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Draft – September 21, 2016
Subject to Negotiations
Subject to Further Gov't Review

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Operable Unit Two of the Diamond Alkali
Superfund Site

In and About Essex, Hudson, Bergen and
Passaic Counties, New Jersey

Occidental Chemical Corporation,

Settling Party.

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMEDIAL DESIGN

U.S. EPA Region 2
CERCLA Docket No. 02-2016-2021

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 & 9622.

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ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
REMEDIAL DESGIN
TABLE OF CONTENTS

I. JURISDICTION AND GENERAL PROVISIONS..... 1
II. PARTIES BOUND..... 2
III. DEFINITIONS..... 2
IV. EPA'S FINDINGS OF FACT..... 5
V. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS..... 9
VI. SETTLEMENT AGREEMENT AND ORDER..... 10
VII. DESIGNATION OF PROJECT MANAGER AND COORDINATORS..... 10
VIII. WORK TO BE PERFORMED..... 12
IX. SITE ACCESS..... 12
X. ACCESS TO INFORMATION..... 13
XI. RECORD RETENTION..... 14
XII. COMPLIANCE WITH OTHER LAWS..... 15
XIII. PAYMENT OF RESPONSE COSTS..... 15
XIV. DISPUTE RESOLUTION..... 17
XV. FORCE MAJEURE..... 18
XVI. STIPUTLATED PENALTIES..... 20
XVII. COVENANTS BY EPA..... 22
XVIII. RESERVATION OF RIGHTS BY EPA..... 23
XIX. COVENANTS BY SETTLING PARTY..... 24
XX. OTHER CLAIMS..... 26
XXI. EFFECT OF SETTLEMENT/CONTRIBUTION..... 27
XXII. INDEMNIFICATION..... 28
XXIII. INSURANCE..... 28
XXIV. FINANCIAL ASSURANCE..... 29
XXV. INTEGRATION/APPENDICES..... 32
XXVI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION..... 33
XXVII. NOTICE OF COMPLETION OF WORK..... 33

Appendix A: Record of Decision for Operable Unit Two
Appendix B: Statement of Work
Appendix C: Map of Site
Appendix D: Financial Assurance

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency (the "EPA") and Occidental Chemical Corporation ("Settling Party"). This Settlement Agreement provides that Settling Party shall undertake a Remedial Design ("RD"), including various procedures and technical analyses, to produce a detailed set of plans and specifications for implementation of the Remedial Action selected in EPA's March 3, 2016 Record of Decision for the lower 8.3 miles of the Lower Passaic River, which is Operable Unit Two of the Diamond Alkali Superfund Site (the "Site"). In addition, Settling Party shall reimburse the United States for certain response costs, as provided herein.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. §§ 9604, 9606, 9607 and 9622. This authority was delegated to the Administrator of EPA on January 23, 1987 by Executive Order 12580 (52 *Fed. Reg.* 2923, Jan. 29, 1987) and further delegated to EPA Regional Administrators by EPA Delegation No. 14-14-C. This authority was further re-delegated on November 23, 2004 by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division through EPA Region 2 Delegation No. 14-14-C.

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

4. The objectives of EPA and Settling Party in entering into this Settlement Agreement are to protect the public health or welfare or the environment at the Site by the design of response actions at the Site by Settling Party, to reimburse response costs of EPA, and to resolve the claims of EPA against Settling Party as provided in this Settlement Agreement.

5. In accordance with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, *et seq.,* as amended ("NCP"), and Sections 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New Jersey (the "State") on May 6, 2016, of negotiations with a potentially responsible party regarding the implementation of the remedial design for Operable Unit Two for the Site, and EPA has provided the State with an opportunity to participate in such negotiations.

6. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the federal natural resource trustees on May 6, 2016, of negotiations with a potentially responsible party regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustees to participate in the negotiation of this Settlement Agreement.

II. PARTIES BOUND

7. This Settlement Agreement applies to and is binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate status of Settling Party including, but not limited to, any transfer of assets or real or personal property shall not alter Settling Party's responsibilities under this Settlement Agreement. The signatories to this Settlement Agreement certify that they are authorized to execute and legally bind the parties they represent.

8. Settling Party shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Settling Party shall be responsible for any noncompliance with this Settlement Agreement by such contractors, subcontractors, and representatives. With regard to the activities undertaken pursuant to this Settlement Agreement, each contractor and subcontractor of Settling Party shall be deemed to be in a contractual relationship with Settling Party within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

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III. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in other regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms are used in this Settlement Agreement, in documents attached to this Settlement Agreement, or incorporated by reference into this Settlement Agreement, the following definitions shall apply:

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

b. "Day" shall mean a calendar day unless otherwise expressly stated. 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 on the next working Day.

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

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

e. "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, costs incurred pursuant to Paragraph 4.1 (Emergency Response and Reporting) of the SOW, the costs incurred pursuant to Paragraph 54 (costs and attorneys' fees and any monies paid to secure access, including the amount of just compensation), and Paragraph 92 (Work Takeover), and Paragraph 53 (Community Involvement), and the costs incurred by the United States in enforcing the terms of this Settlement Agreement, including all costs incurred in connection with Dispute Resolution pursuant to Section XIV (Dispute Resolution) and all litigation costs.

f. "Institutional Controls" or "ICs" shall mean Proprietary Controls and state and local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land or resource use to minimize the potential for human exposure to Waste Material at or in connection with Operable Unit 2 at the Site; (b) limiting land or resource use to implement, ensure non-interference with, or ensure the protectiveness of the remedial action; and/or (c) provide information intended to modify or guide human behavior at or in connection with Operable Unit 2 at the Site.

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g. "Interest" shall mean interest at the rate specified for interest on investments of EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with CERCLA § 107(a), 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.

h. "Lower Passaic River Study Area" or "LPRSA" shall mean the 17-mile stretch of the Lower Passaic River and its tributaries from the Dundee Dam to Newark Bay.

i. "NJDEP" shall mean the New Jersey Department of Environmental Protection.

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

k. "Operable Unit 2 (OU2)" shall mean the lower 8.3 miles of the Lower Passaic River, from RM 0, at the river's confluence with Newark Bay, to RM 8.3, near the border between the City of Newark and Belleville Township, New Jersey, located in and about Essex and Hudson Counties, New Jersey.

l. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

m. “Parties” shall mean EPA and Settling Party.

n. “Performance Standards” shall have the same meaning as used in the Statement of Work, Section 1.4.

o. “Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate records office.

p. “Record of Decision for Operable Unit Two” or “OU2 ROD” shall mean EPA Record of Decision relating to Operable Unit Two for the Site, and all attachments thereto that the Regional Administrator, EPA Region 2, or her delegate, signed on March 3, 2016, and attached as Appendix A.

q. “Remedial Design” or “RD” shall mean those activities that Settling Party shall undertake to develop the final plans and specifications, up to and including the EPA-approved Final Remedial Design, for the Remedial Action pursuant to the Remedial Design Work Plan.

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r. “Remedial Design Work Plan” shall mean the document developed pursuant to the Statement of Work (“SOW”) approved by EPA, and any amendment thereto.

s. “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

t. “Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent, all appendices attached hereto, and all documents incorporated by reference into this document including, without limitation, EPA-approved submissions. The EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by EPA. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

u. “Settling Party” shall mean the Occidental Chemical Corporation.

v. “Site” shall mean the Diamond Alkali Superfund Site, including the former Diamond Alkali property located at 80 and 120 Lister Avenue, Newark, New Jersey, the Lower Passaic River Study Area, Newark Bay, and the areal extent of contamination.

w. “State” shall mean the State of New Jersey.

x. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, and any modifications thereto in accordance with this Settlement Agreement, as set forth in Appendix B of this Settlement Agreement. The Statement of Work is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement.

y. "Waste Material" shall mean (1) any hazardous substance under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any solid waste under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1),(2) or (3), above.

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

IV. EPA's FINDINGS OF FACT

10. Since the late 1800s, the Lower Passaic River has been a highly industrialized waterway, receiving direct and indirect discharges from numerous industrial facilities.

11. The sediments of the Lower Passaic River contain hazardous substances, including, but not limited to, cadmium, copper, lead, mercury, nickel, zinc, polyaromatic hydrocarbons ("PAHs"), dieldrin, bis (2-ethylhexyl) phthalate, polychlorinated biphenyls ("PCBs"), dichlorodiphenyl-trichloroethane ("DDT"), polychlorinated dibenzo-p-dioxins ("PCDDs") including 2,3,7,8-tetrachloro-dibenzo-p-dioxin ("2,3,7,8-TCDD"), polychlorinated dibenzofurans ("PCDFs"), 2,4-dichlorophenoxy acetic acid ("2,4-D"), 2,4,5-trichlorophenoxy acetic acid ("2,4,5-T"), and 2,4,5-trichlorophenol ("2,4,5-TCP").

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12. Between March 1951 and August 1969, the Diamond Alkali Company operated a manufacturing facility located at 80 Lister Avenue in Newark, New Jersey, which produced, among other products, DDT, 2,4-D, 2,4,5-TCP, and 2,4,5-T. A byproduct of the manufacturing process was 2,3,7,8-TCDD , which was released into the Passaic River. Production activities at the Diamond Alkali facility ceased in August 1969.

13. In 1983, hazardous substances were detected at various locations in Newark, New Jersey, including the Diamond Alkali facility located at 80 Lister Avenue and adjoining property at 120 Lister Avenue.

14. EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, placed the Diamond Alkali Superfund Site on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 49 Fed. Reg. 37070.

15. Pursuant to Administrative Orders on Consent with NJDEP, the Diamond Shamrock Chemicals Company (formerly Diamond Alkali Company) conducted investigations and response work for the Lister Avenue facility. The investigation included the sampling and assessment of sediment contamination within the Passaic River.

16. Sampling and assessment of sediments in the lower reaches of the Passaic River revealed the presence of many hazardous substances including, but not limited to, cadmium, copper, lead, mercury, nickel, zinc, PAHs, dieldrin, bis (2-ethylhexyl) phthalate, PCBs, DDT, PCDDs including 2,3,7,8-TCDD, PCDFs, 2,4-D, 2,4,5-T, and 2,4,5-TCP. Hazardous substances identified in the sediments of the Lower Passaic River included elevated concentrations of 2,3,7,8-TCDD, known to have been generated at the Diamond Alkali facility.

17. Some of the chemicals found in the sediments during the remedial investigation of the Lower Passaic River were released from the Diamond Alkali Facility portion of the Site into the Passaic River through direct discharges and ground-water and surface-water runoff.

18. On September 30, 1987, EPA issued a Record of Decision ("ROD") that set forth an interim remedy for the 80 and 120 Lister Avenue portion of the Diamond Alkali Superfund Site. Pursuant to a judicial Consent Decree with EPA and NJDEP, OCC and Chemical Land Holdings, Inc. (now known as Tierra Solutions, Inc ("Tierra")), agreed to implement the 1987 ROD. The interim remedy was completed in 2004. Tierra has owned the 80 and 120 Lister Avenue portion of the Site since 1986.

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19. In 1994, OCC entered into an Administrative Order on Consent with EPA to investigate a six-mile stretch of the Passaic River from RM1 to RM7. The primary objectives of the investigation were to determine: (1) the spatial distribution and concentration of hazardous substances, both horizontally and vertically in the sediments; (2) the primary human and ecological receptors of contaminated sediments; and (3) the transport of contaminated sediment. Tierra performed the work on OCC's behalf, under the oversight of EPA.

20. Sampling results from the investigation of the six-mile area and other environmental studies demonstrated that evaluation of a larger area was necessary because sediments contaminated with hazardous substances and other potential sources of hazardous substances are present along the entire Lower Passaic River. Further, the tidal nature of the Lower Passaic River has resulted in greater dispersion of hazardous substances.

21. Sampling results show concentrations of PCDDs/PCDFs, PCBs, mercury, and other substances that significantly exceed the levels that can produce toxic effects to biota. Based on the results of monitoring and research undertaken since the mid-1970s, the State of New Jersey has taken a number of steps, in the form of consumption advisories, closures, and sales bans, to limit the exposure of the fish-eating public to toxic contaminants in the Lower Passaic River, Newark Bay, the Hackensack River, the Arthur Kill and the Kill Van Kull. The initial measures prohibited the sale, and advised against the consumption, of several species of fish and eel and

was based on the presence of PCB contamination in the seafood. The discovery of widespread dioxin contamination in the Lower Passaic River and Newark Bay led the State of New Jersey to issue a number of Administrative Orders in 1983 and 1984 which prohibited the sale or consumption of fish or shellfish from the tidal Passaic River, and prohibited the sale and consumption of blue crab and striped bass from Newark Bay, the tidal Hackensack River, the Arthur Kill and the Kill Van Kull. These State advisories and prohibitions are still in effect.

22. In 2002, EPA commenced a remedial investigation and feasibility study ("RI/FS") encompassing the 17-mile Lower Passaic River Study Area ("LPRSA"). In 2004, EPA and a group of potentially responsible parties ("PRPs") known as the Lower Passaic River Study Area Cooperating Parties Group ("CPG") entered into a Settlement Agreement pursuant to Section 122(h) of CERCLA to provide funds for EPA's performance of the 17-mile RI/FS. The Settlement Agreement was amended in 2005 and 2007, adding more parties. In May 2007, the CPG members entered into an Administrative Settlement Agreement and Order on Consent ("AOC") with EPA pursuant to which the settling parties agreed to complete the RI/FS for the 17-mile LPRSA. The 17-mile RI/FS is ongoing.

23. In 2004, EPA and OCC entered into an Administrative Order on Consent pursuant to which OCC agreed to perform the RI/FS for Newark Bay under the oversight of EPA. Tierra is performing the RI/FS for Newark Bay on OCC's behalf. The study of Newark Bay is ongoing.

24. In June 2008, EPA, OCC and Tierra signed an Administrative Order on Consent for a non-time-critical removal action to remove 200,000 cubic yards of contaminated sediment from the river (from RM3.0 to RM3.8) adjacent to the 80-120 Lister Avenue facility. This action is referred to as the "Tierra Removal."

25. In 2012, EPA entered into an Administrative Order on Consent with a group of PRPs that agreed to perform a time-critical removal action to address the risks posed by high concentrations of dioxins, PCBs and other contaminants found in surface and subsurface sediments in the RM 10.9 area, including in a mudflat on the east bank of the river at RM10.9 in Lyndhurst, New Jersey. This action is referred to as the "RM10.9 Removal." EPA later issued a Unilateral Administrative Order ("UAO") to OCC ordering it to participate and cooperate in the RM 10.9 Removal. OCC has performed a number of tasks under the UAO, as directed by EPA.

26. In 2011, OCC entered into an Administrative Order on Consent with EPA to sample combined sewer outfalls and stormwater outfalls discharging to the Passaic River.

27. Data collected in the Lower Passaic River, and EPA's analyses show that contaminated sediment in the lower 8.3 miles of the LPRSA are a major source of contamination to the rest of the river and Newark Bay and pose an unacceptable risk to human health and the environment due to the presence of a variety of contaminants that stay in the environment for a long time and can build up in fish and shellfish. These contaminants include dioxins and furans, PCBs, PAHs, DDT and other pesticides, mercury, lead and other metals.

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28. Having identified that the majority of the contaminated sediment is found in the lower 8.3 miles of the LPRSA, EPA completed a remedial investigation/focused feasibility study ("RI/FFS") to evaluate taking action to address these sediments while the 17-mile LPRSA was underway.

29. On April 11, 2014, in accordance with Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published, in a major local newspaper of general circulation, a notice of a proposed plan to address contaminated sediments in the lower 8.3 miles of the LPRSA.

30. On March 4, 2016, EPA issued the OU2 ROD, selecting a remedy for the lower 8.3 miles of the LPRSA. The remedy selected in the OU2 ROD includes, but is not limited to the following: 1) construction of an engineered cap over the river bottom of the lower 8.3 miles of the LPRSA bank to bank; 2) dredging of the river bank to bank (approximately 3.5 million cubic yards) so the cap can be placed without increasing the potential for flooding and to allow for the continued use of the federally-authorized navigation channel in the 1.7 miles of the river closest to Newark Bay; 3) reconstructing dredged mudflat areas and restoring mudflat habitat; 4) offsite disposal of dredged material; 5) institutional controls to protect the cap and enhanced outreach to increase awareness of NJDEP's prohibition on fish and crab consumption; and 6) long term monitoring and maintenance.

31. On December 16, 2014, a Consent Judgment executed by NJDEP and OCC was entered in the matter of NJDEP v. Occidental Chemical Company, et al., Essex County Docket Number L9868-05, in New Jersey Superior Court, Law Division, Essex County, pursuant to which OCC has agreed to pay "Future Cleanup and Removal Costs" as defined in the Consent Judgment. The Consent Judgment is subject to the jurisdiction of the courts of the State of New Jersey.

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32. On March 31, 2016, EPA issued a notice of liability to over 100 parties potentially liable for the lower 8.3 miles of the Lower Passaic River.

33. In 1967, the Diamond Alkali Company changed its name to the Diamond Shamrock Corporation. In 1983, the Diamond Shamrock Corporation changed its name to the Diamond Shamrock Chemicals Company.

34. On September 4, 1986, all outstanding stock in the Diamond Shamrock Chemicals Company was acquired by the Oxy-Diamond Alkali Corporation from Maxus Energy Corporation, and the Diamond Shamrock Chemicals Company name was changed to the Occidental Electrochemicals Corporation.

35. On November 30, 1987, the Occidental Electrochemicals Corporation was merged into Occidental Chemical Corporation.

36. The Diamond Alkali Company disposed of chemical waste, including hazardous substances, during its ownership and operation of the Lister Avenue facility, located in Newark, Essex County, New Jersey. The Diamond Alkali Company also disposed of chemical waste, including hazardous substances, in the LPRSA, which is part of the Site. EPA first notified OCC, corporate successor to the Diamond Alkali Company, of its liability for the Site on October 20, 1988.

V. EPA's CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, as well as the Administrative Record supporting this Settlement Agreement, EPA has determined that:

37. The Diamond Alkali Superfund Site is a facility as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

39. Settling Party is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

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40. Settling Party is a responsible party as defined in Sections 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Settlement Agreement under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). Settling Party is liable for performance of Work under this Settlement Agreement and for payment of Future Response Costs under this Settlement Agreement. Settling Party was an "owner" and/or "operator" of the Lister Avenue portion of the Site at the time of disposal of hazardous substances, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Settling Party also arranged for disposal of hazardous substances at the LPRSA, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

41. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of hazardous substances from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

VI. SETTLEMENT AGREEMENT AND ORDER

43. Based upon the foregoing the Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed

that Settling Party 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 PROJECT MANAGER AND COORDINATORS

44. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Settling Party shall retain one or more contractor(s), including a Supervising Contractor, to perform the Work and shall notify EPA, in writing, of the name(s) and qualifications of such contractor(s), and Supervising Contractor, within 15 days of the Effective Date or such longer time as specified by EPA. Settling Party shall also notify EPA in writing of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 10 days prior to the commencement of such Work. EPA will issue a notice of disapproval of the proposed Supervising Contractor or an authorization to proceed.

45. EPA retains the right to disapprove of any or all of the contractors or subcontractors retained by Settling Party. If EPA disapproves of a selected contractor, EPA shall state its reason(s) for disapproval in a writing provided to Settling Party and Settling Party shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within15days of EPA's disapproval.

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46. With respect to any contractor proposed to be Supervising Contractor pursuant to Paragraph 44, Settling Party shall demonstrate that the proposed contractor has sufficient technical expertise to supervise the Work and a quality assurance system that complies with ANSI/ASQC E4-1994, "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014 or most recent version) , by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "The EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001, reissued May 2006, or subsequently issued guidance) or equivalent documentation as determined by EPA.

47. Within 10 days after the Effective Date, Settling Party shall designate a Project Coordinator who shall be responsible for administration of all actions by Settling Party required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. Settling Party's Project Coordinator must have sufficient technical expertise to coordinate the Work. Settling Party's Project Coordinator may not be an attorney representing any Settling Party in this matter and may not act as the Supervising Contractor. To the greatest extent possible, the Project Coordinator or a designated representative shall be present on site or readily available during Operable Unit 2 Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the

designated Project Coordinator, Settling Party 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. Receipt by Settling Party's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Settling Party.

48. EPA has designated Alice Yeh of the Emergency and Remedial Response Division , Region 2 as its Project Coordinator. EPA will notify Settling Party of a change of its designated Project Coordinator. Except as otherwise provided in this Settlement Agreement, Settling Party shall send all submissions required by this Settlement Agreement to the Project Coordinator at:

ATTN: Site Remedial Project Manager

Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

49. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take or direct any other necessary response action when the EPA Project Coordinator determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the site area shall not be cause for the stoppage or delay of Work. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work as an Alternate Project Coordinator.

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50. EPA and Settling Party shall have the right, subject to Paragraph 47, to change their respective designated Project Coordinators. Settling Party shall notify EPA 10 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

51. **Performance of Work in Accordance with SOW**. Settling Party shall perform all actions necessary to implement the Statement of Work. Settling Party shall: (a) develop the RD; and (b) support EPA's periodic review efforts; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the Settlement Agreement or SOW shall be subject to approval by EPA in accordance with Paragraph 5.6 (Approval of Deliverables) of the SOW.

52. **Emergencies and Releases**. Settling Party shall comply with the emergency and release response and reporting requirements under Paragraph 4.1 (Emergency Response and Reporting) of the SOW. Subject to Section XVII (Covenants by EPA), nothing in this Settlement Agreement, including Section 4.1 of the SOW, limits any authority of EPA: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek a judicial order, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site. If, due to Settling Parties failure to take appropriate response action under Section 4.1 of the SOW, EPA takes such action instead, Settling Parties shall reimburse EPA under Section XIII (Payment of Response Costs) for all costs of the response action

53. **Community Involvement**. If requested by EPA, Settling Party shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section 2 (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Coordinator.

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IX. SITE ACCESS

54. Where any action under this Settlement Agreement is to be performed in areas owned by, or in possession of, someone other than Settling Party, Settling Party shall use its best efforts to obtain all necessary access agreements within 60 days after the Effective Date, or no fewer than 120 days before access to such parcel is needed pursuant to the SOW, whichever is later, or as otherwise specified in writing by the Project Coordinator. If additional areas to which access is necessary are identified after the Effective Date, Settling Party shall use its best efforts to obtain access agreements within 60 days after learning of the need for additional access. Settling Party shall immediately notify EPA if, after using its best efforts, it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Settling Party shall describe in writing its efforts to obtain access. EPA may then assist Settling Party in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Settling Party 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 XIII (Payment of Response Costs).

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

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

X. ACCESS TO INFORMATION

57. Settling Party shall provide to EPA and the State, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities for OU2 for the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, data bases, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Party shall also make available to EPA and the State, for purposes of investigation, information gathering or testimony, its employees, agents or representatives with knowledge of relevant facts concerning the performance of the Work.

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58. Settling Party 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 Settling Party 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 Settling Party. Settling Party shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Settling Party asserts business confidentiality claims.

59. Settling Party may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law or are protected as attorney work product. If the Settling Party asserts such a privilege or protection in lieu of providing documents, it shall provide EPA and the State with the following: a) the title of the document, record, or information; b) the date of the document, record, or information; c) the name and title of the author of the document, record, or information; d) the name and title of

each addressee and recipient; e) a description of the contents of the document, record, or information; and f) the privilege or attorney work product protection asserted by Settling Party. 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.

60. 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, OU2 for the Site.

XI. RECORD RETENTION

61. During the pendency of this Settlement Agreement and until 10 years after the Settling Party's receipt of EPA's notification that work has been completed, Settling Party 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 its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to OU2 for the Site, regardless of any corporate retention policy to the contrary. Until 10 years after notification that work has been completed, Settling Party shall also instruct its contractors and agents to preserve all documents, records, and other information of whatever kind, nature, or description relating to performance of the Work.

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62. At the conclusion of this document retention period, Settling Party shall notify EPA and the State at least 90 days prior to the destruction of any such documents, records, or other information and, upon request by EPA or the State, Settling Party shall deliver any such documents, records, or other information to EPA or the State. Settling Party may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law or are protected as attorney work product. If Settling Party asserts such a privilege or protection, it shall provide EPA with the following: a) the title of the document, record, or other information; b) the date of the document, record, or other information; c) the name and title of the author of the document, record, or other information; d) the name and title of each addressee and recipient; e) a description of the subject of the document, record, or other information; and f) the privilege or attorney work product protection asserted by Settling Party. However, no documents, records, 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 protected.

63. Settling Party 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 OU2 for the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding OU2 for 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.

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XII. COMPLIANCE WITH OTHER LAWS

64. Settling Party 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.

65. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Party shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

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

XIII. PAYMENT OF RESPONSE COSTS

67. Payment for Future Response Costs:

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a. Settling Party shall pay EPA all Future Response Costs not inconsistent with the NCP, based solely on information contained in an EPA SCORPIOS Report. On a periodic basis, EPA will send Settling Party a bill requiring payment that includes a SCORPIOS Report. Settling Party shall make all payments within 30 days of receipt of each such bill requiring payment, except as otherwise provided in Paragraph 69.

b. Settling Party shall make all payments required by this Paragraph by wire transfer directed to the Federal Reserve Bank of New York with the following information:

i. EFT to be directed to: Federal Reserve Bank of New York
ii. Bank Routing Number for Federal Reserve Bank of New York: 021030004
iii. Federal Reserve Bank of New York account number receiving payment: 68010727
iv. SWIFT address: FRNYUS33
v. Address: Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045
vi. Field Tag 4200 of the Fedwire message to read:
D68010727 Environmental Protection Agency
vii. Case Number: CERCLA-02-2016-2021
viii. Amount of payment:
ix. Name of Remitter:

x. Site/Spill identifier: 02-96

c. At the time of payment, Settling Party shall send notice that payment has been made which references the name and address of the party making payment, the date of the transfer, the payment amount, the name of the Site, the Docket Number CERCLA 02-2016-2021and Site/Spill ID number 02-96, to:

Alice Yeh
Project Coordinator
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

Re: Diamond Alkali Superfund Site

And to:

Juan M. Fajardo
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor DRAFT
New York, NY 10007

Re: Diamond Alkali Superfund Site

U.S. Environmental Protection Agency
Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268
Attn: Finance (Elizabeth McGuffey)
Email: cinwd_acctsreceivable@epa.gov and mcguffey.elizabeth@epa.gov

d. The total amount that Settling Party shall pay pursuant to Paragraph 67 shall be deposited in the Diamond Alkali Superfund Site Special Account within 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.

68. In the event that the payments for Future Response Costs are not made within 30 days of Settling Party's receipt of a bill, Settling Party shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall

continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Settling Party's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVI.

69. Settling Party may contest payment of any Future Response Costs billed under Paragraph 67, if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an action by EPA that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Party shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 67. Simultaneously, Settling Party shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New Jersey and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Party shall send to EPA Project Manager 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, Settling Party shall initiate the Dispute Resolution procedures in Section XIV (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Settling Party shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 67. If Settling Party prevails concerning any aspect of the contested costs, Settling Party shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 67. Settling Party 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 XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Party's obligation to reimburse EPA for its Future Response Costs.

DRAFT

XIV. DISPUTE RESOLUTION

70. 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. The Parties agree that the Performance Standards to be developed by EPA will not be subject to dispute.

71. If Settling Party objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) expeditiously and in no event more than 15 days of such action, unless the

objection(s) has/have been resolved informally. EPA and Settling Party shall have 30 days from EPA's receipt of Settling Party's 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.

72. 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, the Director of the Emergency and Remedial Response Division, Region 2, will issue a written decision on the dispute to Settling Party. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Following resolution of the dispute, as provided by this Section, Settling Party shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

73. If the dispute and its resolution, as described above cause a delay that makes it impossible for Settling Party to meet a deadline set forth in or established pursuant to this Settlement Agreement for the disputed obligation, then that deadline shall be extended by EPA by a period of time not to exceed the delay resulting from the dispute and its resolution; provided that Settling Party shall not be entitled to any such extension if the Director, Emergency and Remedial Response Division, determines that Settling Party's disagreement with the comments or determinations specified above is not in good faith or otherwise lacks a reasonable basis. Notwithstanding any of the foregoing, if Settling Party requests an extension of a deadline set forth in or established pursuant to this Settlement Agreement, and if EPA declines to grant an extension in response to such a request, any delay caused solely by the resolution of such a dispute shall not entitle Settling Party to an extension of time.

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74. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Party under this Settlement Agreement not directly disputed by Settling Party. Except as provided in Paragraph 83, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 83. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement Agreement. In the event that Settling Party does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

XV. FORCE MAJEURE

75. Settling Party agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Settling Party, or of any entity controlled by Settling Party, or of Settling Party's contractors that delays or prevents

performance of any obligation under this Settlement Agreement despite Settling Party's best efforts to fulfill the obligation. The requirement that Settling Party exercise "best efforts to fulfill the obligation" includes using best efforts to address the effects of any potential *force majeure* event: (a) as it is occurring; and (b) following the potential *force majeure* event such that the delay and any adverse effect of the delay are minimized to the greatest extent possible. *Force majeure* does not include financial inability to complete the Work, or increased cost of performance.

76. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement for which Settling Party intends or may intend to assert a claim of *force majeure*, Settling Party shall notify the EPA Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Emergency and Remedial Response Division, Region 2, within 24 hours of when Settling Party first knew that the event might cause a delay. Within 14 days thereafter, Settling Party shall provide to EPA in writing: an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Party's rationale for attributing such delay to a *force majeure* event ; and a statement as to whether, in the opinion of Settling Party, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Settling Party shall include with any notice all available documentation supporting its claim that the delay was attributable to a *force majeure*. Settling Party shall be deemed to know of any circumstance of which Settling Party, any entity controlled by Settling Party, or Settling Party's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Party from asserting any claim of *force majeure* regarding that event.

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77. 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 Settling Party in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Settling Party in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

78. If Settling Party elects to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution), it shall do so no later than 10 days after receipt of EPA's notice under Paragraph 77. In any such proceeding, Settling Party shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a *force majeure event*, that the duration of the delay or the extension sought

was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Party complied with the requirements of Paragraphs 75 and 76. If Settling Party carries this burden, the delay at issue shall be deemed not to be a violation by Settling Party of the affected obligation of this Settlement Agreement identified to EPA.

XVI. STIPULATED PENALTIES

79. Settling Party shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 80 and 81 for failure to comply with the obligations specified in Paragraphs 80 and 81, unless excused under Section XV (*Force Majeure*). "Compliance" by Settling Party shall include completion of all obligations under this Settlement Agreement in accordance with all applicable requirements of this Settlement Agreement and within the specified time schedules established under this Settlement Agreement.

80. Stipulated Penalty Amounts.

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverable listed in Subparagraph 80.b (1)-(10), or timely comply with Subparagraph 80.b(11)-(12).

Penalty Per Violation (Per Day)	Period of Noncompliance (Days)
$ 3,000	1-14
$ 5,000	15-30
$ 12,000	31and beyond

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b. Compliance Milestones

1. Project Management Plan;
2. Pre-Design Investigation Work Plan;
3. Pre-Design Investigation Evaluation Report;
4. Remedial Design Work Plan;
5. Site Selection and Evaluation Work Plan;
6. Site Selection and Evaluation Report;
7. Preliminary Remedial Design;
8. Intermediate Remedial Design;
9. Pre-Final Remedial Design;
10. Final Remedial Design;
11. Payment of Future Response Costs; and
12. Establishment and maintenance of financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XXIV (Financial Assurance).

81. Stipulated Penalty Amounts.

The following stipulated penalties shall accrue per violation per day for any noncompliance with a requirement of this Settlement Agreement not identified in Paragraph 81, including failure to submit other timely or adequate reports or deliverables.

Penalty Per Violation (Per Day)	Period of Noncompliance (Days)
$ 3,000	1-14
$ 5,000	15-30
$ 10,000	31and beyond

82. In the event that EPA assumes performance of all or any portion of the Work pursuant to Paragraph 92 (Work Takeover), Settling Party shall be liable for a stipulated penalty in the amount of $5,000,000, and a prepayment of Future Response Costs in the amount of $15,000,000. Stipulated Penalties and prepayment of Future Response Costs under this Paragraph are in addition to the funding available to EPA under Paragraph 116 (Funding for Work Takeover) and Paragraph 92 (Work Takeover). Prepayment of Future Response Costs under this Paragraph shall be payable by Settling Party immediately upon receipt by Settling Party of EPA's written notice ("Work Takeover Notice") pursuant to Paragraph 92. The prepayment of Future Response Costs made under this Paragraph shall be made in accordance with Paragraph 67 (Payment of Future Response Costs) and shall be deposited in the Diamond Alkali Superfund Site Special Account within EPA Hazardous Substance Superfund.

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83. 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 5.6 of the SOW (Approval of Deliverables), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Party of any deficiency; and b) with respect to a decision by the Director of the Emergency and Remedial Response Division, Region 2, under Paragraph 72 of Section XIV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that 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.

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

85. Settling Party shall pay EPA all penalties accruing under this Section within 30 days of Settling Party's receipt from EPA of a demand for payment of the penalties, unless Settling Party invokes the dispute resolution procedures under Section XIV (Dispute Resolution). All stipulated penalties paid to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 67 (Payment for Future Response Costs).

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

87. 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.

88. If Settling Party fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Settling Party shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 83. 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 Settling Party's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that 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 XVIII (Reservation of Rights by EPA), Paragraph 92. 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.

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XVII. COVENANTS BY EPA

89. In consideration of the actions that Settling Party will perform and the payments that Settling Party will make 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 Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work performed under this Settlement Agreement and for recovery of Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon Settling Party's complete and satisfactory performance of its obligations under this Settlement Agreement, including, but not limited to, Settling Party's payments of Future Response Costs pursuant to Section XIII (Payment of Response Costs) of this Settlement Agreement. These covenants extend only to Settling Party and do not extend to any other person.

XVIII. RESERVATION OF RIGHTS BY EPA

90. 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 Settling Party in the future to perform additional activities pursuant to CERCLA or any other applicable law.

91. The covenant not to sue set forth in Section XVII (Covenants 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 Settling Party with respect to all other matters, including, but not limited to:

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

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

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

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d. criminal liability;

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

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

g. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of OU2 for the Site; and

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

92. Work Takeover. In the event EPA determines that Settling Party has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Settling Party and assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). Any Work Takeover Notice issued by EPA

will specify the grounds upon which such notice was issued and will provide Settling Party a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice. Settling Party may invoke the procedures set forth in Section XIV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. However, notwithstanding Settling Party's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover until the earlier of the date that Settling Party remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or the date that a written decision terminating such Work Takeover is rendered in accordance with Section XIV (Dispute Resolution). Funding of Work Takeover costs is addressed under Paragraph 116. 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.

XIX. COVENANTS BY SETTLING PARTY

93. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, past response actions, 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
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;

DRAFT

b. any claim arising out of response actions at, or in connection with, the Site, including any claim under the United States Constitution, the New Jersey 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 Future Response Costs.

d. this Covenant Not to Sue by Settling Party shall not extend to, and Settling Party specifically reserves, any claims or causes of action in contribution pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, against the United States as a "covered person" (within the meaning Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)) with respect to this Settlement Agreement, based solely on actions by the United States other than the exercise of the government's authority under CERCLA or WRDA.

94. Except as expressly provided in Paragraphs 97 (Claims Against De Micromis Parties), and 99 (Claims Against *De Minimis* and Ability to Pay Parties), these covenants shall

not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVIII (Reservation of Rights by EPA), other than in Paragraph 91.a (claims for failure to meet a requirement of the Settlement Agreement) or 91.d (criminal liability), but only to the extent that Settling Party claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

95. Settling Party reserves, and this Settlement Agreement is without prejudice to, claims against the United States subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA, 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 Settling Party's plans or activities.

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

97. Claims Against De Micromis Parties. Settling Party agrees 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 OU2 for the Site against any person where the person's liability to Settling Party with respect to OU2 is based solely on having arranged for disposal or treatment, or 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. This waiver does not, however, apply to any person where the person's liability to Settling Party is based on the disposal of dioxin into the lower 8.3 miles of the Lower Passaic River.

98. The waiver in Paragraph 97 shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person meeting the above criteria, if such person asserts a claim or cause of action relating to OU2 for the Site against Settling Party. 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 failed to comply with any EPA request 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, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to OU2 for 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, either individually or in aggregate, to the cost of response action or natural resource restoration with respect to OU2 for the Site.

99. Claims Against *De Minimis* and Ability to Pay Parties. Settling Party agrees 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 OU2 of 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 ability to pay, with EPA with respect to OU2 for the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to OU2 for the Site against Settling Party.

XX. OTHER CLAIMS

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100. 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 Settling Party. The United States or EPA shall not be deemed a party to any contract entered into by Settling Party or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

101. Except as expressly provided in Paragraphs 97 (Claims Against De Micromis Parties), 99 (Claims Against *De Minimis* and Ability to Pay Parties), and Section XVII (Covenants by EPA), nothing in this Settlement Agreement constitutes a satisfaction of, or release from, any claim or cause of action against Settling Party or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including, but not limited to, any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

102. 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).

XXI EFFECT OF SETTLEMENT/CONTRIBUTION

103. Except as provided in Paragraphs 97 (Claims Against De Micromis Parties), and 99 (Claims Against *De Minimis* and Ability to Pay Parties), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XVII (Covenants by Settling Party), each of the Parties expressly reserves any and all rights (including, but not limited to, claims pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to OU2 for 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) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

104. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. § 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, and Future Response Costs. DRAFT

105. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(e)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

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

107. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent

proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVII (Covenants by EPA).

XXII. INDEMNIFICATION

108. Settling Party 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 Settling Party, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Settling Party agrees to pay the United States all costs incurred by the United States, including, but not limited to, attorney 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 Settling Party, its 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 Settling Party in carrying out activities pursuant to this Settlement Agreement. Neither Settling Party nor any such contractor shall be considered an agent of the United States.

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

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110. Settling Party waives all claims against the United States for damages or reimbursement or for set-off of any payments made, or to be made, to the United States, arising from, or on account of, any contract, agreement, or arrangement between Settling Party and any person for performance of Work on, or relating to, OU2 for the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Party 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 Settling Party and any person for performance of Work on, or relating to, the Site.

XXIII. INSURANCE

111. At least 14 days prior to commencing any on-Site Work under this Settlement Agreement, Settling Party shall secure and shall maintain for the duration of this Settlement Agreement commercial general liability insurance with limits of 10 million dollars, for any one occurrence, and automobile insurance with limits of 5 million dollars, combined single limit, naming EPA as an additional insured with respect to all liability arising out of activities performed by or on behalf of Settling Party pursuant to this Settlement Agreement. Within the same period, Settling Party shall provide EPA with certificates of such insurance and a copy of each insurance policy. Settling Party shall submit such certificates and copies of policies each

year on the anniversary of the Effective Date. In addition, for the duration of this Settlement Agreement, Settling Party 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 Settling Party in furtherance of this Settlement Agreement. If Settling Party demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Settling Party needs to provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor.

XXIV. FINANCIAL ASSURANCE

112. In order to ensure completion of the Work, Settling Party shall establish, maintain, and submit to EPA financial assurance, initially in the amount of $ _____ (the "Financial Assurance Amount"), for the benefit of EPA. The financial assurance, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms (provided that, if Settling Party intends to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds, letter of credits, trust funds, and insurance policies):

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

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

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

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

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

f. a written guarantee to fund or perform the Work executed in favor of EPA provided by one of more of the following: (1) a direct or indirect parent company of Settling Party, or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. §

264.141(h)) with Settling Party; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraph (1) through (8) of 40 C.F.R. § 264.143(f) and this Section with respect to the Financial Assurance Amount (plus the amount(s) of any other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee).

113. Settling Party has selected, and EPA has found satisfactory, as an initial financial assurance a prepared in accordance with Paragraph 112. Within 30 days after the Effective Date, or within 30 days after EPA's approval of the form and substance of Settling Party's financial assurance, whichever is later, Settling Party shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to:

Chief, Resource Management/Cost Recovery Section
Emergency and Remedial Response Division
U.S. EPA Region 2
290 Broadway 18th Floor
New York, NY 10007-1866

114. If Settling Party provides or obtains financial assurance for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 112(e) or 112(f) of this Settlement Agreement, Settling Party and/or its guarantor shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Settlement Agreement, and with the requirements of this Section, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant to EPA no later than 30 days after the Effective Date; (b) the annual re-submission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (c) the notification of EPA no later than 30 days after any such entity determines that it no longer satisfies the financial test requirements set forth 40 C.F.R. § 264.143(f)(1) and in any event within 90 days after the close of any fiscal year for which the year-end financial data show that such entity no longer satisfies such financial test requirements. Settling Party agrees that EPA may also, based on a belief that the relevant entity may no longer meet the financial test requirements of this Section, require reports of financial condition at any time from the relevant entity in addition to those specified in this Section. For purposes of the financial assurance mechanisms specified in this Section, references in 40 C.F.R. Part 264, Subpart H to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate," shall also include the Financial Assurance Amount; (2) "the sum of current closure and post closure cost estimates and current plugging and abandonment cost estimates" shall mean "the sum of all environmental obligations" (including obligations under CERCLA, RCRA,

EPA's Underground Injection Control program, 40 C.F.R. Part 144, enacted as part of the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 to 6992k, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 to 2695d, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Financial Assurance Amount to be performed in accordance with this Settlement Agreement: (3) for purposes of this Paragraph, the terms "owner" and "operator" shall be deemed to refer to "Settling Party" ; and (4) the terms "facility" and "hazardous waste management facility" shall be deemed to include the Site.

115. Settling Party shall diligently monitor the adequacy of the financial assurance. In the event that EPA determines and so notifies Settling Party, or Settling Party becomes aware of information indicating, that financial assurance provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated costs of completing the Work or for any other reason, Settling Party shall notify EPA of the inadequacy within 30 days and, within 30 days after providing to or receiving from EPA such notice, shall obtain and submit to EPA for approval a proposal for a revised or alternate form of financial assurance that satisfies the requirements set forth in this Section. If EPA approves the proposal, Settling Party shall provide a revised or alternate financial assurance mechanism in compliance with and to the extent permitted by such written approval and shall submit all documents evidencing such change to EPA pursuant to the delivery instructions in Paragraph 113 within 30 days after receipt of EPA's written approval. In seeking approval for a revised or alternate form of financial assurance, Settling Party shall follow the procedures set forth in Paragraph 117. If EPA does not approve the proposal, Settling Party shall follow the procedures set forth in Paragraph 117 to obtain and submit to EPA for approval another proposal for a revised or alternate form of financial assurance within 30 days after receipt of EPA's written disapproval.

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116. The issuance of a Work Takeover Notice pursuant to Paragraph 85 (Work Takeover) shall trigger EPA's right to receive the benefit of any financial assurance(s) provided pursuant to this Section. At such time, EPA shall have the right to enforce performance by the issuer of the relevant financial assurance mechanism and/or immediately access resources guaranteed under any such mechanism, whether in cash or in kind, as needed to continue and complete all or any portion(s) of the Work assumed by EPA. In the event (a) EPA is unable to promptly secure the resources guaranteed under any such financial assurance mechanism, whether in cash or in kind, necessary to continue and complete the Work assumed by EPA, or (b) the financial assurance involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 112.e or 112.f, Settling Party shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA. All EPA Work Takeover costs not paid pursuant to this Paragraph shall be reimbursed under Section XIII (Payment of Response Costs). In addition, if at any time EPA is notified by the issuer of a financial assurance mechanism that such issuer intends to cancel the financial

assurance mechanism it has issued, then, unless Settling Party provides an alternate financial assurance mechanism in accordance with this Section no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing financial assurance.

117. Settling Party shall not reduce the amount of, or change the form or terms of, the financial assurance until Settling Party receives written approval from EPA to do so. Settling Party may petition EPA in writing to request such a reduction or change on any anniversary of the Effective Date, or at any other time agreed by the Parties. Any such petition shall include the estimated cost of the remaining Work and the basis upon which such cost was calculated, and, for proposed changes to the form or terms of the financial assurance. If EPA notifies Settling Party that it has approved the requested reduction or change, Settling Party may reduce or otherwise change the financial assurance in compliance with and to the extent permitted by such written approval and shall submit all documents evidencing such reduction or change to EPA pursuant to the delivery instructions in Paragraph 113 within 30 days after receipt of EPA's written decision. If EPA disapproves the request, Settling Party may seek dispute resolution pursuant to Section XIV (Dispute Resolution), provided, however, that Settling Party may reduce or otherwise change the financial assurance only in accordance with an agreement reached pursuant to Section XIV or EPA's written decision resolving the dispute.

118. Settling Party shall not release, cancel, or discontinue any financial assurance provided pursuant to this Section until: DRAFT

a. Settling Party receives written notice from EPA in accordance with Paragraph 123 that the Work has been fully and finally completed in accordance with this Settlement Agreement; or

b. EPA otherwise notifies Settling Party in writing that it may release, cancel, or discontinue the financial assurance(s) provided pursuant to this Section. In the event of a dispute, Settling Party may seek dispute resolution pursuant to Section XIV (Dispute Resolution), and may release, cancel, or discontinue the financial assurance required hereunder only in accordance with an agreement reached pursuant to Section XIV or EPA's written decision resolving the dispute.

XXV. INTEGRATION/APPENDICES

119. This Settlement Agreement 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 and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or

understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

"Appendix A" is the Record of Decision for Operable Unit Two

"Appendix B" is the Statement of Work

"Appendix C" is the Site Map

"Appendix D" Financial Assurance

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.

XXVI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

120. This Settlement Agreement shall be effective on the date that the Settlement Agreement is signed by the Director of the Emergency and Remedial Response Division of EPA Region 2 or his delegate,

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121. This Settlement Agreement, including the attached SOW, may be amended by mutual agreement of EPA and Settling Party. Amendments shall be in writing and shall be effective when signed by EPA. Neither EPA Project Coordinators nor EPA RPMs have the authority to sign amendments to the Settlement Agreement.

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

XXVII. NOTICE OF COMPLETION OF WORK

123. 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 Settling Party. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Settling Party, provide a list of the deficiencies, and require that Settling Party modify the Work Plan if appropriate to correct such deficiencies. Settling Party shall implement the

modified and approved Work Plan and shall submit the required deliverables. Failure by Settling Party to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

It is so ORDERED AND AGREED this _____ day of _____, _____.

BY: _____ DATE: _____

Walter Mugdan, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2

EFFECTIVE DATE: _____

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ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR REMEDIAL DESIGN

In the Matter of Operable Unit 2 of the Diamond Alkali Superfund Site
CERCLA Docket No

For Settling Party _____

By:_____

Title: _____

Date: _____

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