CONFIDENTIAL 11/27/12 DRAFT – FOR DISCUSSION PURPOSES ONLY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Kokomo Dump Site
Kokomo, Howard County, Indiana

Respondent:

City of Kokomo, Indiana

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

Docket No. _____

Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement Agreement) is entered into voluntarily by the United States Environmental Protection Agency (U.S. EPA) and Respondent. This Settlement Agreement provides for the performance of removal actions by Respondent and the payment of certain response costs incurred by the United States at or in connection with the Kokomo Dump Site (Site) located at 1130 South Dixon Road in Kokomo, Howard County, Indiana.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

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

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

II. PARTIES BOUND

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

6. Respondent is jointly and severally liable for carrying out all activities required by this Settlement Agreement.

7. Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

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

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

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

"Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXI (Effective Date).

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement on or after the Effective Date. Future Response Costs shall also include, but not be limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 23 (including, but not limited to, costs and attorneys fees and any monies paid to secure access, including, but not limited to, the amount of just compensation), and Paragraph 35 (emergency response). Future Response Costs shall also include all costs, including, but not limited to, direct and indirect costs, incurred prior to the Effective Date, but paid after that date. Future Response Costs shall also include all "Interim Response Costs," and all Interest on those Past Response Costs Respondent has agreed to pay under this Settlement Agreement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from October 1, 2012 to the Effective Date.

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

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between October 1, 2012 and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.

"Municipal solid waste" or "MSW" shall mean waste material: (a) generated by a household (including a single or multifamily residence); or (b) generated by a commercial, industrial, or institutional entity, to the extent that the waste material (i) is essentially the same as waste normally generated by a household; (ii) is collected and disposed of with other municipal solid waste as part of

normal municipal solid waste collection services; and (iii) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

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

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

"Parties" shall mean EPA and Respondent.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through September 30, 2012, plus Interest on all such costs through such date.

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

"Respondent" shall mean the City of Kokomo, Indiana.

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

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

"Site" shall mean the Kokomo Dump Superfund Site, encompassing approximately 4.54 acres, located at 1130 South Dixon Road in Kokomo, Howard County, Indiana, and depicted generally on the map attached as Attachment A.

"State" shall mean the State of Indiana.

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

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

"Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C.

§ 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous material" and "hazardous waste" under Ind. Code Ann. § 13-22-2-3 and 329 Ind. Admin. Code 3.1-4-1 and 40 C.F.R. Part 261.

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

IV. FINDINGS OF FACT

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

a. The City of Kokomo has owned the Site property from April 1, 1963, until the present.

b. The City of Kokomo operated a municipal landfill and incinerator at the Site from approximately 1963 to the 1970s.

c. The Indiana Department of Environmental Management (IDEM) discovered drums exposed in a creek bank at the Site during an oil spill at the neighboring Haynes International property. The drums were in poor condition, leaking contents onto the creek banks. IDEM collected samples from material leaking out of drums and conducted x-ray fluorescence (XRF) screening. XRF results were as high as 41,765 milligrams per kilogram (mg/kg) lead; 1,600 mg/kg chromium; 3,370 mg/kg arsenic; 13,652 mg/kg zinc; and 30 mg/kg mercury.

d. The EPA On-Scene Coordinator (OSC) and the Superfund Technical Assessment and Response Team (START) contractor conducted a Site Assessment on August 19, 2011. Site Assessment activities included drum, surface and subsurface soil sampling.

e. Two drum samples exceeded EPA's industrial Regional Screening Level (RSL) for arsenic of 1.6 mg/kg at a maximum concentration of 57.9 mg/kg.

f. Arsenic, lead, chromium, zinc and mercury are hazardous substances listed at 40 C.F.R. Table 302.4. Lead was found at the Site at levels exhibiting the characteristic of toxicity and is thus a RCRA hazardous wastes with waste code D008 under 40 C.F.R. § 261.24.

g. One drum sample and the surface soil sample exceeded the industrial RSL for lead of 800 mg/kg at a maximum concentration of 16,100 mg/kg.

h. The surface soil sample exceeded the lead Toxicity Characteristic Leaching Procedure (TCLP) limit for lead of 5 micrograms per liter (mg/L) at a concentration of 8.35 micrograms per liter (ug/L).

9) In subsurface soil, total arsenic was above the industrial RSL of 1.6 mg/kg in 6 of 7 samples

with a maximum concentration of 39.8 mg/kg at a depth from 6 to 8 feet.

10) Total lead exceeded the RSL of 800 mg/kg in 3 of 7 samples at a maximum concentration of 1,500 mg/kg at a depth from 6 to 8 feet.

11) PCBs exceeded the industrial RSL of 740 micrograms per kilogram (ug/kg) in two samples at maximum concentrations of 5,200 and 1,500 ug/kg for Aroclor-1248 and Aroclor-1254, respectively, at a depth of 3 to 4 feet.

12) PCBs are hazardous substances listed at 40 C.F.R. Table 302.4.

13) Municipal waste incineration is a major global source of dioxins because when PCBs are burned, they create dioxin (2,3,7,8-tetrachlorodibenzo-p-dioxin [TCDD]). There is potential for dioxins at the Site as the City operated an incinerator and PCBs were detected in subsurface soil.

14) Dioxins (2,3,7,8-tetrachlorodibenzo-p-dioxin) are hazardous substances listed in 40 C.F.R. Table 302.4.

15) Possible exposure routes to hazardous substance include direct contact with contaminated surface soil or leaking drum contents; direct contact with subsurface soil during excavation activities; and inhalation resulting from wind dispersion of surface contaminants. Possible human receptors include on-site workers, site visitors, trespassers, and nearby residents, including children. Ecological receptors at the Site and in nearby Wildcat Creek, such as mammals, fish, and amphibians, could also be exposed to hazardous substances.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The Kokomo Dump 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 substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

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

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response actions and for response costs incurred and to be incurred at the Site.

i. Respondent is the "owner" and/or "operator" 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).

ii. Respondent is the "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);

iii. Respondent accepts or accepted hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(22) and 101(8) of CERCLA, 42 U.S.C.§§ 9601(22) and 9601(8).

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

i. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Site due to the existence of lead, arsenic, PCBs, and possible dioxin.

ii. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release; this factor is present at the Site due to the existence of hazardous substances, such as lead and arsenic, in drums at the Site. The drums were exposed in a creek bank and lying on the ground surface. Contents of several drums were leaking and pose a threat of release.

iii. High levels of hazardous substances or pollutants or contaminants in soils, largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of high levels of hazardous substance in surface soil, as high as 16,100 mg/kg for lead. Additionally, sample results from subsurface soils showed that both arsenic and lead have migrated to deeper soils.

iv. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present at the Site due to the existence of high winds that could cause dispersion of drum contents and surface soils. Additionally, heavy rains could cause flooding that could reach the level of drums exposed in the creek bank, causing migration through surface water and sediment.

v. The unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Settlement Agreement at the Site because IDEM requested assistance from EPA. IDEM does not have the resources to mitigate the threat of release.

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

VI. SETTLEMENT AGREEMENT AND ORDER

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

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

12. Respondent shall retain one or more contractors to perform the Work and shall notify U.S. EPA of the name(s) and qualifications of such contractor(s) within 5 business days of the Effective Date. Respondent shall also notify U.S. EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 5 business days prior to commencement of such Work. U.S. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If U.S. EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval. The contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared consistent with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002), or equivalent documentation as required by U.S. EPA. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from the On-Scene Coordinator (OSC) and Regional quality assurance personnel to the Site file.

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

Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement shall constitute receipt by all Respondent.

14. U.S. EPA has designated Shelly Lam of the Emergency Response Branch #1, Region 5, as its OSC. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at 2525 North Shadeland Avenue, Suite 100, Indianapolis, Indiana, 46219. Respondent is encouraged to make their submissions to U.S. EPA electronically or on recycled paper (which includes significant post consumer waste paper content where possible) and using two-sided copies.

15. U.S. EPA and Respondent shall have the right, subject to Paragraph 13, to change their respective designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

16. Respondent shall perform, at a minimum, the following removal activities:

a. Develop and implement Site plans including a Site-specific Health and Safety Plan, a Quality Assurance Project Plan, a Site Emergency Contingency Plan, and a Work Plan;

b. Establish Site security;

c. Determine the extent of buried drums and contamination in soil;

d. Develop and implement a plan to control, contain, and/or remove drums and highly contaminated soil;

e. Perform sampling and analysis to determine disposal options;

f. Consolidate and package hazardous substances, pollutants and contaminants for transportation and off-site disposal in accordance with the EPA Off-Site Rule, 40 C.F.R. § 300.440.

17. Work Plan and Implementation.

a. Within 10 business days after the Effective Date, Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 16 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement. The Work Plan shall include a Quality Assurance Project Plan (QAPP). The following documents shall be used for the development of QAPPs for Region 5 Superfund sites:

- The Uniform Federal Policy for Quality Assurance Projects Plans (UFP-QAPP), OSWER Directive 9272.0-17; the QAPP format can be found at **http://www.epa.gov/fedfac/documents/qualityassurance.htm;**
- EPA Requirements for Quality Assurance Project Plans QA/R-5 (EPA/240/B-01/003), March 2001, Reissued May 2006.

The following guidance may be used in conjunction with the requirements above:

- EPA Guidance for the Quality Assurance Project Plans QA/G-5 (EPA/240/R-02/009), December 2002.
- Guidance on Choosing a Sampling Design for Environmental Data Collection EPA QA/G-5S, December 2002.

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

c. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written U.S. EPA approval pursuant to Paragraph 17(b).

18. Health and Safety Plan. Within 10 business days after the Effective Date, Respondent shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement Agreement. This plan shall be prepared consistent with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If U.S. EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by U.S. EPA and shall implement the plan during the pendency of the removal action.

19. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate U.S. EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control

Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001, Reissued May 2006)," or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

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

c. Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity, unless shorter notice is agreed to by U.S. EPA. U.S. EPA shall have the right to take any additional samples that U.S. EPA deems necessary. Upon request, U.S. EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

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

21. Reporting.

a. Respondent shall submit a written progress report to U.S. EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of receipt of U.S. EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit three (3) copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by U.S. EPA, Respondent shall submit such documents in electronic form.

c. Respondent, who owns or controls property at the Site, shall at least 30 days prior to the

conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to U.S. EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondent, who owns or controls property at the Site, also agrees to require that its successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

22. Final Report. Within 60 days after completion of all Work required by Section VIII. (Work To Be Performed) of this Settlement Agreement, Respondent shall submit for U.S. EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and with the guidance set forth in "Superfund Removal Procedures: Removal Response Reporting B POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

> "Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

23. Off-Site Shipments.

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

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

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 23(a) and 23(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

IX. SITE ACCESS

24. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide U.S. EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

25. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 10 business days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as U.S. EPA deems appropriate. Respondent shall reimburse U.S. EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

26. Notwithstanding any provision of this Settlement Agreement, U.S. EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

27. Respondent shall provide to U.S. EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic

routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to U.S. 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.

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

29. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent assert such a privilege in lieu of providing documents, they shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

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

XI. RECORD RETENTION

31. Until 6 years after Respondent's receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 6 years after Respondent's receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

32. At the conclusion of this document retention period, Respondent shall notify U.S. EPA at least 60 days prior to the destruction of any such records or documents, and, upon request by U.S. EPA,

Respondent shall deliver any such records or documents to U.S. EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

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

XII. COMPLIANCE WITH OTHER LAWS

34. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Work Plan subject to U.S. EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

35. In the event of any action or occurrence during performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Response Branch 1, Region 5 at (312) 353-2318, of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and U.S. EPA takes such action instead, Respondent shall reimburse U.S. EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV. (Payment of Response Costs).

36. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at (312) 353-2318 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the recurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq*.

XIV. AUTHORITY OF ON-SCENE COORDINATOR

37. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

38. Payment for Past Response Costs.

a. Within 30 days after the Effective Date, Respondent shall pay to U.S. EPA $78,563.12 for Past Response Costs. Payment shall be made to U.S. EPA by Fedwire Electronic Funds Transfer (EFT) to:

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

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

and shall reference Site/Spill ID Number C564 and the EPA docket number for this action.

b. At the time of payment, Respondent shall send notice that such payment has been made to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 and to Maria Gonzalez, Associate Regional Counsel, 77 West Jackson Blvd., C-14J, Chicago, Illinois, 60604-3590, and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by

mail to: Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall reference Site/Spill ID Number C564 and the EPA docket number for this action.

c. The total amount to be paid by Respondent pursuant to Paragraph 38(a) shall be deposited by U.S. EPA in the Kokomo Dump 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 U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

39. Payments for Future Response Costs.

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

i. Respondent shall make all payments required by this Paragraph to U.S. EPA by Fedwire EFT to:

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

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

and shall reference Site/Spill ID Number C564 and the EPA docket number for this action.

ii. If the amount demanded in the bill is $10,000 or less, Respondent may, in lieu of the procedures in subparagraph 39(a)(i), make all payments required by this Paragraph by official bank check made payable to "U.S. EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number C564, and, if any, the U.S. EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency

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

b. At the time of payment, Respondent shall send notice that payment has been made to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 and to Maria Gonzalez, Associate Regional Counsel, 77 West Jackson Blvd., C-14J, Chicago, Illinois, 60604-3590, and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to: Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall reference Site/Spill ID Number C564 and the EPA docket number for this action.

c. The total amount to be paid by Respondent pursuant to Paragraph 39(a) shall be deposited in the Kokomo Dump Site Special Account within the U.S. 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 U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

40. In the event that the payment for Past Response Costs is not made within 30 days of the Effective Date, or the payments for Future Response Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII (Stipulated Penalties).

41. Respondent contests payment of any Future Response Costs billed under Paragraph 39 if it determines that U.S. EPA has made a mathematical error, or included a cost item that is not within the definition of Future Response Costs, or if it believes U.S. EPA incurred excess costs as a direct result of a U.S. EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested Future Response Costs to U.S. EPA in the manner described in Paragraph 37. Simultaneously, Respondent shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the U.S. EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account.

Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If U.S. EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to U.S. EPA in the manner described in Paragraph 39. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to U.S. EPA in the manner described in Paragraph 39. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse U.S. EPA for its Future Response Costs.

XVI. DISPUTE RESOLUTION

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

43. If Respondent objects to any U.S. EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify U.S. EPA in writing of its objection(s) within 10 days of such action, unless the objection(s) has/have been resolved informally. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which such party relies. U.S. EPA and Respondent shall have 10 days from U.S. EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations. The period for formal negotiations may be extended at the sole discretion of U.S. EPA. If the parties are unable to reach a written agreement by the conclusion of the formal negotiation period, U.S. EPA shall provide its Statement of Position, including supporting documentation, no later than 10 days after the formal negotiation period concludes. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding Paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement. U.S. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement.

44. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

45. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

46. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify U.S. EPA orally within 24 hours of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent shall provide to U.S. EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall be grounds for U.S. EPA to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a *force majeure*, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

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

XVIII. STIPULATED PENALTIES

48. Respondent shall be liable to U.S. EPA for stipulated penalties in the amounts set forth in Paragraphs 49 and 50 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other

plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by U.S. EPA pursuant to this Settlement Agreement within the specified time schedules established by and approved under this Settlement Agreement.

49. Stipulated Penalty Amounts – Work (Including Payments).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 49(b):

Penalty Per Violation Per Day	Period of Noncompliance
$3,000	1st through 14th day
$5,000	15th through 30th day
$10,000	31st day and beyond

b. Compliance Milestones

Designation of Respondent's Contractor
Designation of Respondent's Project Coordinator
Submission of Health and Safety Plan
Submission of Emergency Contingency Plan
Submission of QAPP
Submission of Work Plan(s)
Initiation of Work
Completion of Post-Removal Site Controls
Payment of Past Response Costs pursuant to Paragraph 38
Payment of Future Response costs pursuant to Paragraph 39
Provision of Financial Assurance pursuant to Section XXVII

50. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 21 and 22:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$3,000	15th through 30th day
$7,000	31st day and beyond

51. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA

notifies Respondent of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, Region 5, under Paragraph 43 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after U.S. EPA submits its written statement of position until the date that the Director of the Superfund Division issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

53. All penalties accruing under this Section shall be due and payable to U.S. EPA within 30 days of Respondent's receipt from U.S. EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI. (Dispute Resolution). Respondent shall make all payments required by this Section by official bank check made payable to "U.S. EPA Hazardous Substance Superfund". Each check, or a letter accompanying each check, shall identify the name and address of the party making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number C564, and, if any, the U.S. EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

and shall indicate that the payment is for stipulated penalties, and shall reference the name and address of the party making payment. At the time of payment, copies of checks paid pursuant to this Section, and any accompanying transmittal letter, shall be sent to U.S. EPA as provided in Paragraph 39(a).

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

55. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 20 days after the dispute is resolved by agreement or by receipt of U.S. EPA's decision.

56. If Respondent fails to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 52. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this

Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to 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 U.S. EPA shall not seek civil penalties pursuant to Section 106(b) or 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement. Should Respondent violate this Settlement Agreement or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY U.S. EPA

57. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, U.S. EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon receipt by U.S. EPA of the Past Response Costs due under Section XV (Payment of Response Costs) of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV (Payment of Response Costs) and XVIII (Stipulated Penalties) of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV (Payment of Response Costs). This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY U.S. EPA

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

59. The covenant not to sue set forth in Section XIX (Covenant Not to Sue by U.S. EPA) above does not pertain to any matters other than those expressly identified therein. U.S. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other

matters, including, but not limited to:

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

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

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

d. criminal liability;

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

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

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

XXI. COVENANT NOT TO SUE BY RESPONDENT

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

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

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

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work, Past Response Costs, or Future Response Costs.

Except as provided in Paragraph(s) 62 and 63, below, 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 Paragraphs 59 (b), (c), and (e) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

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

63. Respondent agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the Site against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of MSW at the Site, if the volume of MSW disposed, treated, or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site.

64. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if U.S. EPA determines: (1) that the materials contributed to the Site by such person have contributed significantly or could contribute significantly, either individually or in the aggregate, to the costs of response or natural resource restoration at the Site; or (2) such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise.

XXII. OTHER CLAIMS

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

66. Except as expressly provided in Section XXI (Covenant Not to Sue by Respondent),

Paragraphs 62 (Claims Against De Micromis Parties) and 63 (Claims Against MSW Generators and Transporters) and Section XIX. (Covenant Not to Sue by U.S. EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XXIII. EFFECT OF SETTLEMENT/CONTRIBUTION

68. Except as provided in Section XXI (Covenant not to Sue by Respondent) Paragraphs 62 (Claims Against De Micromis Parties), and 63 (Claims Against MSW Generators and Transporters), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XXI (Covenant not to Sue by Respondent) Paragraphs 62 (Claims Against De Micromis Parties), and 63(Claims Against MSW Generators and Transporters), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

69. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may otherwise be provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs.

b. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Respondent has, as of the Effective Date, resolved its liability to the United States for the Work, Past Response Costs, and Future Response Costs.

70. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify U.S. EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify U.S. EPA in writing within 10 days of service of the

complaint or claim upon it. In addition, Respondent shall notify U.S. EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

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

72. Effective upon signature of this Settlement Agreement by a Respondent, such Respondent agrees that the time period after the date of its signature shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 69.a. and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time after its signature of this Settlement Agreement. If U.S. EPA gives notice to Respondent that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety (90) days after the date such notice is sent by U.S. EPA.

XXIV. INDEMNIFICATION

73. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorney's fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States. The Federal Tort Claims Act (28 U.S.C. §§ 2671, 2680) provides coverage for injury or loss of property, or injury or death caused by the negligent or wrongful act or omission of an employee of U.S. EPA while acting within the scope of his or her employment, under circumstances where U.S. EPA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

74. The United States shall give Respondent notice of any claim for which the United States

plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

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

XXV. MODIFICATIONS

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

77. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 76.

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

XXVI. NOTICE OF COMPLETION OF WORK

79. When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including, *e.g.*, post-removal site controls, payment of Future Response Costs, and record retention, U.S. EPA will provide written notice to Respondent. If U.S. EPA determines that such Work has not been completed in accordance with this Settlement Agreement, U.S. EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXVII. FINANCIAL ASSURANCE

80. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security, initially in the amount of $2,000,000 in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work;

b. One or more irrevocable letters of credit equaling the total estimated cost of the Work, payable to or at the direction of U.S. EPA, issued by one or more financial institution(s) acceptable in all respects to EPA;

c. A trust fund administered by a trustee acceptable in all respects to U.S. EPA;

d. A policy of insurance issued by an insurance carrier acceptable in all respects to U.S. EPA, which ensures the payment and/or performance of the Work;

e. A written guarantee to fund or perform the Work provided by a parent corporation of respondent, or by one or more unrelated corporations that have a substantial business relationship with Respondent, including a demonstration that any such guarantor company satisfies the requirements of 40 C.F.R. Part 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or state environmental obligations financially assured through the use of a financial test or guarantee) that it proposes to guarantee hereunder; or

f. A demonstration of sufficient financial resources to pay for the Work made by Respondent, which shall consist of a demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f). {NOTE: For these purposes, references in 40 C.F.R. § 264.143(f) to the "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates" shall mean the amount of financial security specified above. If Respondent seeks to provide a demonstration under 40 C.F.R. § 264.143(f) and has provided a similar demonstration at other RCRA or CERCLA sites, the amount for which it is providing financial assurance at those other sites should generally be added to the estimated costs of the Work for this Paragraph.}

81. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to U.S. EPA, determined in U.S. EPA's sole discretion. Within 30 days of the Effective Date, Respondent shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to U.S. EPA. In the event that U.S. EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the mechanism(s) evidencing such assurances) are inadequate, Respondent shall, within 30 days of receipt of notice of U.S. EPA's determination, obtain and present to U.S. EPA for approval one of the other forms of financial assurance listed in Paragraph 80, above. In addition, if at any time U.S. EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 30 days of such notification,

Respondent shall obtain and present to U.S. EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

82. If Respondent seeks to demonstrate the ability to complete the Work through a guarantee or demonstration by a third party pursuant to Paragraph 80(a) of this Section, Respondent's guarantor shall (a) demonstrate to U.S. EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (b) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually thereafter within 90 days of the end of the guarantor's fiscal year or such other date as agreed by U.S. EPA, to U.S. EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of $2,000,000 for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondent or guarantor to EPA by means of passing a financial test.

83. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 80 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to U.S. EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by U.S. EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution) and may reduce the amount of the security in accordance with the written decision resolving the dispute.

84. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and approval by U.S. EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XVI (Dispute Resolution), and may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

85. Respondent may not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except as provided in this Paragraph. If Respondent receives written notice from U.S. EPA in accordance with Paragraph 79 that the Work has been fully completed in accordance with the terms of this Settlement Agreement, Respondent may thereafter release, cancel, or discontinue the performance guarantee provided pursuant to this Section. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XVI (Dispute Resolution), and may release, cancel, or discontinue the performance guarantee required hereunder only in accordance with the written decision resolving the dispute.

XVIII. INSURANCE

86. At least 7 days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of 3 million dollars, combined single limit. Within the same time period, Respondent shall provide U.S. EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement, Respondent 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 Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to U.S. EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

[XXIX. PUBLIC COMMENT

87. Final acceptance by U.S. EPA of Section XV. (Payment of Response Costs) of this Settlement Agreement shall be subject to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), which requires U.S. EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. U.S. EPA may withhold consent from, or seek to modify, all or part of Section XV. (Payment of Response Costs) of this Settlement Agreement if comments received disclose facts or considerations that indicate that Section XV. (Payment of Response Costs) of this Settlement Agreement is inappropriate, improper or inadequate. Otherwise, Section XV. (Payment of Response Costs) shall become effective when U.S. EPA issues notice to Respondent that public comments received, if any, do not require U.S. EPA to modify or withdraw from Section XV. (Payment of Response Costs) of this Settlement Agreement.

XXX. ATTORNEY GENERAL APPROVAL

88. The Attorney General or his designee has approved the response cost settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).]

XXXI. SEVERABILITY/INTEGRATION/ATTACHMENTS

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

90. This Settlement Agreement and its attachments constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this

Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following attachments are incorporated into this Settlement Agreement:

ATTACHMENT A: Map of Site Location

XXXII. EFFECTIVE DATE

91. This Settlement Agreement shall be effective upon receipt by Respondent of a copy of this Settlement Agreement signed by the Director, Superfund Division, U.S. EPA Region 5. [Provided, however, that Section XV. (Payment of Response Costs) shall be effective when U.S. EPA issues notice to Respondent that public comments received, if any, do not require U.S. EPA to modify or withdraw from this Settlement Agreement.]

CONFIDENTIAL 11/27/12 DRAFT – FOR DISCUSSION PURPOSES ONLY

IN THE MATTER OF:

KOKOMO DUMP SITE
KOKOMO, INDIANA

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

Agreed this ____ day of _____, 2012.

For Respondent _____

By _____

Title _____

CONFIDENTIAL 11/27/12 DRAFT – FOR DISCUSSION PURPOSES ONLY

IN THE MATTER OF:

KOKOMO DUMP SITE
KOKOMO, INDIANA

It is so ORDERED and Agreed this _____ day of _____, 2012.

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