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

REPLY TO THE ATTENTION OF:
SE-5J

NOV 06 2009

EPA Region 5 Records Ctr.
346885

CERTIFIED MAIL:
RETURN RECEIPT REQUESTED

ROGERS CARTAGE
c/o MICHELLE LARSON ESQ
611 S 28th ST
MILWAUKEE WI 53215-1201

RE: General Notice of Potential Liability and Offer to Negotiate for Removal Action
Former Rogers Cartage Facility Site on ConocoPhillips Property in Cahokia, Illinois

Dear Sir or Madam:

This letter confirms notification of potential liability, as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9607 (a), as amended(CERCLA), that you may incur or may have incurred with respect to the above-referenced site ("Site") (see enclosed map of Site). This letter notifies you of forthcoming removal activities at the Site which you may be asked to perform or finance at a later date.

The United States Environmental Protection Agency (EPA) has documentation of a release or threatened release of hazardous substances, pollutants, or contaminants at the above-referenced Site. EPA is considering spending public funds on actions to investigate and control such releases or threatened releases at the Site. Unless EPA reaches an agreement under which a potentially responsible party (PRP) or parties will properly perform or finance such actions, EPA may perform these actions pursuant to Section 104 of CERCLA.

Under Section 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973 (RCRA), and other laws, PRPs may be obligated to implement response actions deemed necessary by EPA to protect health, welfare or the environment, and may be liable for all costs incurred by the government in responding to any release or threatened release at the Site. Such actions and costs may include, but are not limited to, expenditures for investigations, planning, response, oversight, and enforcement activities. In addition, PRPs may be liable for damages to natural

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resources. EPA may issue an administrative order pursuant to Section 106(a) of CERCLA to require PRPs to commence cleanup activities. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to $32,500 per day, under Section 106(b) of CERCLA, or imposition of treble damages, under Section 107(c)(3).

EPA has evaluated information in connection with the investigation of the Site. Based on this information, EPA believes that you may be a PRP with respect to this Site. PRPs under CERCLA include current and former owners and operators of the Site as well as persons who arranged for disposal or treatment of hazardous substances sent to the Site, or persons who accepted hazardous substances for transport to the Site. By this letter, EPA notifies you of your potential liability with regard to this matter and encourages you to voluntarily perform or finance those response activities that EPA determines are necessary at the Site.

At present, EPA is planning to further delineate the extent of contamination and perform an immediate removal action to protect human health and the environment at the Site. A summary of EPA's proposed statement of work (SOW) to conduct this removal action is listed below:

A. Develop and implement a Site Health and Safety Plan, including an air monitoring plan and site contingency plan;

B. Develop and implement a Site Security Plan;

C. Delineate the extent of PCB soil contamination at the former Rogers Cartage facility.

D. Characterize, remove, and properly dispose of hazardous substances and wastes (contaminated building materials and soils) located at the Site in accordance with U.S. EPA's Off-Site Rule (40 CFR § 300.440);

This information is provided to assist you (and other PRPs) in negotiations with EPA. Work conducted by PRPs must be conducted according to a signed administrative order and an EPA-approved work plan.

Under CERCLA Section 122(e), EPA has the discretionary authority to invoke special notice procedures to formally negotiate the terms of an agreement between EPA and PRPs to conduct or finance response activities. Use of these special notice procedures triggers a moratorium on certain EPA activities at the Site while formal negotiations between EPA and the PRP or PRPs are conducted.

In this case, EPA has decided not to invoke the Section 122(e) special notice procedures. It is EPA's policy not to use the special notice procedures for removals unless there is a 6 month planning lead time after the decision to respond and prior to the initiation of the action. Since the planning lead time prior to the initiation of this response action is less than 6 months, special notice procedures will not be used. Nonetheless, EPA is willing to discuss settlement opportunities without invoking a moratorium, but will initiate the response action as planned if

such discussions do not lead expeditiously to settlement.

EPA would like to encourage good faith negotiations between the PRPs and EPA. To assist PRPs in preparing a proposal and in negotiating with EPA concerning this matter, EPA is providing the following enclosures to this letter:

1. A list of names and addresses of PRPs to whom this notification is being sent. This list represents EPA's preliminary findings on the identities of PRPs. Inclusion on, or exclusion from the list does not constitute a final determination by EPA concerning the liability of any party for the release or threat of release of hazardous substances at the Site.

2. A map (diagram) of the Site.

3. A draft Administrative Order on Consent (AOC) for the Site.

With this letter, EPA encourages you to voluntarily negotiate an AOC and SOW in which you and other PRPs agree to perform a National Contingency Plan-compliant response action at the Site. You are potentially liable for additional costs plus interest if EPA conducts additional activities at the Site.

Pursuant to CERCLA Section 113(k), EPA must establish an administrative record that contains documents that form the basis of EPA's decision on the selection of a response action for a site. The administrative record files, which contain the documents related to the response action selected for this Site, will be available to the public for inspection and comment. The primary location is generally the EPA regional office in Chicago, Illinois.

You are encouraged to contact EPA by 21 days from the date of your receipt of this general notice letter to indicate your willingness to participate in negotiations on the terms of an AOC and SOW for this Site.

You may respond individually. If EPA does not receive a timely response, EPA will assume you do not wish to negotiate a resolution of your liabilities in connection with the response, and that you have declined any involvement in performing the response activities at the Site and for any damages to natural resources. The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein. Your response to this notice letter should be sent to:

U.S. Environmental Protection Agency
Attn: Evette Jones, Program Manager
77 W. Jackson Blvd. (SR-6J)
Chicago, IL 60604

If you have any legal questions please contact Thomas Martin, Office of Regional Counsel at (312) 886-4273. If you have any technical questions, please direct them to Kevin Turner at (618)-525-3665; for all other questions please contact Evette Jones at (312) 886-7572.

Sincerely,

Jason EL-Zein Chief,
Emergency Branch 1

Enclosures

Enclosure 1

List of Addressees

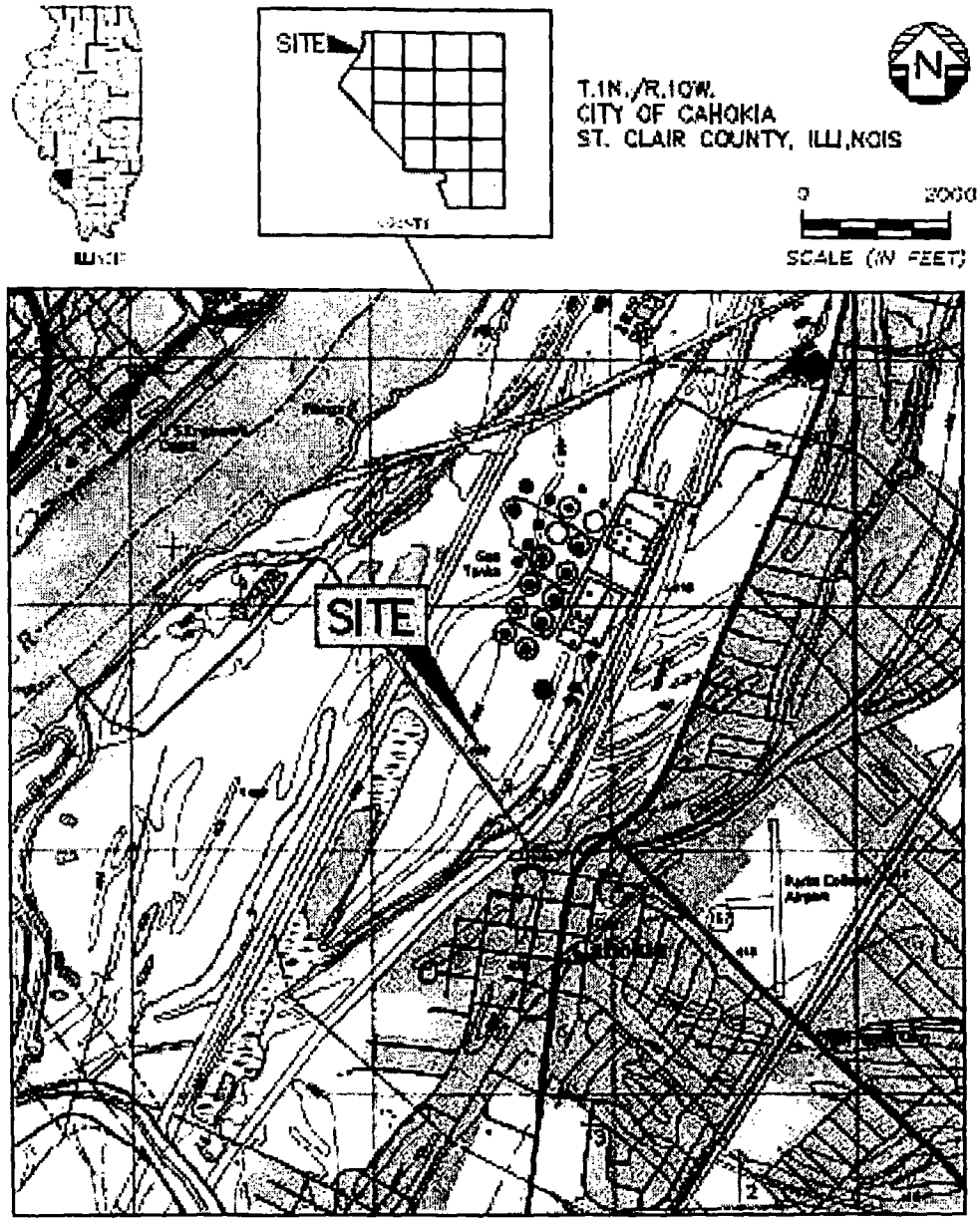
ConocoPhillips Pipeline Co.
c/o: Eric S. Peterson
Site Manager
Risk Management & Remediation
Main Office Building
900 South Central
P.O. Box 76
Roxana, Illinois 62084

Rogers Cartage
c/o: Michelle Larson, Esq.
611 S. 28th St.
Milwaukee, Wisconsin 53215-1201

Tankstar, Inc.
c/o: Greg Meadors
Director of Environmental
P.O. Box 1601
Milwaukee, Wisconsin 53207

Enclosure 2

Former Rogers Cartage Site Map



SITE LOCATION MAP

ERM.	ROGERS CARTAGE SITE 3300 MISSISSIPPI AVENUE CAHOKIA, ILLINOIS	CADD Review [illegible] CHKD [illegible] 0036529
Drawn By RWK 06/12/06	Environmental Resources Management	FIGURE 1

Enclosure 3

Draft Administrative Order on Consent

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF: FORMER ROGERS CARTAGE SITE 3300 Mississippi Ave., Cahokia, Illinois	ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION Docket No. ____
Respondents: Listed in Attachment A	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 (EPA), ConocoPhillips Pipeline Company, Rogers Cartage, and Tankstar, Inc. ("Respondents"). This Settlement Agreement provides for the performance of removal actions by Respondents and the reimbursement of certain response costs incurred by the United States at or in connection with property located within an oil terminal facility located at 3300 Mississippi Ave., Cahokia, Illinois (see map attached hereto as Attachment B; property hereinafter referred to as the "former Rogers Cartage Site" or the "Site.").

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, 9604(a), 9607, and 9622, as amended ("CERCLA"). This authority has been delegated to the Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by 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. EPA has notified the State of Illinois (the "State") of this action.

4. EPA and the Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by the Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability.

5. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

6. This Settlement Agreement applies to and is binding upon EPA and the Respondents and their heirs, successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter such Respondent's responsibilities under this Settlement Agreement.

7. Respondents are jointly and severally liable for carrying out all activities required of them by this Settlement Agreement. In the event of the insolvency or other failure of any one

or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

8. Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

9. 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 meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Administrative Settlement Agreement" or "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all attachments and appendices attached hereto (listed in Section XXVII). In the event of conflict between this Settlement Agreement and any attachment or appendix, this Settlement Agreement shall control.

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

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

d. "Future Response Costs" shall mean all costs, including direct and indirect costs, that the EPA 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. Future Response Costs shall also include all costs, including direct and indirect costs, incurred prior to the Effective Date, but paid by the United States after that date.

e. "Interest" shall mean interest at the rate specified for interest on investments of the 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.

f. "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.

g. "Parties" shall mean EPA and Respondents.

h. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the EPA paid at or in connection with the hazardous soils portion of the Site beginning October 1, 2006 to the Effective Date of this Settlement Agreement which have not previously been reimbursed.

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. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order or Consent and all appendices attached hereto (listed in Section XXVII). In the event of conflict between this Settlement Agreement and any Appendix, this Settlement Agreement shall control.

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

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

m. "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 415 ILCS 5/3.215.

n. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

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

a. The Site lies in a flood plain protected by a Mississippi River levee. The Site is approximately 2.75 acres in size and is located in a mixture of industrialized, residential, and potentially environmentally sensitive areas.

b. The Site is located on the southern portion of the ConocoPhillips, East St. Louis Terminal facility ("Terminal"), whose address is 3300 Mississippi Ave., Cahokia,

Illinois, and west of Illinois Route 3.

c. The Terminal is bordered by railroad lines on the east and west sides of the property. Cargill Road borders the southern portion edge of the property, while Hog Haven Road borders the northern property boundary. The Site is located on the southern portion of the Terminal, and is bordered by Cargill Road to the south, and an unnamed access road to the east, having the south gate at its southern terminus. The Terminal and the Site are shown on the map included as Attachment B.

d. The Terminal is currently used for petroleum-related pipeline terminal activities.

e. The southern portion of the Terminal property was leased by ConocoPhillips to Rogers Cartage Company in the 1950's and 1960's. On information and belief, Rogers Cartage hauled hazardous substances, including polychlorinated biphenyl (PCB) wastes, to disposal facilities and washed out trucks on the leased Site. Wastewater from washout activities was reportedly discharged into lagoons and drainage features adjacent to the washout area.

g. ConocoPhillips conducted the first soil investigation for PCBs in shallow soil at the Site in February 2005 to help identify the locations of PCBs in soil above applicable remediation waste clean-up standards. The February 2005 investigation was completed in a step to further identify and investigate if the elevated levels of PCBs that had been historically detected south of Cargill Road originally came from the former Rogers Cartage facility and to follow up on a March 2004 investigation performed on the Terminal by Pharmacia Corporation. In the spring of 2008, ConocoPhillips completed another Site investigation to further delineate the PCB contamination on their property.

h. The results of these investigations document concentrations of PCBs in shallow soil on the Site that are above the PCB remediation waste clean-up standards of twenty-five (25) milligrams per kilogram (mg/kg) contained in Title 40, Part 761 of the Code of Federal Regulations (40 C.F.R. § 761).

i. EPA has issued General Notice letters to the Respondents for the hazardous soil removal planned for the Site.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

d. Each 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 the response action and for response costs incurred and to be incurred at the Site.

   i. Respondent Rogers Cartage arranged for disposal, or transported for disposal, hazardous substances at the former Rogers Cartage Site. Tankstar is a Respondent in this matter by virtue of its 100% ownership of its subsidiary Rogers Cartage.

   ii. Respondents Rogers Cartage and ConocoPhillips, are or were the owners or operators of the Site at the time of release or threatened release. Each Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), as "arrangers" at, or as "owners/operators" of, the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20).

e. 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).

f. The conditions present at the Former Rogers Cartage Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR §300.415(b)(2) (i) (ii) (iv) (v) and (vii). These factors include, but are not limited to, the following:

   i. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants.

   This factor is present at the Site due to the existence of elevated levels of PCBs in the on-site soils. Analytical results of the PCB arochlors analyzed, PCB-1248 and PCB-1254 were detected with the most frequently. PCB-1248 was detected in most of the soil samples analyzed.

Based upon the soil investigation activities conducted at the Site, it appears that there are several sampling locations within the Site that have elevated levels of PCBs. The highest PCB concentration was detected in the sample collected from 0-2 feet below ground surface (bgs) in SB-126, at 19,300 mg/kg (PCB 1248). PCBs were mainly detected in the upper six (6) feet of the soil borings installed at the Site, with the highest concentrations of PCB located in the first two feet of soil at the Site.

The area surrounding the Site is commercial/industrial, residential and agricultural. Residents of Cahokia and the Cahokia City Hall are less than ¼ mile southeast of the Site. Agricultural fields are approximately ¼ mile to the southwest of the Site.

ii. Actual or potential contamination of drinking water supplies or sensitive ecosystems.

This factor is present at the Site due to the existence of porous sandy soils that are suitable for run-off and/or infiltration and could move contaminants to groundwater or drinking water. The spring 2008 Investigation Report by ConocoPhillips included boring logs that confirmed that the soils on-site are consistent with that of fluvial deposits in the Mississippi River valley.

The Investigation Report by ConocoPhillips also states that the impacted PCB soils are in an area of historically lower elevation when Rogers Cartage operated at the Site. Areas along the southern fence line (next to Cargill Road) and in the middle of the Site are still at a lower elevation than the remainder of the Site. These areas hold surface water after rain events and are hydraulically connected to a surface pond just south of Cargill Road and to Dead Creek. Both this surface pond and Dead Creek underwent extensive clean-up activities in 2001 and are considered sensitive ecosystems. This section of Dead Creek is part of the Sauget Area 1 NPL Site.

iii. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate.

This factor is present at the Site due to the existence of PCBs in site soils.

Analytical results indicated that both surface and subsurface soils at the Site have been impacted by elevated concentrations of PCBs. The contamination exists on the ground surface and in the near subsurface where it may easily migrate via surface water runoff or become airborne. The area has been well studied from a geological perspective and has shown the soils to be of a porous, sandy nature, which would facilitate contamination migration to groundwater.

iv. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.

This factor is present at the Site due to the existence of the potential for heavy rains and snows causing large-scale area flooding in the Mississippi River flood plain.

Sauget area site investigations and clean-ups in Dead Creek have documented that surface contamination could migrate off-site via heavy rains, flooding or severe winds. Heavy rains may cause further migration of contaminants off-site. Winds could cause dust particles containing PCBs to migrate off-site. These weather conditions could result in a continued release of the hazardous wastes described herein to the surrounding soil, air and surface water.

v. The availability of other appropriate federal or state response mechanisms to respond to the release.

In 1999, the entire ConocoPhillips property in Cahokia, IL was entered into the Illinois EPA's Site Remediation Program (SRP). In January, 2005, EPA sent a letter to Illinois EPA discussing the portion of the ConocoPhillips property encompassing the former Rogers Cartage Facility and its relationship to the Sauget Area 1 and 2 sites. The letter further stated EPA's intention to address the contamination on this property outside of the formal remedial superfund process. A letter from ConocoPhillips to Illinois EPA dated September 2005 documented discussions with Illinois EPA and EPA to remove the said property from the Illinois EPA's SRP. Furthermore, if needed, the State of Illinois does not have the funds to undertake removal of the hazardous wastes and hazardous substances found at this Site

VI. SETTLEMENT AGREEMENT AND ORDER

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

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

13. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name and qualifications of each contractor within 5 calendar days of the Effective Date. Respondents shall also notify EPA of the name and qualifications of all

other contractors or subcontractors retained to perform the Work at least 5 calendar days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 3 business days of EPA's disapproval. The contractor 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 consistent with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA.

14. Within 5 business days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 4 business days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

15. EPA has designated Kevin Turner of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the OSC at 8588 Rt. 148, Marion, IL 62959. All Respondents are encouraged to make their submissions to EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

16. EPA and Respondents shall have the right, subject to Paragraph 13, to change their respective designated OSC or Project Coordinator. EPA shall notify the Respondents, and Respondents shall notify 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

17. Respondents shall perform, at a minimum, the following removal activities:

a. Develop and implement a Site Health and Safety Plan, subject to paragraph 19 below, including an air monitoring plan and site contingency plan;

b. Develop and implement a Site Security Plan;

c. Characterize, remove and properly dispose of hazardous substances and wastes (solids and contaminated soils) located at the Site in accordance with the Work Plan included as Appendix A and EPA's Off-Site Rule (40 C.F.R. § 300.440);

d. Conduct such other activities as are required in Paragraphs 18-23 of this Settlement Agreement; and,

e. Conduct and perform under the supervision of the OSC such other activities as are necessary and incidental to the implementation and completion of the Work.

The nature of this removal action, as well as the complete removal of all hazardous wastes from the Site, will eliminate the need for any post removal site control as detailed in the provisions of 40 C.F.R. § 300.415(l) of the NCP.

18. Work Plan and Implementation

a. Within 10 business days after the Effective Date, Respondents shall submit to EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 17 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this settlement agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If U.S.EPA requires revisions, Respondents shall submit a revised draft Work Plan within 7 business days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Work Plan attached hereto until receiving written EPA approval pursuant to

Paragraph 18(b).

19. Health and Safety Plan.

Within 10 business days after the Effective Date, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement Agreement. This plan shall be prepared consistent with 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 EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

20. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents 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. Respondents shall only use laboratories that have a documented Quality System that complies 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), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

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

c. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than 3 business days in advance of any sample collection activity,

unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

21. Post-Removal Site Control.

In accordance with the Work Plan schedule, or as otherwise directed by EPA. Respondents shall submit a proposal for post-removed site control consistent with Section 300.415(*l*) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondents shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

22. Reporting.

a. Respondents shall submit a written progress report, electronically, to EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the effective date of this Settlement Agreement 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. Respondents shall submit 3 copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by EPA, Respondents shall submit such documents in electronic form.

c. Respondents who own or control property at the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also agree to require that their successors comply with the immediately proceeding sentence and Sections IX (Site Access) and X (Access to Information).

23. Final Report.

Within 60 calendar days after completion of all Work required by Section VIII of this Settlement Agreement, Respondents shall submit for 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 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."

24. Off-Site Shipments.

a. Respondents shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondents 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 Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action. Respondents shall provide the information required by Paragraph 24 (a) and (b) as soon as practicable after the award of the contract and before the

Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain 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. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

25. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide 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.

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

27. Notwithstanding any provision of this Settlement Agreement, 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.

IX. ACCESS TO INFORMATION

28. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities 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. Respondents shall also make available to EPA, for

purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

29. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to 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 EPA will be afforded the protection specified in 40 CFR Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 CFR Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

30. Respondents 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 Respondents assert such a privilege in lieu of providing documents, upon EPA request, Respondents shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the 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 Respondents. 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, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

32. Until 6 years after Respondents' receipt of EPA's notification pursuant to Section XXVI (Notice of Completion of Work), each 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 Respondents' receipt of EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondents shall also instruct their 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, Respondents shall notify EPA at least 60 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents 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 Respondents assert such a privilege, upon EPA request, Respondents shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the 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 Respondents. 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. Each 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 written notification of November 22, 2004, of potential liability by EPA or the filing of suit against it regarding the Site and that it has fully complied and will fully comply with any and all 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.

XII. COMPLIANCE WITH OTHER LAWS

35. Respondents 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 EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility sitting laws. Respondents shall identify ARARs in the Work Plan subject to EPA approval.

XIII. 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 Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents 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. Respondents shall also immediately notify the OSC or, in the event of his/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 Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

37. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the OSC at (618) 525-3665 and the National Response Center at (800) 424-8802. Respondents shall submit a written report 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.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

38. The OSC shall be responsible for overseeing Respondents' 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.

IV. PAYMENT OF RESPONSE COSTS

39. Payment for Past Response Costs

Respondents shall pay EPA all past response costs related to the Site not inconsistent with the NCP. As soon as practicable after the effective date of this Order, EPA will send Respondents a bill for "past response costs" at the Site. EPA's bill will include an Itemized Cost Summary. "Past response costs" are all costs, including, but not limited to, direct and indirect costs and interest, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred and paid with regard to the Site prior to the date through which the Itemized Cost Summary runs. Respondents shall make all payments within 30 calendars days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 41 of this Settlement Agreement according to the procedures provided in Paragraph 40(a), (b), and (c) below.

40. Payments for Future Response Costs

a. Respondents shall pay EPA all Future Response Costs related to the Site not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that consists of an Itemized Cost Summary. Respondents shall make all payments within 30 calendars days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 41 of this Settlement Agreement according to the following procedures.

(i) If payment amount in the bill is for $10,000 or greater, payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with procedures. Payment shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, EPA Region 5, and the Site/Spill ID NumberB5SF.

(ii) If the amount demanded in the bill is $10,000 or less, the Settling Respondents may in lieu of the procedures in subparagraph 39(a)(i) make all payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, and the EPA Site/Spill ID Number B5FS. Settling Respondents shall send the check(s) to:

EPA
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

b. At the time of payment, Respondents shall send notice that payment has been made to the Director, Superfund Division, EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604-3590 and to Thomas Martin, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590.

c. The total amount to be paid by Respondents pursuant to Paragraph 39 and 40(a) shall be deposited in the Sauget Area One Special Account within the 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 EPA to the EPA Hazardous Substance Superfund.

41. In the event that the payment for Past or Future Response Costs is not made within 30 days of Respondents' receipt of a bill, Respondents 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. 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 Respondents' failure to make timely payments under this Section, Including but not limited to payment of stipulated penalties pursuant to Section XVIII.

42. Respondents may dispute all or part of a bill for Future Response Costs submitted under this Settlement Agreement, only if Respondents allege that EPA has made an Accounting error, or if Respondents allege that a cost item is inconsistent with the NCP. If any dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 40(a) above. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

XVI. 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 Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Response Costs, they shall notify EPA in writing of their objections within 10 calendar days of such action, unless the objections 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 Respondents' position, and all supporting documentation on which such party relies. EPA shall submit 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 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 EPA. An administrative record of any dispute under this Section shall be maintained by 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, EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement.

45. Respondents' 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, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

46. Respondents agree 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 Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' 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, Respondents shall notify EPA orally within 48 hours of when Respondents first knew that the event might cause a delay. Within 7 calendar days thereafter, Respondents shall provide to 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; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, 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 EPA to deny Respondents an extension of time for performance. Respondents 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 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 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 EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

49. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 50 and 51 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondents 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 law, this Settlement Agreement, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and 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 with milestones identified in Paragraph 50(b):

Penalty Per Violation Per Day	Period of Noncompliance
$500.00	1st through 14th day
$1,000.00	15th through 30th day
$3,000.00	31st day and beyond

b. Compliance Milestones

Confirmation of Site Access
Initiation of the Work
Completion of the Work

51. Stipulated Penalty Amounts - Reports.

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports plans, and other written documents pursuant to Paragraphs 18, 19, 22, and 23 of this Settlement Agreement:

Penalty Per Violation Per Day	Period of Noncompliance
$500.00	1st through 14th day
$1,000.00	15th through 30th day
$3,000.00	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 EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, Region 5, under Paragraph 44 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after 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 EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

54. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "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 EPA Site/B5SF, the EPA Docket Number, and the name and address of the party (ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letters, shall be sent to EPA as provided in Paragraph 40.

55. The payment of penalties shall not alter in any way Respondents' 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 EPA's decision.

57. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 53. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 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 Respondents violate this Settlement Agreement or any portion hereof, 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, EPA may, in its un-reviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

58. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents 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 EPA of the Past Response Costs due under Section XV of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Section XV and XVIII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement including, but not limited to, payment of Future Response Costs Pursuant to Section XV. This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

59. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of 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 EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

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

    a. claims based on a failure by Respondents 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;

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

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

61. Respondents covenant not to sue and Respondents covenant and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, 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 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 shall not apply in the event the United States brings a cause of action or issues an Agreement pursuant to the reservations set forth in Paragraph 60 (b), (c), and (e) - (g), but only to the extent that Respondents' 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 Settlement 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).

XXII. OTHER CLAIMS

63. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their 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 XIX (Covenant Not To Sue By EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents 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 Section 107 of CERCLA, 42 U.S.C. § 9607.

65. No action or decision by 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).

XXIII. CONTRIBUTION

66. 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 Respondents are 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.

67. 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 Respondents have resolved their liability to the United States for the Work, Past Response Costs, and Future Response Costs.

68. Nothing in this Settlement Agreement precludes the United States or Respondents 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 Sections 113(f)(2) and (3) of

CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that provide contribution protection pursuant to Section 113(f)(2).

XXIV. INDEMNIFICATION

69. Respondents 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 Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree 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 Respondents, their 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 Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

71. Respondents waive 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 any one or more of Respondents 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, Respondents 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 any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. MODIFICATIONS

72. 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 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.

73. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 72.

74. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their 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.

XXVI. NOTICE OF COMPLETION OF WORK

75. When EPA determines, after 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, EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXVII. SEVERABILITY/INTEGRATION/ATTACHMENTS

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

77. This Settlement Agreement and its attachments 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 attachments are incorporated into this Settlement Agreement: Attachments A (Respondents), B (Site Map), and C (Scope of Work).

XXVIII. EFFECTIVE DATE

78. This Settlement Agreement shall be effective upon receipt by Respondents of a copy of this Settlement Agreement signed by the Director, Superfund Division, EPA Region 5.

IN THE MATTER OF:
Former Rogers Cartage Site
3300 Mississippi Avenue, Cahokia, Illinois

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

Agreed this ____ day of _____, 2___ .

For Respondent _____

By _____

Title _____

Agreed this ____ day of _____, 2___.

For Respondent _____

By _____

Title _____

Agreed this ____ day of _____, 2___ .

For Respondent _____

By _____

Title _____

IN THE MATTER OF:
Former Rogers Cartage Site
3300 Mississippi Avenue, Cahokia, Illinois

It is so AGREED and ORDERED this _____ day of _____, 2___.

BY: _____

Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5