STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:	)	**DIVISION OF REMEDIATION**
	)	
ACC, LLC	)	**CASE NO: DOR 16-0010**
	)	**Related to: SWM 11-0006**
Respondent	)	**WPC 11-0024**

CONSENT ORDER

This Consent Order (hereinafter referred to as the "ORDER") is made and entered into by and between the Tennessee Department of Environment and Conservation (hereinafter referred to as "TDEC" or the "Department") and ACC, LLC, (hereinafter "ACC" or "Respondent").to cause the remediation of hazardous substances, solid waste, or other pollutants that are impacting portions of Sugar Creek and an unnamed tributary of Sugar Creek. The facts are set out in detail below.

PARTIES

I.

Robert J. Martineau is the duly appointed Commissioner of the Department. ACC, formerly known as Associated Commodities Corporation, is a Tennessee Limited Liability Company whose address is 400 Arrow Mines Road, Maury County, Tennessee. Its agent for service of process is Mr. Thomas W. Hardin, 102 W 7th Street, Columbia, TN 38401-3249.

JURISDICTION

II.

Pursuant to Tennessee Code Annotated ("Tenn. Code Ann.") §69-3-107 the Commissioner is authorized to exercise general supervision and control over the quality of all state waters, administer and enforce all laws relating to pollution of such waters, and administer and enforce the Tennessee Water Quality Control Act (the "WQC Act"), Tenn. Code Ann. §69-3-101 et seq. and all standards, policies, rules, and regulations promulgated under the WQC Act. The Commissioner is also authorized to bring suit in the name of the department for any violation of the provisions of the WQC Act, seeking any remedy provided in the WQC Act, and any other statutory or common law remedy available for the control, prevention, and abatement of pollution. Whenever the Commissioner has reason to believe that a violation of the WQC Act has occurred or is about to occur, the Commissioner may issue a complaint to the violator, and the Commissioner may order corrective action be taken pursuant to Tenn. Code Ann. §69-3-109(a). Further, the Commissioner has authority to assess civil penalties against any violator of the WQC Act, pursuant to Tenn. Code Ann. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to Tenn. Code Ann. §69-3-116 of the WQC Act.

III.

Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to Tenn. Code Ann. §69-3-105 and are effective as the Official Compilation Rules and Regulations of the State of Tennessee, Chapters 400-40-03 and 400-40-04.

IV.

Sugar Creek is "waters" of the state as defined by Tenn. Code Ann. §69-3-103(44). Pursuant to Tenn. Code Ann. §69-3-105(a), all waters of the state have been classified by the Tennessee Board of Water Quality, Oil, and Gas for designated uses as set forth in Tennessee Rule Chapter 400-40-04, Use Classifications for Surface Waters. Accordingly, the impacted portion of Sugar Creek is classified for the following uses: domestic water supply, industrial water supply, fish and aquatic life, recreation, irrigation, livestock watering, and wildlife. Sugar Creek is listed on the 303(d) list due to salinity, total dissolved solids, chlorides, and other causes from a landfill and other pollutant sources. Additionally, an unnamed tributary to Sugar Creek is listed on the 303(d) list due to unionized ammonia, chlorides, and total dissolved solids from an industrial landfill.

V.

When the Commissioner finds that provisions of the Tennessee Solid Waste Disposal Act, (hereinafter the "SWD Act"), Tenn. Code Ann. §68-211-101 et seq. are not being complied with, he is authorized by Tenn. Code Ann. §68-211-112 to issue orders for correction to the responsible person. Pursuant to Tenn. Code Ann. §68-211-104(1), it is unlawful to place or deposit any solid waste into waters of the state except in a manner approved by the department or the Tennessee Board of Water Quality, Oil, and Gas. Further, Tenn. Code Ann. §68-211-117 gives the Commissioner, or his authorized representative, the authority to assess damages and civil penalties against any person who violates any provision of the SWD Act or any rule, regulation, or standard adopted pursuant to said SWD Act.

VI.

Pursuant to Tenn. Code Ann. §68-211-107 the Department is authorized to exercise general supervision over the operation and maintenance of solid waste processing facilities and

disposal facilities or sites. Such general supervision applies to all features of operation or maintenance which do or may affect the public health and safety or the quality of the environment and which do or may affect the proper processing and disposal of solid wastes. Tennessee Rule 400-11-01-.04 establishes the minimum activities that landfill operators must perform including, and not limited to, complying with the groundwater protection requirements.

VII.

Pursuant to Tenn. Code Ann. §68-212-206, the Commissioner is authorized to request any liable or potentially liable party to furnish information relating to possible hazardous substances and to issue an order to any liable or potentially liable party requiring such party to investigate and identify possible hazardous substance sites. The Commissioner is further authorized by this section to order any liable or potentially liable party to contain, clean up, monitor and maintain inactive hazardous substance sites. Additionally, pursuant to Tenn. Code Ann. §68-212-215, the Commissioner may issue an order for correction to an appropriate person if any provision of Part 2 of the Hazardous Waste Management Act of 1983 is not being carried out, or if effective measures are not being taken to comply with any provision of said Part. Further, pursuant to Tenn. Code Ann. §68-212-206 and Tenn. Code Ann. §68-212-216, the Department has right of entry to the site and properties that must be entered to access the site.

VIII.

Respondent is a liable or potentially liable parties pursuant to the meaning of "liable party" defined in Tenn. Code Ann. §68-212-202(4).

IX.

Respondent is a "person" within the meaning of Tenn. Code Ann. §69-3-103(26) and §68-212-202(4). Tenn. Code Ann. §68-212-202(4) incorporates by reference the definition of person set forth in Tenn. Code Ann. §68-212-104(14).

X.

The site, hereinafter described, is a hazardous substance site within the meaning of Tenn. Code Ann. §68-212-202(3).

XI.

Pursuant to Tenn. Code Ann. §68-212-222, no state or local permits are required for clean-up activities which are conducted entirely on site and in accordance with Part 2 of the Hazardous Waste Management Act of 1983; provided, that such clean-up activities meet the standards that would apply if such permits were required.

XII.

Pursuant to Tennessee Code Annotated § 68-212-224, the Commissioner is authorized to enter into a Consent Order with a party who is willing and able to conduct an investigation and remediation of a hazardous substance.

<u>FACTS</u>

XIII.

ACC is the current owner of an approximately 48.02-acre parcel of land located immediately east of Arrow Mines Road south of the City of Mt. Pleasant in Maury County, Tennessee. Located on that parcel of land, and also currently owned and operated by ACC, is a

closed Class II (industrial) solid waste disposal facility known as the "ACC Landfill". The ACC landfill is the same landfill identified as the Smelter Services & Associated Commodity landfill associated with the unnamed tributary to Sugar Creek, Arrow Lake, and Sugar Creek on the Proposed Final 2014 303(d) List. Hereinafter, this property is referred to as the "Site." A more complete description of this property is contained in a Deed of Record in Deed Book 809, Page 294, in the Register's Office of Maury County, Tennessee.

XIV.

In June of 2011, the Department and ACC entered into a Consent Order intended to remediate extensive environmental problems with the ACC Landfill. A copy of that Consent Order and a subsequent Amended and Restated Consent Order entered in August 2012 are attached hereto as Exhibit 1. The facts set-out in these Consent Orders are incorporated herein by this reference. While there has been ongoing litigation concerning and related to these Consent Orders since June of 2011, the Amended and Restated Consent Order remains in force. Remedial work including a Removal Action was required pursuant to the Amended and Restated Consent Order. The Removal Action and remedial work is proceeding. This Order is supplemental to the Amended and Restated Consent Order. However, to the extent there is any inconsistency, this Order controls.

XV.

The Amended and Restated Consent Order included excavation and relocation of waste during four consecutive annual construction seasons. This included:

- Construction of the downgradient impoundment and up gradient storm water diversion berms to manage storm water at the site.
- Construction of an approximate 12-acre lined on-site waste relocation areas.

- Excavation of approximately 555,500 cubic yards of waste and cover soils from the original landfill and relocation of these materials to the new, lined waste area.
- Construction and stabilization of a minimum 12-inch thick intermediate cover layer over exposed waste.

The fourth phase has been completed and is detailed in a report titled *Final Report Phase 4 Corrective Action Construction ACC Landfill*, dated February 1, 2016. The capping of the relocated waste commenced during the 2016 construction season.

XVI.

A primary goal of the Amended and Restated Consent Order was to significantly reduce the loading of contaminants discharging from the Site via surface water.

XVII.

ACC performed regular monitoring of concentrations of several pollutants in surface water and groundwater leaving the Site. Surface water leaving the ACC property flows in an unnamed tributary of Sugar Creek, through a culvert located under Arrow Mines road, and ultimately into Sugar Creek. ACC's monitoring has not included measuring surface water flow and as a result, loading cannot be calculated. However, monitoring has shown reductions in the concentrations of chlorides, ammonia, and TDS from pre-remedial action concentrations. The September 6, 2016 ACC sampling data (from the *October 2016 Surface Water Monitoring Report – Quarterly Monitoring*) shows that surface water continues to contain high levels of chlorides, ammonia, and total dissolved solids; including concentrations of 3,150 mg/L for chlorides, 41.5 mg/L for ammonia, and 4,810 mg/L for total dissolved solids.

XVIII.

ACC has monitored groundwater at the Site for a number of years from five monitoring wells. The June 21, 2016 ACC sampling data (from the *June 2016 Groundwater Monitoring Report*) shows groundwater continues to contain high levels of chlorides, ammonia, and total dissolved solids; including concentrations of 3,520 mg/L for chlorides, 4.07 mg/L for ammonia, and 5,490 mg/L for total dissolved solids in monitoring well MW-3 and 6,690 mg/L for chlorides, 108 mg/L for ammonia, and 9,620 mg/L for total dissolved solids in monitoring well MW-5. Groundwater at the Site discharges to surface water at a number of seeps and/or springs.

XIX.

In the Amended and Restated Consent Order, the Department expressly reserved the right to issue further Orders to require further or supplemental corrective action due to impacts from the discharges from the Site (ACC Landfill), or based on changes of conditions or new information, to assess civil penalties for all violations of the law, and to assess all damages.

ORDER

XX.

WHEREFORE, I, Robert J. Martineau, Jr., hereby ORDER and the Respondent AGREES to fully and timely comply with the following:

A. CORRECTIVE ACTION OBJECTIVES

The corrective action objective for surface water is for surface water in (1) the unnamed tributary draining the ACC landfill property to Sugar Creek, and (2) Sugar Creek to not be impaired due to pollutants associated with the ACC landfill. It is anticipated that this corrective

action objective will include, and not be limited to, stopping ongoing release of ACC landfill pollutants that causes violation of the WQC Act in the unnamed tributary of Sugar Creek and Sugar Creek,

The corrective action objective for surface water leaving the ACC site is to meet the Tennessee Water Quality Criteria.

B. INVESTIGATION AND CORRECTIVE ACTION

(1) Within one hundred and twenty (120) days of receipt of this ORDER, the Respondent shall implement an interim action approved by the Department that prevents surface water and leachate with concentrations of ammonia, chlorides and/or total dissolved solids exceeding the Tennessee Water Quality Criteria from leaving the ACC property and polluting downstream waters including Sugar Creek. Said interim action shall comply with all applicable laws and regulations and shall continue to be implemented until an approved corrective action has been implemented and determined effective by the Department in removing pollution originating at the ACC landfill property including concentrations of ammonia, chlorides, and total dissolved solids exceeding Tennessee Water Quality Criteria. ACC may submit a written request for temporary discontinuance of the interim action to evaluate effectiveness of an approved, installed corrective action(s) and the Department may approve discontinuance of the interim action to evaluate corrective action(s) or when an implemented corrective action is proven to be effective. If a corrective action is deemed ineffective by the Department, Respondent shall reinstate said interim action within five (5) days of written notice from the Department that a corrective action is deemed ineffective.

(2) Within ninety (90) days of the effective date of this ORDER, the Respondent may submit to the Department a written corrective action work plan to replace the interim action. The corrective action work plan shall be designed to prevent ammonia, chlorides, and/or total dissolved solids in surface water from leaving the ACC property in concentrations exceeding Tennessee Water Quality Criteria for the designated uses. Said corrective action work plan shall also include monitoring, feasibility study, and other activities necessary to develop an effective corrective action. Said work plan shall define the process, specifics, and schedule for implementation. Within fifteen (15) days of receipt of the Department's comments, the Respondent shall incorporate said comments and submit a revised corrective action work plan to the Department. The Respondent shall incorporate any additional comments provided by the Department and implement the corrective action as approved by the Department. Respondent shall submit a corrective action report to the Department within ninety (90) days of completion of corrective action construction with as-built drawings, data and analyses demonstrating results of implementation, operation and maintenance requirements, and other information requested by the Department.

(3) Within ninety (90) days of completion of corrective action construction, Respondent shall submit to the Department an operation and maintenance plan that defines all activities and actions, including frequency, necessary to maintain effectiveness of the corrective action. The operations and maintenance plan shall also include monitoring required to evaluate effectiveness of the corrective action to achieve water quality criteria for chlorides, ammonia, and total dissolved solids and to establish loading trends both seasonally and over time. Respondent shall

implement the operation and maintenance plan as approved by the Department. If Respondent does not submit a corrective action work plan, Respondent shall submit an interim action operation and maintenance plan within ninety (90) days of installation of the interim action.

(4) Respondent shall submit quarterly reports with all monitoring data, loading, documentation, analyses, and other information requested by the Department according to a schedule and format requested or approved by the Department until the Department determines quarterly reports are no longer necessary. Respondent shall submit quarterly reports prior to the end of the month following the end of the quarter.

C. COMMUNITY RELATIONS

Within thirty (30) days of the effective date of this ORDER, the Respondent shall submit a public participation plan and Respondent shall implement the public participation plan as approved by the Department.

D. ADDITIONAL CONFERENCES

Following receipt of any plans or reports, or at any time deemed necessary, the Department may schedule a meeting, which the Respondent shall attend. The Respondent shall be given notice of any such conference, in writing, at least seven (7) days prior to the meeting. To the extent practicable, the meeting shall be scheduled at a mutually convenient time.

E. SITE ACCESS

During the effective period of this ORDER, and until certification by the Department of the completion of all activities under this ORDER and determination by the Department that operation and maintenance is no longer necessary, the Department and its representatives or designees shall have access during normal business hours and, upon reasonable notice, at non-business hours, to the Site, or any location where characterization or remediation has been, is, or will be conducted pursuant to this ORDER. Such access may be for the purpose of monitoring activities; verifying data; conducting investigation; inspecting and copying records, logs, or other documents that are not subject to a legally applicable privilege; or for conducting other activities associated with the implementation of this ORDER. Nothing contained herein shall limit or otherwise affect the Department's right of entry pursuant to any applicable statute, regulation, or permit. The Department and its representatives shall comply with all reasonable health and safety plans published by the Respondent for its contractor and used by Site personnel for the purpose of protecting life and property. If safety plans are not included in the applicable Work Plan, then they shall be provided to the Department for review prior to the commencement of Work Plan activities at the Site.

F. OVERSIGHT AND ASSISTANCE COST

The Respondent shall pay all reasonable-costs associated with the Department's oversight of the implementation of this ORDER. Oversight costs shall include, but not be limited to, mileage, lab expense, and the current hourly rate and benefits for the Department's employees actively employed in oversight of work under this ORDER (including preparation for and attendance at meetings), the current State overhead rate, and costs for any state contractor(s) involved in implementation of this ORDER. The Department shall provide the Respondent with

periodic statements reflecting costs incurred. Within sixty (60) days of the receipt of each such statement, the Respondent shall pay to the Department the amount invoiced.

G. SUBMISSION OF INFORMATION, REPORTS, OR STUDIES

Any information, reports, or studies submitted under the terms of this ORDER shall be signed and contain the following notarized certification:

> I certify under penalty of law including, but not limited to, penalties for perjury, that the information contained in this report or study and on any attachments is true, accurate, and complete and to the best of my knowledge, information, and belief. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for intentional violation.

H. TIMEFRAMES AND DEADLINE EXTENSION

All timeframes specified in this ORDER are based on calendar days unless otherwise specified. Prior to missing a deadline in this ORDER, Respondent may submit a written request to extend a deadline for a specific period for a good cause shown. The extension request must specify why the extension is requested and the specific cause(s) for the duration of the extension requested. If the Department extends the deadline, a new deadline will be specified in the written extension approval.

I. CONTINGENT PENALTIES

Missing any deadline required by this ORDER and/or noncompliance with any provision of this ORDER shall result in a contingent penalty of five hundred dollars ($500.00) per day per deadline missed for calendar days one (1) through seven (7) and one thousand dollars ($1,000.00) for day eight (8) and each day thereafter until the item associated with the deadline is met or the noncompliance is resolved to the Department's satisfaction. Contingent penalties shall be payable to the Department within forty-five (45) days of the Department invoicing

Respondent for the stipulated penalty. If Respondent disputes a contingent penalty, Respondent shall submit written notice of dispute and any supporting documentation within thirty (30) days of receipt of the Department's invoice for the contingent penalty. If Respondent disputes a contingent penalty, said penalty continues to accrue pending resolution of the dispute and does not affect other penalties or their due dates. Resolution of dispute of contingent penalty shall be decided by the Commissioner's designee. This decision may be further appealed pursuant to the Uniform Administrative Procedures Act (UAPA).

XXI.

RESERVATION OF RIGHTS

This ORDER shall not be construed as waiving any right or authority available to the Commissioner to assess the Respondent for liability for costs, expenditures, damages incurred by the State, or civil penalties. The right to order further investigation, remedial action, and/or monitoring and maintenance is also specifically reserved. Further, this ORDER shall not be construed as waiving, settling, or in any manner compromising any natural resource damage claim which the State of Tennessee may have under Section 107 of CERCLA, or any statutes, rules, regulations, or common law. The Department expressly reserves the right to issue further Orders to require further or different corrective action for issues associated with the Site but not addressed in this Order or based on changes of conditions or new information or for noncompliance with this ORDER, to assess civil penalties for all violations of law, and to assess all damages, including but not limited to, Natural Resource Damages.

XXII.

NOTICE OF RIGHTS

Tenn. Code Ann. §§68-211-113, 68-212-115, and 69-3-107 allow the Respondent to appeal this Order. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Commissioner within THIRTY (30) DAYS of the date the Respondent received this Order or this Order will become final (not subject to review).

If an appeal is filed, an initial hearing of this will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. §69-3-115, Tenn. Code Ann. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Rule 1360-04-01 *et seq.* (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny the Order. Furthermore, the ALJ on behalf of the Board has the authority to assess damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.

Any petition for review (appeal) must be directed to the Commissioner of the Tennessee Department of Environment and Conservation, c/o E. Joseph Sanders, Senior Legal Counsel.

Payments of the civil penalty and/or damages shall be made payable to "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 10th Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Evan Spann, State of Tennessee, Division of Remediation, 14th Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, TN 37243. The case number, DOR 16-0010 should be written on all correspondence regarding this matter.

WAIVER OF RIGHT TO APPEAL

The Respondent understands that it has the right to appeal this Consent Order as set-out above. By signing below, the Respondent knowingly and voluntarily waives any right to appeal this Consent Order.

AGREED by the parties this 23rd day of November, 2016.

ROBERT J. MARTINEAU, Commissioner
Tennessee Department of Environment
and Conservation

ACC LLC

by: Sharon O. Jacobs

E. Joseph Sanders
Senior Legal Counsel BPR# 6691
Office of General Counsel
312 Rosa L Parks Avenue, 2nd FL TN Tower
Nashville, TN 37243
615-532-0122

Sharon O. Jacobs
Attorney for Respondent BPR#14626
Bone McAllester Norton PLLC
511 Union Street / Suite 1600
Nashville, TN 37219
615 238-6306

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
BEFORE THE TENNESSEE SOLID WASTE DISPOSAL CONTROL BOARD

RECEIVED
2012 AUG -9 AM 11:15
SECRETARY OF STATE

IN THE MATTER OF:	)	
	)	
ACC, LLC	)	**APD DOCKET NUMBER**
	)	**04.27-116746A**
RESPONDENT	)	

BOARD APPROVAL OF AMENDED AND RESTATED CONSENT ORDER

This matter came before the Tennessee Solid Waste Disposal Control Board ("Board"). After consideration the Board made the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Robert J. Martineau, Jr., is the duly appointed Commissioner of the Department of Environment and Conservation ("TDEC").

2. ACC, LLC ("ACC") is a limited liability company organized under and existing by virtue of the laws of the State of Tennessee.

3. In June of 2011, the TDEC and ACC entered into a Consent Order, (Nos. SWM11-0006 and WPC11-0024) (Exhibit A).

4. ACC filed the June 2011 Consent Order in Chancery Court pursuant to applicable provisions of both the Hazardous Waste Management Act and the Water Pollution Control Act.

5. When an administrative Consent Order is filed in Chancery Court pursuant to these provisions it can be converted into a Court Order if it is approved by the Court. However, before the Court acts, public notice is given and interested parties may intervene.

6. A neighbor of the ACC Landfill, StarLink Logistics, Inc. (StarLink) intervened in the Chancery Court Case and objected to the June 2011 Consent Order being approved by the Court.

7. After StarLink intervened in the Chancery Court case, the parties in the Chancery Court case (ACC, TDEC and StarLink) engaged in extensive settlement discussions in an attempt to revise the June 2011 Consent Order in a manner that would make it acceptable to all three parties. Although the parties did agree in principle on the nature of the remedial actions that are needed at the old landfill, the parties could not agree on all of the details. In particular agreement could not be reached on the schedule for implementation.

8. Because all of the parties in the Chancery Court Case could not reach agreement, the Court remanded the matter to the Board (Exhibit C) to determine if the June of 2011 Consent Order should be adopted as a Final Order of the Board or if a modified Order should be issued by the Board.

9. TDEC and ACC continued to attempt to reach agreement after the three party negotiations failed. That resulted in the development of the proposed Amended and Restated Consent Order (Exhibit B). TDEC and ACC jointly recommended that the Board approve this modification of the June 2011 Order.

10. StarLink requested and was granted the right to intervene in the Board hearing so that StarLink would have the opportunity to address the Board concerning the proposed Amended and Restated Consent Order.

11 ACC is the owner and operator of a closed industrial landfill. This closed landfill, known as the "ACC Landfill" is the subject of the Amended and Restated Consent Order.

12. The ACC Landfill is located immediately east of Arrow Mines Road south of the City of Mt. Pleasant in Maury County, Tennessee.

13. The ACC Landfill encompasses approximately 14 acres and was used for the disposal of aluminum recycling wastes from the Smelter Service Corporation ("SSC") secondary aluminum smelting plant located at 400 Arrow Mines Road in Mt. Pleasant, Tennessee.

14. Surface water and ground water at the Landfill drain westward toward Arrow Mines Road and Sugar Creek, into the Arrow Lake impoundment which is located immediately west of Arrow Mines Road.

15. The ACC Landfill was constructed and operated pursuant to a "registration" or "permit" initially issued to Respondent by the TDEC (then the Department of Public Health) on July 1, 1981.

16. The Respondent started disposing of wastes at the Landfill on or about August 1981, and continued doing so until September 1, 1993. The Respondent then performed final closure of the Landfill in accordance with Closure/Post-closure Care and Corrective Action Plans approved by the Department.

17. Within a very few years of beginning operation, it appeared to the Respondent and the Department that unacceptably high levels of chlorides and ammonia were leaching out of the wastes and into the underlying ground water and down-gradient surface water that drained into Sugar Creek and Arrow Lake. That condition was not resolved by the final closure of the Landfill and continues today. Over the years as regulations and technologies have evolved, the Respondent has worked with TDEC – both voluntarily and in response to TDEC enforcement actions – to identify why this leaching was occurring and try to stop it.

18. While resulting in a greater understanding of contaminant migration at the Landfill, these investigations failed to achieve the desired goal of yielding information leading to the development of feasible alternatives for the preferred remedial option of intercepting or diverting ground water away from the buried waste deposits.

19. The Amended and Restated Consent Order recognizes that it is now apparent that the only way to stop this Landfill from continuing to impact ground water and surface water is to remove all waste that has the potential to be in contact with water. The removed waste must be placed in a new cell that meets current landfill design requirements.

20. The Board and the Commissioner have only the authority and power granted in the Tennessee Solid Waste Disposal Act. Neither the Board nor the Commissioner have the authority to redress StarLink's private nuisance claims. Wayne County v The Tennessee Solid Waste Disposal Control BD, 756 S.W.2d 274, 1988.

ORDER

WHEREFORE, PREMISES CONSIDERED:

1. The Board adopts the Amended and Restated Consent Order (Exhibit B) and Orders the Respondent to fully comply with all of its terms and conditions.

2. The Amended and Restated Consent Order supersedes the June 2011 Administrative Consent Order, Nos. SWM11-0006 and WPC11-0024.

REASONS FOR DECISIONS

The above Findings of Facts and Conclusions of Law, and the Orders were made in an effort to provide a coordinated system of control and management of solid waste, hazardous waste and hazardous substances in Tennessee. The Board finds that remediation of the ACC Landfill in the manner specified in the Amended and Restated Consent Order is necessary to

protect the health, safety and welfare of the public. Neither the Board nor the Commissioner have the authority to redress StarLink's private nuisance claims. Wayne County v The Tennessee Solid Waste Disposal Control BD, 756 S.W.2d 274, 1988. Further, the Board encourages settling cases so that limited resources are expended on remediation of the environmental impacts rather than prolonged litigation.

Adopted and approved by a majority of the Board, a quorum being present, this 7th day of August, 2012.

FOR THE SOLID WASTE DISPOSAL CONTROL BOARD

Chairman

Filed in the Administrative Procedures Division, Office of the Secretary of State, on this 9th day of August, 2012.

Administrative Procedures Division

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon all interested parties or their counsel of record by delivering copy of same to their offices or by placing a true and correct copy of same in the United States mail, postage prepaid. This 9th day of August, 2012.

E. Joseph Sanders

E. Joseph Sanders, BPR#6691
General Counsel
Department of Environment and Conservation

RECEIVED
JUN - 8 2011
DEPT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:	)	
	)	
ACC, LLC	)	CASE NO: SWM11-0006
	)	WPC11-0024
RESPONDENT	)	

CONSENT ORDER

This Consent Order is made and entered into by and between the Tennessee Department of Environment and Conservation (hereinafter "Department") and ACC, LLC a Tennessee Limited Liability Company.

PARTIES

I.

Robert J. Martineau, Jr., is the duly appointed Commissioner of the Department.

II.

ACC, LLC. (hereinafter the "Respondent" or "Consenting Party") is a limited liability company organized under and existing by virtue of the laws of the State of Tennessee. Service of process may be made on the Respondent through Mr. Thomas W. Hardin, Registered Agent, at 102 West 7th Street, Columbia, Tennessee 38401. Consenting Party is the owner and operator of a closed, Department-permitted industrial landfill that is releasing waste constituents to

Exhibit
A

{00621175.2}

groundwater and surface water. That closed landfill, known as the "ACC Landfill" is the subject of this Consent Order.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Tennessee Water Quality Control Act (the "WPC Act"), Tennessee Code Annotated (T.C.A.) §69-3-101 et seq. has occurred or is about to occur, the Commissioner may issue a complaint to the violator and the Commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the WPC Act. Further, the Commissioner has authority to assess civil penalties against any violator of the WPC Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the WPC Act.

IV.

When the Commissioner finds that provisions of the Tennessee Solid Waste Disposal Act, (hereinafter the "SWD Act"), T.C.A. §68-211-101 et seq. are not being complied with, he is authorized by T.C.A. §68-211-112 to issue orders for correction to the responsible person. Further, T.C.A. §68-211-117 gives the Commissioner, or his authorized representative, the authority to assess damages and civil penalties against any person who violates any provision of the SWD Act or any rule, regulation, or standard adopted pursuant to said SWD Act. Notwithstanding any law to the contrary, except chapter 213 of Title 211 of the Tennessee Code Annotated, the approval of the commissioner of a solid waste processing facility or disposal

facility or site shall be final and not subject to review by any administrative board, commission or other administrative office or body. T.C.A. §68-211-113(d).

V.

Pursuant to T.C.A. §68-211-107 the Department is authorized to exercise general supervision over the operation and maintenance of solid waste processing facilities and disposal facilities or sites. Such general supervision shall apply to all features of operation or maintenance which do or may affect the public health and safety or the quality of the environment and which do or may affect the proper processing and disposal of solid wastes.

VI.

Pursuant to T.C.A. §68-212-224 of the Hazardous Waste Management Act of 1983, as amended, the Commissioner is authorized to enter into a CONSENT ORDER with a party who is willing and able to conduct an investigation and remediation of a hazardous substance site or Brownfields Project. The Commissioner has the discretion and is authorized to establish and apportion liability consistent with T.C.A. §68-212-207(b) in a CONSENT ORDER.

VII.

Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the Official Compilation Rules and Regulations of the State of Tennessee, Chapters 1200-4-3 and 1200-4-4

VIII.

Sugar Creek, described herein, is "waters of the state" as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses as set forth in Tennessee Rule Chapter 1200-4-4, Use Classifications for Surface Waters. Accordingly, the impacted portion of Sugar Creek is classified for the following uses: domestic water supply, industrial water supply, fish and aquatic life, recreation, irrigation, livestock watering and wildlife. Additionally, Sugar Creek is listed as impaired for salinity/total dissolved solids/chlorides from landfills, loss of biological integrity due to siltation, and other habitat alterations due to urbanized high density area impacts.

IX.

Tennessee Rule 1200-1-7-.04(8)(d) establishes a 30-year period of post-closure care for Class II (industrial) landfills, and Rule 1200-1-7-.04(8)(e) establishes the minimum activities that the landfill operator must perform during that post-closure care period. Specific post-closure care and ground water corrective action requirements are to be established by the landfill operator in the Post-Closure Care Plan and the Ground Water Corrective Action Plan as detailed in the regulations, and must be approved by the Commissioner.

X.

For the purposes of this CONSENT ORDER only, a Brownfield project may be a site contaminated by hazardous substances, solid waste, or any other pollutant.

XI.

As required by T.C.A. §68-212-224, a summary description of all known existing environmental investigations, studies, reports or documents concerning the Site's environmental condition has been submitted to the Department by the Consenting Party. As of the date of entering into this CONSENT ORDER, the Site is not listed or been proposed for listing on the federal National Priorities List.

XII.

The Respondent is a "person" and/or a "potentially liable party" as defined by T.C.A. §§ 69-3-103(20); 68-211-103(6); 68-212-206; as herein described.

FACTS

XIII.

The Respondent is the current owner of a 48.02-acre parcel of land (hereinafter the "Site") located immediately east of Arrow Mines Road south of the City of Mt. Pleasant in Maury County, Tennessee. Located on that parcel of land, and also currently owned and operated by Respondent, is the closed Class II (industrial) solid waste disposal facility known as the "ACC Landfill" (hereinafter the "Facility"). The Facility encompasses approximately 14 acres and was used solely for the disposal of aluminum recycling wastes from the Smelter Service Corporation (hereinafter "SSC") secondary aluminum smelting plant located at 400 Arrow Mines Road in Mt. Pleasant, Tennessee. The disposed wastes consist wholly, or almost wholly, of the "salt cake" slag and bag-house dusts from SSC's aluminum smelting operations.

Salt cake constitutes by far the greatest bulk of the wastes disposed in the Facility, and it contains high concentrations of highly soluble salts sodium chloride and potassium chloride.

XIV.

Surface water and ground water at the Site drain westward toward Arrow Mines Road and Sugar Creek, the Arrow Lake impoundment of which is located immediately west of Arrow Mines Road.

XV.

The Facility was constructed and operated pursuant to a "registration" or "permit" initially issued to Respondent (in its original corporate form of Associated Commodities Corporation) by the Department (then the Department of Public Health) on July 1, 1981. Under the regulations in effect at the time, the Department actually performed the hydrogeologic evaluation of proposed landfill sites and either approved, with conditions, or disapproved such sites (or portions thereof) for use as a landfill. The Department's conditional hydrogeologic approval of the Facility for landfill use was issued by the Department on February 23, 1981. Subsequent to such approval, and in accordance with the then-applicable regulations, Respondent submitted plans for construction and operation of the landfill which were approved by the Department with the issuance of the registration (permit). The Facility is identified by the Department-assigned number IDL 60-0032.

XVI.

The Respondent started disposing of SSC's wastes at the Facility on or about August 1981, and continued doing so until September 1, 1993. The Respondent then performed final closure of the Facility in accordance with Closure/Post-closure Care and Corrective Action Plans approved by the Department. This involved principally establishing a final soil cover system over the waste deposits that met the requirements of Tennessee Rule 1200-1-7-.04(8)(c)3 [at the time], with surface water controls as necessary to minimize and control erosion and sedimentation. Following subsequent improvements to the final cover and reconstruction of the perimeter surface water drainage ditches around the landfill, Respondent on July 18, 1995, submitted to the Department a certification of completion of closure. On April 8, 1996, the Respondent was issued an Acceptance of Closure by the Department.

XVII.

Within a very few years of beginning operation, it appeared to the Respondent and the Department that unacceptably high levels of chlorides was leaching out of the wastes and into the underlying ground water and down-gradient surface water that drained into Arrow Lake. That condition was not resolved by the final closure of the Facility and continues today. Over the years as regulations and technologies have evolved, the Respondent has worked with the Department – both voluntarily and in response to Department enforcement actions – to identify why this leaching was occurring and try to stop it. Various investigative and corrective action efforts have been performed by Respondent, including, but not limited to, the following:

- Application of daily cover material to divert rainfall from the wastes;
- Construction of lengthy ditches to re-route surface water around the landfill;

- Construction of multiple settling ponds and associated drainage control ditches;
- Attempted sealing of springs and seeps;
- Installation, development, and maintenance of a system of ground-water monitoring wells to delineate the nature and extent of groundwater contamination;
- Collection and analysis of surface water and ground water samples at multiple locations, including routine periodic monitoring at selected locations, in accordance with plans approved by the Department;
- Soil boring / rock coring with installation of piezometers along the landfill perimeter, and test pit/trench excavations within the landfill to evaluate ground-water flow into the landfill ;
- Two separate Dye Tracer Studies to try to define groundwater flow and Karst impacts in the vicinity of the landfill;
- Investigation of landfill vicinity for Karst conditions that may control groundwater flow;
- Electrical resistivity and microgravity surveys of the landfill to try to define groundwater flow paths beneath the landfill; and
- Geoprobe / rotary auger investigations to evaluate depth to bedrock and groundwater conditions.

While resulting in a greater understanding of contaminant migration at the Facility, these investigations failed to achieve the desired goal of yielding information leading to the development of feasible alternatives for the preferred remedial option of intercepting or diverting groundwater away from the buried waste deposits.

XVIII.

In a letter dated June 27, 2003, the Department (1) recognized that the final closure of the landfill had not significantly reduced the release of contaminated leachate from the wastes, (2) acknowledged the extensive hydrogeologic investigations Respondent had performed at the Site to identify the nature of the leachate release (including the mechanism by which groundwater interacts with the waste) and the knowledge gained, and (3) called for the development and submission of the groundwater corrective action plan required by Tennessee Rule 1200-1-7-.04(7)7 and 8. Respondent submitted a Corrective Action Plan (hereinafter "CAP") meeting these requirements on December 30, 2003. In the CAP, Respondent presented a comprehensive evaluation of the available data, described how the site conditions limited the available options, and identified three remaining options for mitigating the release of contaminated leachate from the landfill: (1) Clean Closure / Waste Removal, (2) Leachate Collection/Treatment, and (3) Natural or Enhanced Site Attenuation. The CAP then presented an assessment of the feasibility and potential effectiveness of these options and concluded that "selection of a remedy that fulfills all the criteria established by Rule 1200-1-7-.04(7)(a)8(ii) in the next two or three years is technically and economically impractical." The CAP then recommended that a Wetlands Treatment Alternative to enhance attenuation of releases and impacts be pursued at the Site. Following a public meeting held by Respondent in January 2004 to obtain public comments on the CAP, the Department allowed Respondent to pursue this remedy pending the acquisition of the necessary Aquatic Resource Alteration Permit.

XIX.

On April 2, 2004, Respondent submitted to the Department a Remedial Plan for a Constructed Wetland System down-gradient of the landfill that would retain and buffer leachate and improve water quality and habitat. Salt-tolerant vegetation would be planted in both the wetland system and on soil impacted by salt. The constructed wetland system was to have the following benefits to the local environment: (1) reduce surges of salt concentration downstream of the site; (2) improve aesthetic values of the site by removal of stressed vegetation and planting of vegetation that will flourish; (3) improve wildlife habitat, particularly for wetland species (i.e., waterfowl, shorebirds, aquatic invertebrates and amphibians): and (4) improve water quality by the reduction of erosion and breakdown of nutrients and organic matter. On May 4, 2004, the Department's Division of Water Pollution Control issued public notice of their intent to issue an Aquatic Resource Alteration Permit to allow the wetland restoration effort to proceed. On June 2, 2004, the Department's Division of Solid Waste Management approved the Remedial Plan. The Constructed Wetlands System was subsequently built, but Site and drought conditions over the next several years hindered the full development of the vigorous communities of salt-tolerant vegetation that were planned.

XX.

Following a Compliance Review Meeting between Department and Respondent representatives on April 24, 2008, the Department sent a letter to the Respondent, dated June 12, 2008, that stated, in part:

> The landfill is in the fourth year of implementation of a wetland designed to mitigate impacts of a release of leachate and contaminated ground water to Sugar Creek and Arrow Lake. The rate of release of contaminants is now increasing after an initial period of decreasing concentrations. The Tennessee Solid Waste

Rules (Rule 1200-1-7-.04(7)9.) require landfill owners to implement other methods or techniques when remedial objectives are not being met. The Division is therefore requiring Associated Commodities to submit modifications (improvements) to the original corrective action plan prepared on December, 2003.

The goal of the modified plan must be to restore the wetland system and to reduce the amount of contaminants reaching Sugar Creek so that those waters (below the wetland system) are no longer impaired.

XXI.

On August 15, 2008, Respondent submitted the required Modified Corrective Action Plan (hereinafter "MCAP") to the Department. In addition to describing ongoing wetland restoration and monitoring efforts, the MCAP described the very difficult leachate generation and release conditions that had resulted from the failure to accurately characterize the Site's complex hydrogeologic features in the initial permitting and development of the Facility. The MCAP also (1) described the revised corrective action goal established by the Department, (2) identified various potential corrective action options both for reducing chlorides releases from the landfill and for post-release contaminant removal, and (3) set forth a stepwise strategy and schedule for evaluating these options, for selecting from among them (or other options yet to be identified) one or more capable of achieving the revised corrective action goal, and for designing and implementing the final remedy utilizing such selected corrective action options. The MCAP identified the first step in this process to be the preliminary evaluation of the targeted corrective action options, which was to result in a report to the Department that identified those options that were determined not to be feasible and those determined to be at least potentially feasible, the additional information needed for a more complete evaluation of those potentially feasible alternatives, and a general description of the field investigations or other efforts needed to gather

that additional information. The MCAP was approved for implementation in a letter from the Department dated April 19, 2010.

XXII.

Pursuant to the approved MCAP, the Respondent submitted to the Department on August 24, 2010, a Report of Preliminary Evaluation of Corrective Action Alternatives (hereinafter "RPECAA"). Along with background and historical information, the RPECAA included (1) a description of certain investigative efforts that had been performed since the MCAP was approved, (2) a request for clarification of the corrective action goal by the Department and an explanation as to why such was needed, (3) a summary description of current site conditions, (4) Respondent's preliminary evaluation of identified corrective action alternatives (which includes the recommended elimination of several from further consideration), (5) a summary of planned additional data gathering efforts to fill in critical data gaps in the site characterization information necessary to enable a complete feasibility evaluation of the remaining alternatives, and (6) a description of the corrective action path forward. As anticipated in the Department-approved MCAP, the RPECAA noted that considerable additional efforts were required of the Department (to clarify the corrective action goal) and of the Respondent (to further characterize the migration of contaminants from the landfill to Arrow Lake). The RPECCA also recommended that a meeting be held between Department and Respondent representatives to discuss the prioritization and timing of the additional efforts needed and to establish the needed content and a schedule for the Respondent's submission to the Department of the Field Investigations Plan described in the MCAP.

XXIII.

On January 27, 2011, at the Department's request, a meeting was held between representatives of Respondent and the Department's Divisions of Solid Waste Management and Water Pollution Control to discuss in particular the Respondent's perceived need, as described in the RPECAA, for a clarification of the contaminant reductions needed in Sugar Creek to achieve the corrective action goal of such water no longer being considered impaired by contaminants released from the Facility. At this meeting, Respondent also described a potential new corrective action alternative involving removal and reclamation of the salt cake deposits in the Facility, and certain test excavations and waste testing that needed to be performed on the waste deposits to enable evaluation of the feasibility of such excavation and reclamation. Following this meeting, Respondent provided to the Department via e-mail and mailed correspondence additional information concerning water quality testing performed at and around the Site by Respondent, and additional information (including a request for the minor permit modification needed to allow it to occur) on the planned test excavations and waste testing to be performed by Respondent to evaluate the feasibility of reclamation.

XXIV.

On February 11, 2011, February 14, 2011, and February 17, 2011, Department personnel from the Columbia Environmental Field Office (hereinafter "CEFO") and from the Nashville Central Office (hereinafter "CO") conducted a reconnaissance of the Site along with surface water sampling and stream assessment inspections at points along Sugar Creek (and its Arrow Lake impoundment) upstream and downstream of the point at which the leachate-contaminated stream from the Site enters Sugar Creek. The sampling and analysis results confirmed that the

leachate-contaminated inflow from the Site was resulting in high levels of chlorides and dissolved solids in Sugar Creek downstream of the site.

VIOLATIONS

XXV.

By causing or allowing unauthorized discharges to waters of the state, as described herein, the Respondent has violated T.C.A. §69-3-108(a) and (b) and 69-3-114(b).

T.C.A. §69-3-108(a) provides:

> (a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment work, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

T.C.A. §69-3-108(b) provides:

> (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
>
> (2) The construction, installation, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto;
>
> (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. §69-3-114(b) provides:

> (b) In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file and applications for a permit as required in §69-3-108; or to refuse to

furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XXVI.

By contributing to a condition of pollution in Sugar Creek, the Respondent has violated T.C.A. §69-3-114(a).

T.C.A. §69-3-114(a) provides:

(a) It shall be unlawful for any person to discharge any substance into the water of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

XXVII.

By allowing the release of solid waste or solid waste constituents to the waters of the State, the Respondent has violated T.C.A. §§68-211-104(1), 68-211-104(3), and 68-211-104(4).

T.C.A. §68-211-104(1),(3) and (4) provide:

It is unlawful to:

(1) Place or deposit any solid waste into the waters of the state except in a manner approved by the department or the Tennessee water quality control board;

(3) Construct, alter, or operate a solid waste processing or disposal facility or site in violations of the rules, regulations, or orders of the commissioner or in such a manner as to create a public nuisance; or

(4) Transport, process or dispose of solid waste in violation of this chapter, the rules and regulations established under the provisions of this chapter or in violation of the orders of the commissioner or board.

ORDER AND ASSESSMENT

XXVIII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115, 69-2-116, 68-211-112, 68-211-117, 68-212-224, and 68-212-215, **I, Robert J. Martineau, Jr., issue the following ORDERS AND ASSESSMENTS:**

A. Respondent shall take the following actions to prevent, to the extent practicable, the unauthorized discharge of leachate contamination in surface water flowing from the Site into the Arrow Lake impoundment of Sugar Creek:

1. Within ninety (90) days of the receipt of this fully executed CONSENT ORDER, Respondent shall submit to the Commissioner for his review and comment or approval a Discharge Reduction Plan (hereinafter "DRP") to significantly reduce, particularly during periods of low area surface water flow, the amount of contamination that is currently flowing from the Site in surface water. Such plan shall include an aggressive schedule of implementation, beginning actual reductions in contaminant flow within one hundred fifty (150) days of Respondent's receipt of this fully executed CONSENT ORDER.
2. Upon receipt of written comments from the Commissioner, Respondent shall make any necessary modifications to the DRP to effectively address any deficiencies or questions identified by the Commissioner and shall submit the modified DRP to the Commissioner within thirty (30) days of the receipt of the Commissioner's comments.

3. Upon receipt of the Commissioner's written approval, Respondent shall implement the DRP in accordance with the schedule of implementation included and any conditions established in the Commissioner's approval.

B. Respondent shall develop and implement a plan of corrective action(s) that will effectively and permanently prevent, to the extent practicable, the release of landfilled wastes or waste constituents to groundwater. This plan, which shall focus on actions (such as targeted waste removal) to isolate the landfilled wastes from contact with water (ground water and/or storm water), shall be developed and implemented as follows:

1. Within sixty (60) days of his receipt of this fully executed CONSENT ORDER, Respondent shall submit for the Commissioner's review and comment or approval a Field Investigations Plan (hereinafter "FIP") describing in detail the field investigations and other efforts that will be pursued to gather the additional information necessary for an effective assessment and design of potential corrective measures. The FIP will include a schedule of implementation (not to exceed 180 days from the date Respondent receives the Commissioner's approval) for performing the field investigations and other efforts described and submitting to the Commissioner a Field Investigations Report (hereinafter "FIR") describing the performance of and findings from these efforts.
2. Upon receipt of written comments from the Commissioner, Respondent shall make any necessary modifications to the FIP to effectively address any deficiencies or questions identified by the Commissioner and shall submit the modified FIP to the Commissioner within thirty (30) days of the receipt of the Commissioner's comments.

3. Upon receipt of the Commissioner's written approval, Respondent shall implement the FIP and submit the FIR in accordance with the schedule of implementation included and any conditions established in the Commissioner's approval.

4. Within ninety (90) days following submittal of the FIR, Respondent shall submit to the Commissioner for review and comment or approval a CAP describing the planned corrective actions to be taken and an aggressive schedule for implementing them. The schedule will establish reasonably achievable and measurable interim performance goals and require quarterly reports of the progress made toward achieving those goals. The CAP must also describe the actions that will be taken during implementation to prevent or minimize releases that might threaten public health and the environment, as well as monitoring programs that will be implemented to identify such releases and to measure the effectiveness of the corrective actions.

5. Within sixty (60) days of the receipt of written comments from the Commissioner or as may otherwise be specificed in such comments, Respondent shall make any necessary modifications to the CAP to effectively address any deficiencies or questions identified by the Commissioner and shall submit the modified CAP to the Commissioner.

6. Upon receipt of the Commissioner's written approval, Respondent shall implement the approved CAP in accordance with its included schedule of implementation and any conditions established in the Commissioner's approval.

C. As new information becomes available, the plans developed and approved as described in subparagraphs A and B above may be modified upon written approval of both the Commissioner and Respondent.

D. Except as set forth below, as provided in the approved plans described in subparagraphs A, B, and C above, or as may otherwise be specifically approved in writing by the Commissioner, Respondent shall maintain compliance with the post-closure care requirements required by regulation and the Facility's approved Post-Closure Care Plan.

1. Upon the full execution of this CONSENT ORDER, Respondent shall no longer be required to maintain the Constructed Wetland System at the Site except that the lower dam and weir shall be maintained until alternative plans for managing the surface water have been approved by the Commissioner. Respondent and adjacent property owners shall also be relieved of any land use restrictions associated with the Constructed Wetland System remedy.
2. Upon the Commissioner's approval of the CAP described in subparagraph B above, the monitoring programs described in the CAP will be implemented in lieu of the currently established ground-water and surface-water monitoring program.

E. None of the actions described in this Consent Order, and none of the on-site actions set forth in the approved plans described in subparagraphs A, B, and C above, require modification of the permit for the Facility or a new permit pursuant to Tennessee Rule Chapter 1200-1-7.

F. The Commissioner may, for good cause shown, extend the compliance dates contained within this CONSENT ORDER and in plans developed and approved pursuant to this CONSENT ORDER. In order to be eligible for this time extension, the Respondent

shall submit a written request to be received in advance of the compliance date. The written request shall include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and measures taken to minimize the delay.

G. Respondent is hereby assessed a CIVIL PENALTY in the amount of THREE HUNDRED EIGHTEEN THOUSAND THREE HUNDRED DOLLARS ($318,300.00). The Respondent shall pay the assessed penalties as follows:

1. NINETY THOUSAND DOLLARS ($90,000.00) shall be paid to the Department within sixty (60) days of the receipt of this fully executed CONSENT ORDER.

   a. In lieu of payment of this NINETY THOUSAND DOLLARS ($90,000.00), the Respondent may propose Supplemental Environmental Projects (hereinafter "SEP(s)"). Any proposed SEP(s) must be submitted, in writing, to the Commissioner within 30 days of the receipt of this fully executed CONSENT ORDER.

   b. The written proposal must include an estimate of the anticipated cost of the project(s). Before implementing any proposed SEP(s), the SEP(s) must be approved, in writing, by the Commissioner. In the event that one or more of the proposed SEP(s) are not approved, the Commissioner may extend the time in which to submit an alternative SEP(s) proposal. To receive credit against the CIVIL PENALTY for any approved SEP(s), the Respondent must provide documentation to the Commissioner of the actual costs to be expended on each SEP(s). The value credited against the civil penalty for any approved SEP(s) will be determined by the Commissioner. In the event that the Respondent fails to propose SEP(s) within 30 days of the receipt of this fully executed

CONSENT ORDER, or fails to carry out an approved SEP(s), the portion of the civil penalty allocated for such SEP(s) will become due and payable immediately.

2. The remaining TWO HUNDRED AND TWENTY EIGHT THOUSAND THREE HUNDRED DOLLARS ($228,300.00) shall become due and payable or may be waived as provided below:

a. The Respondent, within ninety (90) days of the receipt of this fully executed CONSENT ORDER, shall have submitted the Discharge Reduction Plan (hereinafter "DRP") to the Department to significantly reduce the amount of contamination that is currently flowing from the Site in surface water. If the Respondent fails to submit the DRP within one hundred and twenty (120) days as described above, the Respondent shall pay THIRTY THOUSAND DOLLARS ($30,000.00) to the Department within one hundred and eighty (180) days of the receipt of this CONSENT ORDER, unless the Commissioner has issued a written waiver to the Respondent to the effect that Respondent has presented good cause for being unable to meet this requirement.

b. The Respondent, within one hundred and fifty (150) days of this fully executed CONSENT ORDER, shall have commenced the approved DRP at the ACC Landfill. If the Respondent fails to begin the implementation of the DRP within one hundred and fifty (150) days, the Respondent shall pay FORTY-EIGHT THOUSAND THREE HUNDRED DOLLARS ($48,300.00) to the Department within one hundred and eighty days of the receipt of this CONSENT ORDER, unless the Commissioner has issued a written waiver to the Respondent to the effect that Respondent has presented good cause for being unable to meet this requirement.

c. The Respondent, within sixty (60) days of this fully executed CONSENT ORDER, shall submit the Commissioner's review and comment or approval a Field Investigations Plan (hereinafter "FIP") describing in detail the field investigations and other efforts that will be pursued to gather the additional information necessary for an effective assessment and design of potential corrective measures, the Respondent shall pay FIFTEEN THOUSAND DOLLARS ($15,000.00) to the Department within one hundred and eighty days of the receipt of this CONSENT ORDER, unless the Commissioner has issued a written waiver to the Respondent to the effect that Respondent has presented good cause for being unable to meet this requirement.

d. Within thirty (30) days of receipt of the Commissioner's written approval, the Respondent shall commence implementation of the FIP. If the Respondent does not commence implementation of the FIP within thirty days of receipt of the Commissioner's written approval, the Respondent shall pay FORTY-FIVE THOUSAND DOLLARS ($45,000.00) to the Department, unless the Commissioner has issued a written waiver to the Respondent to the effect that Respondent has presented good cause for being unable to meet this requirement.

e. Respondent shall implement the FIP and submit the FIR in accordance with the approved schedule and any conditions established in the Commissioner's approval of the FIP. If the Respondent fails to timely submit the FIR, the Respondent shall pay FIFTEEN THOUSAND DOLLARS ($15,000.00) to the Department within sixty days of its failure to submit the FIR, unless the Commissioner has issued a written waiver to the Respondent to the effect that Respondent has presented good cause for being unable to meet this requirement.

remediation of contamination identified and addressed in this CONSENT ORDER. This Liability Protection is extended to successors in interest or in title, contractors conducting response actions at the site, developers, future owners, tenants, and lenders, fiduciaries or insurers, conditioned upon performance of the obligations contained in this CONSENT ORDER and compliance with any land use restrictions required thereby; provided, that such Liability Protection to other persons does not apply to any liability that arose prior to this CONSENT ORDER.

B. THIRD PARTY LIABILITY RELIEF

The Consenting Party shall not be liable to third parties for contribution regarding matters addressed in this CONSENT ORDER provided that the third party was given actual or constructive notice of this CONSENT ORDER, and the third party has been given an actual or constructive opportunity to comment upon this CONSENT ORDER. The Consenting Party has demonstrated to the Department that constructive notice was accomplished by publishing a summary of this CONSENT ORDER in The Daily Herald, Columbia, Tennessee, at least thirty (30) days prior to the effective date of this CONSENT ORDER. Nothing in this CONSENT ORDER shall impair the rights of third parties with respect to tort liability claims for damage to person or property arising from the contamination addressed by this CONSENT ORDER.

C. RESERVATION OF RIGHTS

T.C.A. §68-212-114(d), §68-212-215(e), and §69-3-115(e) each provide that a final action of the Commissioner of the Department may be filed with the Chancery Court of Davidson County, and shall be considered an agreement of the parties thereto to the entry by the

Court of a judgment by consent, the terms and conditions of which are the same as those recited in the administrative order. The cited provisions further provide for the Court to enter a final judgment by consent after the expiration of a forty-five day period for intervention by any citizen. The final judgment has the same effect as any judgment of a court of record of the State of Tennessee, and may be enforced or satisfied in like manner.

In agreeing to the foregoing CONSENT ORDER, the Commissioner does not implicitly or expressly waive any provisions of the Act(s) or regulation(s) promulgated thereunder. Compliance with the provisions of this CONSENT ORDER will be considered as a mitigating factor in determining the need for future enforcement action(s). The department expressly reserves the right to issue further Orders to require further or different corrective action based on changes of conditions or new information, to assess civil penalties for all violations of the law, and to assess all damages, including but not limited to, Natural Resource Damages.

WAIVER OF RIGHT TO APPEAL

Respondent understands that it has the right to appeal this CONSENT ORDER pursuant to T.C.A. §§68-211-113, 69-3-109, 69-3-115 and 4-5-301 et seq. Respondent knowingly and voluntarily waives all of these appeal rights.

The individual signing below on behalf of the Consenting Party represents that she is a duly authorized agent, capable of entering into a CONSENT ORDER on behalf of the Consenting Party.

ORDERED AND AGREED by the Commissioner of the Tennessee Department of Environment and Conservation, **AGREED AND CONSENTED** to by the Respondent

6-7-11
Date

Robert J. Martineau, Jr., Commissioner
Tennessee Department of Environment and Conservation

6/6/11
Date

Sharon O. Jacobs, BPR #014626
Bone McAllester Norton PLLC
Attorney for ACC, LLC, Respondent

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:	)	
	)	
ACC, LLC	)	**APD DOCKET NUMBER**
	)	**04.27-116746A**
RESPONDENT	)	

AMENDED AND RESTATED CONSENT ORDER

This Amended and Restated Consent Order is made and entered into by and between the Tennessee Department of Environment and Conservation (hereinafter "Department") and ACC, LLC a Tennessee Limited Liability Company, and it supersedes the June 2011 Administrative Consent Order, Nos. SWM11-0006 and WPC11-0024.

PARTIES

I.

Robert J. Martineau, Jr., is the duly appointed Commissioner of the Department.

II.

ACC, LLC. (hereinafter the "Respondent" or "Consenting Party") is a limited liability company organized under and existing by virtue of the laws of the State of Tennessee. Service of process may be made on the Respondent through Mr. Thomas W. Hardin, Registered Agent, at 102 West 7th Street, Columbia, Tennessee 38401. Consenting Party is the owner and operator of a closed, Department-permitted industrial landfill that is releasing waste constituents to ground water and surface water. That closed landfill, known as the "ACC Landfill" is the

Exhibit B

subject of this Amended and Restated Consent Order.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Tennessee Water Quality Control Act (the "WQCA or the Act"), Tennessee Code Annotated (T.C.A.) §69-3-101 et seq. has occurred or is about to occur, the Commissioner may issue a complaint to the violator and the Commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the WQCA. Further, the Commissioner has authority to assess civil penalties against any violator of the WQCA, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the WQCA.

IV.

When the Commissioner finds that provisions of the Tennessee Solid Waste Disposal Act, (hereinafter the "SWD Act"), T.C.A. §68-211-101 et seq. are not being complied with, he is authorized by T.C.A. §68-211-112 to issue orders for correction to the responsible person. Further, T.C.A. §68-211-117 gives the Commissioner, or his authorized representative, the authority to assess damages and civil penalties against any person who violates any provision of the SWD Act or any rule, regulation, or standard adopted pursuant to said SWD Act. Notwithstanding any law to the contrary, except chapter 213 of Title 211 of the Tennessee Code Annotated, the approval of the commissioner of a solid waste processing facility or disposal facility or site shall be final and not subject to review by any administrative board, commission or other administrative office or body. T.C.A. §68-211-113(d).

V.

Pursuant to T.C.A. §68-211-107 the Department is authorized to exercise general supervision over the operation and maintenance of solid waste processing facilities and disposal facilities or sites. Such general supervision shall apply to all features of operation or maintenance which do or may affect the public health and safety or the quality of the environment and which do or may affect the proper processing and disposal of solid wastes.

VI.

Pursuant to T.C.A. §68-212-224 of the Hazardous Waste Management Act of 1983, as amended, the Commissioner is authorized to enter into a Amended and Restated Consent Order with a party who is willing and able to conduct an investigation and remediation of a hazardous substance site. The State of Tennessee is vested with the authority of the federal government to implement the Resource Conservation Act Program ("RCRA") in lieu of the federal program. 50 F. R. 85-1581; 71 F. R. 27405-01. The TDEC Commissioner, herein acting instead of the U. S. EPA Administrator for purposes of this RCRA action, enters into this Consent Order.

VII.

Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the Official Compilation Rules and Regulations of the State of Tennessee, Chapters 1200-4-3 and 1200-4-4.

VIII.

Sugar Creek, described herein, is "waters of the state" as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses as set forth in Tennessee Rule Chapter

1200-4-4, Use Classifications for Surface Waters. Accordingly, the impacted portion of Sugar Creek is classified for the following uses: domestic water supply, industrial water supply, fish and aquatic life, recreation, irrigation, livestock watering and wildlife. Additionally, Sugar Creek has been assessed by the Department as impaired due to ammonia, salinity/total dissolved solids/chlorides from landfills, loss of biological integrity due to siltation, and other habitat alterations due to urbanized high density area impacts.

IX.

Tennessee Rule 1200-1-7-.04(8)(d) establishes a 30-year period of post-closure care for Class II (industrial) landfills, and Rule 1200-1-7-.04(8)(e) establishes the minimum activities that the landfill operator must perform during that post-closure care period. Specific post-closure care and ground water corrective action requirements are to be established by the landfill operator in the Post-Closure Care Plan and the Ground Water Corrective Action Plan as detailed in the regulations, and must be approved by the Commissioner.

X.

The Respondent is a "person" and/or a "potentially liable party" as defined by T.C.A. §§ 69-3-103(20); and 68-211-103(6); as herein described.

FACTS

XI.

The Respondent is the current owner of a 48.02-acre parcel of land (hereinafter the "Site") located immediately east of Arrow Mines Road south of the City of Mt. Pleasant in Maury County, Tennessee. Located on that parcel of land, and also currently owned and operated by Respondent, is the closed Class II (industrial) solid waste disposal facility known as the "ACC Landfill" (hereinafter the "Facility"). The Facility encompasses approximately 14

acres and was used for the disposal of aluminum recycling wastes from the Smelter Service Corporation (hereinafter "SSC") secondary aluminum smelting plant located at 400 Arrow Mines Road in Mt. Pleasant, Tennessee. The disposed wastes consist wholly, or almost wholly, of the "salt cake" slag and bag-house dusts from SSC's aluminum smelting operations. Salt cake constitutes by far the greatest bulk of the wastes disposed in the Facility, and it contains high concentrations of highly soluble salts sodium chloride and potassium chloride.

XII.

Surface water and ground water at the Site drain westward toward Arrow Mines Road and Sugar Creek, the Arrow Lake impoundment of which is located immediately west of Arrow Mines Road.

XIII.

The Facility was constructed and operated pursuant to a "registration" or "permit" initially issued to Respondent (in its original corporate form of Associated Commodities Corporation) by the Department (then the Department of Public Health) on July 1, 1981. Under the regulations in effect at the time, the Department actually performed the hydrogeologic evaluation of proposed landfill sites and either approved, with conditions, or disapproved such sites (or portions thereof) for use as a landfill. The Department's conditional hydrogeologic approval of the Facility for landfill use was issued by the Department on February 23, 1981. Subsequent to such approval, and in accordance with the then-applicable regulations, Respondent submitted plans for construction and operation of the landfill which were approved by the Department with the issuance of the registration (permit). The Facility is identified by the Department-assigned number IDL 60-0032.

XIV.

The Respondent started disposing of SSC's wastes at the Facility on or about August 1981, and continued doing so until September 1, 1993. The Respondent then performed final closure of the Facility in accordance with Closure/Post-closure Care and Corrective Action Plans approved by the Department. This involved principally establishing a final soil cover system over the waste deposits that met the requirements of Tennessee Rule 1200-1-7-.04(8)(c)3 [at the time], with surface water controls as necessary to minimize and control erosion and sedimentation. Following subsequent improvements to the final cover and reconstruction of the perimeter surface water drainage ditches around the landfill, Respondent on July 18, 1995, submitted to the Department a certification of completion of closure. On April 8, 1996, the Respondent was issued an Acceptance of Closure by the Department.

XV.

Within a very few years of beginning operation, it appeared to the Respondent and the Department that unacceptably high levels of chlorides and ammonia were leaching out of the wastes and into the underlying ground water and down-gradient surface water that drained into Sugar Creek and Arrow Lake. That condition was not resolved by the final closure of the Facility and continues today. Over the years as regulations and technologies have evolved, the Respondent has worked with the Department – both voluntarily and in response to Department enforcement actions – to identify why this leaching was occurring and try to stop it. Various investigative and corrective action efforts have been performed by Respondent, including, but not limited to, the following:

- Application of daily cover material to divert rainfall from the wastes;
- Construction of lengthy ditches to re-route surface water around the landfill;

- Construction of multiple settling ponds and associated drainage control ditches;
- Attempted sealing of springs and seeps;
- Installation, development, and maintenance of a system of ground water monitoring wells to delineate the nature and extent of ground water contamination;
- Collection and analysis of surface water and ground water samples at multiple locations, including routine periodic monitoring at selected locations, in accordance with plans approved by the Department;
- Soil boring / rock coring with installation of piezometers along the landfill perimeter, and test pit/trench excavations within the landfill to evaluate ground water flow into the landfill ;
- Two separate Dye Tracer Studies to try to define ground water flow and Karst impacts in the vicinity of the landfill;
- Investigation of landfill vicinity for Karst conditions that may control ground water flow;
- Electrical resistivity and microgravity surveys of the landfill to try to define ground water flow paths beneath the landfill; and
- Geoprobe / rotary auger investigations to evaluate depth to bedrock and ground water conditions.

While resulting in a greater understanding of contaminant migration at the Facility, these investigations failed to achieve the desired goal of yielding information leading to the development of feasible alternatives for the preferred remedial option of intercepting or diverting ground water away from the buried waste deposits.

XVI.

In a letter dated June 27, 2003, the Department (1) recognized that the final closure of the landfill had not significantly reduced the release of contaminated leachate from the wastes, (2) acknowledged the extensive hydrogeologic investigations Respondent had performed at the Site to identify the nature of the leachate release (including the mechanism by which ground water interacts with the waste) and the knowledge gained, and (3) called for the development and submission of the ground water corrective action plan required by Tennessee Rule 1200-1-7-.04(7)7 and 8. Respondent submitted a Corrective Action Plan (hereinafter "CAP") meeting these requirements on December 30, 2003. In the CAP, Respondent presented a comprehensive evaluation of the available data, described how the site conditions limited the available options, and identified three remaining options for mitigating the release of contaminated leachate from the landfill: (1) Clean Closure / Waste Removal, (2) Leachate Collection/Treatment, and (3) Natural or Enhanced Site Attenuation. The CAP then presented an assessment of the feasibility and potential effectiveness of these options and concluded that "selection of a remedy that fulfills all the criteria established by Rule 1200-1-7-.04(7)(a)8(ii) in the next two or three years is technically and economically impractical." The CAP then recommended that a Wetlands Treatment Alternative to enhance attenuation of releases and impacts be pursued at the Site. Following a public meeting held by Respondent in January 2004 to obtain public comments on the CAP, including the Aquatic Resource Alteration Permit ("ARAP"),the Department allowed Respondent to pursue this remedy pending the acquisition of the necessary ARAP.

XVII.

On April 2, 2004, Respondent submitted to the Department a Remedial Plan for a Constructed Wetland System down-gradient of the landfill that it believed would retain and

buffer leachate and improve water quality and habitat in Sugar Creek and Arrow Lake. Salt-tolerant vegetation would be planted in both the Constructed Wetland System and on soil impacted by salt. The Constructed Wetland System was to have the following benefits to the local environment: (1) reduce surges of salt concentration downstream of the Site; (2) improve aesthetic values of the Site by removal of stressed vegetation and planting of vegetation that will flourish; (3) improve wildlife habitat, particularly for wetland species (i.e., waterfowl, shorebirds, aquatic invertebrates and amphibians): and (4) improve water quality by the reduction of erosion and breakdown of nutrients and organic matter. On May 4, 2004, the Department's Division of Water Pollution Control issued public notice of their intent to issue an ARAP to allow the wetland restoration effort to proceed. On June 2, 2004, the Department's Division of Solid Waste Management approved the Remedial Plan. The Constructed Wetlands System was subsequently built, but Site and drought conditions over the next several years hindered the full development of the vigorous communities of salt-tolerant vegetation that were planned.

XVIII.

Following a Compliance Review Meeting between Department and Respondent representatives on April 24, 2008, the Department sent a letter to the Respondent, dated June 12, 2008, that stated, in part:

> The landfill is in the fourth year of implementation of a wetland designed to mitigate impacts of a release of leachate and contaminated ground water to Sugar Creek and Arrow Lake. The rate of release of contaminants is now increasing after an initial period of decreasing concentrations. The Tennessee Solid Waste Rules (Rule 1200-1-7-.04(7)9.) require landfill owners to implement other methods or techniques when remedial objectives are not being met. The Division is therefore requiring Associated Commodities to submit modifications (improvements) to the original corrective action plan prepared on December, 2003.

The goal of the modified plan must be to restore the wetland system and to reduce the amount of contaminants reaching Sugar Creek so that those waters (below the wetland system) are no longer impaired.

XIX.

On August 15, 2008, Respondent submitted the required Modified Corrective Action Plan (hereinafter "MCAP") to the Department. In addition to describing ongoing wetland restoration and monitoring efforts, the MCAP described the very difficult leachate generation and release conditions that had resulted from the failure to accurately characterize the Site's complex hydrogeologic features in the initial permitting and development of the Facility. The MCAP also (1) described the revised corrective action goal established by the Department, (2) identified various potential corrective action options both for reducing chlorides releases from the landfill and for post-release contaminant removal, and (3) set forth a stepwise strategy and schedule for evaluating these options, for selecting from among them (or other options yet to be identified) one or more capable of achieving the revised corrective action goal, and for designing and implementing the final remedy utilizing such selected corrective action options. The MCAP identified the first step in this process to be the preliminary evaluation of the targeted corrective action options, which was to result in a report to the Department that identified those options that were determined not to be feasible and those determined to be at least potentially feasible, the additional information needed for a more complete evaluation of those potentially feasible alternatives, and a general description of the field investigations or other efforts needed to gather that additional information. The MCAP was approved for implementation in a letter from the Department dated April 19, 2010.

XX.

Pursuant to the approved MCAP, the Respondent submitted to the Department on August 24, 2010, a Report of Preliminary Evaluation of Corrective Action Alternatives (hereinafter "RPECAA"). Along with background and historical information, the RPECAA included (1) a description of certain investigative efforts that had been performed since the MCAP was approved, (2) a request for clarification of the corrective action goal by the Department and an explanation as to why such was needed, (3) a summary description of current Site conditions, (4) Respondent's preliminary evaluation of identified corrective action alternatives (which includes the recommended elimination of several from further consideration), (5) a summary of planned additional data gathering efforts to fill in critical data gaps in the site characterization information necessary to enable a complete feasibility evaluation of the remaining alternatives, and (6) a description of the corrective action path forward. As anticipated in the Department-approved MCAP, the RPECAA noted that considerable additional efforts were required of the Department (to clarify the corrective action goal) and of the Respondent (to further characterize the migration of contaminants from the landfill to Sugar Creek and Arrow Lake). The RPECCA also recommended that a meeting be held between Department and Respondent representatives to discuss the prioritization and timing of the additional efforts needed and to establish the needed content and a schedule for the Respondent's submission to the Department of the Field Investigations Plan described in the MCAP.

XXI.

On January 27, 2011, at the Department's request, a meeting was held between representatives of Respondent and the Department's Divisions of Solid Waste Management and Water Pollution Control to discuss in particular the Respondent's perceived need, as described in

the RPECAA, for a clarification of the contaminant reductions needed in Sugar Creek to achieve the corrective action goal of such water no longer being considered impaired by contaminants released from the Facility. At this meeting, Respondent also described a potential new corrective action alternative involving removal and reclamation of the salt cake deposits in the Facility, and certain test excavations and waste testing that needed to be performed on the waste deposits to enable evaluation of the feasibility of such excavation and reclamation. Following this meeting, Respondent provided to the Department via e-mail and mailed correspondence additional information concerning water quality testing performed at and around the Site by Respondent, and additional information (including a request for the minor permit modification needed to allow it to occur) on the planned test excavations and waste testing to be performed by Respondent to evaluate the feasibility of reclamation.

XXII.

On February 11, 2011, February 14, 2011, and February 17, 2011, Department personnel from the Columbia Environmental Field Office (hereinafter "CEFO") and from the Nashville Central Office (hereinafter "CO") conducted a reconnaissance of the Site along with surface water sampling and stream assessment inspections at points along Sugar Creek (and its Arrow Lake impoundment) upstream and downstream of the point at which the leachate-contaminated stream from the Site enters Sugar Creek. The sampling and analysis results confirmed that the leachate-contaminated inflow from the Site was resulting in high levels of chlorides, ammonia and dissolved solids in Sugar Creek downstream of the Site.

VIOLATIONS

XXIII.

By causing or allowing unauthorized discharges to waters of the state, as described herein, the Respondent has violated T.C.A. §§69-3-108(a) and (b) and 69-3-114(b).

T.C.A. §69-3-108(a) provides:

> (a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment work, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

T.C.A. §69-3-108(b) provides:

> (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
>
> (2) The construction, installation, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto;
>
> (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. §69-3-114(b) provides:

> (b) In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file and applications for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XXIV.

By contributing to a condition of pollution in Sugar Creek, the Respondent has violated T.C.A. §69-3-114(a).

T.C.A. §69-3-114(a) provides:

> (a) It shall be unlawful for any person to discharge any substance into the water of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

XXV.

By allowing the release of solid waste or solid waste constituents to the waters of the State, the Respondent has violated T.C.A. §§68-211-104(1), 68-211-104(3), and 68-211-104(4).

T.C.A. §68-211-104(1),(3) and (4) provide:

It is unlawful to:

> (1) Place or deposit any solid waste into the waters of the state except in a manner approved by the Department or the Tennessee water quality control board;
>
> (3) Construct, alter, or operate a solid waste processing or disposal facility or site in violations of the rules, regulations, or orders of the commissioner or in such a manner as to create a public nuisance; or
>
> (4) Transport, process or dispose of solid waste in violation of this chapter, the rules and regulations established under the provisions of this chapter or in violation of the orders of the commissioner or board.

ORDER AND ASSESSMENT

XXVI.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115, 69-2-116, 68-211-112, and 68-211-117, I, Robert J. Martineau, Jr., issue the following ORDERS AND ASSESSMENTS:

A. Respondent shall take the following actions to prevent the unauthorized discharge of leachate contamination in water flowing from the Site into the Arrow Lake impoundment of Sugar Creek:

1. Within 120 days of the effective date of this Amended and Restated Consent Order, or as is otherwise agreed to by the parties, the Respondent shall construct a berm upgradient of the site to divert uncontaminated storm water away from the Landfill prior to the commencement of any corrective action activities on the Landfill.

2. As part of the Corrective Action Plan (CAP), described in Section C, Respondent shall submit to the Commissioner for his review and comment or approval a modified Discharge Reduction Plan (hereinafter "DRP") that incorporates TDEC's comments and revisions to Respondent's draft DRP that was submitted to TDEC in September 2011. The modified DRP shall significantly reduce, particularly during periods of low area surface water flow, the loading of contaminants that are currently discharging from the Site via surface waters. The modified DRP shall include a schedule for implementation.

3. The DRP shall contain a plan to divert surface water away from the

landfill area and the current wetland system. The DRP shall eliminate, to the extent practicable, the potential for surface water to migrate from the surface into the landfill and eliminate the potential for surface water to enter the excavated area of the landfill once corrective action begins.

4. Upon receipt of written comments from the Commissioner, Respondent shall make any additional necessary modifications to the modified DRP to effectively address any deficiencies or questions identified by the Commissioner and shall submit the final modified DRP to the Commissioner within thirty (30) days of the receipt of the Commissioner's comments and approval.

5. Upon receipt of the Commissioner's written approval, Respondent shall implement the DRP in accordance with the schedule of implementation included therein. Once the CAP has been approved by the Commissioner all discharge reductions measures shall be contained therein and become part of the approved CAP.

B. Respondent shall remove from the current landfill all solid waste, to the extent practicable, that has the potential for future contact with ground or surface water. All waste removed will be relocated to a new landfill cell constructed on the Site or to a permitted off-site landfill.

1. Prior to the Commissioner's approval of the Corrective Action Plan (Section C below) but after commencement of waste removal activities, the Respondent shall capture ground water entering the excavated area, analyze the ground water to determine its chemical characteristics, and

then either (a) redirect the collected water back into the landfill or (b) discharge the collected ground water directly into Arrow Lake if the water is consistent with background concentrations as approved by TDEC, Tennessee water quality criteria, or the water quality described below:

Specific conductance	<500 µS/cm
TDS	< 500 mg/L
Chloride	< 250 mg/L
COD	<15 mg/L
Ammonia nitrogen	< 2 mg/L
Mercury	< 0.00005 mg/L
Cadmium	< 0.00025 mg/L
Hexavalent Chromium	< 0.011 mg/L
Arsenic	<0.000051 mg/L
Copper	<0.009 mg/L.
Nickel	<0.052 mg/L
Lead	< 0.0025 mg/L
Zinc	< 0.12 mg/L
Selenium	< 0.005 mg/L
Silver	< 0.0032 mg/L

2. After the Corrective Action Plan (Section C below) has been approved by the Commissioner, the list of constituents, their concentrations, and frequency of analysis shall follow the sampling plan contained in the approved Water Monitoring Plan as contained in the approved CAP as outlined in section (C) 4 below.

3. As waste is removed from the Site, the Respondent shall capture ground water that is upgradient of the remaining waste and handle such ground water as described in the approved DRP, or as is otherwise required by the CAP. Treatment, transport or disposal of water is not required pursuant to this Order until the TDEC approved CAP has been completed.

C. Within one hundred and fifty (150) days of the effective date of this Amended and

Restated Consent Order, Respondent in general accordance with the ground water corrective action provisions of Rule 1200-01-07-.04(7), shall submit to the Department a Corrective Action Plan (CAP) which provides for the methods and schedule for removal of solid wastes that have been disposed of in the ACC Landfill which have the potential for future contact with surface or groundwater. The CAP shall include, but not be limited to, the following plans:

1. Operation Plan – a narrative and design of the proposed corrective action including an estimate of the amount of waste to be removed daily and proposed methods of removal. The CAP shall contain a schedule for the removal and relocation of all impacted waste which has the potential for future contact with surface or ground water within four (4) years or less from the effective date of this Order;
2. Stormwater Management – The Respondent must obtain coverage under, and fully comply with, the Tennessee Construction Stormwater General Permit during the construction of any landfill cell on the Site and during the removal of solid waste from the existing landfill;
3. Landfill Design – The Respondent shall submit plans for the design of any landfill cell to be built on site. The plan shall be equivalent in design to Subtitle D of the Resource Conservation Recovery Act (RCRA) and include a barrier liner, leachate collection layer, and final cover system for any landfill cell. The Commissioner agrees that the Site is an "Area of Contamination" (AOC) as that term is commonly used in RCRA corrective actions and the AOC policy issued by the United States

Environmental Protection Agency in EPA530-F-98-026 on October 14, 1998 applies to remedial actions at this Site.

4. Water Monitoring Plan – Respondent shall develop and implement a monitoring and sampling plan that meets the requirements in Rule 1200-1-07-.04(7)(a)9(i)(l) for the leachate discharging from the landfill and for any ground water pumped from the worksite. Surface water sampling points shall include the primary point of discharge of contaminated water from the Site and the agreed upon representative sampling points specified in the Plan. The sampling and monitoring plan shall include continuous monitoring of temperature, flow, pH, and conductivity of the leachate, discharge at the site weir, so long as such weir is operational as deemed appropriate by TDEC . Additionally, semi-monthly grab samples shall be collected at the primary point of discharge of contaminated water from the Site and the clean water diversion and agreed upon representative sampling points and analyzed for pH, temperature, chloride, chemical oxygen demand, total dissolved solids, total suspended solids, Ammonia Nitrogen, and total recoverable Aluminum, Lead, Cadmium, Mercury, Hexavalent Chromium, Arsenic, Copper, Nickel and Zinc. The sampling frequency for these constituents may be reduced to monthly if results for 3 consecutive months (6 consecutive samples) remain below the levels indicated in XXVI-B or as otherwise agreed upon by TDEC. In the event there are certain constituents which are consistently below method detection levels, ACC may submit a request to the Department to exclude

those constituents from future sampling requirements. The Department agrees that no reasonable request shall be denied by the Department. Additionally, the Respondant may request a reduction in the extent or frequency of sampling of the clean water diversion if results indicate consistent compliance with water quality limits. Sampling shall follow an approved quality assurance plan, such as the one maintained by the Department on its website, and all chemical analyses shall meet the detection level reporting requirements found in Tennessee's General Water Quality Criteria.

The CAP shall contain a schedule requiring the Respondent to conduct a 3-Brood Water Flea (Ceriodaphnia dubia) Survival and Reproduction Test and a 7-Day Fathead Minnow (Pimephales promelas) Larval Survival and Growth Test on the discharge and every six (6) months thereafter. Sampling and analysis shall be conducted in accordance with TDEC-approved methods. The measured endpoint for toxicity will be the inhibition concentration causing twenty-five percent (25%) reduction in survival, reproduction and growth (IC25) of the test organisms. The IC25 shall be determined based on a twenty-five percent (25%) reduction as compared to the controls, and as derived from linear interpolation. The average reproduction and growth responses will be determined based on the number of Ceriodaphnia dubia or Pimephales promelas larvae used to initiate the test.

The test shall be conducted and its results reported based on appropriate replicates of a total of five (5) serial dilutions and a control, using the percent effluent dilutions as presented in the following table:

Serial Dilutions for Whole Effluent Toxicity (WET) Testing					
Toxicity Limit (PL) (a)	0.50 X PL	0.25 X PL	0.125X PL	0.0625X PL	Control
% effluent					
100	50	25	12.5	6.25	0

The dilution/control water used will be moderately hard water as described in Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms, EPA-821-R-02-013 (or the most current edition).

Toxicity will be demonstrated if the IC25 value is not greater than one-hundred percent (100%). Test procedures, quality assurance practices, determination of effluent survival/reproduction and survival/growth values, and report formats will be made in accordance with Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms, EPA-821-R-02-013, (or the most current edition).

Results of all tests, reference toxicant information, copies of raw data sheets, statistical analysis and chemical analyses shall be compiled in a report. The report will be written in accordance with the Short-Term

Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms, EPA-821-R-02-013, (or the most current edition).

Ground water protection/monitoring standards of Rule 1200-1-7-.04(7) shall continue to apply to the ACC Landfill after implementation of the CAP. A revised Ground Water Monitoring Plan will also be prepared in conjunction with the Surface Monitoring Plan and included as part of the CAP. Upon approval of the CAP by the Commissioner, the CAP shall contain the ground water monitoring plan and the surface water monitoring plan to be conducted at the Site during the implementation of all remedial activities at the Site constistent with Rule 1200-1-7-.04(7).

5. Upon receipt of the Commissioner's written approval, Respondent shall implement the approved CAP in accordance with any conditions established in the Commissioner's approval.

D. As new information becomes available, the plans developed and approved as described above may be modified upon written approval of both the Commissioner and Respondent.

E. Except as set forth below, or as provided in the approved plans described in subparagraphs A, B, and C above, or as may otherwise be specifically approved in writing by the Commissioner, Respondent shall maintain compliance with the post-closure care requirements required by regulation and the Facility's approved Post-Closure Care Plan.

1. Upon the full execution of this Amended and Restated Consent Order,

Respondent shall no longer be required to maintain the Constructed Wetland System at the Site except that the lower dam and weir shall be maintained until alternative plans for managing the surface water have been approved by the Commissioner. Respondent and adjacent property owners shall also be relieved of any land use restrictions associated with the Constructed Wetland System remedy.

2. Upon the Commissioner's approval of the CAP described in subparagraphs B and C above, the monitoring programs described in the CAP will be implemented in lieu of the currently established ground water and surface water monitoring program.

F. None of the actions described in this Amended and Restated Consent Order, and none of the on-site actions set forth in the approved plans described in subparagraphs A, B, and C above, require modification of the permit for the Facility or a new permit pursuant to Tennessee Rule Chapter 1200-1-7.

G. The Commissioner may extend the compliance dates contained within this Amended and Restated Consent Order and in plans developed and approved pursuant to this Amended and Restated Consent Order if the Respondent provides a written request to the Commissioner. The request shall be received by TDEC no later than two (2) weeks, {fourteen (14) days} prior to the applicable compliance date. The written request shall include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and measures taken so far, as well as those planned for the future to minimize the delay.

H. Respondent is hereby assessed a CIVIL PENALTY in the amount of FOUR HUNDRED THOUSAND DOLLARS ($400,000.00). The Respondent shall pay the assessed penalties as follows:

1. ONE HUNDRED THOUSAND DOLLARS ($100,000.00) shall become due and payable to the Department if the Respondent fails to meet the one-year milestone deadlines established in the CAP for removing waste from the ACC Landfill.

2. ONE HUNDRED THOUSAND DOLLARS ($100,000.00) shall become due and payable to the Department if the Respondent fails to meet the two-year milestone deadlines established in the CAP for removing waste from the ACC Landfill.

3. ONE HUNDRED THOUSAND DOLLARS ($100,000.00) shall become due and payable to the Department if the Respondent fails to meet the three-year milestone deadlines established in the CAP for removing waste from the ACC Landfill.

4. ONE HUNDRED THOUSAND DOLLARS ($100,000.00) shall become due and payable to the Department if the Respondent fails to meet the four-year milestone deadlines established in the CAP for removing waste from the ACC Landfill.

XXVII.

RESERVATION OF RIGHTS

T.C.A. §68-212-114(d) and §69-3-115(e) each provide that a final action of the Commissioner of the Department may be filed with the Chancery Court of Davidson County, and shall be considered an agreement of the parties thereto to the entry by the Court of a judgment by consent, the terms and conditions of which are the same as those recited in the administrative order. The cited provisions further provide for the Court to enter a final judgment by consent after the expiration of a forty-five (45) day period for intervention by any citizen. The final judgment has the same effect as any judgment of a court of record of the State of Tennessee, and may be enforced or satisfied in like manner.

In agreeing to the foregoing Amended and Restated Consent Order, the Commissioner does not implicitly or expressly waive any provisions of the Act(s) or regulation(s) promulgated thereunder. Compliance with the provisions of this Amended and Restated Consent Order will be considered as a mitigating factor in determining the need for future enforcement action(s). The Department expressly reserves the right to issue further Orders to require further or different corrective action, including without limitation, restoration of Aventis' and/or SLLI's property impacted solely as a result of ACC's landfill, Sugar Creek and Arrow Lake due to impacts from the discharges from the Site, or based on changes of conditions or new information, to assess civil penalties for all violations of the law, and to assess all damages, including but not limited to, Natural Resource Damages.

WAIVER OF RIGHT TO APPEAL

Respondent understands that it has the right to appeal this Amended and Restated Consent Order pursuant to T.C.A. §§68-211-113, 69-3-109, 69-3-115 and 4-5-301 et seq. Respondent knowingly and voluntarily waives all of these appeal rights.

The individual signing below on behalf of the Consenting Party represents that she is a duly authorized agent, capable of entering into an Amended and Restated Consent Order on behalf of the Consenting Party.

ORDERED AND AGREED by the Commissioner of the Tennessee Department of Environment and Conservation, **AGREED AND CONSENTED** to by the Respondent.

8/7/12
Date

Robert J. Martineau, Jr.
Robert J. Martineau, Jr., Commissioner
Tennessee Department of Environment and Conservation

8/7/12
Date

Sharon O. Jacobs, BPR #014626
Bone McAllester Norton PLLC
Attorney for ACC, LLC, Respondent

MAR 1 9 2012
Dav. Co. Chancery Court

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

IN RE:	)	
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION Order No. SWM11-0006; WPC11-0024	)	CASE NO. 11-0769-III
ACC, LLC	)	
Petitioner, and	)	
StarLink Logistics, Inc., and Tennessee Department of Environment and Conservation,	)	
Intervenors.	)	

RECEIVED
MAR 23 2012
TN ATTORNEY GENERAL
ENVIRONMENTAL DIVISION

FILED
2012 MAR 21 AM 9:33
CLERK & MASTER
DAVIDSON COUNTY CHANCERY COURT
D.C. & M.

ORDER OF REMAND FOR CONTESTED CASE HEARING BEFORE THE TENNESSEE SOLID WASTE DISPOSAL CONTROL BOARD

Pursuant to this Court's Order of November ~~11~~ 14 (EHL), 2011, ACC, LLC ("ACC"), the Petitioner in this matter has filed a Notice of Failure to Resolve this Matter with this Court notifying the Court that the parties have been unable to resolve all matters at issue on or before January 20, 2012. Therefore, as required by the November ~~11~~ 14 (EHL), 2011 Order, this matter shall be remanded to the Tennessee Solid Waste Disposal Control Board for a contested case.

(EHL)

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

This matter is dismissed from Davidson County Chancery Court and remanded for further proceedings before the Tennessee Solid Waste Disposal Control Board as a contested case matter pursuant to the Tennessee Uniform Administrative Procedures Act in accordance with Tenn. Code Ann. § 4-5-301, *et seq.* (EHL) Court costs are taxed equally to all the parties, the intervenors and petitioner.

IT IS SO ORDERED THIS _____ DAY OF JANUARY 2012.

Ellen Hobbs Lyle
HON. ELLEN HOBBS LYLE,
CHANCELLOR

Exhibit C

{00702255.1}

Respectfully submitted,

SHARON O. JACOBS, BPR #014626
Bone McAllester Norton PLLC
Nashville City Center
511 Union Street, Suite 1600
Nashville, TN 37219
Telephone: (615) 238-6306
Facsimile: (615) 687-2761
sjacobs@bonelaw.com

and

SUSAN R. HIGH-MCAULEY, BPR #016143
131 Saundersville Road, Suite 130
Hendersonville, TN 37075
Telephone: (615) 822-8822
Facsimile: (615) 780-7979
shigh-mcauley@bonelaw.com

by SOJ w/ permission

THOMAS W. HARDIN, BPR #2873
Hardin, Parkes, Kelley & Carter, PLLC
102 West Seventh Street
P. O. Box 929
Columbia, TN 38402-0929
Telephone: (931) 388-4022
thardin@hardinandparkes.com

Attorneys for ACC, LLC

RULE 58 CERTIFICATION

A Copy of this order has been served by U. S. Mail upon all parties or their counsel named above.

Deputy Clerk and Master
Chancery Court

3/21/12
Date

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via HAND DELIVERY and electronic mail to the following:

Elizabeth P. McCarter, Senior Counsel
Tennessee Attorney General's Office
Environmental Division
425 5th Avenue North
P. O. Box 20207
Nashville, TN 37202

Derek C. Jumper, Esq.
Frost Brown Todd, LLC
424 Church Street, Suite 1600
Nashville, TN 37219-2308

I hereby certify that a true and correct copy of the foregoing has been sent via United States mail and electronic mail to the following:

Christopher S. Habel, Esq.
Frost Brown Todd, LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, OH 45202-4182

on January 19th, 2012.

Sharon O. Jacobs