UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.
291077

APR 25 2008

REPLY TO THE ATTENTION OF Lindsay Light II/OU07

BY ELECTRONIC MAIL [glp@mmmlaw.com]
AND BY CERTIFIED MAIL/RETURN RECEIPT REQUESTED

465 N. Park Drive, LLC
C/o Gerald L. Pouncey, Jr., Esq.
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, Georgia 30326

Re: Lindsay Light II Site, 05YT, Chicago, IL
OU07/319 E. Illinois

Dear Mr. Pouncey:

Enclosed please find an executed copy of the Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") issued for this Site pursuant to Sections 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9606 and 9622. Under this Settlement Agreement, your client has agreed to undertake the removal actions determined by the United States Environmental Protection Agency ("U.S. EPA") to be necessary at the Lindsay Light II Site, 05YT, Operable Unit 07 in Chicago, Illinois and has agreed to reimburse the United States for its past costs associated with this Operable Unit.

If you have any questions regarding this Settlement Agreement, please contact Mary Fulghum, Associate Regional Counsel, at (312) 886-4683 or Verneta Simon, On-Scene Coordinator, at (312) 886-3601.

Thank you for your cooperation in achieving this settlement. U.S. EPA looks forward to the cleanup of this property.

Sincerely yours,

Richard C. Karl, Director
Superfund Division

Enclosure

cc: State Agency Superfund Program Manager

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Lindsay Light II Site 05YT
Operable Unit 7
319 Illinois Street,
Chicago, Illinois

Respondent:

465 N. Park Drive, LLC

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL

Docket No. V-W- '08-C-899

Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, And Liability Act, as amended, 42 U.S.C.§§ 9604, 9606(a), 9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and Respondent. This Settlement Agreement provides for the performance of removal actions by Respondent including recording deed restrictions on portions of the Site where radioactive contamination may be present and the reimbursement of certain response costs incurred by the United States at or in connection with the property currently designated as Lindsay Light II Site 05YT Operable Unit ("OU") 7, and more specifically defined in paragraph 8(k) below.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"). This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

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

4. U.S. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Other than proceedings to implement or enforce this Settlement Agreement, Respondent does not admit, and retains the right to controvert in any subsequent proceedings the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon U.S. EPA and upon Respondent and its successors and assigns including subsequent Surface/Subsurface Ownership holders or transferees. Any change in ownership or corporate status of the Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter the Respondent's responsibilities under this Settlement Agreement except as expressly stated in Section X (Deed Restriction/Institutional Control Document), Paragraph 26 (c) of this Settlement Agreement.

6. Respondent is jointly and severally liable for carrying out all activities required of Respondent by this Settlement Agreement.

7. Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance by such parties with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.

c. "Future Response Costs" shall mean all costs, including direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement on or after April 1, 2008.

d. "Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded

annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

e. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

f. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all exhibits attached hereto (listed in Section XXIX Severability/Integration/Exhibits). In the event of conflict between this Settlement Agreement and any exhibit, this Settlement Agreement shall control.

g. "Parties" shall mean U.S. EPA and Respondent.

h. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid or incurred prior to or on March 31, 2008 in connection with the Site.

i. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

j. "Respondent" shall mean 465 N. Park Drive, LLC, a Delaware limited liability company formerly known as 319 E. Illinois Street, LLC. and any subsequent Surface/Subsurface Ownership Interest holder or transferee.

k. "Site" shall mean the Lindsay Light II, Operable Unit 7, 319 E. Illinois Superfund Site in Chicago, Cook County, Illinois and depicted generally on the map and legal description attached as Exhibit A. Previously, Operable Unit 7 included the current Operable Unit 7 owned by 319 E. Illinois Street, LLC and adjacent property to the south. U.S. EPA has designated the adjacent property to the south, which is not owned by 319 E. Illinois Street, LLC, as Operable Unit 13.

l. "State" shall mean the State of Illinois.

m. "Surface/Subsurface Ownership Interest" shall mean any ownership interest in the Site as described by the legal description of property included in Exhibit A which includes

control of the surface and/or subsurface portions of the Site. This term is not intended to apply to condominium units.

n. "Thorium Contaminated Soil" shall mean thorium contaminated soil exceeding 7.1 pico Curies per gram (pCi/g) total radium (RA-226 and RA-228) including background.

o. "Uninvestigated or Unremediated Area" shall mean any portion of the Site which is not radiologically surveyed in 18-inch lifts to native soil or any portion of the site where any known Thorium Contaminated Soil will remain after completion of the Work.

p. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

q. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous material" under Section 3.125 of the Illinois Environmental Protection Act, 415 ILCS 5/3.125 (2002).

r. "Work" shall mean all activities the Respondent is required to perform under this Settlement Agreement.

s. "Work Plan" shall mean the U.S. EPA-approved work plan including schedule described in Section VIII Work to be Performed and any modifications pursuant to Section XXVI Modifications.

IV. FINDINGS OF FACT

9. Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

a. Beginning in 1904, the Lindsay Light Company ("Lindsay Light") manufactured gas lights and gas mantles containing radioactive thorium at several locations in the Streeterville neighborhood of Chicago, Illinois. The production of thorium resulted in "mill tailings," a sandy waste containing radioactive thorium that was used as fill material in the Streeterville area. U.S. EPA has not identified any records of Lindsay Light's thorium mill

tailing disposal practices in Chicago. In the City of Chicago, where the soil generally is covered by pavement, sidewalks, buildings, and fill material, it is difficult for radiation detection instruments to confirm the presence or absence of buried thorium contamination until soils are exposed.

b. Lindsay Light corporate records indicate that by September 1936, Lindsay Light completed moving its ore processing and manufacturing operations to the City of West Chicago and discontinued its Streeterville operations. After moving to West Chicago, Lindsay Light and its successors continued to produce thorium as well as other radioactive materials. In West Chicago and nearby areas, the radioactive thorium mill tailings were used as fill material, dispersed by wind, and subject to runoff. U.S. EPA determined that the thorium presented a threat to human health and designated four West Chicago areas as separate sites on the National Priorities List of Superfund Sites. Over 670 residential area properties, a 100 acre park, a sewage treatment plant, and nearly 8 miles of creek and river have been or are being addressed by U.S. EPA-ordered removal actions at the West Chicago facility.

c. In 1994, after buried thorium was discovered at 316 E. Illinois, Chicago, Illinois a former location of Lindsay Light's ore processing plant, U.S. EPA designated 316 E. Illinois as the "Lindsay Light II" removal site. U.S. EPA since has identified ten additional removal action operable units associated with the Lindsay Light II facility and, to date, approximately 50,000 cubic yards of thorium-contaminated material associated with the Lindsay Light II facility have been removed from Streeterville area.

d. The Site is located at 319 East Illinois Street immediately southeast of 316 East Illinois Street, Lindsay Light II Site. Lindsay Light also used a building at 161 East Grand Avenue (Lindsay Light I) for its offices and for manufacturing thorium-impregnated gas mantles. The Site is also located east southeast from the Lindsay Light II Site, OU 03, North Columbus Drive (227 East Grand Avenue) which was formerly known as "Grand Pier."

e. Respondent plans to begin excavation and construction at the Site, during April 2008 to build a multi-story, residential, hotel and/or retail development.

f. Subsurface thorium contamination has been identified at the Site. Construction laborers, utility workers and the public may be exposed to elevated levels of thorium if the site is excavated without proper radiation monitoring, management and disposal of radioactively contaminated materials.

g. Thorium Contaminated Soil may remain on certain portions of the Site to the extent allowed by the Work Plan.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

b. The contamination found at the Lindsay Light II facility, as identified in the Findings of Fact above, includes a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.

e. Respondent, 465 N. Park Drive, LLC, is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

f. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(22) and 101(8) of CERCLA, 42 U.S.C.§§ 9601(22) and 9601(8).

g. The removal action, including deed restrictions, required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment, 42 U.S.C. § 9604(a)(1), is in the public interest, 42 U.S.C. § 9622(a), and, if carried out in compliance with the terms of this Settlement Agreement, will be done properly and promptly by the Respondent and considered consistent with the NCP, 42 U.S.C. §§ 9604(a)(1) and 9622(a).

VI. SETTLEMENT AGREEMENT AND ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all Exhibits to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

11. Respondent has selected a supervising contractor known as STS Consultants Ltd. ("STS") to perform the Work. Respondent has provided U.S. EPA with the qualifications of STS Consultants, Ltd. The Respondent shall also notify U.S. EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least fifteen (15) days prior to commencement of such Work. U.S. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by the Respondent to perform the Work. If U.S. EPA disapproves of a selected contractor, the Respondent shall retain a different contractor and shall notify U.S. EPA of that contractor's name and qualifications within fifteen (15) days of U.S. EPA's disapproval. STS must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by U.S. EPA

12. Respondent has designated Dr. Steven C. Kornder as the Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. U.S. EPA retains the right to disapprove of any subsequent designated Project Coordinator. If U.S. EPA disapproves of a designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify U.S. EPA of that person's name, address, telephone number, and qualifications within 5 business days following U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

13. U.S. EPA has designated Verneta Simon of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC in accordance with Section XXVIII Notices and Submissions. Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant post consumer waste paper content where possible) and using two-sided copies.

14. U.S. EPA and Respondent shall have the right, subject to Paragraph 12, to change their respective designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

15. Respondent shall implement the removal actions required by the approved Work Plan which is attached as Exhibit B and perform, at a minimum, the following removal activities in accordance with the Work Plan:

a. Based upon soil results, remove, transport and dispose of wastes or contaminants at a RCRA/CERCLA approved disposal facility in accordance with the U.S. EPA off-site rule or otherwise manage in accordance with federal, state and local environmental regulations.

b. As set forth in the Work Plan, remove certain radioactive wastes or contaminants exceeding 7.1 picoCuries per gram (pCi/g) total radium (Ra-226 + Ra-228), including background, cleanup criterion and transport to and dispose of at the EnergySolutions, Inc. ("EnergySolutions"), a disposal facility in Clive, Utah licensed to accept radiological Waste Material from the Site in accordance with the U.S. EPA off-site rule. (Respondent has orally advised U.S. EPA that it has entered into a separate agreement with Tronox in which Tronox agreed to perform transportation and disposal of radiologically contaminated Waste Material. U.S. EPA can not enforce that the Tronox agreement, however, and Respondent is responsible for compliance with this paragraph.)

c. Conduct off-site radiological surveying and sampling as necessary to the existing curb line surrounding the site should Thorium Contaminated Soil be discovered within the sidewalk rights-of-ways contiguous to the property on Illinois Street and New Street or in the utility

corridors excavated or intruded upon, and, remove thorium-contaminated soil to the 7.1 picoCuries per gram (pCi/g) total radium (Ra-226 + Ra-228) including background and, at a minimum, implement 40 C.F.R. §192, if deemed necessary.

d. If any portion of the Site is not radiologically surveyed due to interference by existing utilities, infrastructure or depth of the Ogden Slip arm or if any known Thorium Contaminated Soil will remain after completion of the Work due to interference by existing utilities or infrastructure then Respondent shall identify and depict all locations at the Site that were not radiologically surveyed in accordance with the Work Plan or where any known Thorium Contaminated Soil will remain after completion of the Work and shall implement U.S. EPA-approved deed restrictions or other U.S. EPA-approved institutional controls pertaining to the Site.

16. Work Plan and Implementation.

a. Respondent shall implement the Work Plan, attached as Exhibit B, which has been approved in writing by U.S. EPA. The Work Plan shall be performed in accordance with the schedule approved by U.S. EPA. The Work Plan, the schedule contained therein, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

17. Health and Safety Plan.

Respondent has submitted for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of Work under this Settlement Agreement. The Health and Safety was be prepared consistent with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If U.S. EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by U.S. EPA and shall implement the Health and Safety Plan during the pendency of the removal action.

18. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures.

Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001, Reissued May 2006)," or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for QA monitoring. Respondent shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity, unless shorter notice is agreed to by U.S. EPA. U.S. EPA shall have the right to take any additional samples that U.S. EPA deems necessary. Upon request, U.S. EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

19. Reporting.

a. Respondent shall submit a written progress report to U.S. EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of the commencement of Work, until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit three (3) copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by U.S. EPA, Respondent shall submit such documents in electronic form.

c. Respondent shall prior to the conveyance of any Surface/Subsurface Ownership Interest at the Site (excluding condominium units), give written notice to the transferee that the property is subject to this Settlement Agreement and give written notice to U.S. EPA of the transfer or conveyance, including the name and address of the transferee. Respondent also agrees to require that each subsequent transferee agree in writing to comply with the immediately preceding sentence and Sections X (Site Access), XI (Deed Restriction/Institutional Control Document) and XII (Access to Information) and agree in writing to be subject to Section XIX (Stipulated Penalties) for any noncompliance with this Settlement Agreement.

20. Final Report.

Within sixty (60) calendar days after completion of all Work required by Section VIII of this Settlement Agreement, Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and with the guidance set forth in "Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total direct costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

21. Off-Site Shipments.

a. Thorium Contaminated Soil. Respondent has advised U.S. EPA that Tronox LLC ("Tronox"), the successor corporation to Lindsay Light and Kerr-McGee Chemical, has agreed in writing to transport Thorium Contaminated Soil to EnergySolutions, a disposal facility in Clive, Utah licensed to accept radioactive Waste Material from the Site. Prior to the initial shipment of Thorium Contaminated Soil originating from the Site, Respondent shall provide or cause Tronox to provide written notification of such shipment to the appropriate Utah state environmental official and to the OSC.

i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Thorium Contaminated Soil is to be shipped; 2) the type and quantity of the Thorium Contaminated Soil to be shipped; 3) the expected schedule for the shipment of the Thorium Contaminated Soil; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Thorium Contaminated Soil to another facility.

b. Other Waste Material. If Respondent encounters any hazardous substances that are not Thorium Contaminated Soil in the course of conducting the Work-such hazardous substances, Respondent shall obtain U.S. EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440.

i. Prior to the initial shipment of non-radioactively contaminated Waste Material originating from the Site, Respondent shall provide written notification of such shipment to the appropriate state environmental official and to the On-Scene Coordinators. Respondent shall comply with the terms and conditions of the requirements of Paragraph 21 (a)(i) for each such shipment of non-radioactive hazardous substances, pollutants, and contaminants.

ii. The identity of any facility and state receiving the non-radioactively contaminated Waste Material will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by 21(a) and (b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

IX. SITE ACCESS

22. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by the Respondent, Respondent shall, commencing on the Effective Date, provide U.S. EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

23. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 10 business days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondent shall reimburse U.S. EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVI (Payment of Response Costs).

24. Notwithstanding any provision of this Settlement Agreement, U.S. EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. DEED RESTRICTION/ INSTITUTIONAL CONTROL DOCUMENT

25. Post-Removal Site Control. Consistent with Section 300.415(*l*) of the NCP and OSWER Directive No. 9360.2-02, upon completion of all Work required by Section VIII of this Settlement Agreement, if any portion of the Site is not radiologically surveyed in 18-inch lifts to native soil or if any known contamination will remain after completion of the Work then:

a. In accordance with the Work Plan, Respondent shall submit to U.S. EPA a map of the Uninvestigated or Unremediated Area and

b. If Respondent, its contractors, representatives or agents disturb, expose or intrude upon the soils in the Uninvestigated or Unremediated Area, Respondent, its contractors, representatives and agents shall notify U.S. EPA both by telephone and in writing of plans to work in the Uninvestigated or Unremediated Area at least 72 hours prior to (but no more than 21

calendar days in advance of) commencing such activities (unless, due to the exigencies of the need to work in such areas, i.e., ruptured utilities, etc., such notice cannot be given, in which case Respondent shall notify U.S. EPA by telephone within 2 hours). If material containing total radium in excess of 7.1 pCi/g is identified in the Uninvestigated or Unremediated Area, the Respondent shall provide a letter report to U.S. EPA explaining how the work was conducted in accordance with the Work Plan within 60 days of completion of the work.

26. Within thirty (30) days of notice by U.S. EPA to Respondent that all Work required by Section VIII of the Settlement Agreement has been completed and before any Surface/Subsurface Ownership Interest is transferred, if any portion of the Site is not radiologically surveyed in 18-inch lifts to native soil or if any known Thorium Contaminated Soil will remain after completion of the Work, Respondent shall record, with the Recorder of Deeds, Cook County, Illinois, a deed restriction or other institutional control document ("Deed Restriction"), that U.S. EPA has approved in writing for this Site. Respondent agrees that every subsequent deed or other document which transfers any Surface/Subsurface Ownership Interest in the property will be subject to the Deed Restriction. The Respondent further agrees that the language in the Deed Restriction shall not be modified or removed from the Deed Restriction without pre-approval from U.S. EPA, as described in Paragraph 27.

a. If there is any conveyance or transfer of any Surface/Subsurface Ownership Interest, Respondent's obligations under this Settlement Agreement, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls pursuant to this Section, shall continue to be met by Respondent unless otherwise agreed to by the U.S. EPA in writing. The conveyance or transfer of the Surface/Subsurface Ownership Interest shall not release or otherwise affect the liability of Respondent to comply with all provisions of this Settlement Agreement except as provided in Paragraph 26(c) below or unless otherwise agreed to among the Parties hereto in writing.

b. The intent of Respondent is to record a Deed Restriction that is applicable to all subsequent owners of the Site. The Deed Restriction will apply to any portion of the Site that is not radiologically surveyed in 18-inch lifts to native soil or where any known Thorium Contaminated Soil will remain after completion of the Work. The Deed Restriction shall provide the following:

1) subject to paragraph 27, a restriction, in perpetuity, on the disturbance of, exposure of or intrusion upon any portion of the Site that a) is not radiologically surveyed in 18-inch lifts to native soil or b) where any known Thorium Contaminated Soil will remain;

2) the right to enforce said restrictions;

3) a right of access to the Site;

4) prior notice of disturbance, exposure, intrusion, or excavation of the soils in any portion of the Site that is not radiologically surveyed in 18-inch lifts to native soil or where any known Thorium Contaminated Soil will remain; and

5) an agreement that when soils are disturbed, exposed, intruded or excavated in those areas, those activities are conducted in accordance with the Work Plan.

c. The Respondent agrees that every subsequent deed or other instrument conveying or transferring any Surface/Subsurface Ownership Interest in the Site or any portion thereof shall be subject to the Deed Restriction and that the recipient of such interest shall agree in writing to comply with the terms of Paragraphs 25, 26 and 27 herein. After Respondent has recorded a Deed Restriction in accordance with Paragraph 26, and if Respondent transfers any Surface/Subsurface Ownership Interest and the recipient of the Surface/Subsurface Ownership Interest has agreed in writing to be bound by the provisions of Section IX (Site Access), Section X (Deed Restriction Institutional Control Document) and Section XIX (Stipulated Penalties), then Respondent, who no longer retains any Surface/Subsurface Ownership Interest, shall not be subject to Section XIX (Stipulated Penalties), Paragraph 50(c)(v). This Settlement Agreement requires each Surface/Subsurface Ownership Interest holder or transferee, to agree to Section IX (Site Access), Section X (Deed Restriction Institutional Control Document) and Section XIX (Stipulated Penalties) for any noncompliance during the time that holder or transferee has a Surface/Subsurface Ownership Interest.

27. U.S. EPA may terminate the restrictions in Paragraphs 25 and 26, in whole or in part, in writing, as authorized by law. If requested by the U.S. EPA, such writing will be executed by the Respondent in recordable form and recorded with the Recorder of Deeds, Cook County, Illinois. Respondent may modify or terminate the above restrictions in whole or in part, in writing, with the prior written approval of U.S. EPA. Respondent may seek to modify or terminate, in whole or in part, the restrictions by submitting to U.S. EPA, for approval, a written application that identifies each such restriction to be terminated or modified, describes the terms of each proposed modification and includes proposed revision(s) to the Deed Restriction and institutional control document described in Section X (Deed Restrictions/Institutional Control

Document). Each application for termination or modification of any restriction shall include a demonstration that the requested termination or modification will not interfere with, impair or reduce protection of human health and the environment. If U.S. EPA makes a determination that an application satisfies the requirements of this Paragraph, including the criteria specified above, U.S. EPA will notify Respondent in writing. If U.S. EPA does not respond in writing to a request to change land use within 90 days of its receipt of that request, unless Respondent agrees to extend this period beyond 90 days, U.S. EPA may be deemed to have denied the request. If a modification to or termination of restriction is approved, Respondent shall record the revised Deed Restriction as approved by U.S. EPA, with the Recorder of Deeds, Cook County, Illinois.

XI. ACCESS TO INFORMATION

28. Respondent shall provide to U.S. EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to implementation of the Work Plan at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to U.S. EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

29. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to U.S. EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, or if U.S. EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

30. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, Respondent shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document,

record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

31. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydro geologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XII. RECORD RETENTION

32. Until 6 years after Respondent's receipt of U.S. EPA's notification pursuant to Section XXVII (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 6 years after Respondent's receipt of U.S. EPA's notification pursuant to Section XXVII (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

33. At the conclusion of this document retention period, Respondent shall notify U.S. EPA at least 60 days prior to the destruction of any such records or documents, and, upon request by U.S. EPA, Respondent shall deliver any such records or documents to U.S. EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

34. Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by U.S. EPA or the State and that it has fully complied and will fully comply with any and all U.S. EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIII. COMPLIANCE WITH OTHER LAWS

35. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARS") under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARS in the Work Plan subject to U.S. EPA approval.

XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

36. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Thorium Contaminated Soil from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of her unavailability, the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and U.S. EPA takes such action instead, Respondent shall reimburse U.S. EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payment of Response Costs).

37. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at (312) 353-2318 and the National Response

Center at (800) 424-8802. Respondent shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XV. AUTHORITY OF ON-SCENE COORDINATOR

38. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XVI. PAYMENT OF RESPONSE COSTS

39. Payment for Past Response Costs.

a. Within 30 days after the Effective Date, Respondent shall pay to U.S. EPA $12,853.81 for Past Response Costs. Payment shall be made to U.S. EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondent by U.S. EPA Region 5, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, and Site/Spill ID Number 05YT, and the U.S. EPA docket number for this action.

b. At the time of payment, Respondent shall send notice that such payment has been made to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 and to Mary L. Fulghum, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590.

c. The total amount to be paid by Respondent pursuant to Paragraph 40(a) shall be deposited in the Lindsay Light II Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

40. Payments for Future Response Costs.

a. Respondent shall pay U.S. EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, U.S. EPA will send Respondent a bill requiring payment that consists of an Itemized Cost Summary. Respondent shall make all payments within 30 calendar days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 42 of this Settlement Agreement.

b. The total amount to be paid by Respondent pursuant to this Paragraph shall be deposited in the Lindsay Light Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

41. In the event that the payment for Past Response Costs is not made within 30 days of the Effective Date, or the payments for Future Response Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XIX.

42. Respondent may dispute all or part of a bill for Future Response Costs submitted under this Settlement Agreement, only if Respondent alleges that U.S. EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to U.S. EPA as specified in Paragraph 40 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 39(b) above. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which it prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

XVII. DISPUTE RESOLUTION

43. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

44. If Respondent objects to any U.S. EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify U.S. EPA in writing of its objection(s) within 10 calendar days of such action, unless the objection(s) has/have been resolved informally. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which such party relies. U.S. EPA shall provide its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of U.S. EPA. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement.

45. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

XVIII. FORCE MAJEURE

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

47. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify U.S. EPA orally within 24 hours of when Respondent first knew that the event might cause a delay. Within 7 calendar days thereafter, Respondent shall provide to U.S. EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if Respondent intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall be grounds for U.S. EPA to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

48. If U.S. EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, U.S. EPA will notify Respondent in writing of its decision. If U.S. EPA agrees that the delay is attributable to a *force majeure* event, U.S. EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XIX. STIPULATED PENALTIES

49. Respondent shall be liable to U.S. EPA for stipulated penalties in the amounts set forth in Paragraphs 50 and 51 for Respondent's failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVIII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of this Settlement Agreement within the specified time schedules established by and approved under this Settlement Agreement.

50. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 50(c) (i), ii, iii or iv:

Violation Per Day	Period of Noncompliance
$500.00	1st through 14th day
$2,000.00	15th through 30th day
$5,000.00	31st day and beyond

b. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 50(c)(v):

1st Violation- Per Day Penalty	Period of Noncompliance
$ 500.00	1st day
$ 1,000.00	2nd day
$ 1,500.00	3rd through 5th day
$ 3,500.00	6th through 15th
$ 7,500.00	16th day and beyond

2nd Violation- Per Day Penalty	Period of Noncompliance
$ 1,500.00	1st day
$ 2,250.00	2nd day
$ 3,500.00	3rd through 5th day
$ 5,000.00	6th through 15th
$10,000.00	16th day and beyond

3rd or More Violation Per Day Penalty	Period of Noncompliance
$ 2,500.00	1st day
$ 4,000.00	2nd day
$ 7,500.00	3rd through 5th day
$12,500.00	6th through 15th day
$20,000.00	16th day and beyond

c. Compliance Milestones

i. Payment of Past Costs due 30 days after the Effective Date of this Settlement Agreement.

ii. Payment of Future Costs due 30 days after Respondent's receipt of demand.

iii. Recording the Deed Restriction within 30 calendar days after completion of all Work required by Section VIII of this Settlement Agreement.

iv. Submit to U.S. EPA a draft map and a final revised map of the Uninvestigated or Unremediated Area in accordance with the Work Plan.

v. After submission of the Final Report, 72-hour advance notice of intrusive work in Uninvestigated or Unremediated Area as required in Paragraph 25 (except as expressly stated in Section X (Deed Restriction/Institutional Control Document), Paragraph 26 (c)).

51. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 19 and 20 :

Violation Per Day	Period of Noncompliance
$250.00	1st through 14th day
$500.00	15th through 30th day
$3000.00	31st day and beyond

52. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction

of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, Region 5, under Paragraph 44 of Section XVII (Dispute Resolution), during the period, if any, beginning on the 21st day after U.S. EPA submits its written statement of position until the date that the Director of the Superfund Division issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

53. Following U.S. EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, U.S. EPA may give Respondent written notification of the failure and describe the noncompliance. U.S. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether U.S. EPA has notified Respondent of a violation.

54. All penalties accruing under this Section shall be due and payable to U.S. EPA within 30 days of Respondent's receipt from U.S. EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVII (Dispute Resolution). All payments to U.S. EPA under this Section shall be paid by certified or cashier's check made payable to "U.S. EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Program Accounting & Analysis Section, P.O. Box 70753, Chicago, Illinois 60673, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Site/Spill ID Number 05YT, the U.S. EPA Docket Number, and the name and address of the party making payment. Copies of any check paid pursuant to this Section, and any accompanying transmittal letters, shall be sent to U.S. EPA as provided in Paragraph 39(b).

55. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

56. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 20 days after the dispute is resolved by agreement or by receipt of U.S. EPA's decision.

57. If Respondent fails to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to

Paragraph 54. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that U.S. EPA shall not seek civil penalties pursuant to Section 106(b) or 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. Should Respondent violate this Settlement Agreement or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. §9606. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XX. COVENANT NOT TO SUE BY U.S. EPA

58. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, U.S. EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon receipt by U.S. EPA of the Past Response Costs due under Section XVI of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XVI and XIX of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XVI. This covenant not to sue extends only to Respondent and does not extend to any other person.

XXI. RESERVATIONS OF RIGHTS BY U.S. EPA

59. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous

or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

60. The covenant not to sue set forth in Section XX above does not pertain to any matters other than those expressly identified therein. U.S. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site.

XXII. COVENANT NOT TO SUE BY RESPONDENT

61. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Illinois State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 61 (b), (c), and (e) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

62. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIII. OTHER CLAIMS

63. By issuance of this Settlement Agreement, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or U.S. EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

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

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

XXIV. CONTRIBUTION

66. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42. U.S.C. § 9613(f)(3)(B), pursuant to which the Respondent has, as of the Effective Date, resolved its liability to the United States for the Work, Past Response Costs, and Future Response Costs.

c. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Section 113(f)(2)and (3), 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action, and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

XXV. INDEMNIFICATION

67. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States. The Federal Tort Claims Act (28 U.S.C. §§ 2671, 2680) provides coverage for injury or loss of property, or injury or death caused by the negligent or wrongful act or omission of an employee of U.S. EPA while acting within the scope of his or her employment, under circumstances where U.S. EPA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

68. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

69. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVI. MODIFICATIONS

70. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by U.S. EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

71. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 70.

72. No informal advice, guidance, suggestion, or comment by the OSC or other U.S. EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVII. NOTICE OF COMPLETION OF WORK

73. When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including, *e.g.*, post-removal site controls, payment of Future Response Costs, and record retention, U.S. EPA will provide written notice to Respondent. If U.S. EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, U.S. EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modifies the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXVIII. NOTICES AND SUBMISSIONS

74. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to U.S. EPA and Respondent.

As to U.S. EPA:

Mary L. Fulghum
Cathleen M. Martwick
Associate Regional Counsel
U.S. EPA (C-14J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

Verneta Simon, P.E.
On-Scene Coordinator
U.S. EPA (SE-6J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

Gene Jablonowski
Health Physicist
U.S. EPA (SR-6J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

Vanessa Mbogo
Comptroller's Office
U.S. EPA (MF-10J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

As to Respondent:

Gerald L. Pouncey, Jr.
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, Georgia 30326

Steve Kornder
STS Consultants Inc.
750 Corporate Woods Parkway
Vernon Hills Illinois 60061-3153

XXIX. SEVERABILITY/INTEGRATION/EXHIBITS

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

76. This Settlement Agreement and its Exhibits constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following Exhibits are incorporated into this Settlement Agreement:

Exhibit A	Site Map.
Exhibit B	Work Plan

XXX. EFFECTIVE DATE

77. This Settlement Agreement shall be effective upon signature of this Settlement by the Director, Superfund Division, U.S. EPA Region 5.

The undersigned representative of Respondent certifies that s/he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party s/he represent to this document.

Agreed this 24 day of April, 2008.

For Respondent 465 N. Park Drive, LLC

By: Kathy K. Binford

KATHY K. BINFORD
VICE PRESIDENT

Title _____

IN THE MATTER OF:

Lindsay Light II, 465 N. Park Drive
Chicago, Illinois

It is so ORDERED and Agreed this 25th day of April, 2008.

BY: Mindy L Carney for
Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5