contribution or indemnity. The WVDEP reserves all rights it may have under common law, the West Virginia Code, and federal statutes to seek contribution or indemnity from persons other than the Applicant and those persons identified in W.Va. Code §22-22-18.
4. By entering into this Agreement, Applicant neither admits nor denies liability.

III. STATEMENT OF ELIGIBILITY

5. The Secretary has determined that the application submitted by Applicant is complete and that Applicant is eligible to participate in the Voluntary Remediation Program. However, neither the Secretary’s determination of eligibility nor the entry into this Agreement precludes any finding by the Secretary at a later date that the Site poses an imminent and substantial threat to human health or the environment within the meaning of W.Va. Code §22-22-7(d). In addition, if it is determined that Applicant withheld or misrepresented information that would be relevant to Applicant’s eligibility, the Secretary may withdraw from this Agreement.

IV. PARTIES BOUND

6. This Agreement shall apply to and be binding upon Applicant, its officers, secretaries, principals, employees, agents, successors, subsidiaries, and assigns and upon WVDEP, its employees, agents, and successors. The signatories to this Agreement certify that they are fully authorized to execute and legally bind the parties they represent. No change in ownership, corporate, or partnership status of Applicant shall in any way alter its status or responsibilities under this Agreement unless Applicant or WVDEP withdraws from this Program as provided herein.

7. Applicant shall provide a copy of this Agreement to any subsequent owners or successors before ownership rights are transferred. Applicant shall provide a copy of this Agreement to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Agreement, within fourteen (14) days after the effective date of this Agreement or within fourteen (14) days of the date of retaining their services.

V. DEFINITIONS

8. "Day" means the 24-hour period between 12:00 A.M. – 12:00 A.M.
9. "No further action" means a site is eligible to receive a Certificate of Completion on the basis of site assessment sampling or sampling data developed under a Voluntary Remediation Agreement which demonstrates that the site meets applicable standards.
10. "Rules" mean those rules adopted by the Secretary of the Department of Environmental Protection pursuant to the Voluntary Remediation and Redevelopment Act, and promulgated at 60 CSR 3 as the Voluntary Remediation and Redevelopment Rule.
11. "Site" shall be used in the manner as defined by W.Va. Code §22-22-2(dd) and for purposes of this Agreement means the property located in Kearneysville, West Virginia, and is more particularly described in the Application for Participation in the Voluntary Remediation Program submitted to WVDEP and accepted by letter dated July 6, 2017. A map depicting the site boundaries and including 80 acres is attached and incorporated herein as Exhibit "A".
12. All other terms contained in this Agreement shall be used in the manner as defined by W.Va. Code §22-22-2 or the Rules.

VI. STATEMENT OF PURPOSE

13. This Agreement sets forth necessary terms and conditions to satisfy the requirements of the Act for the investigation and remediation of the Site.
14. The activities conducted by Applicant under this Agreement are subject to approval by WVDEP as provided herein. Applicant shall provide all necessary information for the Site. The activities conducted by Applicant shall be consistent with this Agreement, all applicable laws and regulations, and any appropriate guidance documents.

VII. WORK TO BE PERFORMED

15. All work performed by Applicant pursuant to this Agreement shall be under the direction and supervision of a licensed remediation specialist (LRS). The licensed remediation specialist may be designated by Applicant as Applicant's project manager pursuant to Paragraph 33. Prior to the initiation of Site work, Applicant shall notify WVDEP, in writing, regarding the name and title of the licensed remediation specialist, if different from the licensed remediation specialist designated in the application, and of any contractors and/or subcontractors to be used in carrying out the terms of this Agreement.

16. Applicant shall submit a hardcopy and electronic version of a voluntary remediation work plan which, when implemented, provides for the attainment of the applicable standard(s) specified in Paragraph 18 of this Agreement.
17. The voluntary remediation work plans submitted with this Agreement include the following:

No voluntary remediation work plans are submitted with this Agreement.

18. The parties agree that the applicable standard(s) for the Site, consistent with Section 9 of the Rule, is as follows:

The parties agree that the applicable standard(s) for this Site will be determined by approval of the work plan(s) and report(s) described in Paragraph 20 of this Agreement. The parties agree that the future determination of standard(s) will be described in a modification of the Agreement.

19. The statutes and regulations for which compliance is mandated in connection with the investigation or remediation of this Site are as follows:

- a. Air Pollution Control Act, W.Va. Code §22-5-1 et seq.;
- b. Water Pollution Control Act, W.Va. Code §22-11-1 et seq.;
- c. Groundwater Protection Act, W.Va. Code §22-12-1 et seq.;
- d. Hazardous Waste Management Act, W.Va. Code §22-18-1 et seq.;
- e. Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.A §9603(a);
- f. Section 304 of Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C.A §§11001 to 11050;
- g. Occupational Safety & Health Act, 29 U.S.C.A §§651 to 678;
- h. Resource Conservation and Recovery Act, as amended, et seq., 42 U.S.C.A §6901 et seq.; and
- i. Toxic Substances Control Act, 15 U.S.C.A. §2601 et seq.; and
- j. any applicable regulation promulgated thereunder.

VIII. SUBMITTAL AND APPROVAL OF WORK PLANS OR REPORTS

20. Applicant shall submit hardcopies and electronic versions of the following work plans or reports in accordance with the schedule provided in this Agreement:

<i>Sampling and Analysis Plan</i>	<i>Third Quarter 2017</i>
<i>Site Characterization Report</i>	<i>Third Quarter 2017</i>
<i>Remedial Action Work Plan</i>	<i>Third Quarter 2017</i>
<i>Baseline/Residual Human Health and Ecological Risk Assessment</i>	<i>Fourth Quarter 2018</i>

When additional work plans or reports are planned as a follow-up to initial or subsequent activities, Applicant shall submit hardcopies and electronic versions of the future work plans, reports, and schedules in accordance with a modification of this Agreement.

21. The Secretary may, based upon accuracy, quality, and completeness, either approve or disapprove a work plan or report submitted by Applicant.
22. If the Secretary disapproves a work plan or report, the Secretary must, within five (5) days of its disapproval, notify Applicant in writing that its work plan or report has been disapproved. Such written notice shall include a list specifying the reasons that the work plan or report was disapproved, and shall specify all additional information needed for the work plan or report to obtain approval.
23. If the Secretary disapproves a work plan or report as submitted, Applicant must resubmit the work plan or report or terminate this Agreement as provided in Paragraph 74.
24. Except for the final report as described in §60-3-11, and Paragraph 29 of this Agreement, the Secretary shall either approve or disapprove all work plans and reports within thirty (30) days of receipt. Any such action taken on a work plan or report must be confirmed in writing and received by Applicant within the thirty (30)-day period. An extension of time for approval or disapproval of work plans or reports may be mutually agreed to by and between Applicant and the Secretary. If an extension of time is mutually agreed to by the Secretary and Applicant, it must be confirmed in writing.
25. After work plans or reports are resubmitted, the Secretary shall approve or disapprove the resubmitted work plans or reports within thirty (30) days of receipt, or within such shorter period specified in the parties' Voluntary Remediation Agreement. Any action taken on resubmitted work plans or reports must be confirmed in writing and received by Applicant within the thirty (30)-day period for acting on a resubmitted application, or within such shorter time specified in the parties' Voluntary Remediation Agreement. An extension of time or action on resubmitted work plans or reports may be mutually agreed to between Applicant and the Secretary. If an extension of time is mutually agreed to by the Secretary and Applicant, it must be confirmed in writing. If resubmitted work plans or reports are not approved by the Secretary, then the Secretary and Applicant may mutually agree, in writing, to a schedule for additional review of the resubmitted work plans or reports.
26. If work plans or reports are not approved or disapproved within thirty (30) days of receipt by the Secretary, or if resubmitted work plans or reports are not approved or disapproved within thirty (30) days of receipt by the Secretary, then the work plans or reports will be deemed approved unless such work plans or reports are determined to be materially inaccurate.
27. Any notice required to be given under the provisions of this section must be in writing and sent via United States certified mail, package delivery service, or hand-delivered. Notice is complete upon receipt.

28. If Applicant desires to proceed with the implementation of the approved work plan, Applicant must notify the Secretary in writing not more than ninety (90) days after the work plan is approved. After providing such notice, Applicant shall initiate the work detailed in the voluntary remediation work plan according to the schedule as set forth in the Secretary's Notice of Approval. Upon the Secretary's receipt of notice that Applicant intends to proceed, the fully approved voluntary remediation work plan shall be deemed incorporated into and made an enforceable part of this Agreement.
29. Upon completion of the work contemplated by all work plans, Applicant shall submit to the Secretary hardcopies and electronic versions of the final report prepared by the licensed remediation specialist, along with a request for a Certificate of Completion as required in §60-3-12.1.c.1. The final report shall include all information necessary to verify that all work contemplated by the work plan has been completed and all information required by the Rules. Upon receiving the request for a Certificate of Completion, the Secretary shall evaluate the final report provided by Applicant and determine, within sixty (60) days, whether the final report was properly issued by the licensed remediation specialist.

IX. ADDRESSES FOR ALL CORRESPONDENCE

30. Documents, including reports, notifications, approvals, disapprovals, and other correspondence, to be submitted under this Agreement, may be sent by U.S. certified mail, return receipt requested, hand delivery, overnight mail, or by courier service to the following addresses or to such addresses as Applicant or WVDEP may designate in writing.

- a. Documents to be submitted to WVDEP should be sent to:
West Virginia Department of Environmental Protection
Division of Land Restoration
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0455
Email: DEPOERFileCopy@wv.gov

A copy of all documents should be sent to the WVDEP project manager:

Ms. Sheena Moore
West Virginia Department of Environmental Protection
Division of Land Restoration
22288 Northwestern Pike
Romney, WV 26757
Phone: (304) 707-6094
Email: Sheena.R.Moore@wv.gov

- b. Documents to be submitted to Applicant should be sent to:
Attn: Mr. Ron Slonaker
365 Granny Smith Lane
Kearneysville, WV 25442
Phone: (304) 676-0981

A copy of all documents should be sent to the LRS:

David T. Connelly, LRS
204 Chase Drive
Hurricane, WV 25526
Phone: (304) 757-4777
Email: david.connelly@erm.com

X. COMPLIANCE WITH APPLICABLE LAWS

31. All work undertaken by Applicant pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and local laws, ordinances, and regulations, including, but not limited to, all Occupational Safety and Health Administration, Department of Transportation, and Resource Conservation and Recovery Act regulations. Applicant shall be responsible for obtaining all permits which are necessary for the performance of any work hereunder.
32. Completion of the work performed in accordance with this Agreement shall satisfy all applicable remediation requirements of Chapter 22 of the West Virginia Code, including the following: the Surface Coal Mining and Reclamation Act, W.Va. Code §22-3-1 et seq.; the Air Pollution Control Act, W.Va. Code §22-5-1 et seq.; the Water Pollution Control Act, W.Va. Code §22-11-1 et seq.; the Groundwater Protection Act, W.Va. Code §22-12-1 et seq.; the Solid Waste Management Act, W.Va. Code §22-15-1 et seq.; the Underground Storage Tank Act, W.Va. Code §22-17-1 et seq.; and the Hazardous Waste Management Act, W.Va. Code §22-18-1 et seq.

XI. PROJECT MANAGER/LICENSED REMEDIATION SPECIALIST

33. The WVDEP project manager for the Site is identified in Paragraph 30 of this Agreement. Applicant has designated David Connelly (LRS#251) as Applicant's licensed remediation specialist and project manager for the Site. The licensed remediation specialist shall be responsible for the supervision of all activities under this Agreement. The WVDEP project manager will be the WVDEP designated representative at the Site. To the maximum extent possible, communications between Applicant and WVDEP and all documents (including reports, approvals, and other correspondence) concerning the activities performed pursuant to the terms and conditions of this Agreement shall be directed through the project managers. During the implementation of this Agreement, the project managers shall, whenever possible, operate by consensus and shall attempt in good faith to resolve disputes informally through discussion of the issues. Each party has the right to change its respective project manager or licensed remediation specialist and shall notify the other party of such change within seventy-two (72) hours.
34. The absence of Applicant's or WVDEP's project manager or licensed remediation specialist from the Site shall not be cause for the stoppage of work. Applicant's project manager or licensed remediation specialist or his supervisor or licensed remediation specialists shall

reasonably be available by telephone while work is being performed. Applicant shall designate a person to be in charge who will be available on-site when field work is being performed.

XII. QUALITY ASSURANCE

35. Applicant shall use quality assurance, quality control, and chain of custody procedures in accordance with the Quality Assurance Project Plan approved for use by WVDEP throughout any work plan sample collection and analysis activities under this Agreement, unless WVDEP agrees otherwise.
36. Applicant shall provide the WVDEP project manager with reasonable advance notice of all sampling and analysis as detailed in the work plan. To provide quality assurance and maintain quality control, Applicant shall:
- a. use laboratories certified by WVDEP;
 - b. ensure that all sampling and analyses are performed according to US EPA methods, the approved Quality Assurance Project Plan, or other methods deemed satisfactory by WVDEP; and
 - c. ensure that any laboratories used by Applicant for analyses participate in a documented Quality Assurance/Quality Control program that complies with US EPA guidance documents. As part of such a program, and upon request by WVDEP, such laboratories shall perform analyses of samples provided by WVDEP to demonstrate quality of analytical data for each such laboratory.
37. In the event any laboratory fails to perform the activities required above, WVDEP reserves the right to reject any data not gathered pursuant to the requirement listed above, and to require that Applicant utilize a different laboratory.

XIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

38. Applicant shall, upon request, make the results of all sampling, including raw data and/or tests or other data generated by Applicant, or on Applicant's behalf, available to WVDEP. WVDEP shall make available to Applicant the quality-assured results of sampling and/or tests or other data similarly generated by WVDEP.
39. At the request of WVDEP, Applicant shall permit an authorized representative of WVDEP to take samples of wastes, soils, air, surface water, and groundwater at the Site. For each sample taken, the authorized representative shall provide Applicant a receipt describing the sample obtained and, if requested, a portion of each sample equal in weight or volume to the portion retained.

XIV. ACCESS

40. To the extent that the Site or other areas where work is performed hereunder is presently owned or controlled by parties other than those bound by this Agreement, Applicant shall obtain, or use its best efforts to obtain, access agreements from the present owners. Best efforts shall include, at a minimum, a certified letter from Applicant to the present owner of such property requesting access agreements to permit Applicant or any authorized representative of WVDEP access to such property. Such agreement shall provide access for authorized representatives of WVDEP specified below. In the event such access agreements are not obtained, Applicant shall so notify WVDEP, which may then, at its discretion, assist Applicant in gaining access.
41. Upon presentation of proper credentials, authorized representatives of WVDEP shall be provided access by Applicant to the Site and other areas where work is to be performed under this Agreement at all reasonable times. Such access shall be related solely to the work being performed on the Site and shall include, but not be limited to: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of Applicant in carrying out the terms of this Agreement; and conducting such tests, inspections, and sampling as WVDEP may deem necessary consistent with this Agreement. Applicant shall permit WVDEP's authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertain to this Agreement over which Applicant exercises control. All persons with access to the Site pursuant to this Agreement shall comply with any applicable health and safety plans.
42. Nothing herein shall be construed as restricting the inspection or access authority of WVDEP under any law or regulation.

XV. RECORD PRESERVATION

43. Applicant agrees to preserve, during the pendency of this Agreement, and for a minimum of three (3) years after its termination, all documents required by this Agreement and any other documents generated or used to prepare the documents required by this Agreement. Upon request by WVDEP, Applicant shall make available to WVDEP such records, or copies of any such records.
44. Applicant may assert a confidentiality claim for any information submitted pursuant to this Agreement on the grounds that such information, or parts thereof, if made public would divulge methods, processes, or activities entitled to protection as trade secrets. If no such confidentiality claim accompanies the information when it is submitted to WVDEP, it may be made available to the public by WVDEP without further notice to Applicant. Applicant agrees not to assert any confidentiality claim with regard to any physical or analytical data regarding environmental conditions at the Site.

XVI. DISPUTE RESOLUTION

45. The parties shall use their best efforts to, in good faith, resolve all disputes or differences of opinion informally. The period of informal resolution shall not exceed thirty (30) days from the time that either party commences informal resolution by verbally citing the dispute with reference to this paragraph to the other party, unless the parties agree otherwise in writing. If, however, the parties are unable to resolve the dispute informally, Applicant may present written notices of such dispute to WVDEP and set forth specific points of dispute and the position of Applicant. This written notice shall be submitted no later than ten (10) calendar days after the expiration of the informal dispute resolution period. Applicant's project manager will notify the WVDEP project manager immediately by phone or other appropriate methods of communication, prior to written notice, when he/she believes that the parties are unable to resolve a dispute. If either party requests, within fourteen (14) days receipt of written notice of the dispute by WVDEP, disputes will be submitted to a mutually-approved impartial third party for non-binding mediation.
46. After the parties have attempted in good faith to resolve disputes pursuant to the terms of Paragraph 45, any unresolved disputes arising out of or relating to this agreement, or the breach thereof, shall be settled by binding arbitration and judgment on the arbitrator's decision may be entered in any court having jurisdiction. Applicant shall notify WVDEP in writing of any unresolved disputes which they believe require arbitration. Within five (5) days, the parties shall agree to an arbitrator. If the parties fail to agree to an arbitrator, the arbitration shall be administered by the American Arbitration Association. In selecting a mediator or arbitrator, the parties shall attempt to select persons with experience in environmental matters, including, but not limited to, a licensed remediation specialist.
47. Applicant shall make a written submission in support of its position to the agreed arbitrator within ten (10) days of the arbitrator's selection, and the other party may make a written response in support of its position within seven (7) days thereafter. Upon notice to the parties, the arbitrator may request additional information or make specific inquiry of either party. Within thirty (30) days of the written response under this paragraph, the arbitrator shall render a decision on the dispute and notify each of the parties of the decision. Applicant agrees to pay for the services of any mediator and arbitrator used by the parties in attempting to resolve disputes arising out of or relating to this agreement. Each party shall pay its own legal fees in conducting mediation or arbitration.
48. Until the dispute is resolved, any actions concerning that element of work in dispute shall be halted. The resolution of the dispute shall be incorporated into the work plan and made an enforceable part thereof. The time schedule for the work in dispute shall be extended by the amount of time needed for resolution. Elements of work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the work plan.
49. Elements of work and any actions required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plan or procedure, and into this Agreement. Applicant shall proceed with all remaining work according to the modified plan or procedure.

XVII. FORCE MAJEURE

50. Applicant shall cause all work or required reporting to be performed within the time limits set forth herein, unless performance is delayed by events which constitute a force majeure. "Force Majeure" shall mean conditions or circumstances beyond the reasonable control of Applicant which could not have been overcome by due diligence and shall include, without limitation, acts of God, action or inaction of other governmental agencies, or administrative or judicial tribunals or other third parties, or strikes or labor disputes (provided, however, Applicant shall not be required to concede to any labor demands), which prevent or delay Applicant from complying with the work plan.
51. Applicant shall notify WVDEP by telephone within three (3) working days and by writing no later than seven (7) working days after any event, which Applicant contends is a Force Majeure. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by Applicant to minimize the delay, and the timetable by which these measures will be implemented. Applicant shall have the burden of demonstrating that the event is a Force Majeure. The decision of whether an event is a Force Majeure shall be made by the Secretary or the Secretary's designate. The decision shall be immediately communicated to Applicant.
52. If a delay is attributable to a Force Majeure, the time period for performance under this Agreement shall be extended, in writing, by the amount of time that is attributable to the event constituting the Force Majeure.

XVIII. RESERVATION OF RIGHTS

53. WVDEP and Applicant reserve all rights and defenses they may have pursuant to any available authority unless expressly waived herein.
54. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of actions, or demands in law or equity which the parties may have against any person, firm, partnership, or corporation not a party to this Agreement 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 materials, hazardous substances, hazardous waste, contaminants, or pollutants at, to, or from the Site. The parties to this Agreement expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this Agreement, and as to each other for matters not covered hereby.
55. Applicant reserves the right to seek contribution, indemnity, or any other available remedy against any persons found to be responsible or liable for contributions, indemnity, or otherwise for any amounts which have been or will be expended by Applicant in connection with the Site.

56. WVDEP reserves the right to bring an action, including an administrative action, against Applicant for any violation of statutes or regulations except for the specific violations or releases that are being remediated in the work plan.
57. WVDEP reserves the right to withdraw its approval of the work plan at any time during the implementation of the work plan if:
- a. WVDEP determines that Applicant has failed to substantially comply with the terms and conditions of this Agreement or the work plan;
 - b. Applicant declines to implement the work plan after being notified of its approval by WVDEP; or
 - c. WVDEP determines that a hazardous substance or petroleum has become an imminent or substantial threat to human health or the environment.

Upon WVDEP's withdrawal of its approval, this Agreement shall be terminated and WVDEP reserves the right to bring any action to enforce any statute or regulation under Chapter 22 of the West Virginia Code, including an action regarding the violations or releases that were the subject of this Agreement.

58. WVDEP acknowledges that, pursuant to W.Va. Code §22-22-18, Applicant, upon receipt of the Certificate of Completion, is not liable for claims for contribution concerning matters addressed in the Voluntary Remediation Agreement or any other work plan.

XIX. ADMINISTRATIVE COSTS

59. Applicant agrees to reimburse WVDEP for all of its reasonable administrative costs associated with implementation of this Agreement at the rate of 3.5 times the hourly rate of the primary employee assigned to the Site plus the actual and direct expenses of such employee. Within sixty (60) calendar days of the approval of the work plan, WVDEP shall send Applicant an itemized list of estimated in-house costs that WVDEP expects to incur under this Agreement. Applicant agrees that a reasonable estimate of WVDEP contractor costs will be provided as described in the following paragraph. Itemization will be in standard WVDEP format. The estimated costs may include the preparation of the itemized list of administrative costs. Upon request, Applicant shall have the right to examine any documentation in WVDEP's possession used to develop the itemized list of costs. Requests for such documentation shall be made in writing and must be received by WVDEP within two (2) weeks from the date which Applicant receives the estimate of costs.
60. WVDEP agrees to allow Applicant to review and comment on the scope of work and associated cost estimates for outside contractors prior to WVDEP's authorization of the said contractor to proceed with the associated work. WVDEP will strive whenever possible to use cost effective and qualified outside contractors. "Outside contractors" are defined as individuals, partnerships, or corporations paid by WVDEP to assist in the oversight of the activities under this Agreement (e.g., risk assessment), but shall not include WVDEP

employees. Cost estimates and invoices from outside contractors shall be submitted to Applicant within two (2) weeks from the date WVDEP receives the cost estimate or invoice. Applicant shall raise any and all objections regarding cost estimates or invoiced work to WVDEP within two (2) weeks from the date Applicant receives the forwarded estimates/invoices from WVDEP or within two (2) weeks of the receipt by Applicant of any back-up documentation of the said cost estimates/invoices which is contained in WVDEP files and requested by Applicant, whichever shall last occur. Notwithstanding any other provision of this Agreement, the process for the review of and objection to any cost estimates pursuant to this paragraph may extend the period otherwise provided in this Agreement for WVDEP review of the submitted work plan or report by no more than an additional thirty (30) days.

61. Applicant shall pay these costs in accordance with the following provisions. WVDEP shall periodically send an accounting of contractor, subcontractor, and laboratory costs to Applicant. Said accounting shall itemize all costs incurred by WVDEP for the previous calendar quarter. Applicant shall pay said amount within forty-five (45) days of receipt of the accounting. WVDEP shall also periodically send an accounting of WVDEP's primary employee time charged to this Site to Applicant. Applicant shall pay said amount within forty-five (45) days of receipt of the accounting.
62. Checks should be made payable to the Voluntary Remediation Fund and mailed along with a transmittal letter stating the Site name and address to:

West Virginia Department of Environmental Protection
Attention: Director, Division of Land Restoration
601 57th Street SE
Charleston, WV 25304

In addition, a copy of the check and transmittal letter should be mailed to the WVDEP project manager.

XX. NOTICE OF BANKRUPTCY

63. As soon as Applicant has knowledge of its intention to file bankruptcy or no later than seven (7) days prior to the actual filing of a voluntary or involuntary bankruptcy petition, Applicant shall notify WVDEP of its intention to file a bankruptcy petition.

XXI. INDEMNIFICATION

64. Applicant agrees to indemnify and save and hold the State of West Virginia, its agencies, departments, agents, and employees harmless from and all claims or causes of action arising from, or on account of, acts or omissions of Applicant, its officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Agreement.

XXII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

65. The effective date of this Agreement shall be the date on which Applicant receives the notice that this Agreement has been signed by the Secretary of WVDEP.
66. This Agreement may be amended by mutual agreement of WVDEP and Applicant. Amendments shall be in writing and shall be effective when Applicant receives notice that the amendment has been signed by the Secretary of WVDEP.
67. If the Secretary determines that there is an imminent threat to the public, he or she may unilaterally modify or amend this Agreement.

XXIII. EXTENSIONS OF TIME PERIODS

68. Any written response shall be deemed timely performed if hand delivered or postmarked by the last day of any time period prescribed herein. Whenever a party has the right or is required to do some act or make some response within a prescribed period after the service of a notice or other paper on him and the notice or paper is served upon him by U.S. mail, three (3) days shall be added to the prescribed period.
69. Whenever any party is called upon to respond or otherwise act in a certain number of days, and if the final day occurs on a Saturday, Sunday, or legal holiday (whether state or national), such time limitation shall automatically extend to the next business day after such Saturday, Sunday, or legal holiday.
70. Any time periods specified in this Agreement may be extended only by agreement of the parties in writing.

XXIV. TERMINATION AND SATISFACTION

71. Upon completion of the final report prepared by the licensed remediation specialist, Applicant may seek a Certificate of Completion from the Secretary. Upon receipt of a request for a Certificate of Completion, the Secretary shall determine that the Site meets applicable standards for those areas of the Site and for those contaminants identified in the Voluntary Remediation Agreement and that Applicant has complied with the Voluntary Remediation Agreement and any approved work plans for the Site. Upon making this determination, the Secretary shall issue a Certificate of Completion which conforms substantially to Appendix 60-3C of the Rules. Where a land use covenant is required by this Agreement, such Certificate of Completion shall not become effective until it is properly filed with the Clerk of the County Commission of the county in which the property is located.

If the Secretary determines that the Certificate should not be issued because work required by this Agreement and any approved work plans has not been completed or because the Site does not meet applicable standards, the Secretary shall initiate the procedures relating to denial of a Certificate as provided in the Rules.

72. The provisions of this Agreement shall be satisfied and this Agreement shall terminate when the Secretary issues the Certificate of Completion.
73. Nothing in this Agreement shall restrict the State of West Virginia from seeking other appropriate relief to protect human health or the environment from pollution or contamination at or from this Site not remediated in accordance with this Agreement.
74. Applicant may, in its sole discretion, terminate this Agreement by providing to the Secretary fifteen (15) days advance written notice of termination. Only those costs incurred or obligated by the Secretary before the notice of termination is received are recoverable if the Agreement is terminated. If Applicant terminates this Agreement, then Applicant shall pay WVDEP's costs associated with the voluntary remediation within thirty-one (31) days after receiving notice that the costs are due and owing.

XXV. LAND USE COVENANTS

75. The parties agree that restrictions may be required on the future use of the Site. Once such restrictions have been determined, an appropriate land use covenant will be prepared and recorded for the Site.

XXVI. REOPENER

76. Upon agreement of the parties or upon occurrence of one or more conditions of W.Va. Code §22-22-15, this Agreement may be reopened in accordance with W.Va. Code §22-22-15 and the Rules implementing that section.

XXVII. PRECEDENCE OF AGREEMENT

77. In the event that conflict arises among the terms and conditions of this Agreement, the Statement of Work, or the approved work plan, this Agreement shall govern and the terms and conditions hereunder shall determine the parties' rights and responsibilities.

XXVIII. GOVERNING LAW

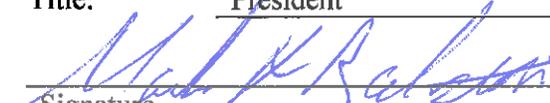
78. This Agreement will be governed under the laws of the State of West Virginia.

Applicant

Jefferson Orchards, Inc. _____

Printed Name: Mark Ralston

Title: President

 _____
Signature Date 8/14/2017

West Virginia Department of Environmental Protection

Printed Name: Patricia A. Hickman

Title: Director, Division of Land Restoration

 _____
Signature Date 8-14-14



- Legend**
- Property Boundary
 - VRP Site Boundary