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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF:	)	**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION**
The Explo Systems Inc. Site	)	
	)	U.S. EPA Region 6
Hercules Incorporated.	)	CERCLA Docket No. 06-03-14
Respondent.	)	Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622)

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTIONS

707368

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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"), and Hercules Incorporated ("Hercules"). Hercules is referred to as "Respondent" throughout this Settlement Agreement. This Settlement Agreement provides for the performance of a removal action by Respondent and the payment of certain response costs incurred by the United States at or in connection with the "Explo Systems, Inc. Site" (the "Site") located on a portion of the Louisiana Army Ammunition Plant, renamed to Camp Minden under a January 1, 2005, property transfer. The Site is located in the northwestern corner of the State of Louisiana, in Webster Parish, near the town of Doyline.

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 ("CERCLA").

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

4. EPA and the 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. Respondent does not admit, and retains 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 (Findings of Fact) and V (Conclusions of Law and Determinations) 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 is binding upon EPA, and upon Respondent and its 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.

6. Respondent is jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of the Respondent to implement the requirements of this Settlement Agreement, the Respondent shall remain responsible for completing all such requirements.

7. Respondent shall provide a copy of this Settlement Agreement to each contractor hired to perform the Work required by this Order and to each person representing the Respondent with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Respondent or its

contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Order.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that 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 its attached appendices, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

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

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"LDEQ" shall mean the Louisiana Department of Environmental Quality and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other deliverables pursuant to this Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Section IX (Access), Section XIII (Emergency Response and Notification of Releases), Paragraph 63 (Work Takeover), and the costs incurred by the United States in enforcing the terms of this Settlement Agreement, including all costs incurred in connection with Dispute Resolution pursuant to Section XV (Dispute Resolution) and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry ("ATSDR") costs regarding the Site.

"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.[1]

"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.

"Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA and Respondent.

"Post-Removal Site Control" shall mean actions necessary to ensure the effectiveness and integrity of the removal action consistent with Sections 300.415(*l*) and 300.5 of the NCP and "Policy on Management of Post-Removal Site Control" (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Respondent" shall mean Hercules Incorporated. ("Hercules").

"Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

"Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXIX - Integration/Appendices). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

"Site" shall mean the Explo Systems, Inc. Site" (the "Site") located on a portion of the Louisiana Army Ammunition Plant, renamed to Camp Minden under a January 1, 2005, property agreement transfer. The Site is located in the northwestern corner of the State of Louisiana, in Webster Parish, near the town of Doyline.

"State" shall mean the State of Louisiana.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the removal action, as set forth in Appendix A 1, and any modifications made thereto in accordance with this Settlement Agreement. The Statement of Work ("SOW") is incorporated into this Order and is an enforceable part of this Order as are any modifications made thereto in accordance with this Order.

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[1] The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

"Work" shall mean all activities and obligations Respondent is required to perform under this Settlement Agreement except those required by Section XI (Record Retention).

IV. FINDINGS OF FACT

9. The following information addresses the facts and circumstances surrounding the contamination and endangerment at the Explo Systems, Inc. Site.

a. The Explo Site is located on a portion of Camp Minden, La., in the northwestern corner of the State of Louisiana, in Webster Parish, near the town of Doyline; and is comprised of the S-line which occupies 110 acres where Explo Systems, Inc. conducted demilitarization and disposal operations. The Site also includes areas where Explo Systems, Inc. stored explosive materials including areas L-1, L-2, L-3 and L-4, which encompass approximately 216 acres, 218 acres, 276 acres and 57 acres respectively. Camp Minden includes approximately 14,995 acres, and was formerly known as the Louisiana Army Ammunition Plant ("LAAP"). LAAP's primary function was to produce, assemble, load, and pack ammunitions. Burning and demolition activities were also performed to destroy explosives and explosive wastes generated by manufacturing of munitions. The above activities resulted in LAAP's placement on the National Priorities List in March 1989.

b. On January 1, 2005, the United States Army ("Army") transferred ownership of the Louisiana Army Ammunition Plant to the State of Louisiana Military Dept./National Guard ("LM/NG"), and the property was re-named Camp Minden, Louisiana. As owner of the Site property, LM/NG entered into leasing agreements with Explo Systems, Inc. ("Explo"), which allowed Explo to use the Site property and approximately 100 magazines/buildings. Explo utilized the Site property, magazines and buildings to perform activities required under demilitarization and disposal contracts (i.e., November 16, 2006 and March 24, 2010 contracts) Explo entered into with the Army. Under the March 24, 2010, contract the Army agreed to pay Explo $2,902,500 for the demilitarization of artillery 155MM propelling charges. The contract price increased to $8,684,722.25 on March 8, 2012, to account for the additional 155MM propelling charges demilitarization work performed by Explo.

c. On October 15, 2012, an explosion of a magazine and a box van trailer containing black/smokeless powder occurred at the Explo Site. The explosion of the magazine containing 124,190 of black/smokeless powder and a trailer containing 42,240 pounds of M6 propellant completely destroyed the magazine and the trailer. The explosion shattered windows in Minden, La. located approximately four miles northeast of the Site, and produced a 7,000 foot mushroom cloud. As a result of the violations observed during inspection of the explosion, the Louisiana State Police ("LSP") served a search warrant on Explo Systems, Inc. The search warrant was

executed on November 27, 2012. During the search, LSP identified 9-10 million pounds of unsecured and improperly stored M6 propellant. The M6 propellant stored in 60 pound cardboard boxes, 140 pound drums, and 880 pound super sacks throughout Site buildings, hallways, and outside where is was exposed to the elements including heat which reduces the propellant stabilizers. From November 30, 2012 through December 7, 2012, people from the town of Doyline, Louisiana (i.e., approximately 400 homes) were voluntarily evacuated due to the risk of explosion from the M6 propellant, and its unsafe proximity to the human population residing in Doyline, Louisiana. From November 28, 2012, through May 2013, the LSP and Explo secured and stored the M6 propellant in magazines at the Site

d. Additional investigation of the Explo Site revealed the improper storage of other materials, in addition to the M6 propellant. For example, the Army's Explosives Safety Board 2013 safety reviews show the materials stored at the Site include: 1) 128 pounds of black powder; 2) 200 pounds of Composition H6; 3) four 50-gallon drums of ammonium perchlorate;4) two 50-gallon drums and 150 pound boxes of Explosive D (ammonium picrate); 5) 109,000 pounds of M30 propellant; 6) 320,000 pounds of Clean Burning Incendiary (CBI); 7) 661,000 pounds of nitrocellulose; 8) 1.817 million pounds of tritonal mixed with wax/tar; and 9) 15 million pounds of M6 propellant. Some of the chemicals included in the above materials include trinitrotoluene (TNT), 1,3,5- trinitrobenzene, dinitrotoluene, dibutylphthalate, nitroglycerin, cyclotrimethylenetrinitramine (RDX), and nitrocellulose. The chemicals listed above are CERCLA hazardous substances because they are either listed hazardous substances under 40 CFR §302.4, or characteristic hazardous waste under 40 CFR §261.23. These materials are known to be highly reactive according to material safety data sheets. Incompatible hazardous materials are stored in close proximity to one another. There is no stability monitoring program in place for the M6 propellant and other explosives at the Site.

e. Site investigations also show that Explo Systems Inc. utilized Site property and buildings to perform sub-contract work required under the Demilitarization and Disposal Purchase Order Agreements (i.e., August 28, 2008, and May 4, 2012) between Explo and General Dynamics-OTS ("GD-OTS"). GD-OTS served as the primary contractor under August 18, 2005, and March 17, 2011, demilitarization and disposal contracts between GD-OTS and the Army. Pursuant to work required under such agreements, M30 propellant and bombs containing tritonal (aluminum/TNT mixture) were sent to the Explo Site. The M30 propellant and tritonal contain some of the chemicals (e.g., nitrocellulose, nitroglycerin, and nitroguanidine) listed in item 9.d. Explo also utilized Site property and buildings to perform sub-contract work for Alliant Techsystems, Inc ("ATK or Alliant"). Alliant and the U.S. Army entered into a September 12, 2003 contract requiring Alliant to supply the U.S. Army with trinitrotoluene ("TNT") reclaimed from the tritonal included bombs over a 5-year period. The above contract identifies Explo as a subcontractor who reclaimed TNT from the tritonal included in the bombs. Explo's agreements (i.e., July 24, 2002, May 6, 2010) with Alliant also resulted in the shipment of nitrocellulose to the Site.

e.1. On or about February 28, 2002, Explo and the Aqualon Company (i.e., a subsidiary of Hercules Incorporated at the time) entered into a Chemical Product Sales Agreement pursuant to which Explo agreed to accept 1.5 million to 2.5 million pounds of nitrocellulose stored in 55 gallon steel and fiber drums originating from warehouses located in Parlin, New Jersey and

Camden, Arkansas. The Agreement provided that Explo would convert and reuse all suitable nitrocellulose. Hercules Incorporated agreed to pay Explo an estimated $1,500,000 to convert and re-use nitrocellulose that would have otherwise required incineration or disposal. A total of approximately 661,000 pounds of Hercules Incorporated nitrocellulose remains at the Site.

f. Site investigations show that the hazardous materials at the Site present a significant risk of an explosion, and injury to workers and residents near the Site. The investigations show that due to the handling and unknown storage conditions of the materials, lot integrity/identity has been compromised and the stability of the materials cannot be guaranteed. In addition, materials such as nitrocellulose as stored at the Site have the ability to auto-ignite due to the degradation/aging process which leads to the loss of stabilizers over time. As such, the conditions at the Site and preponderant evidence show that the materials should be addressed in the near-term. Due to the volume of explosive and hazardous materials, the unknown stability of such materials, the incompatible storage of such materials, and the unsafe proximity to human populations, there is a significant threat of an explosion and injury for workers at the Site, and residents of the town of Doyline, Louisiana. On September 6, 2013, the Louisiana Governor declared the Site a state of emergency due to the 18 million pounds of M6 propellant and other explosives stored at the Site, and the safety risks presented to the citizens and property of the State of Louisiana.

g. Due to the handling and storage conditions of the hazardous materials described above, and the threat of explosion and injury to Site workers on-site and nearby residents, the LSP commenced license revocation proceedings against Explo Systems on May 20, 2013. The LM/NG commenced eviction proceedings against Explo Systems for delinquent rent and expenses on July 22, 2013. In addition, the United States Alcohol, Tobacco, and Firearms Bureau (ATF) issued a notice of license revocation on August 5, 2013, due to a criminal indictment pending against Explo, and the improper storage of explosives at the Site. The Webster Parish, Louisiana, District Attorney's Office issued a criminal indictment against several of Explo's executives and officers on June 10, 2013, and the criminal action is proceeding.

h. On August 12, 2013, Explo filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court, Western District of Louisiana, Shreveport Division, Case No.13-12046. On September 23, 2013, the U.S. Bankruptcy Court granted the Louisiana State Department of Public Safety and LM/NG's motion to take possession of and confiscate all of Explo's explosives located at Camp Minden, and possession of all leased premises and premises where the explosives were stored. The Bankruptcy Court terminated all leases between Explo and the LM/NG. On September 30, 2013, the Bankruptcy Court transferred title and ownership of the M6 and other explosives stored at Camp Minden, La., to the Louisiana Military Department.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The Explo 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. 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 pursuant to this Settlement Agreement.

(1) Respondent Hercules Incorporated arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

e. The conditions described in Paragraphs 9.c through 9.f of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

11. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the administrative record, it is hereby Ordered and Agreed that Respondent 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

12. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the names and qualifications of such contractors within 10 days after the Effective Date. Respondent shall also notify EPA of the names and qualifications of any other contractors or subcontractors retained to perform the Work at least 14 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 Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 14 days after EPA's disapproval. The proposed

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 in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA.

13. Within 14 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent 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, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 14 days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by the Respondent.

14. EPA has designated Paige Delgado of the Response and Prevention Branch, as its On-Scene Coordinator ("OSC"). EPA and Respondent shall have the right, subject to Paragraph 13, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA 7 days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

15. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at:

Paige Delgado
On-Scene Coordinator
United States Environmental Protection Agency
Response and Prevention Branch (6SF-RR)
1445 Ross Avenue
Dallas, Texas 75202-2733

Respondent shall submit 3 copies of all plans, reports, or other deliverables required by this Settlement Agreement, the Statement of Work ("SOW"), or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form. All data evidencing Site conditions shall be submitted to EPA in electronic form.

16. 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.

VIII. WORK TO BE PERFORMED

17. Respondent shall perform, at a minimum, all actions necessary to implement the removal action as set for in the attached Statement of Work, and this Settlement Agreement. The actions to be implemented generally include, but are not limited to, the following:

a. Respondent shall conduct a removal action of the following hazardous substances, pollutants and contaminants currently stored at the Site to include: 1) approximately 661,000 pounds of nitrocellulose that originated from Hercules Incorporated or the Aqualon Company, and 2) any other hazardous materials identified as materials originating from Hercules Incorporated or the Aqualon Company.

b. In addition to on-site and off-site disposal options, the Respondent shall explore and propose any and all options for sale, recycling, and/or reuse for the materials listed above in Paragraph 17.a.

c. Respondent shall generate and provide a proposed work plan that includes, but is not limited to staffing requirements and limitations, travel/mobilization costs and requirements, necessary equipment, necessary personnel, necessary materials, availability/limitations of necessary equipment required and available materials, proposed disposal/recycle/reuse methods, total and itemized cost, duration for each phase (if applicable) of the Work, and timeline/schedule for the Work.

d. Limitations concerning the volume to be disposed of should be accounted for when calculating the total cost and time required for disposal, recycling, or reusing the total volume of materials listed in 17.a. Potential limitations are:

- Minimum safe distance limitations on the maximum volume of material that can be disposed of at one time;

-Limitations due to the maximum volume of material that can be disposed of each day, due to maintenance of the disposal areas or other reasons;

-Permit and/or capacity requirements/limitations for volume and/or location of disposal; and

-Provide any other limitations, qualifications, assumptions that impact the implementation of the proposed work plan. Other limitations to address may include potential limitations resulting from the activities of other parties performing removal work at the Site.

e. Respondent shall verify and provide the availability of licensed and experienced personnel that will be available. The proposed Removal Work Plan shall reflect compliance with State and Federal statutory requirements. Respondent shall provide their process for ensuring compliance with State and Federal statutory requirements.

f. Respondent shall prepare a Spill and Emergency Response Contingency Plan - Respondent must implement the plan after approval by the OSC. The following items must be addressed in detail – (1) Response to spills or releases at and/or from the Site to address both the workers on-site and the public exposure; (2) Response analysis for conceivable occurrences (i.e. who and what will respond, alternative communication methods); (3) Call-down list for notification; and (4) Coordination mechanism with State and local authorities.

g. Respondent shall propose achievable milestones by which to gauge the work performed (i.e., date to initiate action, date to complete the removal of 25%, 50%, 75% of the material, completion date for the removal of all materials listed in 17.a).

18. Work Plan and Implementation.

a. Within 21 days after the Effective Date, Respondent shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan") generally described in Paragraph 17 above. The draft Removal 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 Removal Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Removal Work Plan within 14 days after receipt of EPA's notification of the required revisions. Respondent shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Upon approval of the Removal Work Plan Respondent shall commence implementation of the Work in accordance with the schedule included therein. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement.

d. Unless otherwise provided in this Settlement Agreement, any additional plans, reports, or other deliverables that require EPA approval under the SOW or Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

19. Health and Safety Plan.

a. Within 21 days after the Effective Date, Respondent 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 in accordance 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. Respondent 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, Sampling, and Data Analysis.

a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. Prior to the commencement of any monitoring project under this Settlement Agreement, Respondent shall submit to EPA for approval, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, and the NCP. Respondent shall ensure that EPA and State regulator personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement Agreement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP. Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement Agreement perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/superfund/programs/clp/), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www.epa.gov/ttnamti1/airtox.html)," and any amendments made thereto during the course of the implementation of this Settlement Agreement. However, upon approval by EPA, Respondent may use other appropriate analytical methods, as long as: (a) quality assurance/quality control ("QA/QC") criteria are contained in the methods and the methods are included in the QAPP, (b) the analytical methods are at least as stringent as the methods listed above, and (c) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement Agreement have a documented Quality System that complies with ANSI/ASQC E4-1994, "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, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network ("ERLN") laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP"), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs (http://www.epa.gov/fem/accredit.htm) as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement Agreement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

c. Upon request, Respondent shall provide split or duplicate samples to EPA and the State regulators, or their authorized representatives. Respondent shall notify EPA and the State regulators not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA's oversight of Respondent's implementation of the Work.

d. Respondent shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Settlement Agreement unless EPA agrees otherwise.

e. Notwithstanding any provision of this Settlement Agreement, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes and regulations.

21. Post-Removal Site Control. In accordance with the Removal Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for Post-Removal Site Control which shall include, but not be limited to: a) a Post-Site Control and Implementation Plan specifying the objectives, and who is responsible for implementation, monitoring, inspection, reporting and enforcement. Upon EPA approval, Respondent shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondent shall provide EPA with documentation of all Post-Removal Site Control commitments. If Respondent completes the Removal Work Plan, it will have no obligation to provide any Post-Site Removal Control under the Work required for this Settlement Agreement.

22. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 21st day after the date of receipt of EPA's approval of the Work Plan 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.

23. Final Report. Within 30 days after completion of all Work required by the SOW, Respondent shall submit for EPA review and approval 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 EPA Guidance (i.e., 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 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 responsible corporate official of a Respondent or Respondent's Project Coordinator:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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. Respondent may arrange for the shipment of hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if the shipments comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. The shipments will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b). Respondent may arrange for the shipment of Investigation Derived Waste (IDW) from the Site to an off-Site facility only if the shipments comply with EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992).

b. Respondent may arrange for the shipment of Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, Respondent provides written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

IX. ACCESS

25. If the Site, or any other real property where access or land, water, or other resource use restrictions are needed, is owned or controlled by the Respondent:

a. Respondent shall, commencing on the Effective Date, provide the United States, and the State regulators, with access at all reasonable times to the Site, or such other real property, to conduct any activity regarding the Settlement Agreement including, but not limited to, the following activities:

1) Monitoring the Work;

2) Verifying any data or information submitted to EPA;

3) Conducting investigations regarding contamination at or near the Site;

4) Obtaining samples;

5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;

7) Implementing the Work pursuant to the conditions set forth in Paragraph 63 (Work Takeover);

8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section X (Access to Information);

9) Assessing Respondent's compliance with the Settlement Agreement; and

10) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the 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 Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 21days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Section, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing their efforts to obtain access. EPA may assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs incurred, direct or indirect, by

the United States in obtaining such access, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation, in accordance with the procedures in Section XIV (Payment of Response Costs).

27. Notwithstanding any provision of the Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

28. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") 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 regarding the Work. Respondent 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. Privileged and Protected Claims.

a. Respondent may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 29.b, and except as provided in Paragraph 29.c.

b. If Respondent asserts such a privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the subject of the Record; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, the Record shall be provided to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidence conditions at or around the Site; or

(2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement Agreement.

30. Business Confidential Claims. Respondent may assert that all or part of a Record submitted to EPA under this Section or Section XI (Record Retention) is business confidential 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). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Respondent assert business confidentiality claims. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records 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 Records without further notice to Respondent.

31. Notwithstanding any provision of this Settlement Agreement, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

32. Until 10 years after the Effective Date, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into their possession or control that relate in any manner to its liability under CERCLA with regard to the Site, provided, however, that Respondent who is potentially liable as an owner or operator of the Site, must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Hercules is potentially liable at the Site as provided in Section V of this Settlement Agreement. The Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that the Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

33. At the conclusion of the document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any Records, and, upon request from EPA, and except as provided in Paragraph 29, Respondent shall deliver any such records to EPA. The Respondent may destroy Records under this Section (XI - Record Retention) upon completion of all obligations required under Section XI of this Settlement Agreement.

34. The Respondent 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 (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by EPA or

the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information regarding the Site 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. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable 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 siting laws. Respondent shall identify ARARs in the Removal Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

36. In the event any action or occurrence during performance of the Work 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, Respondent shall immediately take all appropriate action. Appropriate action may include the delay or stoppage of Work as defined in this Settlement Agreement, due to health and safety concerns as provided in the Site Health and Safety Plan approved by EPA. Respondent shall provide the EPA OSC with notice of any delay or stoppage of Work, and request review and approval by the EPA OSC. Any delay, stoppage or extension to the Work schedule approved by EPA shall be incorporated into the Work schedule for the Site, and is enforceable under this Settlement Agreement. 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 his/her unavailability, the Regional Response and Prevention Branch, EPA Region 6, at 1-866-EPA-SPIL (or 1-866-372-7745), of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

37. In addition, in the event of any release of a hazardous substance from the Site while the Respondent is performing Work under this Settlement Agreement, Respondent shall immediately notify the OSC at 1-866-EPA-SPIL (or 1-866-372-7745), and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 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. PAYMENT OF RESPONSE COSTS

38. Payments for Future Response Costs. Respondent shall pay EPA all Future Response Costs related to the Work as defined in Section III of this Settlement Agreement that are not inconsistent with the NCP.

a. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a costs summary (standard cost accounting summary), which includes direct and indirect costs incurred by EPA, and its contractors, and the Department of Justice. Respondent shall make all payments within 30 days after receipt of each bill requiring payment, except as otherwise provided in Paragraph 40 of this Settlement Agreement.

b. Respondent shall make all payments required by this Paragraph to EPA by Fedwire Electronic Funds Transfer ("EFT") to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number A6GH and the EPA docket number for this action. Respondent may note the availability to make payment by ACH. For ACH payment:

Payment by Respondent shall be made to EPA by Automated Clearinghouse ("ACH") to:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number A6GH and the EPA docket number for this action.

For online payment:

Payment shall be made at https://www.pay.gov to the U.S. EPA account in accordance with instructions to be provided to Respondent by EPA.

c. At the time of payment, Respondent shall send notice that payment has been made to:

Section Chief, Enforcement Assessment (6SF-TE)
U.S. EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, Texas 75202-2733

and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

d. The total amount to be paid by Respondent pursuant to Paragraph 38 shall be deposited by EPA in the Explo Site Special Account 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.

e. Prepayment of Future Response Costs – PrePayment of Future Response Costs in the amount of $25,000, shall be made in accordance with this Paragraph. In lieu of paying future response costs in accordance with Paragraph 38(a) – (d), the Respondent shall, within 30 days after the Effective Date, shall pay to EPA $25,000 as prepayment of Future Response Costs. Payment shall be made in accordance with Paragraph 38(b). The total amount shall be deposited by EPA in the Explo Site Future Response Costs Special Account. These funds shall be retained and used by EPA to conduct or finance response actions at or in connection with the Site.

f. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a costs summary (standard cost accounting summary), which includes direct and indirect costs incurred by EPA, and its contractors, and the Department of Justice. Respondent shall make all payments within 30 days after receipt of each bill requiring payment, except as otherwise provided in Paragraph 40 of this Settlement Agreement.

Respondent shall make all payments required by this Paragraph [38(f)], to EPA by Fedwire Electronic Funds Transfer ("EFT") to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number A6GH and the EPA docket number for this action. Respondent may note the availability to make payment by ACH. For ACH payment:

Payment by Respondent shall be made to EPA by Automated Clearinghouse ("ACH") to:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number A6GH and the EPA docket number for this action.

For online payment:

Payment shall be made at https://www.pay.gov to the U.S. EPA account in accordance with instructions to be provided to Respondent by EPA.

At the time of payment, Respondent shall send notice that payment has been made to:

Section Chief, Enforcement Assessment (6SF-TE)
U.S. EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, Texas 75202-2733

and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

g. After EPA issues the Notice of Completion of Work pursuant to Paragraph 90 and a final accounting of Future Response Costs (including crediting the Respondent for any amounts received under Paragraphs 38(e) or (f), EPA will remit and return an unused amount of the funds paid by the Respondent pursuant to Paragraphs 38(e) or (f).

39. Interest. In the event that the payment for Future Response Costs is not made within 30 days after Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. 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 XVII (Stipulated Penalties).

40. Respondent may contest payment of any Future Response Costs billed under Paragraph 38 if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days after receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 38. Simultaneously, Respondent shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 38. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 38. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

41. 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.

42. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objections within 30 days after such action, unless the objections have been resolved informally. EPA and Respondent shall have 14 days from EPA's receipt of Respondent's written objections to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

43. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Superfund Division Director level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. 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 EPA's decision, whichever occurs.

44. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Respondent under this Settlement Agreement, not directly in dispute, unless EPA provides otherwise in writing. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 40. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement Agreement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

45. "Force Majeure" for purposes of this Settlement Agreement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work, or increased cost of performance, or a failure to attain performance standards set forth in the EPA Statement of Work.

46. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 6, within 48 hours of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent shall provide in writing to EPA 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; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or

welfare, or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 45 and whether Respondent had exercised its best efforts under Paragraph 45, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely notices under this Paragraph.

47. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement Agreement that are affected by the force majeure 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 shall not, of itself, extend the time for performance of any other obligation, except if the delay or anticipated delay for performance of the obligation is directly caused by the force majeure. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

48. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's written decision. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 45 and 46. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement Agreement identified to EPA.

XVII. STIPULATED PENALTIES

49. Respondent shall be liable for stipulated penalties in the amounts set forth in Paragraphs 50 and 51 to EPA for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Respondent shall include completion of all payments and activities required under this Settlement Agreement, or any plan, report, or other deliverable approved under this Settlement Agreement, in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans, reports, or other deliverables approved under this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

50. Stipulated Penalty Amounts - Work including Removal Work (Section VIII) and Payments (Section XIV and XVII), and Excluding Plans, Reports, and Other Deliverables.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 50, except for Compliance Milestones identified in Paragraph 50b.:

Penalty Per Violation Per Day	Period of Noncompliance
$2,000	1st through 14th day
$3,500	15th through 30th day
$5,000	31st day and beyond

b. Compliance Milestones Violations of compliance milestones, including but not limited to due dates establishing escrow accounts to hold disputed Future Response Costs; milestones under Section XXV (Financial Assurance) to establish and maintain financial assurance; and due dates to establish and insurance (Section XXIV – Insurance) shall result in stipulated penalties accruing per violation per day as provided under Paragraph 50.b.

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$2,000	15th through 30th day
$3,000	31st day and beyond

51. Stipulated Penalty Amounts - Plans, Reports, and Other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports, plans or other deliverables pursuant to this Settlement Agreement:

Penalty Per Violation Per Day	Period of Noncompliance
$2,000	1st through 14th day
$3,000	15th through 30th day
$5,000	31st day and beyond

52. In the event that EPA assumes performance of all or any portion of the Work pursuant to Paragraph 63 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of $25,000. Stipulated penalties under this Paragraph are in addition to the funding available to EPA under Section XXV (Financial Assurance).

53. 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: (a) with respect to a deficient submission under Paragraph 18 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA Management Official at the

Superfund Division Director level or higher, under Paragraph 43 of Section XV (Dispute Resolution), during the period, if any, beginning the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 30 days after the agreement or the receipt of EPA's decision or order.

54. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the failure and describe the noncompliance. 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 EPA has notified Respondent of a violation. EPA, in its discretion, may or may not assess penalties accrued under this Settlement Agreement.

55. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 38 (Payments for Future Response Cost).

56. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 39 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 39 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

58. 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 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 Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), provided however, that the EPA shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement Agreement, except in the case of a willful violation of this Settlement Agreement.

59. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVIII. COVENANTS BY EPA

60. 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, EPA and the United States covenants not to sue or to take administrative action against the Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, and Future Response Costs. These covenants shall take effect upon the Effective Date and are conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Paragraph 38 (Payments for Future Response Costs). These covenants extend only to Respondent and do not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

61. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement 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 in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

62. The covenants set forth in Section XVIII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. 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. liability for failure by Respondent to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definition Future Response Costs;

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

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments related to the nitrocellulose at the Site;

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

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement Agreement.

63. Work Takeover. In the event EPA determines that the Respondent has ceased implementation of any portion of the Work as defined in this Settlement Agreement, is seriously or repeatedly deficient or late in their performance of the Work, or is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondent and assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued. Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover until the earlier of the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or the date that a written decision terminating such Work Takeover is rendered in accordance with Section XV (Dispute Resolution). Funding of Work Takeover costs is addressed under Paragraph 83. Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANTS BY RESPONDENT

64. 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, 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 Louisiana 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 pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Work, or Future Response Costs.

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 any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 62 (liability for failure to meet a requirement of the Settlement Agreement) or Paragraph 62 (criminal liability), 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.

65. 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).

66. Respondent reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's plans, reports, other deliverables or activities.

XXI. OTHER CLAIMS

67. 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 Respondent. The United States or 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.

68. Except as expressly provided in Section XVIII (Covenants by 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.

69. 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).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

70. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 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 give rise to contribution protection pursuant to Section 113(f)(2).

71. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), 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), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs. The Parties further 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 some or all of a response action or for some or all of the costs of such action."

72. The Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. The Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, the Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

73. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVIII (Covenants By EPA).

74. Effective upon signature of this Settlement Agreement by Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending

on the date EPA receives from such Respondent the payments required by Section XIV (Payment of Response Costs) and, if any, Section XVII (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 71 and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

XXIII. INDEMNIFICATION

75. 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, it's 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. However, nothing in this Paragraph modifies the rights of Respondent in Paragraph 66.

76. 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.

77. 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 any one or more of 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 the 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.

XXIV. INSURANCE

78. At least 7 days prior to commencing any on-Site Work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, commercial general liability insurance with limits of $2 million dollars, for any one occurrence, and automobile insurance with limits of $2 million dollars, combined single limit, naming the EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement Agreement. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent needs to provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXV. FINANCIAL ASSURANCE

79. In order to ensure completion of the Work, Respondent shall establish, maintain, and submit to EPA financial assurance, initially in the amount of $2.67 million, the estimated cost of the work, for the benefit of EPA. Respondent shall also establish, maintain, and submit to EPA a standby trust fund into which funds from financial assurance mechanisms can be deposited if the issuer of the financial assurance is directed to do so by EPA pursuant to Paragraph 83. The financial assurance, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms (provided that, if Respondent intends to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds, letters of credit, trust funds, and insurance policies).

a. a surety bond that provides EPA with acceptable rights as a beneficiary thereof unconditionally guaranteeing payment and/or performance of the Work;

b. an irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. a trust fund established for the benefit of EPA that is administered by a trustee acceptable in all respects to EPA;

d. a policy of insurance that provides EPA with acceptable rights as a beneficiary thereof, is issued by an insurance carrier acceptable in all respects to EPA, and ensures the payment and/or performance of the Work;

e. a demonstration by the Respondent that such Respondent meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) and this Section are satisfied; and/or

f. a written guarantee to fund or perform the Work executed in favor of EPA provided by one or more of the following: (1) a direct or indirect parent company of a Respondent, or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with the Respondent; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (8) of 40 C.F.R. § 264.143(f) and this Section with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee).

80. Within 21 days after the Effective Date, Respondent shall submit all executed or otherwise finalized financial assurance mechanisms or other documents required, in a form substantially identical to the documents agreed to during negotiations that includes the Superfund Division Director as the Region 6 recipient, at the mailing address:

Superfund Division Director (6SF)
United States Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733.

A copy shall be sent to Paige Delgado consistent with the address/information at Paragraph 15.

81. If Respondent provides or obtains financial assurance for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 79.e or 79.f, Respondent and/or its guarantors shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Settlement Agreement, and with the requirements of this Section, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant to EPA no later than 21 days after the Effective Date; (b) the annual re-submission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (c) the notification of EPA no later than 30 days after any such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1), and in any event within 90 days after the close of any fiscal year for which the year-end financial data shows that such entity no longer satisfies such financial test requirements. Respondent agrees that EPA may also, based on a belief that the relevant entity may no longer meet the financial test requirements of this Section, require reports of financial condition at any time from the relevant entity in addition to those specified in this Section. For purposes of the financial assurance mechanisms specified in this Section, references in 40 C.F.R. Part 264, Subpart H

to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall also include the Estimated Cost of the Work; (2) "the sum of current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental obligations" (including obligations under CERCLA, RCRA, EPA's Underground Injection Control program, 40 C.F.R. Part 144, enacted as part of the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 to 6992k, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 to 2695d, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work to be performed in accordance with this Settlement Agreement; (3) the terms "owner" and "operator" shall be deemed to refer to the Respondent obtaining a guarantee or making a demonstration under Paragraph 79.e or 79.f; and (4) the terms "facility" and "hazardous waste management facility" shall be deemed to include the Site.

82. Respondent shall diligently monitor the adequacy of the financial assurance. In the event that EPA determines and so notifies Respondent, or the Respondent became aware of information indicating, that financial assurance provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Respondent shall notify EPA of the inadequacy within 30 days and, within 30 days after providing to or receiving from EPA such notice, shall obtain and submit to EPA for approval a proposal for a revised or alternative form of financial assurance that satisfies the requirements set forth in this Section. If EPA approves the proposal, Respondent shall provide a revised or alternate financial assurance mechanism in compliance with and to the extent permitted by such written approval and shall submit all documents evidencing such change to EPA pursuant to the delivery instructions in Paragraph 80 within 30 days after receipt of EPA's written approval. In seeking approval for a revised or alternate form of financial assurance, Respondent shall follow the procedures set forth in Paragraph 84. If EPA does not approve the proposal, Respondent shall follow the procedures set forth in Paragraph 84 to obtain and submit to EPA for approval another proposal for a revised or alternate form of financial assurance within 30 days after receipt of EPA's written disapproval.

83. The issuance of a Work Takeover Notice pursuant to Paragraph 63 (Work Takeover) shall trigger EPA's right to receive the benefit of any financial assurances provided pursuant to this Section. At such time, EPA shall have the right to enforce performance by the issuer of the relevant financial assurance mechanism and/or immediately access resources guaranteed under any such mechanism, whether in cash or in kind, as needed to continue and complete all or any portion(s) of the Work assumed by EPA. In the event (a) EPA is unable to promptly secure the resources guaranteed under any such financial assurance mechanism, whether in cash or in kind, necessary to continue and complete the Work assumed by EPA, or (b) the financial assurance involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 79.e or 79.f, Respondent shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the

remaining Work to be performed as of such date, as determined by EPA. All EPA Work Takeover costs not paid pursuant to this Paragraph shall be reimbursed under Section XIV (Payment of Response Costs). In addition, if at any time EPA is notified by the issuer of a financial assurance mechanism that such issuer intends to cancel the financial assurance mechanism it has issued, then, unless Respondent provides an alternate financial assurance mechanism in accordance with this Section no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing financial assurance.

84. Respondent shall not reduce the amount of, or change the form or terms of, the financial assurance until Respondent receives written approval from EPA to do so. Respondent may petition EPA in writing to request such a reduction or change on any anniversary of the Effective Date, or at any other time agreed to by the Parties. Any such petition shall include the estimated cost of the remaining Work and the basis upon which such cost was calculated, and, for proposed changes to the form or terms of the financial assurance, the proposed revisions to the form or terms of the financial assurance. If EPA notifies Respondent that it has approved the requested reduction or change, Respondent may reduce or otherwise change the financial assurance incompliance with and to the extent permitted by such written approval and shall submit all documents evidencing such reduction or change to EPA pursuant to the delivery instructions in Paragraph 80 within 30 days after receipt of EPA's written decision. If EPA disapproves the request, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution), provided however, that Respondent may reduce or otherwise change the financial assurance only in accordance with an agreement reached pursuant to Section XV or EPA's written decision resolving the dispute.

85. Respondent shall not release, cancel, or discontinue any financial assurance provided pursuant to this Section until: (a) Respondent receives written notice from EPA in accordance with Paragraph 90 that the Work has been fully and finally completed in accordance with this Settlement Agreement; or (b) EPA otherwise notifies Respondent in writing that it may release, cancel, or discontinue the financial assurance(s) provided pursuant to this Section. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution), and may release, cancel, or discontinue the financial assurance required hereunder only in accordance with an agreement reached pursuant to Section XV or EPA's written decision resolving the dispute.

XXVI. MODIFICATION

86. The OSC may modify any plan or schedule to complete the Work as defined in Section III, 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 requirement of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

87. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to 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 86.

88. 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 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. ADDITIONAL REMOVAL ACTION

89. If EPA determines that additional removal actions are necessary to complete the Work as defined in this Settlement Agreement, that are not included in the Removal Work Plan, or other approved plan are necessary to protect public health, welfare, or the environment, and such additional removal actions are consistent with the Statement of Work attached to this Settlement Agreement, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a work plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the plan pursuant to Paragraph 18 (Work Plan and Implementation), Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modification).

XXVIII. COMPLETION OF WORK

90. 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 Post-Removal Site Controls (i.e., if Post-Removal Site controls are applicable), payment of Future Response Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that the Respondent modify 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 EPA notice.

Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXIX. INTEGRATION/APPENDICES

91. This Settlement Agreement and its Statement of Work 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.

XXX. EFFECTIVE DATE

92. This Settlement Agreement shall be effective 7 days after the Settlement Agreement is signed by the Region 6 Superfund Division Director, and notice is given to the Respondent. This Settlement shall remain in effect until the Respondent has completed all requirements and obligations under this Settlement Agreement, and the Respondent is so notified in writing by EPA.

The undersigned representative of the Respondent certifies that they are fully authorized to enter into the terms and conditions of this Settlement Agreement, CERCLA Docket No. 06-03-14, and to bind the party they represent, in the matter of Explo Systems, Inc. Site.

Agreed this 9 day of April, 2014.

For Respondent - Hercules Incorporated

BY: _____
Peter J. Ganz
Title: Senior Vice President, General Counsel and Secretary of Ashland Inc. (Authorized signatory for Hercules Incorporated)

The undersigned Party enters into this Settlement Agreement, CERCLA Docket No. 06-03-14, in the matter of Explo Systems, Inc. Site.

It is so ORDERED and Agreed this 11 day of April, 2 2014.

BY: Pamela Phillips, Acting DATE: April 11, 2014

Carl Edlund, P.E.
Superfund Division Director
EPA Region 6,
U.S. Environmental Protection Agency