UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7

| | |
|---|---|
| IN THE MATTER OF:<br><br>Citizens Gas and Electric Company Site, Council Bluffs, Iowa<br><br>Black Hills/Iowa Gas Utility Company, LLC, Iowa Department of Transportation, and T & A Real Estate, L.L.C.,<br><br>Respondents.<br><br>Proceeding under Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622. | CERCLA Docket No. 07-2020-0089 |

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT**

## TABLE OF CONTENTS


I. JURISDICTION AND GENERAL PROVISIONS ..... 1
II. PARTIES BOUND ..... 1
III. DEFINITIONS ..... 2
IV. FINDINGS OF FACT ..... 4
V. CONCLUSIONS OF LAW AND DETERMINATIONS ..... 10
VI. SETTLEMENT AGREEMENT AND ORDER ..... 11
VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR ..... 11
VIII. WORK TO BE PERFORMED ..... 12
IX. PROPERTY REQUIREMENTS ..... 17
X. ACCESS TO INFORMATION ..... 18
XI. RECORD RETENTION ..... 20
XII. COMPLIANCE WITH OTHER LAWS ..... 20
XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES ..... 21
XIV. PAYMENT OF RESPONSE COSTS ..... 21
XV. DISPUTE RESOLUTION ..... 23
XVI. FORCE MAJEURE ..... 24
XVII. STIPULATED PENALTIES ..... 25
XVIII. COVENANTS BY EPA ..... 28
XIX. RESERVATIONS OF RIGHTS BY EPA ..... 28
XX. COVENANTS BY RESPONDENTS ..... 29
XXI. OTHER CLAIMS ..... 30
XXII. EFFECT OF SETTLEMENT/CONTRIBUTION ..... 31
XXIII. INDEMNIFICATION ..... 32
XXIV. INSURANCE ..... 32
XXV. FINANCIAL ASSURANCE ..... 33
XXVI. MODIFICATION ..... 37
XXVII. ADDITIONAL REMOVAL ACTION ..... 37
XXVIII. NOTICE OF COMPLETION OF WORK ..... 38
XXIX. INTEGRATION/APPENDICES ..... 38
XXX. EFFECTIVE DATE ..... 38

Appendix A – Site Map




ED_005352_00000727-00002

## I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Black Hills/Iowa Gas Utility Company, LLC, Iowa Department of Transportation, and T & A Real Estate, L.L.C. (collectively, Respondents). This Settlement provides for the performance of an engineering evaluation/cost analysis (EE/CA) by Respondents and the payment of certain response costs incurred by the United States at or in connection with the Citizens Gas and Electric Company Site (the Site) generally located between 10th and 11th Avenues and 6th and 8th Streets in Council Bluffs, Iowa.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). 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 Regional Administrators by EPA Delegation Nos. 14-14A (Determinations of Imminent and Substantial Endangerment, Jan. 31, 2017), 14-14C (Administrative Actions through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). This authority was further redelegated by the Regional Administrator of EPA Region 7 to the Director of the Superfund & Emergency Management Division by Delegation Nos. R7-14-14A (April 1, 2019), R7-14-14C (April 29, 2019), and R7-14-14D (April 29, 2019).

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

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

## II. PARTIES BOUND

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

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any Respondent to implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements.

7. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondents to this Settlement.

8. Respondents shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondents with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Respondents or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

## III. DEFINITIONS

9. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the EE/CA and related work, and any subsequent removal action.

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

"Citizens Gas and Electric Company Site Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, which will be established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

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

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

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

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

"IDNR" shall mean the Iowa Department of Natural Resources and any successor departments or agencies of the State.



ED_005352_00000727-00004

"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 deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 96 (Work Takeover), Paragraph 118 (Access to Financial Assurance), Paragraph 49 (Community Involvement Plan) (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

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

"Owner Respondent" shall mean any Respondent that owns or controls any Affected Property, including Black Hills/Iowa Gas Utility Company, Iowa Department of Transportation, and T & A Real Estate, L.L.C. The clause "Owner Respondent's Affected Property" means Affected Property owned or controlled by Owner Respondent.

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

"Parties" shall mean EPA and Respondents.

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

"Respondents" shall mean Black Hills/Iowa Gas Utility Company, Iowa Department of Transportation, and T & A Real Estate, L.L.C.

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

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

"Site" shall mean the Citizens Gas and Electric Company Superfund Site, encompassing approximately 4.75 acres, located between 10th and 11th Avenues and 6th and 8th Streets in Council Bluffs, Pottawattamie County, Iowa and depicted generally on the map attached as Appendix A.

"State" shall mean the State of Iowa.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

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

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean the performance of an EE/CA and related activities and obligations Respondents are required to perform under this Settlement except those required by Section XI (Record Retention).

## IV. FINDINGS OF FACT

10. The Site is located between 10th and 11th Avenues and 6th and 8th Streets in the City of Council Bluffs (City), Pottawattamie County, Iowa. What is referred to as 11th Avenue is a railroad right-of-way. The Site encompasses approximately 4.75 acres. The Site is zoned for commercial use and the surrounding area is mainly commercial and industrial, with some residential areas ¼ mile from the Site. While the Site is currently zoned commercial, it is possible that a change in land use in the area surrounding the Site may occur, as the City's plan for the overall area is "significant industrial activity, public facilities, recreational opportunities, and commercial activity."

11. Investigations conducted since 1969 have identified soil and groundwater contamination at the Site. Benzene, toluene, ethylbenzene, and xylenes (BTEX) and polynuclear aromatic hydrocarbons (PAHs) have been found in the soil and groundwater at the Site. BTEX and PAHs are designated as hazardous substances pursuant to 40 C.F.R. § 302.4.

12. The Site is located approximately 2 miles east of the Missouri River on the floodplain. River bluffs, which form the eastern boundary of the flood plain, are located approximately ¼ mile east of the Site. The bluffs rise approximately 200 feet above the floodplain and consist primarily of loess deposits (wind-blown silt). Other unconsolidated soils in the Council Bluffs area typically consist of glacial till overlain by approximately 30 feet of loess. In many areas the glacial till may be underlain by sand and gravel. Typically, the depth of unconsolidated deposits ranges from approximately 35 to 200 feet. Pennsylvanian-aged bedrock underlies the unconsolidated deposits and consists of alternating beds of limestone and shale.



ED_005352_00000727-00006

The limestone units are water bearing, but due to the relatively impermeable nature of the shale, the individual limestone units are confined, and therefore, the average aquifer yield is low.

13. The Site operated as a gas manufacturer from approximately 1870 to at least 1932. Initially, gas was manufactured from coal using the coal carbonization gasification method. Coal was cooked in ovens or retorts to produce gas and various gas by-products. These gases required treatment to remove tar, ammonia, "light oils" (i.e., BTEX), naphthalene, and sulfur compounds before use. By 1930, the City had converted to natural gas, relegating the plant to operational status for emergency use only. Until 1952, the Site stored natural gas and propane to accommodate peak needs of the City, and coal gas equipment was maintained at the facility. In 1952 the Site's manufacturing equipment was retired. Most of the structures associated with the former manufactured gas plant have since been demolished.

14. While the gas plant was operating, by-product tars and carbon were produced along with the gas. A variety of oil-based feedstocks were used to produce gas, including kerosene, diesel oil and bunker C fuel oil. By-product tars were either refined into marketable products, such as creosote, road tars, fuels, and various pitches, or stored or abandoned on-Site. Contaminants and wastes typically associated with gas production include BTEX, PAHs, oxide waste, tar residues, sludge, wastewater, ash, and phenolic and ammonia compounds.

15. The initial manufactured gas plant was owned by Council Bluffs Gas Light Company from the early 1870s to the early 1890s. Sometime in the 1890s, Council Bluffs Gas Light Company reincorporated into Council Bluffs Gas and Electric Company. Citizens Gas and Electric Company of Council Bluffs (CGE) leased the gas plant from Council Bluffs Gas and Electric Company from 1900 to 1904. In 1904, CGE bought the plant and continued to operate it until 1928. Council Bluffs Gas Company (CBGC) purchased the plant from CGE in 1928 and continued operating it until at least 1932.

16. In 1929, CGE changed its name to Citizens Power & Light Company. In 1937, Citizens Power & Light Company merged into Nebraska Power Company. In 1946, Omaha Public Power District (OPPD) acquired all issued and outstanding common stock of Nebraska Power Company, and Nebraska Power Company was later liquidated into OPPD.

17. CBGC sold the Site property to Northern Natural Gas Company (NNG) in 1960, and CBGC was acquired and merged into the Peoples Natural Gas Company (Peoples) division of NNG. In 1980, NNG changed its name to Internorth, Inc. (Internorth). In 1985, Utilicorp United, Inc. (Utilicorp) bought Peoples' assets and the Site property from Internorth as part of an asset purchase. Internorth changed its name to Enron Corporation (Enron) on April 17, 1986. On July 14, 1986, Enron created a wholly-owned subsidiary named Enron Holdings, Inc. On April 11, 1990, Enron Holdings, Inc. changed its name to NNG. On January 31, 2002, Dynegy, Inc. purchased NNG from Enron. On August 16, 2002, MidAmerican Energy Holdings Company (MEH) purchased NNG from Dynegy, Inc. MEH changed its name to Berkshire Hathaway Energy Company in 2014. MidAmerican Energy Company is a direct subsidiary of Berkshire Hathaway Energy Company.

18. During the original evaluation of Potentially Responsible Parties ("PRPs"), Northern Natural Gas, MidAmerican Energy Company, Omaha Public Power District, the City

of Council Bluffs were each identified by EPA and Respondents as having some association and involvement with the Site. General Notice Letters were sent by EPA to those entities and their respective inclusion as a PRP was evaluated. However, each of the aforementioned entities denied liability and declined to participate in this EE/CA Settlement. Respondents and EPA made the decision to proceed with this EE/CA Settlement and reserve all rights as to these entities.

19. In 1986, Utilicorp sold portions of the Site property to Linda Whisler, but maintained ownership of the majority of the Site. In 2002 Utilicorp changed its name to Aquila Inc., and in 2008, Aquila, Inc. sold the remainder of the Site property it owned to Black Hills Corporation. Black Hills Corporation is a current owner of multiple parcels of property located within the Site.

20. In 2018, Linda Whisler sold a parcel of property located within the Site to T & A Real Estate, L.L.C. T & A Real Estate, L.L.C. is the current owner of a parcel of property located within the Site.

21. In 1972, the Iowa State Highway Commission, n/k/a Iowa Department of Transportation (IDOT), acquired a portion of the site from Peoples to construct a highway. In 1978, IDOT acquired another portion of the site for the same purpose from Union Pacific Railroad Company (UPRC), who purchased portions of the Site in 1898 and 1899. IDOT constructed a highway on these portions of the Site in the mid-1970's. IDOT later transferred jurisdiction of the highway, including these portions of the Site, to the City of Council Bluffs, Iowa in 2019, pursuant to Iowa Code section 306.42. Over the years, UPRC sold various parcels it owned within the Site, and in 2012, UPRC quitclaimed the remainder of its parcels of Site property to the City. The City is a current owner of two parcels of property located within the Site.

22. In 1969, IDOT conducted soil borings in the area directly east of the Site in order to evaluate foundation conditions for a proposed highway construction project. The soil borings identified the presence of gas odors and visible oils in the soil in the area of what was believed (at the time) to be the bottom of an underground, old gasoline tank. IDOT also documented additional gas odors and visible oils in nearby soil borings. During the mid-1970s, IDOT constructed Highway 192 through that area.

23. In 1989 Peoples conducted a Phase I preliminary investigation at the Site, which included soil borings and ground water sampling. This investigation included the installation of four groundwater monitoring wells and on-site soil borings. Elevated levels of BTEX and cyanide were found in one of the monitoring wells. BTEX compounds were found in three of the eleven soil samples collected on-site. The investigation also found indications that volatile organic compounds had migrated off-site.

24. In 1993, Peoples and EPA entered into an Administrative Order on Consent, Docket No. VII-93-F-0033, specifying that Peoples complete a Phase II investigation to delineate the extent of a release if one was found to have occurred, or if not, to assess the threat of release and any danger to public health and the environment. The Phase II investigation was conducted in October 1995 and confirmed the presence of groundwater contamination within the western

Site parcel, and concluded that elevated concentrations of BTEX and PAHs at the Site were related to coal tar contamination. The Phase II also confirmed the presence of non-aqueous phase liquid (NAPL) at the bottom of one of the Site's monitoring wells, with PAHs constituting approximately 18% of the material.

25. In 2003, a Phase II environmental site assessment (ESA) was conducted one block east of the Site. The Phase II ESA concluded that soils had been adversely impacted by coal tar constituents from approximately 64 to 75.5 feet below ground surface (bgs), and that coal tar contamination in the form of free-phase non-aqueous product existed at 68 to 73 feet bgs.

26. In 2015, EPA's contractor, Tetra Tech, conducted a removal assessment at the Site and confirmed the presence of soil contamination at and around the Site, including concentrations of BTEX and PAHs above their maximum contaminant levels (MCLs), regional screening levels (RSLs), and removal management levels (RMLs).

27. The EPA RSLs are used to help identify areas, contaminants, and conditions that require further attention at a particular site. RSLs are risk-based concentrations derived from standardized equations combining exposure information assumptions with EPA toxicity data. Exceeding an RSL suggests that further evaluation of the potential risks by site contaminants may be appropriate. The RSLs are generic and calculated without site-specific information. RSLs for the hazardous substances found at the Site are:

a. Benzene – 5.1 milligrams per kilogram (mg/kg) for industrial soil, 0.46 micrograms per liter (μg/L) for tap water

b. Ethylbenzene – 25 mg/kg for industrial soil, 1.5 μg/L for tap water

c. Toluene – 4,700 mg/kg for industrial soil, 110 μg/L for tap water

d. Xylenes – m- and/or p-xylene - 240 mg/kg for industrial soil, 19 μg/L for tap water; o-xylene - 280 mg/kg for industrial soil 19 μg/L for tap water

e. PAHs – benzo(a)anthracene – 21 mg/kg for industrial soil, 0.03 μg/L for tap water; benzo(a)pyrene – 2.1 mg/kg for industrial soil, 0.025 μg/L for tap water; benzo(b)fluoranthene – 21 mg/kg for industrial soil, 0.25 μg/L for tap water; biphenyl – 20 mg/kg for industrial soil, 0.083 μg/L for tap water; chrysene – 2,100 mg/kg for industrial soil, 25 μg/L for tap water; dibenz(a,h)anthracene – 2.1 mg/kg for industrial soil, 0.025μg/L for tap water; indeno(1,2,3-cd)pyrene – 21 mg/kg for industrial soil, 0.25 μg/L for tap water; 2-methylnaphthalene – 300 mg/kg for industrial soil, 3.6 μg/L for groundwater; naphthalene – 17 mg/kg for industrial soil, 0.17 μg/L for tap water

28. The EPA RMLs help identify areas, contaminants, and conditions where a removal action may be appropriate. They are risk-based concentrations derived from standardized equations combining exposure assumptions with EPA toxicity data. Exceeding an RML suggests that a response action may be warranted. The RMLs are generic and calculated without site-specific information. RMLs for the hazardous substances found at the Site are:

a. Benzene – 420 mg/kg for industrial soil, 33 µg/L for tap water

b. Ethylbenzene – 2,500 mg/kg for industrial soil, 150 µg/L for tap water

c. Toluene – 47,000 mg/kg for industrial soil, 1,100 µg/L for tap water

d. Xylenes – m- and/or p-xylene - 2,400 mg/kg for industrial soil, 190 µg/L for tap water; o-xylene - 2,800 mg/kg for industrial soil, 190 µg/L for tap water

e. PAHs – benzo(a)anthracene – 2,100 mg/kg for industrial soil, 3.0 µg/L for tap water; benzo(a)pyrene – 210 mg/kg for industrial soil, 2.5 µg/L for tap water; benzo(b)fluoranthene – 2,100 mg/kg for industrial soil, 25 µg/L for tap water; biphenyl – 200 mg/kg for industrial soil, 0.83 µg/L for tap water; chrysene – 210,000 mg/kg for industrial soil, 2,500 µg/L for tap water; dibenz(a,h)anthracene – 210 mg/kg for industrial soil, 2.5 µg/L for tap water; indeno(1,2,3-cd)pyrene – 2,100 mg/kg for industrial soil, 25 µg/L for tap water; 2-methylnaphthalene – 3,000 mg/mg for industrial soil, 36 µg/L for tap water; naphthalene – 590 mg/kg for industrial soil, 6.1 µg/L for tap water

29. The MCLs were promulgated pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j-27, and are the maximum permissible level of a contaminant in water that is delivered to any user of a public water system. MCLs are legally enforceable standards. MCLs for the hazardous substances found at the Site are:

a. Benzene – 5 µg/L

b. Ethylbenzene – 700 µg/L

c. Toluene – 1,000 µg/L

d. Total xylenes – 10,000 µg/L

e. PAHs – benzo(a)pyrene – 0.2 µg/L. MCLs have not been established for the other PAHs found at the Site.

30. The analytical results from the 2015 removal assessment indicate the presence of the following hazardous substances in the subsurface soils at the Site in ranges exceeding their RSLs and/or RMLs:

a. Benzene – 0.023 to 44 mg/kg

b. Ethylbenzene – 0.0053 to 110 mg/kg

c. PAHs – benzo(a)anthracene – 0.46 to 32 mg/kg; benzo(a)pyrene – 0.24 to 24 mg/kg; benzo(b)fluoranthrene – 0.3 to 32 mg/kg; dibenz(a,h)anthracene – 0.24 to 4.7 mg/kg; indeno(1,2,3-cd)pyrene – 0.34 to 14 mg/kg; naphthalene – 0.22 to 1,200 mg/kg

31. The analytical results from the 2015 removal assessment also indicate the presence of the following hazardous substances in groundwater at the Site in ranges exceeding their RSLs and/or RMLs and/or MCLs:

a. Benzene – 8.6 to 11,000 µg/L

b. Ethylbenzene – 14 to 2,600 µg/L

c. Toluene – 8.4 to 490 µg/L

d. Xylenes – m- and/or p-xylene - 16 to 2,200 µg/L; o-xylene - 6.4 to 1,300 µg/L

e. PAHs – benzo(a)anthracene – 6.8 µg/L; biphenyl – 7.1 to 54 µg/L; chrysene – 6.1 µg/L; 2-methylnaphthalene – 5.3 to 1,000 µg/L; naphthalene – 24 to 9,200 µg/L

32. The 2015 removal assessment concluded that the elevated concentrations of BTEX and PAHs were likely related to the former manufactured gas plant operations. Soil contamination occurs in the southern portion of the Site, extending from 2 feet bgs to the soil-groundwater interface (approximately 5 to 14 feet bgs). Laboratory analysis indicated that coal tar constituents have impacted groundwater within the immediate vicinity of the Site. Groundwater contamination occurs in the southern portion of the Site, extends west across 6th Street and south of 11th Avenue, and may be more widespread at depth.

33. Human and environmental exposure to the hazardous substances, pollutants, and/or contaminants such as those found at the Site may result in the following toxicological effects:

a. There are more than 100 different PAHs. PAHs generally occur as complex mixtures, not as single compounds. Although the health effects of individual PAHs are not exactly alike, they are typically considered as a group rather than as individual compounds. PAHs are harmful to human health under certain circumstances.

b. Naphthalene is a PAH. It is a white solid that evaporates easily. 1-methylnaphthalene and 2-methylnaphthalene are naphthalene-related compounds. 1-methylnaphthalene is a clear liquid and 2-methylnaphthalene is a solid.

c. Benzene is a known carcinogen. People living around hazardous waste sites may be exposed to higher levels of benzene in the air.

d. Toluene is a colorless, flammable liquid.

e. Ethylbenzene occurs naturally in coal tar and petroleum. People living near hazardous waste sites may be exposed to elevated levels of ethylbenzene in the air, water, and soil.

f. Xylene is a colorless, flammable liquid that is sometimes released into water and soil as a result of use, storage, and transport of petroleum products.

34. The City obtains most of its drinking water from the Missouri River. One public well and 11 private wells are within 1 mile of the Site, 30 private wells are within 1 to 2 miles of the Site, 7 public wells and 180 private wells are within 2 to 3 miles of the Site, and 26 public wells and 226 private wells are within 3 to 4 miles of the Site. Completion of the EE/CA will further evaluate populations at risk.

35. The Site is not currently on the National Priorities List and has not been proposed for listing.

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

d. Each Respondent is a potentially responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

(1) Respondents Black Hills/Iowa Gas Utility Company, LLC, Iowa Department of Transportation, and T & A Real Estate, L.L.C. are the "owner(s)" and/or "operator(s)" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

(2) Respondent Iowa Department of Transportation was an "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, 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).

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



ED_005352_00000727-00012

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

## VI. SETTLEMENT AGREEMENT AND ORDER

37. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

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

38. Respondents shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within 30 days after Work Plan Approval. Respondents shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 10 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 30 days after EPA's disapproval. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

39. Within 30 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 38. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 30 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator shall constitute notice or communication to all Respondents.

40. EPA has designated Yvonne Smith of the Assessment Emergency Response and Removal Branch, Region 7, as its On-Scene Coordinator (OSC). EPA and Respondents shall have the right, subject to Paragraph 39, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA 10 days before such a change is made. EPA shall notify Respondents upon such a change. The initial notification by Respondents may be made orally, but shall be promptly followed by a written notice.

41. The OSC shall be responsible for overseeing Respondents' implementation of this Settlement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

## VIII. WORK TO BE PERFORMED

42. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

43. Respondents shall perform, at a minimum, all actions necessary to implement the requirements of this Settlement that provides for the performance of an EE/CA. The actions to be implemented generally include, but are not limited to, the following:

44. **Work Plan and Implementation**

a. Within 75 days after the Effective Date, in accordance with Paragraph 45 (Submission of Deliverables), Respondents shall submit to EPA for approval a draft work plan for conducting and submitting to EPA an EE/CA report for the Site. The draft work plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement. The EE/CA shall be drafted in compliance with EPA "Guidance on Conducting Non-Time-Critical Removal Actions Under CERCLA" (EPA/540-R-93-057).

b. EPA may approve, disapprove, require revisions to, or modify the draft work plan in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft work plan within 30 days after receipt of EPA's notification of the required revisions. Upon written approval of the Work Plan by EPA ("Work Plan Approval"), Respondents shall implement the Work Plan in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of the Work Plan Respondents shall commence implementation of the Work in accordance with the schedule included therein. Respondents shall not commence or perform any Work except in conformance with the terms of this Settlement.

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

45. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to the OSC at Yvonne M. Smith, 11201 Renner Blvd., Lenexa, KS 66219, (913)551-7795, smith.yvonne@epa.gov. Respondents shall submit all deliverables required by this Settlement or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 45.b. All other deliverables shall be submitted to EPA in the form specified by the OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide EPA with paper copies of such exhibits.

b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://www.epa.gov/geospatial/epa-metadata-editor.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult https://www.epa.gov/geospatial/geospatial-policies-and-standards for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

46. **Risk Assessment and Identification of Removal Action Goals.** Within 75 days after Work Plan Approval, Respondents shall submit to EPA a conceptual site model. Within 75 days of EPA approval of the conceptual site model, Respondents shall submit to EPA a risk assessment. EPA may approve, disapprove, require revisions to, or modify the risk assessment. The EPA-approved risk assessment shall be incorporated into the EE/CA. The risk assessment shall identify the removal action goals for the Site.

47. **Health and Safety Plan.** Within 75 days after Work Plan Approval, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OlC (Nov. 2002), available on the NSCEP database at https://www.epa.gov/nscep, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at https://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

48. **Quality Assurance, Sampling, and Data Analysis**

a. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. **Sampling and Analysis Plan**. Within 75 days after Work Plan Approval, Respondents shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the Work Plan, the NCP and applicable guidance documents, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" EPA 240/B-01/003 (March 2001, reissued May 2006), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Respondents shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Settlement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) available at

http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/clp), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (https://www.epa.gov/hw-sw846), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www3.epa.gov/ttnamti1/airtox.html).

d. However, upon approval by EPA, Respondents may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

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

f. Respondents shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Settlement.

g. Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondents object to any other data

relating to the Work, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

49. **Community Involvement Plan**. EPA will prepare a community involvement plan, in accordance with EPA guidance and the NCP. If requested by EPA and to the extent feasible in accordance with existing public health and safety recommendations, Respondents shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings or virtual meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondents' support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any community advisory groups, (2) any technical assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondents at EPA's request are subject to EPA's oversight. Upon EPA's request, Respondents shall establish a community information repository at or near the Site to house one copy of the administrative record.

50. **Progress Reports**. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement on a quarterly basis, or as otherwise requested by EPA, from Work Plan Approval until issuance of Notice of Completion of Work pursuant to Section XXVIII, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

51. **Off-Site Shipments**

a. Respondents may ship Waste Material from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

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

and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for removal of Waste Material and before the Waste Material is shipped.

c. Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Action Memorandum. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

## IX. PROPERTY REQUIREMENTS

52. **Agreements Regarding Access and Non-Interference.** Respondents shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondents and the EPA, providing that such Non-Settling Owner, and Owner Respondent shall, with respect to Owner Respondent's Affected Property: (i) provide the EPA, Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 52.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Work. Respondents shall provide a copy of such access agreement(s) to EPA.

a. **Access Requirements**. The following is a list of activities for which access is required regarding the Affected Property:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States;

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

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions;

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

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 96 (Work Takeover);

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

(9) Assessing Respondents' compliance with the Settlement;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

53. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIV (Payment of Response Costs).

54. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondents shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls.

55. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

56. Notwithstanding any provision of the Settlement, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

## X. ACCESS TO INFORMATION

57. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of

custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work, provided, however, that privileged, protected and/or confidential information shall be treated as specified in Paragraphs 57 and 58. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

58. **Privileged and Protected Claims**

a. Respondents may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 58.b, and except as provided in Paragraph 58.c.

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

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

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

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

## XI. RECORD RETENTION

61. Until 10 years after EPA provides Respondents with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

62. At the conclusion of the document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 58 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA.

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

## XII. COMPLIANCE WITH OTHER LAWS

64. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

65. No local, state, or federal 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), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state

permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

## XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

66. **Emergency Response**. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with applicable environmental laws and all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at (913) 281-0991 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

67. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately orally notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at (913) 281-0991 and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

68. For any event covered under this Section, Respondents shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

## XIV. PAYMENT OF RESPONSE COSTS

69. **Payments for Future Response Costs**. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills**. On a periodic basis, EPA will send Respondents a bill requiring payment that includes an Itemized Cost Summary, which includes a SCORPIOS report detailing direct and indirect costs incurred by EPA, its contractors, subcontractors, and the

United States Department of Justice. Respondents shall make all payments within 30 days after Respondents' receipt of each bill requiring payment, except as otherwise provided in Paragraph 72 (Contesting Future Response Costs), and in accordance with Paragraphs 70.a and and 70.b (Payment Instructions).

b. **Deposit of Future Response Costs Payments**. The total amount to be paid by Respondents pursuant to Paragraph 69.a (Periodic Bills) shall be deposited by EPA in the Citizens Gas and Electric Company Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Citizens Gas and Electric Company Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.

70. **Payment Instructions.**

a. For all payments subject to this Paragraph 70, Respondents shall make such payments by Fedwire EFT or by Automatic Clearinghouse (ACH) in accordance with the instructions below. Each payment shall include a reference to the Site/Spill ID and DJ numbers.

| | |
|---|---|
| Fedwire EFT: | Federal Reserve Bank of New York<br>ABA: 021030004<br>Account: 68010727<br>SWIFT address: FRNYUS33<br>Field Tag 4200: D 68010727 Environmental Protection Agency |
| ACH: | ABA: 051036706<br>Transaction Code: 22 - checking<br>Environmental Protection Agency<br>Account 310006<br>CTX Format |

b. At the time of payment, Respondents shall send notice that payment has been made to EPA's OSC and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

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

Such notice shall reference Site/Spill ID Number 07HY and the EPA docket number for this action.

71. **Interest**. In the event that any payment for Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

72. **Contesting Future Response Costs**. Respondents may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 69 (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the OSC within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 69, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 69. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 69. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes under Respondents' obligation to reimburse EPA for its Future Response Costs.

## XV. DISPUTE RESOLUTION

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

74. **Informal Dispute Resolution**. If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within 30 days after such action. EPA and Respondents shall have 30 days from EPA's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

75. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 30 days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within 30 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Director, Superfund and Emergency Management Division, Region 7 level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

76. Except as provided in Paragraph 72 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement. Except as provided in Paragraph 86, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

## XVI. FORCE MAJEURE

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

78. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify EPA's OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund and Emergency Management Division, Region 7 within 7 days of when Respondents first knew that the event might cause a delay. Within 7 days thereafter, Respondents



ED_005352_00000727-00026

shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 77 and whether Respondents have exercised their best efforts under Paragraph 77, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

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

80. If Respondents elect to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs 77 and 78. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

81. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

## XVII. STIPULATED PENALTIES

82. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 83.a and 84 for failure to comply with the obligations specified in Paragraphs 83.b and 84, unless excused under Section XVI (Force Majeure). "Comply" as used

in the previous sentence include compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

83. **Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 83.b:

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

b. **Obligations**

(1) Payment of any amount due under Section XIV (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXIII (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 72 (Contesting Future Response Costs).

(4) Submission of deliverables required under Paragraph 43 (Work Plan and Implementation).

84. **Stipulated Penalty Amounts – Other Deliverables**. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement, other than those specified in Paragraph 83.b:

| Penalty Per Violation Per Day | Period of Noncompliance |
|---|---|
| $400 | 1st through 14th day |
| $750 | 15th through 30th day |
| $2,000 | 31st day and beyond |

85. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 96 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of $100,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 96 (Work Takeover) and 118 (Access to Financial Assurance).

86. 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. Penalties shall continue to accrue

during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 44 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Division Director level or higher, under Paragraph 75 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

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

88. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 69 (Payments for Future Response Costs).

89. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 86 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 88 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

91. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement 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 Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that

EPA assumes performance of a portion or all of the Work pursuant to Paragraph 96 (Work Takeover).

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.

## XVIII. COVENANTS BY EPA

93. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

## XIX. RESERVATIONS OF RIGHTS BY EPA

94. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

95. The covenants set forth in Section XVIII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. liability for failure by Respondents to meet a requirement of this Settlement;

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

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

d. criminal liability;

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

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

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

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

96. **Work Takeover**

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are 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 Respondents. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of 30 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 30-day notice period specified in Paragraph 96.a, Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 96.b. Funding of Work Takeover costs is addressed under Paragraph 118 (Access to Financial Assurance).

c. Respondents may invoke the procedures set forth in Paragraph 75 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 96.b. However, notwithstanding Respondents' 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 under Paragraph 96.b until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 75 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## XX. COVENANTS BY RESPONDENTS

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

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

b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Future Response Costs, and this Settlement;

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

98. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 95.a (liability for failure to meet a requirement of the Settlement), 95.d (criminal liability), or 95.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

99. Nothing in this Settlement 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).

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

## XXI. OTHER CLAIMS

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

102. Except as expressly provided in Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement, 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.

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

## XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

104. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

105. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 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, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work and Future Response Costs.

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

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

108. 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, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however,

that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVIII (Covenants by EPA).

## XXIII. INDEMNIFICATION

109. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

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

## XXIV. INSURANCE

112. No later than 14 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the



ED_005352_00000727-00034

activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the Citizens Gas and Electric Company Site, Council Bluffs, Iowa, and the EPA docket number for this action.

## XXV. FINANCIAL ASSURANCE

113. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of $70,000 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

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

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

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by a Respondent that it meets the financial test criteria of Paragraph 115, accompanied by a standby funding commitment, which obligates the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of Paragraph 113.

114. Respondents shall, within 30 days after the Effective Date, obtain EPA's approval of the form of Respondents' financial assurance. Within 30 days of such approval, Respondents 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 EPA Region 7's Regional Financial Management Officer, Alan Cooke, at 11201 Renner Blvd., Lenexa, Kansas 66219.

115. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 113.e or 113.f must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) the affected Respondent or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Respondent or guarantor has:

i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of

other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/.

116. Respondents providing financial assurance by means of a demonstration or guarantee under Paragraph 113.e or 113.f must also:

a. Annually resubmit the documents described in Paragraph 115.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

b. Notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in Paragraph 115.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

117. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures

of Paragraph 119 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

118. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 96.b, then, in accordance with any applicable financial assurance mechanism and/or related standby funding commitment, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 118.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 118.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 96.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraph 113.e or 113.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 118 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA, the State, or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Citizens Gas and Electric Company Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 118 must be reimbursed as Future Response Costs under Section XIV (Payments for Response Costs).

119. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA and the State in accordance with Paragraph 114, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA, after a reasonable opportunity for

review and comment by the State, will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 114.

120. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXVIII (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XV (Dispute Resolution).

## XXVI. MODIFICATION

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

122. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 121.

123. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

## XXVII. ADDITIONAL REMOVAL ACTION

124. If EPA determines that additional removal actions not included in the Work Plan or other approved plan(s) are necessary to protect public health, welfare, or the environment, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a

work plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the plan pursuant to Paragraph 44 (Work Plan and Implementation), Respondents shall implement the plan for additional Work under this Settlement in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modification).

## XXVIII. NOTICE OF COMPLETION OF WORK

125. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, EPA will provide written notice to Respondents. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Settlement.

## XXIX. INTEGRATION/APPENDICES

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

a. "Appendix A" is the description and/or map of the Site.

## XXX. EFFECTIVE DATE

127. This Settlement shall be effective upon signature by the Division Director of EPA Region 7's Superfund and Emergency Management Division.

IT IS SO AGREED AND ORDERED:



ED_005352_00000727-00040

**FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:**

MARY PETERSON Digitally signed by MARY PETERSON Date: 2020.09.30 16:00:11 -05'00'

_____ _____, 2020

Mary P. Peterson
Divison Director
Superfund and Emergency Management Division

CATHERINE CHICCINE Digitally signed by CATHERINE CHICCINE Date: 2020.09.30 16:09:25 -05'00'

_____ _____, 2020

Catherine R. M. Chiccine
Attorney-Adviser
Office of Regional Counsel

**FOR BLACK HILLS/IOWA GAS UTILITY COMPANY, LLC:**

September 24, 2020

Brian Iverson
General Counsel and Senior Vice President
Black Hills/Iowa Gas Utility Company, LLC
7001 Mount Rushmore Road
Rapid City, SD 57702

**FOR IOWA DEPARTMENT OF TRANSPORTATION:**

Mitchell J. Dillavou

September 21, 2020

Mitchell J. Dillavou, P.E.
Chief Engineer, Highway Administration
Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010

**FOR T & A REAL ESTATE, L.L.C.:**

September 21, 2020

ANDY SONDAG
T & A Real Estate, L.L.C.
607 South Main Street
Council Bluffs, Iowa 51503

# Appendix A

Legend

Approximate site boundary

Source: ESRI, ArcGis Online, Bing Maps Imagery, 2020

N

0 75 150

Feet

Citizen's Gas and Electric Company Site

Council Bluffs, Iowa

Site Location Map