

## ACCESS AGREEMENT

This ACCESS AGREEMENT (“AGREEMENT”) is made and entered on the \_\_\_\_\_ day of \_\_\_\_\_ 2012 by and between the CITY OF COLUMBUS, OHIO, which is acting by and through its DEPARTMENT OF PUBLIC UTILITIES (“CITY”), a municipal corporation, and the STATE OF OHIO, which is acting by and through its DEPARTMENT OF TRANSPORTATION (“ODOT”).

### RECITALS

- A. **WHEREAS**, ODOT is completing construction of the SCIOTO BIKEWAY CONNECTOR PROJECT, PID 77591 (“PROJECT”) that runs parallel to RIVERSIDE DRIVE into downtown COLUMBUS, OHIO; and
- B. **WHEREAS**, In order for ODOT to complete the Project, it is necessary to fill a portion of the floodway and consequently ODOT is required to establish a compensatory storage area at a location near or adjacent to the Project (“COMPENSATORY AREA”); and
- C. **WHEREAS**, ODOT proposed construction of the COMPENSATORY AREA on certain real property owned by the CITY across the street from the CITY’S facility at 910 DUBLIN RD, COLUMBUS, OH 43215 (“PROPERTY”, which is depicted on the attachment, EXHIBIT “A”); and
- D. **WHEREAS**, ODOT conducted a PHASE II ENVIRONMENTAL SITE ASSESSMENT (“ASSESSMENT”, which is depicted on the attachment, EXHIBIT “B”) of the Property, and the Assessment found that the Property contains solid wastes and hazardous and potentially hazardous material;
- E. **WHEREAS**, ODOT requested the CITY to provide ODOT access to its Property to permit the construction of the Compensatory Area; and
- F. **WHEREAS**, the CITY agrees and permits ODOT to possess access to construct the Compensatory Area subject to the terms and conditions set forth in this Agreement; and

**NOW, THEREFORE**, for good and valuable consideration, including the mutual covenants and benefits stated in this Agreement, the Parties agree as follows:

- 1. The CITY grants to ODOT, and ODOT’S contractors, the right of reasonable ingress and egress access to, in, on, upon, under, over, and through the Property between the dates of \_\_\_\_\_ and \_\_\_\_\_, for the sole and exclusive purposes of constructing, excavating, removing, disposing, operating, and monitoring the establishment of the Compensatory Area (collectively “WORK”); however, subject to the following requirements:
  - 1.1. All drill cuttings generated during the drilling of the Compensatory Area, and all drill water removed from the monitoring wells, shall be collected in UNITED STATES DEPARTMENT OF TRANSPORTATION approved fifty-five (55) gallon drums, and, within thirty (30) days after such collection, such drums shall be removed from the Property and transported to a licensed disposal site. All such disposals shall be properly documented or manifested, or both, as required by law.
  - 1.2. ODOT shall remove all fill, solid waste, and hazardous and potentially hazardous material from the Compensatory Area, and ODOT shall cap and buffer the Compensatory Area with a two (2) foot clay liner. Prior to entry onto the Property, ODOT shall provide the CITY with a copy of the following documents and undertake the following actions as recommended by the Assessment:
    - 1.2.1. A health and safety plan during the Work to mitigate potential worker exposure issues; and
    - 1.2.2. A storm water pollution prevention plan during the Work to ensure that runoff from the Property does not enter the Scioto River; and

- 1.2.3. Stockpiling and characterizing any soil that requires excavation and off-site disposition prior to such disposal.
  - 1.3. ODOT shall secure all necessary permits, plan approvals, and other local, state, and federal governmental authorizations, including, if necessary, any approvals required as a hazardous waste generator of such wastes. ODOT agrees to assume all duties as a hazardous waste generator under the RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) and any other duties related to the remediation and disposal of hazardous and potentially hazardous waste as imposed by federal, state, or local laws, regulations, rules, or standards. Furthermore, ODOT shall be responsible for the payment of all permit and waste disposal fees. Disposal of all soils, solid, hazardous and potentially hazardous wastes shall be at facilities properly licensed and permitted to accept such waste. All such disposals shall be properly documented or manifested, or both, as required by law.
  - 1.4. Prior to entry on the Property, ODOT shall obtain prior written approval of its construction plans for the Compensatory Area from the CITY'S DEPARTMENT OF PUBLIC UTILITIES, DIVISION OF POWER AND WATER, which the CITY'S approval shall not be unreasonably denied.
  - 1.5. ODOT shall give the CITY'S DIRECTOR OF PUBLIC UTILITIES, at least thirty (30) days advance written notice of ODOT's intent to enter the Property and exercise its rights under this Agreement.
2. ODOT, and ODOT's contractors, shall conduct the Work in full compliance with all applicable local, state, and federal rules, regulations, guidelines, and laws.
3. ODOT shall provide the CITY with copies of all information, reports, disposal records, studies, etc, related to the Property, and related to ODOT's Work performed on the Property prior to, and subsequently after, the Execution of this Agreement, including but not limited to any previous or future soil borings, laboratory reports, site investigations, environmental assessments, etc.
4. In the course of ODOT's Work, ODOT shall not make any other changes to the Property that is not contemplated under this agreement, and after the Work's completion, ODOT shall not use the Property for any kind of storage, placement, or occupation.
5. ODOT shall require all of its contractors conducting business on the Property to obtain and maintain, in full force and effect, (a) an insurance policy(ies) for comprehensive broad form general liability, insuring against any claims for personal injury, death, or property damage occurring in, on, upon, under, over, or through, the Property, subject to combined single limits of not less than ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) for personal injury or death, and not less than FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00) for property damage arising out of any one occurrence; and (b) worker's compensation at the required statutory levels. Prior to the Work's commencement, ODOT shall provide to the CITY copies of all applicable insurance certificates, which evidence compliance with this article, and ODOT shall name the CITY OF COLUMBUS, OHIO, as an additional insured on all policies referenced in this article.
6. ODOT agrees that the CITY and its agents, employees, and elected officials shall not be liable to ODOT, its contractor's, or employees, and ODOT releases the CITY and its agents, employees, and elected officials from any liability for any personal injury, loss of income, or damage to or loss of property or persons, from any cause or claim whatsoever resulting from the exercise of the rights granted in this Agreement. Furthermore, ODOT, its contractor's, and employees, use of the Property shall be at their sole risk, and the CITY shall not be liable to ODOT, its contractors, or employees, for any such damage or loss to the extent compensated by insurance.

7. ODOT shall be solely responsible for arranging for the disposal, transport, and payment of all the solid waste and hazardous material from the Property in accordance with applicable sections of RCRA and any other applicable laws and regulations.
8. All notices issued or required under this Agreement must be in writing and shall be deemed validly submitted if that notice is sent by overnight delivery or regular certified mail, return receipt requested. Notice shall be addressed as follows:

CITY OF COLUMBUS, OHIO

DIRECTOR  
DEPARTMENT OF PUBLIC UTILITIES,  
DIVISION OF WATER  
910 DUBLIN RD  
COLUMBUS, OHIO 43215

WITH A COPY TO:

CHIEF REAL ESTATE ATTORNEY  
COLUMBUS CITY ATTORNEY, REAL ESTATE DIVISION  
109 NORTH FRONT STREET, 4<sup>TH</sup> FLOOR  
COLUMBUS, OHIO 43215

OHIO DEPARTMENT OF TRANSPORTATION

BRIAN S. TATMAN  
ENVIRONMENTAL COORDINATOR  
OFFICE OF PLANNING AND ENGINEERING  
OHIO DEPARTMENT OF TRANSPORTATION –DISTRICT 6  
PH: (740)833-8065  
FAX: (614)887-4659

9. This Agreement shall inure to the benefit of, and be binding upon, the Parties, and their respective successors and assigns. However, this Agreement is not assignable by ODOT without the prior written consent of the CITY, and any permitted assignment by the CITY shall not release the assigning-party from its duties and obligations to perform in accordance with this Agreement's provisions.
10. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, then the remaining terms and provisions of this Agreement shall not be affected, but each term and provision of this Agreement shall be valid and be enforced to the maximum extent permitted by law.
11. No waiver of any covenant or condition, or breach of any covenant or condition, of this Agreement shall constitute a waiver of any subsequent breach of any covenants or conditions, or breach of any subsequent covenants or conditions of this Agreement.
12. This Agreement shall not, in any manner, limit or affect the CITY'S rights associated with its ownership of the Property, and nor shall anything in this Agreement be construed to create a real property interest by ODOT in the Property. In addition, ODOT shall have no right to occupy any portion of the Property after the expiration or termination of this Agreement.
13. This Agreement shall be construed and enforced in accordance with the laws of the STATE OF OHIO. All claims, counterclaims, disputes, and other matters in question between the CITY, its agents and employees, and ODOT arising out of, or relating to, this Agreement, or its breach, shall be decided in a court of competent jurisdiction within the COUNTY OF FRANKLIN, STATE OF OHIO.
14. Parties agree that this Contract contains the entire agreement between the Parties, and any agreements made after the enforceability of this Contract shall be ineffective to change, modify, or discharge, any portion of this Contract unless such agreement is in writing, signed by the Owner and CITY, and approved by the Owner and CITY'S appropriate authorities.
15. Parties shall execute and apply good faith and cooperation in the execution of all terms and conditions contained in this Agreement.
16. The signatories of this Agreement represent that they have the authority to bind themselves and their respective organizations to this Agreement.

**\*\*\*SIGNATURES BEGIN ON NEXT PAGE\*\*\***

**APPROVED:**

IN WITNESS WHEREOF, the CITY OF COLUMBUS, OHIO, by GREG J. DAVIES, DIRECTOR, DEPARTMENT OF PUBLIC UTILITIES, as authorized by COLUMBUS CITY COUNCIL ORDINANCE № \_\_\_\_\_, caused the voluntary execution of this Agreement to be subscribed on \_\_\_\_\_, 2012.

**CITY OF COLUMBUS, OHIO,**  
A MUNICIPAL CORPORATION

\_\_\_\_\_  
GREG J. DAVIES, DIRECTOR  
DEPARTMENT OF PUBLIC UTILITIES

---

**APPROVED:**

IN WITNESS WHEREOF, OHIO DEPARTMENT OF TRANSPORTATION, by its duly authorized representative, voluntarily caused the execution of this Agreement to be subscribed on \_\_\_\_\_, 2012.

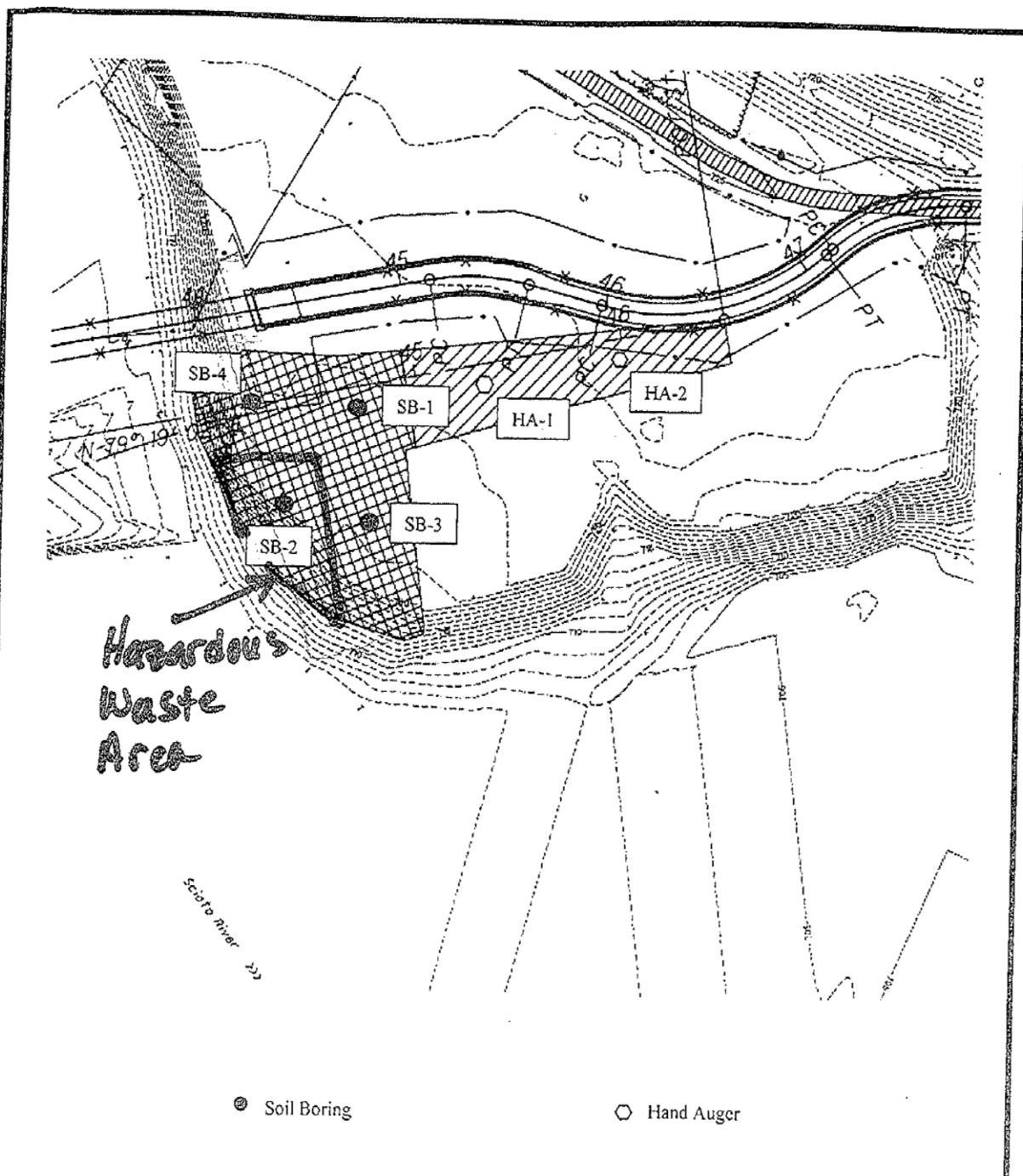
**OHIO DEPARTMENT OF TRANSPORTATION,**


\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
Its: \_\_\_\_\_

---

**THIS DOCUMENT APPROVED AS TO FORM: (3/5/2012)**  
**COLUMBUS CITY ATTORNEY, REAL ESTATE DIVISION**  
**BY: USAMAH ABDULLAH, ASSISTANT CITY ATTORNEY**  
**FOR: DEPARTMENT OF PUBLIC UTILITIES (JASON SANSON)**  
**RE: ODOT ACCESS AGREEMENT – NEAR 910 DUBLIN RD**

**EXHIBIT "A" (PG. 1/2)**



		950 Taylor Station Road, Suite V Gahanna, Ohio 43230 (614) 367-7840	
Source: Compensatory Storage (Mitigation Plan) Figure			
Project No: 072.33784.0016		Date: September 2011	
Drawn By: NB	Reviewed By: DI	Scale: 1" = 75'	

**Figure 2**  
**Soil Boring Location**  
 Phase II Environmental Site Assessment  
 FRA-Scioto Bikeway Connector; PID: 77591  
 Columbus, Franklin County, Ohio

**EXHIBIT "A" (PG. 2/2)**

C:\no01-05\77591\roadway\butemap\77591BPE51CW73.dwg 1/11/2011 3:14:50 PM mschu-lr





**PHASE II ENVIRONMENTAL SITE ASSESSMENT  
FRA-SCIOTO BIKEWAY CONNECTOR; PID: 77591  
SCIOTO BIKEWAY CONNECTOR  
COLUMBUS, OHIO**

**FOR**

**OHIO DEPARTMENT OF TRANSPORTATION  
MS. ANDREA L. STEVENSON**

**OFFICE OF ENVIRONMENTAL SERVICES  
1980 WEST BROAD ST.  
COLUMBUS, OHIO 43223  
ATC PROJECT NUMBER 072.33784.0016**

**September 29, 2011**



950 Taylor Station Road Suite V  
Columbus, Ohio 43230  
Phone: (614) 367-7840  
Fax: (614) 367-7846  
Website: [www.atcassociates.com](http://www.atcassociates.com)

September 29, 2011

Ms. Andrea L. Stevenson  
Ohio Department of Transportation  
Office of Environmental Services  
1980 West Broad St.  
Columbus, Ohio 43223

RE: **Phase II Environmental Site Assessment  
FRA-Scioto Bikeway Connector, PID: 77591  
Scioto Bikeway Connector  
Columbus, OH  
PID # 77591; Agreement No. 16168  
ATC Project No. 072.33784.0016; Work Order No. ATC-11-06-02**

Dear Ms. Stevenson:

ATC Associates Inc. (ATC) has completed the above-referenced project in general accordance with ATC Proposal Number 072-2011-0378R dated July, 2011. The purpose of the study was to investigate lead concentrations in the soil in a proposed compensatory storage area adjacent to the proposed Scioto Bikeway Connector. The area of study is adjacent to an area know to have elevated lead concentrations in the soil/fill. Accordingly, the scope of study consisted of soil sampling/analysis, and data evaluation/compilation. This letter report documents our findings.

## INTRODUCTION

### **Background Information**

ODOT has proposed construction of a compensatory storage area adjacent to the proposed Scioto Bikeway Connector. Previous investigation by others identified the presence of elevated lead concentrations in soil/fill in areas adjacent to the proposed area of construction which will require the excavation, removal and disposal of possible lead impacted soil. ODOT Inter-office communication dated June 15, 2011 recommended that soil testing be conducted in the proposed compensatory storage area prior to excavation.

## SUBSURFACE INVESTIGATION

### **Field Methods and Findings**

Soil conditions in a proposed construction area south of the proposed Scioto Bikeway Connector were investigated on August 13, 2011. The area in question is located on the east



## EXHIBIT "B" (PG. 3/5)

ATC Project No. 072.33784.0016 – Phase II ESA  
Scioto Bikeway Connector

September 29, 2011  
Page 2

side of a northwest trending bend in the Scioto River where the bikeway crosses the river. The general site location is shown in Figure 1. Four borings (SB-1, SB-2, SB-3 and SB-4) and two hand augers (HA-1 and HA-2) were installed in the study area at locations as specified by ODOT (see Figure 2).

Test borings were advanced by EnviroCore of Columbus, Ohio utilizing a Geoprobe™ "hydraulic push" drill rig. The Geoprobe™ method of test boring installation results in a small diameter boring (less than two inches) and does not produce the "soil cuttings" generated by conventional drilling. Soil samples were continuously collected from each boring using five-foot long stainless steel sampling tubes, equipped with disposable acetate sample-recovery sleeves, attached to the end of the Geoprobe™ rods. The sampling tubes were decontaminated after each use by an Alconox®/de-ionized water wash and de-ionized water rinse. The hand auger was decontaminated between each boring with an Alconox®/de-ionized water wash and de-ionized water rinse. Borings were terminated at a depth of 10 feet below ground surface (bgs) and the hand auger locations were terminated at 3 feet bgs. Sand, gravel and clay fill with brick fragments were encountered to total depth at all six sampling locations. Following the completion of soil sampling, each borehole was abandoned by filling with bentonite chips.

Soil collected from the Geoprobe™ borings was split into two-foot intervals. Soil samples were collected in two aliquots: one aliquot was collected in 4-ounce jars and placed on ice for possible laboratory analysis, and one aliquot was placed in a plastic bag for field screening. Latex gloves were worn and changed between samples to prevent cross-contamination. The sample in the plastic bag was held at ambient temperature and field screened with a photoionization detector (PID), which measures total photoionizable vapors in parts per million (ppm). PID readings ranged from 0.0 parts per million (ppm) to a high of 1.9 ppm in boring SB-4. Boring logs are included in Attachment A.

Soil samples were selected for analysis based upon physical characteristics and sample depth. Samples selected for analysis were placed on ice in a cooler and shipped to Belmont Labs in Englewood, Ohio utilizing chain-of-custody procedures. The samples were analyzed for total lead and toxicity characteristic leaching procedure (TCLP) by U.S. EPA Method 6010B.

### **Analytical Findings**

Elevated lead concentrations (i.e., above naturally occurring background concentrations) were detected in all six soil samples analyzed; concentrations ranged from 176 to 5,470 mg/kg (ppm). TCLP lead concentrations ranged from 0.104 to 23.5 mg/L (ppm). Analytical data is summarized in Table 1. A complete copy of the laboratory report is included in Attachment B.

## CONCLUSIONS AND RECOMMENDATIONS

Soil conditions encountered in the area of concern consisted of variable fill material with brick fragments. Although not directly applicable to the site, generic direct contact standards available from Ohio's Voluntary Action Program (VAP) were utilized as applicable or relevant and appropriate requirements (ARARs) to evaluate total lead concentrations quantified. Lead concentrations quantified exceeded ARARs for a residential exposure scenario (used to evaluate exposure in a park setting) in three of the six samples analyzed. Concentrations exceeded construction worker and commercial/industrial standards in one sample. One of the samples exceeded TCLP thresholds that would require management of the material as a characteristically hazardous waste.

**EXHIBIT "B" (PG. 4/5)**

ATC Project No. 072.33784.0016 – Phase II ESA  
Scioto Bikeway Connector

September 29, 2011  
Page 3

Potential exposure issues in the area could be addressed through implementation of engineering controls (a "cap") to mitigate potential exposure concerns. A health and safety plan should be developed and implemented during such work to mitigate potential worker exposure issues. A storm water pollution prevention plan should be developed and implemented during construction activities to ensure that runoff from the area does not enter the Scioto River. If soils require excavation and off-site disposition in association with the subject development, materials should be stockpiled and characterized prior to disposal. Results from this study suggest that such materials may require management as a characteristically hazardous waste.

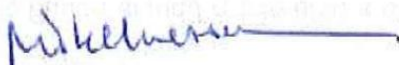
We appreciate your business and trust that you have been pleased with our services. Please do not hesitate to contact us if you have any questions or comments, or if we may be of further service in any way.

Sincerely,

**ATC ASSOCIATES INC.**



Douglas Flinn  
Project Geologist



Michael J. Luessen, C.P., P.G.  
Principal Geologist

Attachments (4)

EXHIBIT "B" (PG. 5/5)

**Table 1**  
**Phase II Environmental Site Assessment**  
**FRA-Scioto Bikeway Connector; PID 77591**  
**Columbus, Franklin County, Ohio**

A LOT OF LEAD AND →  
 ITS MOBILE

Sample	Depth	Total Lead	TCLP Lead
Location	Sampled	mg/kg	mg/L
HA-1	2 - 3'	<b>708</b>	1.98
HA-2	2 - 3'	387	1.39
SB-1	8 - 10'	176	0.104
SB-2	8 - 10'	<b>5470</b>	<b>23.5</b>
SB-3	8 - 10'	<b>461</b>	0.37
SB-4	0- 2'	342	0.739
Applicable or Relevant and Appropriate Requirements		400 (1)	5.0 (4)
		750 (2)	
		1,800 (3)	

\* WORST

- Bold** indicates exceeds ARARs  
 (1) Ohio VAP Generic Direct Contact Standard – Residential  
 (2) Ohio VAP Generic Direct Contact Standard – Construction/Excavation Worker  
 (3) Ohio VAP Generic Direct Contact Standard – Commercial/Industrial  
 (4) RCRA Limit for Definition as a Characteristic Hazardous Waste (40 CFR Part 761)

TCLP MINIMUM OF 5