DRAFT –12/9/14: FOR DISCUSSION PURPOSES ONLY
SUBJECT TO FURTHER GOVERNMENT REVIEW AND REVISION

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF THE NEW CASSEL/HICKSVILE GROUNDWATER CONTAMINATION SUPERFUND SITE 101 Frost Street, LP, 570 Properties, Inc., 2632 Realty Development Corp., Adchem Corporation, Arkwin Industries, Inc., Atlas Graphics, Inc., Barouh Eaton Allen Corp., GTE Operations and Support, Inc., Grand Machinery Exchange, Inc., HDP Printing Industries, Corp., IMC Eastern Corp, Island Transportation Corp. Lincoln Processing Corp., Nest Equities, Inc., Next Millennium Realty, LLC, Osram Sylvania, Inc., Tishcon Corporation, United States Department of Energy, Utility Manufacturing Co., Inc., and Vishay GSI, Inc. Respondents. Proceeding under Sections 104, 106, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606, 9607 and 9622	Index No.: CERCLA-02-2014-2020

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR
REMEDIAL DESIGN, REMEDIAL INVESTIGATION/FEASIBILITY STUDY, AND COST RECOVERY

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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 101 Frost Street, LP, 570 Properties, Inc., 2632 Realty Development Corp., Adchem Corporation, Arkwin Industries, Inc., Atlas Graphics, Inc., Barouh Eaton Allen, Corp., Grand Machinery Exchange, Inc., GTE Operations and Support, Inc., HDP Printing Industries, Corp., IMC Eastern Corp., Island Transportation Corp., Lincoln Processing Corporation, Nest Equities, Inc., Next Millennium Realty, LLC, Osram Sylvania, Inc., Tishcon Corp., United States Department of Energy, Utility Manufacturing Co., Inc., and Vishay GSI, Inc. ("Respondents") and the United States Environmental Protection Agency, Region 2 ("EPA"). This Settlement Agreement provides that Respondents shall undertake a Remedial Design ("RD"), including pre-design investigations, at the New Cassel/Hicksville Groundwater Contamination Superfund Site ("Site") in the area downgradient of the New Cassel Industrial Area and Old Country Road in the towns of Westbury and Salisbury, Nassau County, New York (hereinafter referred to as "OU1"). This Settlement Agreement also concerns the preparation and performance of a remedial investigation/feasibility study ("RI/FS") of the area of groundwater contamination in the far field area downgradient of OU1 (hereinafter referred to as "OU3"). This Settlement Agreement also provides that Respondents shall reimburse the United States for certain past response costs as well as future response costs that EPA will incur, as provided herein.

2. This Settlement Agreement is issued to Respondents by EPA pursuant to the authority vested in the President of the United States under Sections 104, 106, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9606, 9607, and 9622, which authority was delegated to the Administrator of EPA on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2926 (January 29, 1987) and further redelegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D, respectively. This authority was further redelegated within Region 2 to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated November 23, 2004.

3. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact in Section IV and the conclusions of law and determinations in Section V. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

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4. The objectives of EPA and Respondents in entering into this Settlement Agreement are to protect public health or welfare, or the environment at the Site by: (a) performing the remedial design of the remedy set forth in EPA's Record of Decision for OU1 at the Site as more specifically set forth in the OU1 Statement of Work ("OU1 SOW"), attached as Appendix 1 of this Settlement Agreement; (b) determining the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from OU3 at the Site, by conducting a Remedial Investigation as more specifically set forth in the OU3 Statement of Work ("OU3 SOW") attached as Appendix 2 to this Settlement Agreement; (c) identifying and evaluating remedial alternatives to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting a Feasibility Study as more specifically set forth in the OU3; (d) paying certain response costs and oversight costs incurred by EPA with respect to this Settlement Agreement; and (e) paying certain Past Response Costs.

5. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), EPA notified federal natural resource trustee(s) on July 23, 2014 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Settlement Agreement.

II. PARTIES BOUND

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

7. Respondents agree to implement all activities required of them under this Settlement Agreement as more specifically set forth in Paragraphs 48 through 51, below. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of those work elements for which they are responsible in accordance with this Settlement Agreement, the remaining Respondents that are liable for those work elements shall complete all such requirements. Nothing in this Settlement Agreement is or should be construed as a determination by EPA as to the divisibility of the harm at the Site or as to the applicability, outside of the context of this Settlement Agreement, of joint and several liability to the Site or to Respondents.

8. Respondents shall ensure that their consultants, contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement.

9. The undersigned representative of each Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind such Respondent to this Settlement Agreement.

III. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto, or incorporated by reference into this Settlement Agreement, the following definitions shall apply:

a. "Central Plume" shall mean the area of groundwater contamination identified on Appendix 7 as Central Plume and all areas to which contamination has migrated therefrom.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

c. "Common Work Elements" shall mean the work to be performed under the OU1 SOW related to the design of the treatment system as well as the preparation and submittal of work plans, memoranda, and reports required under the OU1 SOW, and the work to be performed under the OU3 SOW.

d. "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 holiday, the period shall run until the close of business of the next working day.

e. "Eastern Plume" shall mean the area of groundwater contamination identified on Appendix 7 as Eastern Plume and all areas to which contamination has migrated therefrom.

f. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXVIII (Effective Date and Subsequent Modification).

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

h. "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 items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including, but not limited to, payroll costs, contractor costs, travel

costs, laboratory costs, the costs incurred pursuant to Paragraph 72 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation) and Paragraph 106 (Work Takeover).

i. "Group A Respondents" shall mean the following Respondents that agree to perform the work associated with the Eastern Plume – Nest Equities, Inc, Utility Manufacturing Co., Inc., Next Millennium Realty, LLC, 101 Frost Street, LP, Adchem Corporation, Lincoln Processing Corp., GTE Operations and Support, Inc., Osram Sylvania, Inc., United States Department of Energy, Utility Manufacturing Co., Inc., and Vishay GSI, Inc.

j. "Group B Respondents" shall mean the following Respondents that agree to perform the work associated with the Central Plume – Arkwin Industries, Inc., Tishcon Corporation, and Grand Machinery Exchange, Inc.

k. "Group C Respondents" shall mean the following Respondents that agree to perform the work associated with the Western Plume – 570 Properties, Inc., IMC Eastern Corp., HDP Printing Industries, Corp., Atlas Graphics, Inc., Barouh Eaton Allen Corp., 2632 Realty Development Corp., and Island Transportation Corp.

l. "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 Section 107(a) of CERCLA, 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.

m. "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, and codified at 40 C.F.R. Part 300, including any amendments thereto.

n. "NYSDEC" shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State, defined below.

o. "Operable Unit 1" or "OU1" shall mean the area downgradient and south of the New Cassel Industrial Area and Old Country Road, which is located primarily in Salisbury, an unincorporated area of the Town of Hempstead, and within the Hamlet of New Cassel in the Town of North Hempstead. OU1 is depicted generally on the map attached as Appendix 3.

p. "Operable Unit 3" or "OU3" shall mean the area of groundwater contamination in the far field area south and downgradient of OU1 as depicted generally on the map attached as Appendix 4.

q. "OU1 Statement of Work" or "OU1 SOW" shall mean the statement of work for implementation of the RD for OU1 at the Site which is set forth in Appendix 1 to this Settlement Agreement and any modifications made thereto in accordance with this Settlement Agreement.

r. "OU1 Work Plan" or "RD Work Plan" shall mean the document developed consistent with the OU1 SOW and approved by EPA, and any amendments thereto.

s. "OU3 Statement of Work" or "OU3 SOW" shall mean the statement of work for implementation of the RI/FS for OU3 at the Site, which is set forth in Appendix 2 to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

t. "OU3 Work Plan" or "RI/FS Work Plan" shall mean the document developed consistent with the OU3 SOW and approved by EPA, and any amendments thereto.

u. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

v. "Parties" shall mean EPA and Respondents.

w. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs paid by EPA at or in connection with the Site through February 28, 2014, including Interest.

x. "Performance Standards" shall mean the cleanup standards and Remedial Action Objectives and other measures of achievement of the goals of the Remedial Action set forth in the Record of Decision, defined below, and in Section II of the OU1 SOW.

y. "Pre-Design Investigation (PDI) Work Plans" shall mean the documents developed consistent with the OU1 SOW and approved by EPA, and any amendments thereto.

z. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to OU1 of the Site signed on September 30, 2013 by the Director of the Emergency Remedial Response Division, EPA Region 2, including all attachments thereto, attached hereto as Appendix 5.

aa. "Remedial Action" or "RA" shall mean the remedy for OU1 as set forth in the ROD.

bb. "Remedial Design" or "RD" shall mean those activities to be undertaken by Respondents to develop the final plans and specifications for the Remedial Action for OU1 pursuant to the RD Work Plan.

cc. "Remedial Investigation/Feasibility Study" or "RI/FS" shall mean those activities to be undertaken by Respondents to characterize conditions at OU3 of the Site, determine the nature and extent of contamination of OU3, assess the risk to human health and the environment, and to develop, screen and evaluate remedial action alternatives for OU3.

dd. "Respondents" shall mean 101 Frost Street, LP, 570 Properties, Inc., 2632 Realty Development Corp., Adchem Corporation, Arkwin Industries, Inc., Atlas Graphics, Inc., Barouh Eaton Allen, Corp., Grand Machinery Exchange, Inc., GTE Operations and Support, Inc., HDP Printing Industries, Corp., IMC Eastern Corp., Island Transportation Corp., Lincoln Processing Corporation, Nest Equities, Inc., Next Millennium Realty, LLC, Osram Sylvania, Inc., Tishcon Corp., United States Department of Energy, Utility Manufacturing Co., Inc., and Vishay GSI, Inc.

ee. "Relevant Respondent" shall mean the relevant Group A, Group B, and/or Group C Respondents, or all Respondents, as applicable, that are responsible for performing a particular Work Element, as those requirements are set forth in subparagraphs mm to rr.

ff. "Section" shall mean a portion of this Settlement Agreement identified by an upper-case Roman numeral and includes one or more Paragraphs.

gg. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, Index No. CERCLA-02-2014-2020, and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

hh. "Site" shall mean the New Cassel/Hicksville Groundwater Contamination Superfund Site, which is an approximately 6.5 square mile area of groundwater contamination within the Towns of North Hempstead, Hempstead, and Oyster Bay, Nassau County, New York, and associated source areas. The Site is depicted generally on the map attached as Appendix 6.

ii. "State" shall mean the State of New York.

jj. "United States" shall mean the United States of America.

kk. "Waste Material" shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), (ii) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33), and (iii) any "solid waste" under Section 1004(27) of the Solid Waste Disposal Act, as amended, 42 U.S.C.
§ 6903(27).

ll. "Western Plume" shall mean the area of groundwater contamination identified on Appendix 7 as Western Plume and all areas to which contamination has migrated therefrom.

mm. "Work" shall mean all activities, including the payment of certain Past Response Costs and Future Response Costs as provided in Section XV, below, that Respondents are required to perform under this Settlement Agreement, except those required by Section XIII (Record Retention).

nn. "Work Element" shall mean, collectively, the Common Work Elements and Work Elements 1 through 5, as those terms are defined herein.

oo. "Work Element 1" shall mean the work required to be performed under the OU1 SOW which is related to the RD associated with the Eastern Plume.

pp. "Work Element 2" shall mean the work required to be performed under the OU1 SOW related to the RD of the Central Plume.

qq. "Work Element 3" shall mean the work required to be performed under the OU1 SOW related to the RD of the Western Plume.

rr. "Work Element 4" shall mean the work required to be performed under the OU1 SOW related to the pre-design study necessary to define the extent of contamination between the Eastern Plume and the Central Plume.

ss. "Work Element 5" shall mean the work required to be performed under the OU1 SOW related to the pre-design study necessary to define the extent of contamination between the Central Plume and the Western Plume.

IV. FINDINGS OF FACT

11. The Site comprises a widespread area of groundwater contamination within the Towns of North Hempstead, Hempstead, and Oyster Bay, Nassau County, New York. The Site is estimated to include approximately 6.5 square miles that have been characterized by volatile organic compound ("VOC") contaminated groundwater that has impacted eleven public supply wells, including four Town of Hempstead wells (Bowling Green I and II, Roosevelt Field 10, and Levittown 2A), six Hicksville wells (4-2, 5-2, 5-3, 8-1, 8-3, and 9-3), and one Village of Westbury well (11).

12. The eleven public supply wells provide drinking water to a population of an estimated 38,624.

13. The Towns of North Hempstead, Hempstead, and Oyster Bay encompass residential, commercial and industrial areas.

14. The area comprising OU1 of the Site includes approximately 211 acres and consists of residential properties, as well as some commercial areas. A part of the Site, upgradient of OU1, is the New Cassel Industrial Area ("NCIA"), encompassing approximately 170 acres of industrial and commercial property, which is bounded by the Long Island Railroad, Frost Street, Old Country Road and Grand Boulevard in North Hempstead, Nassau County, New York.

15. The area comprising OU3 of the Site includes groundwater contamination in the far-field area south and downgradient of OU1.

16. The NCIA was developed for industrial use during the 1950s through the 1970s and currently has an estimated 200 industrial and commercial properties. On-property leach pools and/or dry wells were generally used for disposal of wastewater until sewers were installed by the mid-1980s.

17. In 1986, as part of a county-wide groundwater investigation, the Nassau County Department of Health ("NCDOH") identified extensive groundwater contamination throughout the NCIA. Six groundwater monitoring wells revealed concentrations of total VOCs above 1,000 micrograms per liter ("ug/L"), with a maximum concentration of nearly 10,000 ug/L. Results of sampling of upgradient groundwater monitoring wells appeared to isolate the NCIA as the source. Sampling of deeper groundwater monitoring wells in and downgradient of the NCIA also indicated that contamination has migrated into the Magothy Aquifer to at least 260 feet below ground surface ("bgs") and is present in significant concentrations (2,700 ug/L of total VOCs) at about 100 feet.

18. In 1988, NYSDEC listed the NCIA as a Class 2 site in the New York State Registry of Inactive Hazardous Waste Disposal Sites ("State Registry").

19. In 1990, the Town of Hempstead installed a granular activated carbon ("GAC") system at the location of the two Bowling Green Water District water supply wells. In 1993, the NCDOH approved the GAC system for full operation. The GAC system commenced operations, and it has remained in operation since. In 1995, to supplement the GAC system, construction began for an air stripper tower. Construction of the air stripper tower was completed in 1997. The air stripper tower commenced operations, and it has remained in operation since.

20. In or around 1994, the NYSDEC delisted the NCIA from the State Registry.

21. From 1994 to 1999, NYSDEC conducted preliminary site assessments and field investigations to identify the sources of contamination within the NCIA. Based on the findings of

these assessments and investigations, 17 individual facilities were identified and listed as Class 2 sites on the State Registry between May 1995 and September 1999.

22. Of the 17 facilities within the NCIA that were initially listed as Class 2 sites on NYSDEC's Registry of Inactive Hazardous Waste Disposal Sites, NYSDEC, under New York State authority, issued nine RODs relating to soil contamination, four RODs relating to groundwater contamination, and eight RODs addressing both groundwater and soil contamination.

23. From 1995 to 2000, NYSDEC conducted groundwater sampling at locations south of the NCIA, Old Country Road, and Grand Boulevard. In September 2000, NYSDEC issued a Remedial Investigation/Feasibility Study Report under New York State authority for the "New Cassel Industrial Area Off-site Groundwater." NYSDEC determined that PCE, TCE, and TCA above New York State standards, criteria, and guidance were present in the groundwater downgradient of the NCIA in the area which EPA has designated as OU1.

24. Based on NYSDEC's investigations for the "New Cassel Industrial Area Off-site Groundwater," NYSDEC determined that VOCs disposed of in the NCIA were released at and/or had migrated from the NCIA to groundwater downgradient of the NCIA. In 2003, NYSDEC selected a remedy under its state authorities to address the "New Cassel Industrial Area Off-site Groundwater," which consisted of remediation of the upper and deep portion of the aquifer (to a depth of 225 feet bgs) with in-well vapor stripping/localized vapor treatment. NYSDEC's remedy included a contingency plan to utilize ex-situ extraction and treatment if pilot testing determined that NYSDEC's selected remedy was less practical because of engineering or economic reasons. NYSDEC's remedy for the "New Cassel Industrial Area Off-site Groundwater" was considered the third operable unit of NYSDEC's Class 2 NCIA site on New York State's Registry of Inactive Hazardous Waste Disposal Sites. This third operable unit covers a portion of the area that EPA has designated as OU1. Pre-design investigations conducted by NYSDEC consultants resulted in a determination that in-well vapor stripping may not be an effective technology for remediating the groundwater. NYSDEC decided that the contingency remedy was more appropriate and commenced pre-design studies of this technology. NYSDEC never implemented the remedy selected in 2003 for the "New Cassel Industrial Area Off-site Groundwater."

25. By letter dated December 27, 2010, NYSDEC requested that EPA nominate the following areas to the national priorities list ("NPL") of releases: the area encompassing contaminated groundwater migrating from the NCIA, Off-site Groundwater South of the NCIA (NYSDEC's Operable Unit No. 3); the General Instruments Corp. (NYSDEC's Operable Unit 2); and 70-140 Cantiague Rock Rd/Former Sylvania (also NYSDEC's Operable Unit 2). The New Cassel/Hicksville Groundwater Contamination Site, as defined in Paragraph 10.hh. above, was listed on the NPL on September 16, 2011.

26. On July 19, 2013, EPA issued a Supplemental Remedial Investigation Memorandum which, among other things, summarized the groundwater data collected by NYSDEC through 2011 in the area designated by EPA as OU1. EPA determined that three groundwater plumes

exist at OU1 (the eastern, central, and western plumes). These plumes are characterized by chlorinated VOCs, primarily PCE, TCA and TCE. In the Eastern Plume, the highest concentrations of PCE (16,000 ug/L) and TCE (1,800 ug/L) were observed during the NYSDEC's April 2011 pre-design investigation sampling. In the Central Plume, the highest concentrations of TCA (1,400 ug/L), PCE (330 ug/L), and TCE (1,800 ug/L) were observed during NYSDEC's 2008 pre-design investigation sampling. In the Western Plume, the highest concentrations of PCE (3,700 ug/L) and TCE (5,100 ug/L) were observed during NYSDEC's 2008 pre-design investigation sampling. Other contaminants found in the groundwater at OU1 include, but are not limited to, vinyl chloride, chloroform, cis-1,2-dichloroethene, 1,1-dichloroethene, 1,1,-dichloroethane, and 1,1,2,2-tetrachloroethane.

27. EPA's Human Health Risk Assessment found unacceptable future noncancer and cancer risks to human health based on the presence of VOCs in the groundwater at OU1 at the Site.

28. Based on the results of the Supplemental Remedial Investigation and the Supplemental Feasibility Study for OU1 completed on July 23, 2013, EPA issued a ROD for OU1 on September 30, 2013, in which it selected a remedy for OU1 at the Site. The OU1 remedy includes, but is not limited to, the following: 1) a combination of in-situ treatment of groundwater via in-well vapor stripping and extraction of groundwater via pumping and ex-situ treatment of extracted groundwater prior to discharge to a publically owned treatment works or reinjection to groundwater to establish containment and effectuate removal of contaminant mass where concentrations of total VOCs are greater than 100 ug/L; 2) in-situ chemical treatment to target high concentration contaminant areas, as appropriate; 3) implementation of long-term monitoring to track and monitor changes in groundwater in OU1 to ensure the remedial action objectives are achieved; 4) development of a Site Management Plan to ensure proper management of the remedy post-construction; and 5) institutional controls consisting of any existing local requirements that prevent installation of drinking water wells and informational devices to limit exposure to contaminated groundwater. The selection of the interim remedy for OU1 presumes the effective continuation of ongoing response actions at the NCIA facilities being overseen by NYSDEC pursuant to New York State authority.

29. EPA's September 30, 2013 OU1 ROD also called for the performance of an investigation of OU3 to address downgradient contamination in that area.

30. Exposure to high levels of VOCs can cause a variety of adverse health effects, including, but not limited to damage to the liver and kidneys.

31. 299 Main Street, 570 Main Street, 567 Main Street, 686 Main Street, 700 Main Street, 770 Main Street, 118-130 Swalm Street, 125 State Street, 29 New York Avenue, 30-36 New York Avenue and 30-33 Brooklyn Avenue, 62 Kinkel Street, 36 Sylvester Street, 89 Frost Street, and 101 Frost Street in Westbury, NY (hereinafter "NCIA Properties") and, 70-140 Cantiague Rock Road, and 600 West John Street in Hicksville, NY are properties where hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located.

32. Respondents are current owners or operators of properties within the Site from which

EPA has determined that hazardous substances were released, and/or owners or operators at the time of disposal of hazardous substances at properties within the Site.

V. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

33. The NCIA Properties are "facilities" within the meaning of Section 101(9) of CERCLA, 42 U.S.C § 9601(9).

34. The Site, including the NCIA Properties, is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

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

36. The discharge, dumping, and/or disposal of hazardous substances at the Site constitutes a "release" of hazardous substances into the environment as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). In addition, there is a threat of further releases of hazardous substances at and from the Site.

37. Respondents are responsible parties within the meaning of Section 107(a)(1) and/or (2) of CERCLA, 42 U.S.C. §9607(a)(1) and/or (2), because they are owners or operators of facilities within the Site and/or owned and/or operated facilities within the Site at which hazardous substances were released.

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

39. Respondents have been given an opportunity to discuss with EPA the basis for issuance of this Settlement Agreement and its terms.

40. The actions required by this Settlement Agreement are necessary to protect the public health or welfare or the environment, are in the public interest, are consistent with CERCLA and the NCP, and are expected to expedite effective remedial action.

41. EPA has determined that Respondents are qualified to conduct the RI/FS pursuant to this Settlement Agreement within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). EPA has also determined that Respondents will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement Agreement.

VI. ORDER

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

VII. DESIGNATED EPA PROJECT MANAGER AND RESPONDENTS' PROJECT COORDINATOR

43. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within thirty (30) days of the Effective Date, and before the Work outlined below begins, Respondents shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor has a quality system that complies with The Uniform Federal Policy for Implementing Quality Systems (UFP-QS), (EPA/505/F-03/001, March 2005 by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. If EPA disapproves in writing of any person's technical qualifications, Respondents shall notify EPA of the identity and qualifications of the replacements within 10 days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to perform the RD and the RI/FS, and to seek reimbursement for costs and penalties from Respondents. During the course of the Work, Respondents shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification. Nothing herein shall prevent Respondents from retaining the same contractor to perform both the OU1 and the OU3 SOWs.

44. Within thirty (30) days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents for all work elements required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 10 days following EPA's disapproval. Respondents shall have the right to change their Project Coordinator, subject to EPA's right to disapprove. Respondents shall notify EPA 30 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondents.

45. EPA has designated Jennifer LaPoma of the New York Remediation Branch, Emergency and Remedial Response Division, EPA Region 2, as its Remedial Project Manager ("RPM"). EPA will notify Respondents of a change of its designated RPM. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the RPM via email at lapoma.jennifer@epa.gov and by first class mail, at U.S. EPA, Region 2, 290 Broadway, 20th Floor, New York, NY 10007.

46. EPA's RPM shall have the authority lawfully vested in an RPM and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's RPM shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA RPM from the area under study or where Work under this Settlement Agreement is being performed shall not be cause for the stoppage or delay of Work.

47. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the RI/FS Work Plan.

VIII. WORK TO BE PERFORMED

48. Respondents agree that they are jointly and severally liable to EPA for performance of the Common Work Elements under this Settlement Agreement and for all other general obligations under this Settlement Agreement, including, but not limited to, any necessary emergency response notifications, obtaining access, monthly reports, and the payment of Future Response Costs and certain Past Response Costs.

49. Group A Respondents agree that they are jointly and severally liable to EPA for the performance of Work Elements 1 and 4.

50. Group B Respondents agree that they are jointly and severally liable to EPA for the performance of Work Elements 2, 4, and 5.

51. Group C Respondents agree that they are jointly and severally liable to EPA for performance of Work Elements 3 and 5.

52. Notwithstanding the assignment of specific Work obligations as set forth above, Respondents agree and acknowledge that they shall coordinate their respective obligations in such a manner so as to provide only one submission for all Respondents for each required submission under this Settlement Agreement. Respondents shall perform all actions required of them that are necessary to implement the Work as set forth in the OU1 SOW and the OU3 SOW (collectively, the "SOWs"). All Work performed shall be in accordance with the provisions of this Settlement

Agreement, the SOWs, CERCLA, the NCP, and all applicable EPA guidance, including, but not limited to guidances referenced in the SOWs, as may be amended or modified by EPA. EPA's Remedial Project Manager shall use her best efforts to inform Respondents if new or revised guidances may apply to the Work. The SOWs and all deliverables required by the SOWs, are incorporated into and an enforceable part of this Settlement Agreement.

53. Within forty-five (45) days of the Effective Date of the Settlement Agreement, Respondents shall submit a Pre-Design Vertical Profile Boring Work Plan for the installation and physical/chemical characterization of vertical profile borings within the boundaries of OU1 as specified in the OU1 SOW. Within thirty (30) days of the Effective Date of the Settlement Agreement Respondents shall submit the Site Characterization Summary Report ("SCSR") for OU3 at the Site as specified in the OU3 SOW.

54. Modification of the Work Plans.

a. If one or more of the Relevant Respondents at any time during the performance of any Work Element under this Settlement Agreement identifies a need for additional data, such Respondent or Respondents shall submit a memorandum documenting the need for additional data to the EPA RPM within thirty (30) days of such identification. EPA in its discretion will determine whether the additional data will be collected by such Respondent or Respondents and whether it will be incorporated into plans, reports, and other deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the EPA RPM by email within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the RI/FS Work Plan, the RD Work Plan or PDI Work Plans, EPA shall modify or amend the RI/FS Work Plan, RD Work Plan or PDI Work Plans in writing accordingly. Those Respondents with the obligation to perform said work shall perform it as modified or amended.

c. EPA may determine that in addition to tasks defined in the initially approved RI/FS Work Plan, RD Work Plan, or PDI Work Plans, other additional work may be necessary to accomplish the objectives of the RI/FS or the RD. Respondents agree to perform these response actions in addition to those required by the initially approved RI/FS Work Plan, RD Work Plan, or PDI Work Plans, as it relates to the Common Work Elements, and the appropriate Relevant Respondents agree to perform any additional work as it relates to a Work Element that they are required to perform, including any approved modifications, if EPA determines that such actions are necessary for a complete RI/FS or RD.

d. Relevant Respondents shall confirm their willingness to perform the additional Work in writing to EPA within ten (10) days of receipt of the EPA request. If Relevant Respondents object to any modification determined by EPA to be necessary pursuant to this Paragraph, Relevant Respondents may seek dispute resolution pursuant to Section XVI (Dispute Resolution). The RD SOW and/or RD Work Plan or the RI/FS SOW and/or RI/FS Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Relevant Respondents shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan, RD Work Plan, or PDI Work Plans or written RI/FS Work Plan supplement, RD Work Plan supplement, or PDI Work Plans supplements. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Relevant Respondents, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

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

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

b. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the remedial investigation and feasibility study. Respondents shall provide the information required by Paragraph 55.a and 55.c as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

c. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

56. Meetings. Respondents shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS and/or the RD. In addition to discussion of the technical aspects of the RI/FS and/or RD, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

57. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during performance of the Work, which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release and shall immediately notify the EPA RPM at 212-637-4328, or, in the event of her unavailability, Respondents shall immediately notify the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA, Region 2, at 732-321-6645 of the incident or Site conditions. Respondents shall take such actions in consultation with EPA's RPM, or other available authorized EPA officer, and in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOWs. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP, pursuant to Section XV (Payment of Response Costs).

b. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

c. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven (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.*

IX. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

58. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Relevant Respondents modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Relevant Respondents at least one notice of deficiency and an opportunity to cure within twenty one (21) days or other time frame as determined by EPA, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved because of material defects.

59. In the event of approval, approval upon conditions, or modification by EPA pursuant to subparagraphs 58(a), (b) or (c) above, Relevant Respondents shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA subject only

to their right to invoke the Dispute Resolution procedures set forth in Section XVI (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submission or portion thereof, Relevant Respondents shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 58.c and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVIII (Stipulated Penalties).

60. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 58.d, Relevant Respondents shall, within twenty-one (21) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVIII, shall accrue during the ten (10)-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified because of a material defect as provided in Paragraphs 61 and 62.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 58, Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties under Section XVIII (Stipulated Penalties).

c. Relevant Respondents shall not proceed further with any subsequent activities or tasks relating to the Work Element(s) subject to the disapproval until receiving EPA approval, approval on condition, or modification of the PDI Work Plans, RD Work Plan, and/or the RI/FS Work Plan. While awaiting EPA approval, approval on condition, or modification of either of these deliverables, Respondents shall proceed with other tasks and activities that may be conducted independently of either of these deliverables, in accordance with EPA-approved schedules.

d. For all remaining deliverables not listed above in Subparagraph 60.c, Respondents shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval on the relevant submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity, or deliverable at any point.

61. If EPA disapproves a resubmitted plan, report, or other deliverable, or portion thereof, EPA may again direct Relevant Respondents to correct the deficiencies. EPA also retains the right to modify or develop the plan, report, or other deliverable. Relevant Respondents shall implement any such plan, report, or deliverable as corrected, modified, or developed by EPA, subject only to Relevant Respondents' right to invoke the procedures set forth in Section XVI (Dispute Resolution).

62. If, upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA because of a material defect, Relevant Respondents shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately, unless Relevant Respondents invoke the dispute resolution procedures in accordance with Section XVI (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XVI (Dispute Resolution) and Section XVIII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified, or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XVI, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVIII.

63. In the event that EPA takes over some but not all of the tasks required to be performed under this Settlement Agreement, Relevant Respondents shall incorporate and integrate information supplied by EPA into the final reports.

64. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and become enforceable under this Settlement Agreement.

65. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables acceptable to EPA.

X. SUBMISSION OF PLANS AND REPORTING REQUIREMENTS

66. Reporting

a. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement as provided in the SOWs and pursuant to the schedules provided in the SOWs until termination of this Settlement Agreement, unless otherwise directed in writing by EPA.

b. Respondents shall submit copies of all plans, reports, or other submissions required by this Settlement Agreement, the SOWs, or any approved work plan as set forth below. Submission of any electronic submissions, if requested by EPA, must be in a format that is compatible with EPA software and in database files and sizes to be specified by EPA. Reports should be submitted to the following unless otherwise notified by EPA:

1 hard copy and 1 electronic copy to:

U.S. Environmental Protection Agency Region 2
290 Broadway, 20th Floor
New York, New York 10007
Attention: New Cassel/Hicksville Groundwater Contamination Superfund Site Remedial Project Manager
212-637-4328
Lapoma.jennifer@epa.gov

1 electronic copy to:

New York/Caribbean Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency Region II
290 Broadway, 17th Floor
New York, New York 10007-1866
Attention: Attorney for New Cassel/Hicksville Groundwater Contamination Site
212-637-3183
kivowitz.sharon@epa.gov

1 hard copy and 1 electronic copy to:

Jeffrey L. Dyber, P.E.
Environmental Engineer 2
New York State Department of Environmental Conservation
Remedial Bureau A
625 Broadway
Albany, NY 12233-7015
518-402-9621
jldyber@gw.dec.state.ny.us

1 electronic copy to:

Jacqueline Nealon
New York State Department of Health
jen02@health.state.ny.us

XI. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

67. Quality Assurance. Respondents shall assure that Work performed, samples taken, and analyses conducted conform to the requirements of the SOW, the Quality Assurance Project Plan ("QAPP"), and guidances identified therein. Respondents will assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody

procedures. Respondents shall only use laboratories that have a documented quality system that complies with "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.

68. Sampling.

a. All results of sampling, tests, modeling, or other data (including raw data) generated by Respondents, or on Respondents' behalf, during the period that this Settlement Agreement is effective, shall be submitted to EPA in the next monthly progress report as more fully set forth in the SOWs. EPA will make available to Respondents validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondents shall verbally notify EPA at least seven (7) days prior to conducting significant field events as described in the SOWs, Work Plans, or Sampling and Analysis Plans. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondents shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected in implementing this Settlement Agreement. All split samples of Respondents shall be analyzed by the methods identified in the QAPP.

69. Access to Information.

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

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

c. Respondents may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal

law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the document, record, or information; and (vi) the privilege asserted by Respondents. However, no documents, reports, or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

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

70. In entering into this Settlement Agreement, Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the Work that has been verified according to the quality assurance/quality control ("QA/QC") procedures required by the Settlement Agreement or any EPA-approved RI/FS Work Plan, RD Work Plan and PDI Work Plans. If Respondents object to any other data relating to the RI/FS, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the monthly progress report containing the data.

XII. SITE ACCESS

71. If any Respondent owns or controls any part of the Site, or any other property where access is needed to implement this Settlement Agreement, such Respondent shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, to conduct any activity related to this Settlement Agreement. Such Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Such Respondent also agrees to require that its successors comply with the immediately preceding sentence, this Section, and Section XI (Quality Assurance, Sampling and Access to Information).

72. Where any action under this Settlement Agreement is to be performed in areas owned by, or in possession of, someone other than a Respondent, Relevant Respondents shall use their best efforts to obtain all necessary access agreements to such property based on the respective Work Element(s) that necessitates the access within 30 days after the Effective Date, or as otherwise specified in writing by EPA. Relevant Respondents shall immediately notify EPA if, after using their best efforts, they are unable to obtain such agreements. For purposes of this Paragraph, "best

efforts" includes the payment of reasonable sums of money in consideration of access. Relevant Respondents shall describe in writing their efforts to obtain access. EPA may in its sole discretion then assist such Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Relevant Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

73. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act ("RCRA"), and any other applicable statutes or regulations.

74. If Respondents cannot obtain access agreements, EPA may obtain access for Respondents, perform those tasks or activities with EPA contractors, or terminate the Settlement Agreement. If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondents shall perform all other activities not requiring access to such property and shall reimburse EPA for all costs incurred in performing such activities. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

XIII. RECORD RETENTION

75. During the pendency of this Settlement Agreement and until ten (10) years after Respondents' receipt of EPA's notification that the Work has been completed, Respondents shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in their possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after notification that the Work has been completed, Respondents shall also instruct their contractors and agents to preserve all documents, records, and other information of whatever kind, nature, or description relating to performance of the Work.

76. At the conclusion of this document retention period, Respondents shall notify EPA at least ninety (90) days prior to the destruction of any such documents, records, or other information and, upon request by EPA, Respondents shall deliver any such documents, records, or other information to EPA.

77. Each Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it by the United States regarding the Site, and that it has fully complied with any

and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. COMPLIANCE WITH OTHER LAWS

78. Respondents shall undertake all action that this Settlement Agreement requires in accordance with the requirements of all applicable local, state, and federal laws and regulations, unless an exemption from such requirements is specifically provided by law or in this Settlement Agreement. The activities conducted pursuant to this Settlement Agreement, if approved by EPA, shall be considered consistent with the NCP.

79. Except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a federal or state permit or approval, Respondents shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

80. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. PAYMENT OF RESPONSE COSTS

81. Respondents hereby agrees to reimburse EPA $400,000 for partial reimbursement of Past Response Costs. Respondents shall remit payment of Past Response Costs with thirty (30) days of the Effective Date of this Settlement Agreement in accordance with the payment provisions of Paragraph 83 below.

82. Respondents hereby agree to reimburse EPA for Future Response Costs. EPA will periodically send billings to Respondents for Future Response Costs. The billings will be accompanied by a printout of cost data in EPA's financial management system. Respondents shall remit payment to EPA within thirty (30) days of receipt of each such billing.

83. Payments under this Settlement Agreement shall be made via electronic funds transfer ("EFT"). To effect payment via EFT, Respondents shall instruct their bank to remit payment in the required amount via EFT using the following information, or such other updated EFT information that EPA may subsequently provide to Respondents:

- Amount of payment
- Bank: **Federal Reserve Bank of New York**
- Account code for Federal Reserve Bank account receiving the payment: **68010727**
- Federal Reserve Bank ABA Routing Number: **021030004**
- SWIFT Address: **FRNYUS33**
  33 Liberty Street
  New York, NY 10045

- Field Tag 4200 of the Fedwire message should read:
  D 68010727 Environmental Protection Agency
- Name of remitter:
- Settlement Agreement Index number: **CERCLA - 02-2014-2020**
- Site/spill identifier: A2-45

At the time of payment, Respondents shall send notice that such payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

U.S. Environmental Protection Agency
Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

and:

Jennifer LaPoma, Remedial Project Manager
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866

as well as to:

Sharon E. Kivowitz
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866

Such notice shall reference the date of the EFT, the payment amount, the name of the Site, the Site Identifier, the Settlement Agreement index number, the bill number (if applicable) , whether the payment is for past cost, future costs or penalties, and Respondent's name and address.

84. The total amounts to be paid by Respondents pursuant to Paragraphs 81 and 82 shall be deposited into the New Cassel/Hicksville Groundwater Contamination Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

85. In the event that payment of Past Response Costs is not made within thirty (30) days of the Effective Date or any payments for Future Response Costs are not made within thirty (30) days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall accrue on the first day that payment is overdue and shall

continue to accrue until the date of payment. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including, but not limited to, payment of stipulated penalties pursuant to Section XVIII.

86. Respondents may contest payment of any billed Future Response Costs under Paragraph 82, if they determine that EPA has made an accounting error, or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the EPA RPM. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall, within the thirty (30)-day period, pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 83. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA RPM 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, Respondents shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 83. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay any portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 83, and Respondents 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 XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for Future Response Costs.

XVI. DISPUTE RESOLUTION

87. Unless this Settlement Agreement expressly provides otherwise, 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. A Respondent may only initiate or participate in disputes related to Work Elements for which they are a Relevant Respondent.

88. Notwithstanding any other provision of this Settlement Agreement, Respondents may not invoke dispute resolution procedures more than once regarding the same issue. For example, if Respondents invoke the dispute resolution procedures with respect to an issue raised by EPA's comments on the draft RD Work Plan, and said issue is resolved under this Section, Respondents

may not invoke the dispute resolution procedures with respect to the same issue later, in the context of EPA's comments on the draft RD Report.

89. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify EPA in writing of its objection(s) within twenty (20) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have twenty (20) days from EPA's receipt of such Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing.

90. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both 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 Branch Chief level will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. Respondents shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondents agrees with the decision.

XVII. FORCE MAJEURE

91. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless agreed otherwise by EPA in writing or unless the performance is delayed by a *force majeure* event. For purposes of this Settlement Agreement, a *force majeure* event is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including, but not limited to, their contractors and subcontractors, that delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* event: (a) as it is occurring; and (b) following the potential *force majeure* event, such that the delay is minimized to the greatest extent possible. A *force majeure* event does not include financial inability to complete the Work or increased cost of performance.

92. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Relevant Respondents shall notify EPA orally within two (2) days of when Relevant Respondents first knew that the event might cause a delay. Within five (5) days thereafter, Relevant Respondents shall provide to EPA in writing the following: 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; Relevant Respondents' rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Relevant Respondents, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of a *force majeure* event for the period of time of such failure to comply and for any additional delay caused by such failure. Relevant Respondents shall be deemed to know of any circumstance of which Relevant Respondents, any entity controlled by Relevant Respondents, or Relevant Respondents' contractors knew or should have known.

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

XVIII. STIPULATED PENALTIES

94. If Relevant Respondents fail, without prior EPA approval, to comply with any of their respective requirements or time limits set forth in or established pursuant to this Settlement Agreement and appendices hereto, and such failure is not excused under the terms of Section XVII (Force Majeure), such Respondents shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

a. For all requirements of this Settlement Agreement, other than the timely provision of progress reports required by Section III of the RD SOW and Section V.E. of the RI/FS SOW, stipulated penalties shall accrue in the amount of $2,000 per day, per violation, for the first seven days of noncompliance, $4,000 per day, per violation, for the 8th through 15th day of noncompliance, $8,000 per day, per violation, for the16th through 25th day of noncompliance, and $16,000 per day, per violation, for the 26th day of noncompliance and beyond.

b. For the progress reports required by Section III of the RD SOW and Section V.E. of the RI/FS SOW, stipulated penalties shall accrue in the amount of $1,000 per day, per violation, for the first seven days of noncompliance, $2,000 per day, per violation, for the 8th through 15th day of noncompliance, $4,000 per day, per violation, for the 16th through 25th

day of noncompliance, and $6,000 per day, per violation, for the 26th day of noncompliance and beyond.

95. In the event that EPA assumes performance of a Common Work Element pursuant to Paragraph 106, Respondents shall be liable for a stipulated penalty in the amount of $500,000.

96. 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 Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Relevant Respondents of any deficiency; and b) with respect to a decision by the Director of the Emergency and Remedial Response Division, or his designee, under Paragraph 90 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

98. Relevant Respondents shall pay EPA all penalties accruing under this Section within 30 days of Relevant Respondents' receipt from EPA of a demand for payment of the penalties, unless Relevant Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be made via EFT in accordance with the payment procedures in Paragraph 83 above.

99. The payment of penalties shall not alter in any way Relevant Respondents' obligation to complete performance of the Work Element required to be performed by Relevant Respondents, under this Settlement Agreement.

100. Penalties shall continue to accrue during any dispute resolution period but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

101. If Relevant Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Relevant Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 97.

102. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon

which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c) (3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 106. 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.

XIX. COVENANT NOT TO SUE BY EPA

103. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents or their successors and assigns pursuant to Section 106 and 107(a) of CERCLA, 42 U.S.C. §§9606 and 9607(a), for the Work, for $400,000 of Past Response Costs, and for the recovery of Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the payment required by Paragraph 81 (Payment of Past Response Costs) and any Interest or Stipulated Penalties due thereon under Paragraph 85 (Interest) or Section XVIII (Stipulated Penalties). This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their respective obligations to perform Work Element(s) under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Paragraph 82 (Payment of Future Response Costs). This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATION OF RIGHTS BY EPA

104. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Settlement Agreement, nothing herein 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 Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

105. The covenant not to sue set forth in Section XIX (Covenant Not To Sue By EPA) above does not pertain to any matters other than those expressly identified therein. EPA reserves and this Settlement Agreement is without prejudice to, all rights against Respondents, or Relevant

Respondents in the case of subparagraph a., below, with respect to all other matters, including, but not limited to:

a. claims based on a failure by Relevant Respondents to meet one of their respective obligations under this Settlement Agreement;

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

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

d. criminal liability;

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

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

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

106. Work Takeover. In the event EPA determines that Relevant Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may assume the performance of any or all portion(s) of the Work as EPA determines necessary. Relevant Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs that EPA incurs in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Relevant Respondents shall pay pursuant to Section XV (Payment of Future Response Costs). 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.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

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

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b) (2), 107, 111, 112, or

113 of CERCLA, 42 U.S.C. §§ 9606(b) (2), 9607, 9611, 9612, or 9613, or any other provision of law;

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

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Past Response Costs or Future Response Costs, provided however, that this Settlement Agreement shall not have any effect on claims or causes of action in contribution that Respondents have or may have pursuant to CERCLA against the United States or any of its agencies or departments, other than EPA, as a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), relating to the Site.

108. Except as expressly provided in Paragraphs 110 (Claims Against De Micromis Parties), and 112 (Claims Against *De Minimis* and Ability to Pay Parties), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XX (Reservations of Rights by EPA), other than in Paragraph 105.a (claims for failure to meet a requirement of the Settlement Agreement) or 105.d (criminal liability), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

109. 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).

110. Claims Against De Micromis Parties. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) or 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

111. The waiver in Paragraph 110 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

112. Claims Against *De Minimis* and Ability to Pay Parties. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) or 113 of CERCLA) that they may have for response costs relating to the Site against any person that has entered, or in the future enters, into a final Section 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to the Site as of the Effective Date. This waiver shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against such Respondent.

113. Respondents reserve, 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, 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 while acting within the scope of his 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, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Respondents' plans or activities. The foregoing applies only to claims that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

114. 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).

XXII. OTHER CLAIMS

115. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their respective directors, officers, employees, agents, successors,

representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

116. 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. Respondents expressly reserve 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 Respondents 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).

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

XXIII. CONTRIBUTION PROTECTION

118. The Parties agree that this settlement 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 Respondents are entitled, as of the Effective Date to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), 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, Past Response Costs and Future Response Costs.

XXIV. INDEMNIFICATION

119. Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including, but not limited to, attorneys fees and other expenses of litigation and settlement, arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into, by, or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

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

XXV. INSURANCE

122. At least five (5) days prior to commencing any on-Site Work under this Settlement Agreement, Respondents shall secure and shall maintain for the duration of this Settlement Agreement comprehensive general liability insurance and automobile insurance with limits of $5 million dollars, combined single limit, naming the EPA as an additional insured. Within the same period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents 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, Respondents 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 Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate 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 Respondents need provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

123. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security for the benefit of EPA in an amount no less than the estimated cost of the Work to be performed by Respondents under this Settlement Agreement, which is valued by EPA at $6,000,000, in one or more of the following forms, in order to secure the full and final completion of Work by Respondents:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A policy of insurance that ensures the payment for and/or performance of the Work and that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration by Respondents that Respondents meet the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; and

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of one of the Respondents, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with one of the Respondents; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the estimated cost of the Work that it proposes to guarantee hereunder.

124. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 123, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within thirty (30) days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

125. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 123(e) or 123(f) of this Settlement Agreement, Respondents shall: (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date, to EPA. For the purposes of this

Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the current EPA cost estimate of $6,000,000 for the Work at the Site shall be used in relevant financial test calculations.

126. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 123 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondents may change the form of financial assurance required hereunder only in accordance with a final decision resolving such dispute pursuant to Section XVI (Dispute Resolution).

127. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of financial assurance required hereunder only in accordance with a final decision resolving such dispute pursuant to Section XVI (Dispute Resolution**).**

XXVII. INTEGRATION/APPENDICES

128. This Settlement Agreement, its appendices, and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into, and enforceable under, this Settlement Agreement 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.

129. In the event of a conflict between any provision of this Settlement Agreement and the provisions of any document attached to this Settlement Agreement or submitted or approved pursuant to this Settlement Agreement, the provisions of this Settlement Agreement shall control.

130. The following documents are attached to and incorporated into this Settlement Agreement:

Appendix 1 is the OU1 SOW;

Appendix 2 is the OU3 SOW;

Appendix 3 is a Map of OU1 of the Site;

Appendix 4 is a Map identifying the approximate area of OU3 of the Site;

Appendix 5 is the OU1 ROD;

Appendix 6 is the Map of the Site.

Appendix 7 is the Map identifying the OU1 Eastern, Central and Western Plumes.

XXVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

131. This Settlement Agreement shall be effective five (5) days after the Settlement Agreement is signed by the Director of the Emergency and Remedial Response Division or his designee.

132. This Settlement Agreement may be amended by mutual agreement of EPA and Respondents. Amendments shall be in writing and shall be effective when signed by EPA. EPA's RPM does not have the authority to sign amendments to the Settlement Agreement.

133. No informal advice, guidance, suggestion, or comment by EPA's RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXIX. NOTICE OF COMPLETION OF WORK

134. When EPA determines that all Work has been fully performed in accordance with the other requirements of this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including payment of Future Response Costs or record retention, EPA will provide written notice to Respondents. If EPA determines that any such Work, has not been completed in accordance with this Settlement Agreement, EPA will notify Relevant Respondents, provide a list of the deficiencies, and require that Relevant Respondents modify the applicable work plan(s), if appropriate, to correct such deficiencies. Relevant Respondents shall implement the modified and approved work plan(s) and shall submit the required deliverables. Failure by Relevant Respondents to implement the approved modified work plan(s) related to their respective Work Element(s) shall be a violation of this Settlement Agreement.

By: _____ _____

Walter Mugdan, Director Date
Emergency and Remedial Response Division
Region 2

In the Matter of the New Cassel/Hicksville Groundwater Contamination Superfund Site, *Administrative* Settlement Agreement and Order for Remedial Design, Remedial Investigation/Feasibility Study, and Cost Recovery, Index No. CERCLA-02-2014-2020

CONSENT

The Respondent identified below has had an opportunity to confer with EPA regarding this Settlement Agreement. Respondent hereby consents to the issuance of this Settlement Agreement and to its terms. The individual executing this Settlement Agreement on behalf of the Respondent certifies under penalty of perjury under the laws of the United States that he or she is fully and legally authorized to agree to the terms and conditions of this Settlement Agreement and to bind such Respondent thereto.

_____
Name of Respondent

_____ _____
Signature Date

_____
Printed Name

_____
Title of Signatory

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