UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SEP 30 2015

MEMORANDUM

SUBJECT: Issuance of Revised Model Administrative Settlement Agreement and Order on Consent and Unilateral Administrative Order for Removal Actions

FROM: Cynthia L. Mackey, Director
Office of Site Remediation Enforcement

TO: Regional Counsels, Regions I-X
Superfund National Policy Managers, Regions I-X

I. INTRODUCTION

This memorandum transmits the following two revised Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) models for removal actions, which were developed in collaboration with Headquarters, Regional, and Department of Justice (DOJ) staff:

1) Model Administrative Settlement Agreement and Order on Consent for Removal Actions (ASAOC); and
2) Model Unilateral Administrative Order for Removal Actions (UAO).

These documents are now available from the removal category on the Cleanup Enforcement Model Language and Sample Documents Database ("Cleanup Models Database"). These models are effective today and supersede the previously issued versions of these removal models.[1]

The revised removal ASAOC and UAO models include much of the same language. Differences between them relate to the differences between a negotiated agreement and a unilaterally issued order. An explanation of, and the more significant updates to, each model are outlined below.

[1] Specifically, this memorandum supersedes the following documents: *Revised Model Administrative Settlement Agreement and Order on Consent for Removal Actions* (Jan. 30, 2007); the removal administrative order on consent elements of *Interim Revisions to CERCLA Removal, RI/FS and RD AOC Models to Clarify Contribution Rights and Protection Under Section 113(f)* (Aug. 3, 2005); *Revised Language for the Model Removal Unilateral Administrative Order* (Aug. 1, 2001); and *Model Unilateral Administrative Order for Removal Response Activities* (Mar. 16, 1993).

II. REMOVAL ASAOC

The revised removal ASAOC is suitable for use in both time critical (TC) and non-time critical (NTC) removal situations. It incorporates revised model settlement language announced in September 2014 as applicable to all CERCLA models (i.e., immediately effective covenants not to sue and contribution protection and rights language updates).[2] It also incorporates the model geospatial data and electronic submission of deliverables language announced in September 2014.[3] Further, it contains a number of useful conforming changes to the Model Remedial Design and Remedial Action Consent Decree (CD) and Statement of Work (SOW)[4] adapted to the removal context, including updated: property requirements (covering site access and use restrictions); access to information; record retention; financial assurance; past and future response costs payment provisions; force majeure; and the consolidated waiver of claims covering de micromis, municipal solid waste, and *de minimis*/ability to pay parties. It also contains a new community involvement provision for use in accordance with applicable EPA guidance and the National Contingency Plan. Finally, the removal ASAOC includes as appendices optional language addressing removal institutional controls (ICs) (Appendix A) and orphan share forgiveness[5] (Appendix B). These are rarely used in the removal context, but are included so that language is available when needed.

III. REMOVAL UAO

The last full model removal UAO was issued by EPA over twenty years ago. Over the years EPA has issued updates to specific sections of the UAO[6] and has made numerous additional language changes in actual practice. The attached revised UAO provides an up-to-date national model for use in both TC and NTC situations, which will assist the Regions in drafting speedy, nationally-consistent CERCLA § 106(a) removal UAOs.

As noted above, the UAO contains many of the same provisions as found in the ASAOC, e.g., very similar property requirements (covering site access and use restrictions); access to information; record retention; and community involvement. One significant change from the previous removal UAO is the addition of a Financial Assurance section. On April 6, 2015, this office issued new Financial Assurance and Enforcement/Work Takeover model language as well

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[2] See *Revisions to 2009 ARC Memo and Issuance of Revised CERCLA Past Cost, Peripheral, De Minimis, De Micromis, and Municipal Solid Waste Settlement Models* (9/26/14), available at http://www2.epa.gov/enforcement/guidance-revisions-2009-arc-memo-and-issuance-cercla-payment-models.

[3] See *Transmittal of Model Geospatial Data and Electronic Submission of Deliverables Language for Inclusion in CERCLA Statements of Work* (9/29/14), available at http://www2.epa.gov/enforcement/guidance-model-geospatial-data-language-use-cercla-sows.

[4] See *Issuance of 2014 CERCLA Model Remedial Design/Remedial Action Consent Decree and Statement of Work* (9/29/14), available at http://www2.epa.gov/enforcement/guidance-2014-cercla-rdra-cd-and-sow.

[5] Applicability of orphan share forgiveness to the removal context is explained in *Interim Guidance on Orphan Share Compensation for Settlors of Remedial Design/Remedial Action and Non-Time-Critical Removals* (6/3/96), available at http://www2.epa.gov/enforcement/guidance-orphan-share-compensation-rdra-and-non-time-critical-removal-settlors. See also *Model Language Relating to Orphan Share Compensation Through the Compromise of Future Oversight Costs* (9/28/2000), available at http://www2.epa.gov/enforcement/guidance-orphan-share-compensation-through-compromise-future-oversight-costs-model.

[6] See *supra*, n. 1.

as sample financial assurance mechanisms for use in UAOs.[1] The UAO being issued today incorporates that new model language. Recognizing that the UAO Financial Assurance section may not always be practical or needed in smaller removal actions, the section is presented as optional language in the UAO model. However, Regions are encouraged to incorporate the Financial Assurance section as often as possible, especially for larger removal actions, to ensure completion of the work.

Another significant change is the restructuring of the UAO models to place four related sections (Order, Opportunity to Confer, Effective Date, Notice of Intent to Comply) together consecutively toward the beginning of the UAO, instead of separated throughout the Order. In addition, changes have been made to several of these sections to address the process for modifying the UAO based on the conference or any written comments submitted by the UAO Respondents.

IV. CONTACTS

Please direct any questions about the ASAOC to Manuel Ronquillo of OSRE's Regional Support Division (RSD) at 202-564-6065 (ronquillo.manuel@epa.gov) and any questions about the UAO to Doug Dixon of RSD at 202-564-4232 (dixon.douglas@epa.gov).

V. DISCLAIMER

This memorandum and the documents referenced herein are intended as guidance for EPA employees. They are not rules and do not create any legal obligations. The extent to which EPA applies them in a particular case will depend on the facts of the case.

Attachments

cc: John Michaud, Acting Associate General Counsel, OGC/SWERLO
James Woolford, Director, OSWER/OSRTI
W. Benjamin Fisherow, Chief, Environmental Enforcement Section, DOJ
Lead Region Removal Attorneys Workgroup

[1] See *Guidance on Financial Assurance in Superfund Settlement Agreements and Unilateral Administrative Orders*, available at http://www2.epa.gov/enforcement/guidance-financial-assurance-superfund-settlements-and-orders. The attached sample FA mechanisms for use in connection with CERCLA settlement agreements and UAOs are available in Word format from the Financial Assurance categories of our Cleanup Models Database at http://cfpub.epa.gov/compliance/models/.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION ___

IN THE MATTER OF: [Site Name and Location] [Names of Respondents (if many, reference attached list)], Respondents 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	)	U.S. EPA Docket No. ____ CERCLA Docket No. ____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTIONS**

MODEL ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTIONS

September 2015

[NOTE: This model is suitable for time critical and non-time critical removal actions. Optional Institutional Controls and Orphan Share provisions are included at the end as Appendices A and B.]

This document contains automatic section and paragraph numbers, automatic section and paragraph cross references, and an automated Table of Contents. If you add or delete sections or paragraphs, please do not attempt to manually renumber any sections or paragraphs or cross references. Please see instructions at the end for more details.

This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.

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[**NOTE: Appendices may also be listed in this Table of Contents.**]

Appendix A – Optional Model Institutional Controls Language
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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 [**insert names or attach list of Respondents**] ("Respondents"). This Settlement provides for the performance of a removal action by Respondents and the payment of certain response costs incurred by the United States at or in connection with the "[**insert name**] Site" (the "Site") generally located at [**insert address or descriptive location of Site**] in [**City or Town, County, State**].

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, 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. [**insert if Paragraph 10.f endangerment determination included:** 14-14-A (Determinations of Imminent and Substantial Endangerment, Nov. 1, 2001),] 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). [**Insert if applicable:** This authority was further redelegated by the Regional Administrator of EPA Region __ to the _____ (**insert title of manager to whom delegation was made**) by (**insert numerical designations and dates of each Regional delegation**).]

3. EPA has notified the State [Commonwealth] of _____ (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 [heirs,] 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.

6. 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.

7. 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

[**NOTE: The following list of definitions may be reduced or expanded as appropriate.**]

8. 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:

["Action Memorandum"] ["Action Memorandum-Enforcement"] shall mean the EPA Action Memorandum relating to the Site signed on _____, by the Regional Administrator, EPA Region __, or his/her delegate, and all attachments thereto. The ["Action Memorandum"] ["Action Memorandum-Enforcement"] is attached as Appendix __.
[**NOTE: Hereinafter the model uses term "Action Memorandum."**]

[**NOTE: In the definition below, it is generally sufficient to describe the property using the street address or the tax parcel ID number, but you also may use the legal property description. Legal property descriptions can be lengthy. It is common in conveyance documents to include the legal property description in an attachment. If using a legal property description, it should be the kind found in a deed.**]

"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 removal action, including, but not limited to, the following properties [**insert property descriptions**].

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

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, 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 XXXII.

"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.

["_____" shall mean the [**insert name of State pollution control agency or environmental protection agency**] and any successor departments or agencies of the State.]

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing 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 [**if applicable:** 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 73 (Work Takeover), [**if Financial Assurance included:** Paragraph 97 (Access to Financial Assurance)], [**if Paragraph 22 included:** Paragraph 22 (Community Involvement Plan)] [**if Paragraph 22 not included:** community involvement] [**use in all cases:** (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 [**if Past Response Costs are being paid under the Settlement, also insert:** , all Interim Response Costs, and all Interest on those Past Response Costs Respondents have agreed to pay under this Settlement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from [**insert date identified in Past Response Costs definition**] to the Effective Date].

[NOTE: If including provisions for Respondents to prepay Future Response Costs in accordance with Paragraph 47 (Payments for Future Response Costs), add the following definition.]

["[**Site name**] Future Response Costs Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and Paragraph 47.a (Prepayment of Future Response Costs).]

"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 http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

[**NOTE: Insert the following definition if Past Response Costs are being paid under the Settlement.**]

["Interim Response Costs" shall mean all costs, including but not limited to direct and indirect costs, (a) paid by the United States in connection with the Site between [**insert date identified in Past Response Costs definition**] and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.]

[**NOTE: If including Paragraph 79.a(2) (MSW Waiver), insert the following definition.**]

["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 (1) is essentially the same as waste normally generated by a household; (2) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (3) 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.

[**NOTE: Include next definition if any "Affected Property" is owned or controlled by persons other than any Respondent.**]

["Non-Settling Owner" shall mean any person, other than a Respondent, that owns or controls any Affected Property, including [**insert names**]. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.]

[**NOTE: Include next definition if any "Affected Property" is owned or controlled by any Respondent.**]

["Owner Respondent" shall mean any Respondent that owns or controls any Affected Property, including [**insert names**]. 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.

[**NOTE: Insert the following definition if Past Response Costs are being paid under the Settlement.**]

[“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 [**insert date of most recent cost summary**], plus Interest on all such costs through such date.]

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

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

“Respondents” shall mean [**insert names of Respondents**] [**insert if applicable:** those Parties identified in Appendix __.]

“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 XXXI (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the _____ Superfund Site, encompassing approximately __ acres, located at [**address or description of location**] in [**insert name of City, County, State**] and depicted generally on the map attached as Appendix __.

[“[**Site name**] Special Account” shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and [**identify prior settlement under which EPA established the special account**].]

“State” [or “Commonwealth”] shall mean the State [or Commonwealth] of _____.

[“Statement of Work” or “SOW” shall mean the document describing the activities Respondents must perform to implement the removal action pursuant to this Settlement [, as set forth in Appendix __,] and any modifications made thereto in accordance with this Settlement.]

“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.

[NOTE: Substitute the following definition of “Tribe” for the definition of “State” if the Site is entirely on tribal land. Add a definition for “Tribe” in addition to the definition of “State” if both have a role at or interest in the Site. Additional changes will be needed throughout the Settlement to either add and/or substitute the Tribe for the State.]

[“Tribe” shall mean the ___ Tribe.]

“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); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any [“hazardous material”] under [**insert appropriate State statutory citation and “hazardous material” terminology**].

“Work” shall mean all activities and obligations Respondents are required to perform under this Settlement except those required by Section XI (Record Retention).

IV. FINDINGS OF FACT

[**NOTE: Because Findings of Fact are site-specific, no model language is provided. Facts should be presented concisely, accurately, and logically. Regions should include a discussion of the following points: identification of Respondents; Site location and description; Site history and operations; Site ownership; enforcement history; general categories of Respondents’ liability; past EPA and/or State activities and investigations; and conditions and data showing hazardous substances are present and releases or threats of releases exist. The Settlement need not contain a determination of endangerment if such a determination has been properly made and documented in an Action Memorandum in accordance with the “Superfund Removal Guidance for Preparing Action Memoranda” (September 2009), available at http://www2.epa.gov/emergency-response/superfund-removal-guidance-preparing-action-memoranda. If such a determination has not been made in an Action Memorandum, this Section should include data showing that the releases or threats of releases may present an imminent and substantial endangerment, e.g., exposure routes, risk assessment, affected populations, environmental harm, potential for fire or explosion, or other dangers, and should be supported by an administrative record. If such a determination has been made in an Action Memorandum (and is not being made in the Settlement as well), the date of the signing of the Action Memorandum should be included as a determination, and the Action Memorandum should be attached and incorporated by reference into the Settlement.**]

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The [**insert name**] 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 [a] “hazardous substance(s)” 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 responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). [**Regions should specify each category of liability under Section 107. For example:**

(1) Respondents [**insert names**] 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) Respondents [**insert names**] were the "owners" and/or "operators" 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).

(3) Respondents [**insert names**] arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

(4) Respondents [**insert names**] accept 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 [Paragraphs __ of] the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. [**Insert if endangerment determination is being made in the Settlement:** The conditions described in [Paragraphs __ of] the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).] [**Insert if endangerment determination has being made previously:** EPA determined in an Action Memorandum dated _____, that the conditions [at the Site] [described in [Paragraphs __ of] the Findings of Fact above] may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).]

g. The removal action 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

10. 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

11. Respondents shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) or subcontractor(s) within __ days after the Effective Date. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least __ 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 and qualifications within __ days after EPA's disapproval. [**NOTE: The following two sentences may be deleted if the removal work is being ordered under emergency circumstances or is non-complex. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from the OSC and Regional QA personnel to the Site file.**] 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 that such persons meet minimum technical background and experience requirements.

12. Within __ 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, 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. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, email address, and qualifications within __ 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. [**NOTE: If Respondents' Project Coordinator has been selected prior to signature of the Settlement, replace the first sentence with the following (and delete the third sentence):** Respondents have designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondents required by this Settlement: [**insert name, address, phone number, and email address**].]

13. EPA has designated _____ of the [**insert Regional Office, e.g., Emergency and Enforcement Response Branch, Region __**], as its On-Scene Coordinator (OSC) [**replace**

with "Remedial Project Manager" (RPM), as appropriate, here and throughout Settlement]. EPA and Respondents shall have the right, subject to Paragraph 13, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA __ days before such a change is made. The initial notification by Respondents may be made orally, but shall be promptly followed by a written notice.

14. 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, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

VIII. WORK TO BE PERFORMED

[**NOTE: This Section should provide a brief description consistent with the Action Memorandum and should provide sufficient detail to permit Respondents to draft a Removal Work Plan. Regions should ensure that the description is sufficiently broad and does not unintentionally limit the removal action in terms of hazardous substances to be addressed or to site boundaries if hazardous substances are present or migrate beyond boundaries to be addressed. Regions may append their own SOW or Removal Work Plan; if this situation occurs, modify Paragraph 18 as appropriate.**]

15. Respondents shall perform, at a minimum, all actions necessary to implement the [Action Memorandum] [SOW] [the following items]. The actions to be implemented generally include, but are not limited to, the following: _____.

16. 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.

17. Work Plan and Implementation.

a. Within __ days after the Effective Date, in accordance with Paragraph 19 (Submission of Deliverables), Respondents shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan") generally described in Paragraph 16 above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.]

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

c. Upon approval or approval with modifications of the Removal 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 [SOW] [Removal Work Plan] shall be reviewed and approved by EPA in accordance with this Paragraph.

[**NOTE: If a planning period of at least 6 months exists, EPA shall require the performance of an Engineering Evaluation/Cost Analysis (EE/CA) as required by the NCP at 40 C.F.R. § 300.415(b)(4). Early Site security requirements, if any, should be added to this Section.**]

18. 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 [**insert OSC's name, address, phone number, email**]. Respondents shall submit all deliverables required by this Settlement, [the attached SOW], 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 19.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. [**NOTE: If paper copies of specific deliverables (in addition to large exhibits) are needed, this paragraph should be edited accordingly.**]

b. Technical Specifications for Deliverables.

[**NOTE: The information in this paragraph is consistent with the EPA National Geospatial Data Policy 2008, which is under review and may be revised at any time. The case team should check http://www.epa.gov/geospatial/policies.html for the latest guidance on the policy and associated EPA and CERCLA procedures and technical specifications, including standards and quality assurance for geographic information system (GIS) deliverables.**]

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. [**Specify the EDD format that the Region uses.**] 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 [**or insert Regionally-preferred spatial file 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://edg.epa.gov/EME/.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult http://www.epa.gov/geospatial/policies.html 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.

19. Health and Safety Plan. Within __ days after the Effective Date, 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 http://www.epa.gov/nscep/index.html, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at http://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. [**NOTE: Regions may provide more detail, e.g., evacuation plans, etc.**] Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

20. Quality Assurance, Sampling, and Data Analysis.

a. 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. [**NOTE: EPA shall require preparation of a Quality Assurance Project Plan (QAPP) as part of the Work Plan except in circumstances involving emergency or non-complex Work.**] Sampling and Analysis Plan. Within ___ days after the Effective Date, 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 [SOW] [Removal 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 [and State] personnel and its [their] 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 EPA's "Field Operations Group Operational Guidelines for Field Activities" (http://www.epa.gov/region8/qa/FieldOperationsGroupOperationalGuidelinesForFieldActivities.pdf) and "EPA QA Field Activities Procedure" (http://www.epa.gov/irmpoli8/policies/2105-p-02.pdf). 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" (http://www.epa.gov/fem/pdfs/fem-lab-competency-policy.pdf) 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/superfund/programs/clp/), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www.epa.gov/ttnamti1/airtox.html)."

d. However, upon approval by EPA [, after a reasonable opportunity for review and comment by the State], 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 (http://www.epa.gov/fem/accredit.htm) 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 [and the State] or its [their] authorized representatives. Respondents shall notify EPA [and the State] not less than [7] days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA [and the State] shall have the right to take any additional samples that EPA [or the State] deem[s] necessary. Upon request, EPA [and the State] shall provide to Respondents split or duplicate samples of any samples it [they] take[s] 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.

[NOTE: Insert optional Paragraph 22 if required by 40 C.F.R. § 300.415(n)(3) and applicable guidance]

21. [Community Involvement Plan. EPA will prepare a community involvement plan, in accordance with EPA guidance and the NCP. If requested by EPA, 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 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.]

22. [Post-Removal Site Control. In accordance with the Removal Work Plan schedule, or as otherwise directed by EPA, Respondents shall submit a proposal for Post-Removal Site Control which shall include, but not be limited to: [**insert list of applicable post-removal site controls**]. Upon EPA approval, Respondents shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondents shall provide EPA with documentation of all Post-Removal Site Control commitments.]

23. Progress Reports. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement on a [monthly/weekly] basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Removal Work Plan 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. [**NOTE: The frequency and content of these reports may be determined on a site-specific basis.**]

24. Final Report. Within __ days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 104 (notice of completion), Respondents shall submit for EPA review [and approval] a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." [**NOTE: For removals that are more extensive, Regions may require compliance with "Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994).**] The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, 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 responsible corporate official of a Respondent or Respondents' Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than 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."

25. Off-Site Shipments.

a. Respondents may ship hazardous substances, pollutants and contaminants 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 the removal action 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

[NOTE: Here and in other places in this Section, optional text to be used if there is an Owner Respondent is set off in brackets.]

26. 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 [**if Owner Respondent:** , and Owner Respondent shall, with respect to Owner Settling Respondent's Affected Property]: (i) provide the EPA [, the State,] 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 27.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 removal action [**use if applicable**: , including the restrictions listed in Paragraph 27.b (Land, Water, or Other Resource Use Restrictions)].

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

[NOTE: Augment this list as appropriate.]

(1) Monitoring the Work;

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

(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 provided in the SOW] [**if QAPP is required by Removal Work Plan insert:** as defined in the approved QAPP];

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 73 (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.

[NOTE: Include Paragraph 27.b if land, water, or other resource use restrictions are needed.]

b. Land, Water, or Other Resource Use Restrictions. The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

[NOTE: Customize and augment this list as appropriate. Be as specific as possible.]

(1) Prohibiting the following activities which could interfere with the removal action: _____;

(2) Prohibiting use of contaminated groundwater;

(3) Prohibiting the following activities which could result in exposure to contaminants in subsurface soils and groundwater:_____;

(4) Ensuring that any new structures on the Affected Property will not be constructed in the following manner which could interfere with the removal action: _____; and

(5) Ensuring that any new structures on the Affected Property will be constructed in the following manner which will minimize potential risk of inhalation of contaminants:_____.]

27. 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).

[**NOTE: Include Paragraph 29 if there is an Owner Respondent.**]

28. Owner Respondent shall not Transfer its Affected Property unless it has first secured EPA's approval of, and transferee's consent to, an agreement that: (i) is enforceable by Respondents and EPA; and (ii) requires the transferee to provide access to and refrain from using the Affected Property to the same extent as is provided under Paragraphs 27.a (Access Requirements) and 27.b (Land, Water, or Other Resource Use Restrictions).

29. 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 [and the State's] efforts to secure and ensure compliance with such institutional controls.

30. 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.

31. [**Insert if needed:** Notice to Successors-in-Title.

a. Owner Respondent shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding Owner Respondent's Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title that: (i) the Affected Property is part of, or related to, the Site; (ii) EPA has selected a removal action for the Site; and (iii) potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of that removal action; and (3) identify the name, docket number, and effective date of this Settlement. Owner Respondent shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Owner Respondent shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a removal action regarding the Site, that potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of such removal action, (identifying the name, docket number, and the effective date of this Settlement); and

(2) Notify EPA [and the State] of the name and address of the proposed transferee and provide EPA [and the State] with a copy of the above notice that it provided to the proposed transferee.]

32. Notwithstanding any provision of the Settlement, EPA [and the State] retain[s] all of its [their] access authorities and rights, as well as all of its [their] 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

33. Respondents shall provide to EPA [and the State], 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. Respondents shall also make available to EPA [and the State], for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

34. Privileged and Protected Claims.

a. Respondents may assert all or part of a Record requested by EPA [or the State] is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 35.b, and except as provided in Paragraph 35.c.

b. If Respondents assert such a privilege or protection, they shall provide EPA [and the State] 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 [and the State] 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 [and the State] has [have] 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.

35. Business Confidential Claims. Respondents may assert that all or part of a Record provided to EPA [and the State] 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 submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA [and the State], 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.

36. Notwithstanding any provision of this Settlement, EPA [and the State] retain[s] all of its [their] 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

37. Until ten (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.

38. At the conclusion of the document retention period, Respondents shall notify EPA [and the State] at least 90 days prior to the destruction of any such Records, and, upon request by EPA [or the State], and except as provided in Paragraph 35 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA [or the State].

39. 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

40. 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. § 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 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. [Respondents shall identify ARARs in the Removal Work Plan subject to EPA approval.]

41. 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

42. 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 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 [**insert Regional spill phone number**] 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).

43. 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 [**insert Regional spill phone number**], 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(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.

44. 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

45. [Payment for Past Response Costs.

a. Within 30 days after the Effective Date, Respondents shall pay to EPA $___ for Past Response Costs. Respondents shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

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

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

[**NOTE: Regions may substitute the following for payment by Automated Clearinghouse (ACH) or for online payment:**

For ACH payment:

Respondents shall make payment to EPA by Automated Clearinghouse (ACH) to:

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

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

For online payment:

Respondents shall make payment at https://www.pay.gov to the U.S. EPA account in accordance with instructions to be provided to Respondents by EPA.]

[**NOTE: If Respondents have difficulty making EFT, ACH, or online payments, you may substitute the following:** Respondents shall make payment by official bank check made payable to "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, Site/Spill ID Number ____, and the EPA docket number for this action, and shall be sent to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000]

b. At the time of payment, Respondents shall send notice that payment has been made to [**insert name and address of OSC or other receiving official in Region**], 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 _____ and the EPA docket number for this action.

[**NOTE ON SPECIAL ACCOUNTS: The Settlement should specify whether payments for Past Response Costs (if any) and Future Response Costs should be deposited in the EPA Hazardous Substance Superfund or in a site-specific special account within the EPA Hazardous Substance Superfund, or should be split between the Superfund and the Special Account (and should specify the split).**]

c. Deposit of Past Response Costs Payments. [**Insert one of the following three sentences here.**] [The total amount to be paid by Respondents pursuant to Paragraph 46.a shall be deposited by EPA in the EPA Hazardous Substance Superfund.] [The total amount to be paid by Respondents pursuant to Paragraph 46.a shall be deposited by EPA in the [**Site name**] 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.] [Of the total amount to be paid by Respondents pursuant to Paragraph 46.a, ["$____" or "___%"] shall be deposited by EPA in the EPA Hazardous Substance Superfund and ["$____" or "___%"] shall be deposited by EPA in the [**Site name**] 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.]

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

[**NOTE ON USE OF PREPAID FUTURE RESPONSE COSTS SPECIAL ACCOUNTS: Keep Paragraphs 47.c (Periodic Bills) and 47.d (Deposit of Future Response Costs Payments) in all Settlements. If Respondents will be prepaying any part of EPA's Future Response Costs, also keep Paragraphs 47.a (Prepayment of Future Response Costs), 47.b (Shortfall Payments), and 47.e (Unused Amount). (Note that Paragraph 47.b (Shortfall Payments) is an optional provision for replenishment of the Future Response Costs Special Account in the event of a shortfall in the prepayment.) For an explanation of prepaid accounts, including when prepayment is appropriate, see "Additional Guidance on Prepayment of Oversight Costs and Special Accounts" (Dec. 22, 2006), available at http://www2.epa.gov/enforcement/guidance-prepayment-oversight-costs-and-special-accounts.**]

a. [Prepayment of Future Response Costs. Within 30 days after the Effective Date, Respondents shall pay to EPA $ _____ as a prepayment of [**if the Paragraph 47.b (Shortfall Payments) optional provision for replenishment is used substitute**: as an initial payment toward] Future Response Costs. Respondents shall make payment in accordance with Paragraphs 46.a and 46.b (Payment for Past Response Costs). The total amount paid shall be deposited by EPA in the [**Site name**] Future Response Costs Special Account. These funds shall be retained and used by EPA to conduct or finance future response actions at or in connection with the Site. [**NOTE: If Past Response Costs are not being paid, insert Paragraphs 46.a and 46.b payment instructions here.**]

[NOTE: Paragraph 47.b (Shortfall Payments) is an optional provision for replenishment of the Future Response Costs Special Account in the event of a shortfall in the prepayment.]

b. Shortfall Payments. If at any time prior to the date EPA sends Respondents the first bill under Paragraph 47.c (Periodic Bills), or one year after the Effective Date, whichever is earlier, the balance in the [**Site name**] Future Response Costs Special Account falls below $ _____, EPA will so notify Respondents. Respondents shall, within 30 days after receipt of such notice, pay $ _____ to EPA. Payment shall be made in accordance with Paragraphs 46.a and 46.b (Payment for Past Response Costs). The amounts paid shall be deposited by EPA in the [**Site name**] Future Response Costs Special Account. These funds shall be retained and used by EPA to conduct or finance future response actions at or in connection with the Site.

c. Periodic Bills. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a [**insert name of standard Regionally-prepared cost summary**], which includes 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 49 (Contesting Future Response Costs), and in accordance with

Paragraphs 46.a and 46.b (Payments for Past Response Costs). [**NOTE: If neither Past Response Costs nor Prepaid Future Response Costs are being paid, insert Paragraphs 46.a and 46.b payment instructions here.**]

d. Deposit of Future Response Costs Payments. [**Insert one of the following three sentences here.**] [The total amount to be paid by Respondents pursuant to Paragraph 47.c (Periodic Bills) shall be deposited by EPA in the EPA Hazardous Substance Superfund.] [The total amount to be paid by Respondents pursuant to Paragraph 47.c (Periodic Bills) shall be deposited by EPA in the [**Site name**] 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 [**Site name**] 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.] [Of the total amount to be paid by Respondents pursuant to Paragraph 47.c (Periodic Bills), ["$____" or "___%"] shall be deposited by EPA in the EPA Hazardous Substance Superfund and ["$____" or "___%"] shall be deposited by EPA in the [**Site name**] 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 the entire amount of the Future Response Cost payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the [**Site name**] 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.] [**If second or third sentence is used:** 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.]

e. Unused Amount. After EPA issues the Notice of Completion of Work pursuant to Paragraph 104 and a final accounting of the [**Site name**] Future Response Costs Special Account (including crediting Respondents for any amounts received under Paragraphs 47.a (Prepayment of Future Response Costs) [, 47.b (Shortfall Payments),] or 47.c (Periodic Bills), EPA will [**choose one or more of the following three clauses**: "offset the next[1] Future Response Costs bill by the unused amount paid by Respondents pursuant to Paragraphs 47.a (Prepayment of Future Response Costs) [, 47.b (Shortfall Payments),] or 47.c (Periodic Bills);" "apply any unused amount paid by Respondents pursuant to Paragraphs 47.a (Prepayment of Future Response Costs) [, 47.b (Shortfall Payments),] or 47.c (Periodic Bills) to any other unreimbursed response costs or response actions remaining at the Site;" or "remit and return to Respondents any unused amount of the funds paid by Respondents pursuant to Paragraphs 47.a (Prepayment of Future Response Costs) [, 47.b (Shortfall Payments),] or 47.c (Periodic Bills)."] [**If the second clause is chosen, insert**: Any decision by EPA to apply unused amounts to unreimbursed response costs or response actions remaining at the Site shall not be subject to

[1] If the removal action is complete at the time of the final accounting (because no post-removal site controls, land, water, or other resource use restrictions, or other continuing obligations that may require EPA oversight or other enforcement actions within the definition of "Future Response Costs" are required or may arise), in the "offset" clause, use "final" instead of "next."

challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.]

47. Interest. In the event that any payment for [**if applicable:** Past Response Costs or] Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. [**If applicable:** The Interest on [Past Response Costs] [and] [prepaid Future Response Cost] shall begin to accrue on the Effective Date. The Interest on [**if prepaid Future Response Costs:** all subsequent] Future Response Costs shall begin to accrue on the date of the bill [**if prepaid Future Response Costs:** or on the date of the prepayment shortfall notice pursuant to Paragraph 47.b]. 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 Paragraph 60 (Stipulated Penalties - Work).

48. Contesting Future Response Costs. Respondents may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 47 (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 47, 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 47. 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 47. 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 regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

[**NOTE: The Regions should develop a record for the dispute and its resolution.**]

49. 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.

50. 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 __ days after such action. EPA and Respondents shall have __ 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.

51. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within [20] days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within [20] days thereafter, submit a statement of position. Thereafter, an EPA management official at the [**insert Region-specific**] 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.

52. Except as provided in Paragraph 49 (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 63, 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

53. "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 [**insert, if applicable:** , or a failure to attain [performance standards] set forth in the Action Memorandum].

54. 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 Waste Management Division, EPA Region __, within [**insert period of time**] of when Respondents first knew that the event might cause a delay. Within __ days thereafter, Respondents 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 54 and whether Respondents have exercised their best efforts under Paragraph 54, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

55. 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.

56. 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 54 and 55. 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.

57. 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

58. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 60 and 61 for failure to comply with the requirements of this Settlement specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Respondents shall include completion of all activities and obligations, including payments, required under this Settlement, or any deliverable approved under this Settlement, in accordance with all applicable requirements of law, this Settlement, [the attached SOW,] and any deliverables approved under this Settlement and within the specified time schedules established by and approved under this Settlement.

59. Stipulated Penalty Amounts - Work (Including Payments and Excluding Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 60.b:

Penalty Per Violation Per Day	Period of Noncompliance
$_____	1st through 14th day
$_____	15th through 30th day
$_____	31st day and beyond

b. Compliance Milestones. [**List violations or compliance milestones, including due dates for payments and for establishing escrow accounts to hold disputed Future Response Costs. Include the following milestone if Section XXV (Financial Assurance) is included in the Settlement:** Establishment and maintenance of financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XXV (Financial Assurance).]

60. Stipulated Penalty Amounts - Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement:

Penalty Per Violation Per Day	Period of Noncompliance
$_____	1st through 14th day
$_____	15th through 30th day
$_____	31st day and beyond

61. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 73 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of _____. [**Include the following sentence if Section XXV (Financial Assurance) is included in the Settlement:** "Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 73 (Work Takeover) and 97 (Access to Financial Assurance).]

62. 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 18 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the [**insert Region specific**] level or higher, under Paragraph 52 (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.

63. 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.

64. 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 47 (Payments for Future Response Costs).

65. 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 63 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 65 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.

66. 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.

67. 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 73 (Work Takeover).

[**NOTE: A provision for EPA to elect between seeking stipulated and statutory penalties for a particular Settlement violation may be substituted in the paragraph above in appropriate cases by changing "for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation" to "for any violation for which a stipulated penalty is collected pursuant to this Settlement."**]

68. 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

69. 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 [**if addressed:** , Past Response Costs,] 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

70. 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.

71. 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[s] of [**if addressed:** Past Response Costs or] 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.

72. 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 3 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 3-day notice period specified in Paragraph 73.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 73.b. [**Include the following sentence if Section XXV (Financial Assurance) is included in the Settlement:** Funding of Work Takeover costs is addressed under Paragraph 97 (Access to Financial Assurance).]

c. Respondents may invoke the procedures set forth in Paragraph 52 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 73.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 73.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 52 (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

73. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, [Past Response Costs,] Future Response Costs, 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, [**if addressed:** , Past Response Costs,] 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 [State] Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

[**NOTE: If the Settlement contains a Future Response Cost prepayment provision under which Respondents may receive a return of unused amounts under option 3 of Paragraph 47.e (Unused Amount), include Paragraph 74.d.**]

d. [any direct or indirect claim for return of unused amounts from the [**Site name**] Future Response Costs Special Account, except for unused amounts that EPA determines shall be returned to Respondents in accordance with Paragraph 47.e (Unused Amount).]

74. Except as provided in Paragraph 79 (Waiver of Claims by Respondents), 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 72.a (liability for failure to meet a requirement of the Settlement), 72.d (criminal liability), or 72.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.

75. 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).

76. 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.

[**NOTE: Insert the following paragraph if remedial action and NPL listing are anticipated at the Site.**]

77. [Respondents agree not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.]

78. Waiver of Claims by Respondents.

a. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) De Micromis Waiver. For all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

[**NOTE: Use next paragraph if there is MSW at the Site.**]

(2) [MSW Waiver. For all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of 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; and]

[**NOTE: Use the next paragraph if there are known or potential *de minimis* and/or ability to pay (ATP) parties at the Site. Include bracketed reference to *de minimis* party settlement, ATP party settlement, or both as appropriate given Site facts. Use the bracketed "[or in the future enters]" if there are known or potential *de minimis* and/or ATP PRPs with whom the United States has not yet settled. Note that inclusion of the future component of the waiver does not affect Respondents' right to oppose entry of any such future settlement through the public comment process and does not have any effect unless and until the United States enters into any such future settlement. The scope of the waiver should generally track the scope of the "matters addressed" in the contribution provision of the concluded *de minimis* or ATP settlement. Normally, this means that the scope will be "response costs" as included below. However, if the settlement included natural resource damages, also include "natural resource damages and assessment costs," and if the settlement was not site-wide, limit the scope as appropriate. Also, if the "[or in**

the future enters]" bracket is used and the scope of the future settlement is likely to be different from the past settlement(s), redraft as necessary.]

(3) [*De Minimis*/Ability to Pay Waiver. For response costs relating to the Site against any person that has entered [or in the future enters] into [a final Section 122(g) *de minimis* settlement] [, or] [a final settlement based on limited ability to pay] [,] with EPA with respect to the Site.]

b. Exceptions to Waiver[s].

(1) The waiver[s] under this Paragraph 79 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waiver[s] if such person asserts a claim or cause of action relating to the Site against such Respondent.

[**NOTE: If a Respondent asserts that it has a claim against a PRP within the scope of the waiver[s] that is unrelated to the PRP's CERCLA liability at the Site, e.g., a claim for contractual indemnification, add an exception for such claim, such as the following:**

(2) [The waiver[s] under this Paragraph 79 shall not apply to Respondent [**insert name]**'s contractual indemnification claim against [**insert name**].]

(3) The waiver under Paragraph 79.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

(4) [The waiver under Paragraph 79.a(2) (MSW Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

XXI. OTHER CLAIMS

79. 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.

80. Except as expressly provided in Paragraphs 79 (Waiver of Claims by Respondents) and 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.

81. 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

82. Except as provided in Paragraphs 79 (Waiver of Claims by Respondents), 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).

83. 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 [**if addressed:** , Past Response Costs,] and Future Response Costs.

84. 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).

85. 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.

86. 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).

[**NOTE: Include Paragraph 88 if Past Response Costs are being paid under the Settlement.**]

87. [Effective upon signature of this Settlement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Respondent the payment(s) required by Paragraphs 46 (Payment for Past Response Costs) and, if any, Section XVII (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 84 and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondents that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.]

XXIII. INDEMNIFICATION

88. 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.

89. 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.

90. 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

91. No later than __ 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 $___ million, for any one occurrence, and automobile insurance with limits of $___ million, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the 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.

XXV. FINANCIAL ASSURANCE

[**NOTE: When determining whether to include this Section in the Settlement or whether to modify it to limit the form of the financial assurance (formerly known as a performance guarantee) to certain mechanisms, case teams should consider the facts and circumstances of each case, including but not limited to: the estimated cost of Work to be performed, the estimated time to complete the Work, the nature and extent of contamination at the Site, whether the financial assurance can be secured before commencement of the Work, the industry sectors in which Respondents operate, and the financial health of Respondents. Case teams are encouraged to include this Section for the more costly and time-consuming removal actions. When this Section is included in the Settlement, case teams should examine the form and substance of all financial assurance mechanisms submitted by**

Respondents, both initially and over time, to ensure consistency and compliance with this Section (e.g., case teams should ensure that entities providing a demonstration or guarantee pursuant to Paragraph 93.e or 93.f have: (a) submitted all required documentation so that EPA can determine whether such financial assurance is adequate; and (b) fully and accurately reflected in their submission all of their financial assurance obligations (under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) to the United States or other governmental entities so all such obligations have been properly accounted for in determining whether such entity meets the financial test criteria). If a Respondent is a municipality or if case teams have financial assurance questions, contact financial assurance team members within the Office of Site Remediation Enforcement.]

92. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of $[_____] ("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 the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at http://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 one or more Respondents that each such Respondent meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for 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

f. A guarantee to fund or perform the Work executed in favor of EPA by one of the following: (1) a direct or indirect parent company of a Respondent; or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; provided, however, that any company providing such a guarantee must demonstrate

to EPA's satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for 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.

93. [**If the case team and the Respondents have already negotiated the form of the Financial Assurance, use this text**: Respondents have selected, and EPA has found satisfactory, as an initial financial assurance a [**insert type**] in the form attached as Appendix __. Within 30 days after the Effective Date, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the form of financial assurance attached as Appendix __]

[**Otherwise, use this text**: Respondents have selected, and EPA has found satisfactory, as an initial financial assurance a [**insert type**] prepared in accordance with Paragraph 93. Within 30 days after the Effective Date, or 30 days after EPA's approval of the form and substance of Respondents' financial assurance, whichever is later, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance]

[**Keep following text with either option**] and shall submit such mechanisms and documents to the [**insert "Regional Financial Management Officer" or an alternative recipient such as "Regional financial assurance specialist"**] at [**insert address**].

94. If Respondents provide financial assurance by means of a demonstration or guarantee under Paragraph 93.e or 93.f, the affected Respondents shall also comply and shall ensure that their guarantors comply with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including, but not limited to: (a) the initial submission to EPA of required documents from the affected entity's chief financial officer and independent certified public accountant no later than 30 days after the Effective Date; (b) the annual resubmission of such documents within 90 days after the close of each such entity's fiscal year; and (c) the notification of EPA no later than 30 days, in accordance with Paragraph 96, after any such entity determines that it no longer satisfies the relevant financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). Respondents agree that EPA may also, based on a belief that an affected entity may no longer meet the financial test requirements of Paragraph 93.e or 93.f, require reports of financial condition at any time from such entity in addition to those specified in this Paragraph. For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (2) the phrase "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" includes the sum of all environmental obligations (including obligations under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work under this Settlement; (3) the terms "owner" and "operator" include each Respondent making a demonstration or obtaining a guarantee under Paragraph 93.e or 93.f; and (4) the terms "facility" and "hazardous waste management facility" include the Site.

95. 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 98 (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 and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Settlement, including, without limitation, the obligation of Respondents to complete the Work in accordance with the terms of this Settlement.

[NOTE REGARDING PARAGRAPH 97 (Access to Financial Assurance): Case teams should make sure that the "trigger" for obtaining funds and/or work under the financial assurance mechanism is consistent with the trigger in the Settlement, e.g., if the Settlement allows EPA to access the funds in the event of a Work Takeover or a Respondent's failure to provide alternative financial assurance 30 days prior to an impending mechanism cancellation, the mechanism should contain equivalent language.]

96. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 73.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 97.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such 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 97.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 73, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is provided under Paragraph 93.e or 93.f, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within __ days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 97 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA 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 [**Site name**] 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 97 must be reimbursed as Future Response Costs under Section XIV (Payments for Response Costs).

97. 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 in accordance with Paragraph 94, 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 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). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision 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 94.

98. 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

99. The OSC may modify any plan or schedule [or SOW] 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.

100. If Respondents seek permission to deviate from any approved work plan or schedule [or the SOW], 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 100.

101. 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

102. [If EPA determines that additional removal actions not included in the Removal Work Plan or other approved plan(s) are necessary to protect public health, welfare, or the environment, [**optional:** "and such additional removal actions are consistent with the [**insert same language used in Paragraph 16, i.e.:** [Action Memorandum] [SOW] [the following items]",] 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 18 (Work Plan and Implementation), Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modification).]

XXVIII. NOTICE OF COMPLETION OF WORK

103. 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, including [**insert list of such obligations, e.g., Post-Removal Site Controls, land, water, or other resource use restrictions, payment of Future Response Costs, or record retention**], 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 Removal Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Removal Work Plan shall be a violation of this Settlement.

XXIX. [PUBLIC COMMENT]

[**NOTE: Include this Section if any response costs are compromised under Section XIV (Payment of Response Costs) or this Settlement.**]

104. [Final acceptance by EPA of Paragraph __ (insert paragraph title) [**insert paragraph number within Section XIV that addresses the costs, if any, that are being**

compromised, or, if in the highly unusual event that either all Past Response Costs or all Future Response Costs are being compromised for, e.g., orphan share compensation, insert instead: "Final acceptance by EPA of the [Past Response Costs] [Future Response Costs] [Past Response Costs and Future Response Costs] compromise included in this Settlement"] shall be subject to Section 122(i) of CERCLA, 42 U.S.C.§ 9622(i), which requires 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. EPA may withhold consent from, or seek to modify, all or part of Section XIV (Payment of Response Costs) of this Settlement if comments received disclose facts or considerations that indicate that Section XIV of this Settlement is inappropriate, improper, or inadequate. Otherwise, Section XIV shall become effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XIV of this Settlement.]

XXX. [ATTORNEY GENERAL APPROVAL]

[**NOTE: This Section should be used if Attorney General approval is required for Section XIV (Payment of Response Costs) or this Settlement because total past and projected response costs of the United States at the Site will exceed $500,000, excluding interest, and the Settlement compromises a claim for past or future costs. If Attorney General approval is required, the Region should consult with DOJ during the negotiations process and obtain written DOJ approval before publishing notice of the proposed cost compromise in the Federal Register. If the Settlement compromises a claim, but Attorney General approval is not required because total response costs are not expected to exceed $500,000, excluding interest, insert a finding of fact in Section IV above stating that: The Regional Administrator of EPA Region __, or [his/her] delegatee, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed $500,000, excluding interest.**]

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

XXXI. INTEGRATION/APPENDICES

106. This Settlement [and its appendices] constitute[s] 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 _" is the Action Memorandum.]

b. ["Appendix _" is the complete list of Respondents.]

c. "Appendix _" is the description and/or map of the Site.

d. [“Appendix _” is the SOW.]

e. [“Appendix _” is the draft form of Proprietary Controls.]

f. [“Appendix _” is the financial assurance.].]

XXXII. EFFECTIVE DATE

107. [**NOTE: Regions may insert specific practice and language.**] This Settlement shall be effective __ days after the Settlement is signed by the Regional Administrator or his/her delegatee [**if the Settlement includes a cost compromise, include the following:** , with the exception of Paragraph __ (**insert paragraph title**) [**insert paragraph number within Section XIV that addresses the costs, if any, that are being compromised**] [**if either all Past Response Costs or all Future Response Costs are being compromised (and, therefore, there is no paragraph within the payment provision to reference) insert instead:** , with the exception of the [Past Response Cost] [Future Response Cost] compromise included in this Settlement], which shall be effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from [Paragraph __ (insert paragraph title)] [the [Past Response Cost/Future Response Cost] compromise included within this Settlement.] [**NOTE: The notice sent after the comment period, if one is required, should inform Respondents that payment is now due in accordance with Paragraph 46.a (Payment for Past Response Costs) [and Paragraph 47.a (Prepayment of Future Response Costs), if applicable].**]

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____ _____

Dated [Name]
Regional Administrator (or designee/delegatee), Region __

Signature Page for Settlement Regarding _____ Superfund Site

FOR _____:
[Print name of Respondent]

_____
Dated

_____
[Name]
[Title]
[Company]
[Address]

[NOTE: A separate signature page is required for each settlor.]

Appendix A – Optional Model Institutional Controls Language

[NOTE: If Proprietary Controls (PCs) have been selected in the Action Memorandum for the removal action, follow the instructions below to: 1) modify definitions of "Affected Property" and "Future Response Costs;" 2) add definitions for "Institutional Controls" (ICs) and "Proprietary Controls" (PCs); and 3) add or modify Section IX (Property Requirements) as specified below.]

1. Modify "Affected Property" definition as follows

"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, and/or Institutional Controls are needed to implement the removal action, including, but not limited to, the following properties [**insert property descriptions**].

2. Modify lines 7-8 of "Future Response Costs" definition, as follows

". . . [**if applicable:** or land, water, or other resource use restrictions, and/or to secure, implement, monitor, maintain, or enforce ICs]."

3. Add new definitions for "Institutional Controls" and "Proprietary Controls" (and capitalize "Institutional Controls" throughout the Settlement)

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

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

4. Modify Paragraph 27.a(11) as follows

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

5. Insert the paragraph below immediately after Paragraph 27 of the Settlement. (Paragraph numbers will automatically renumber when text is moved.) If implementation, maintenance, and enforcement of PCs is likely to be complicated or time-consuming, it is recommended that they be implemented pursuant to an "Institutional Controls Implementation and Assurance Plan" (ICIAP) as part of the SOW, rather than under the Property Requirements Section, and that the paragraph below be omitted. The OSC may consider including Paragraph 109's provisions in the

ICIAP, including the requirement to use best efforts (as defined in Paragraph 28) to secure Non-Settling Owner's cooperation in executing and recording PCs.

108. Proprietary Controls. Respondents shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure Non-Settling Owner's cooperation in executing and recording [; and Owner Respondent shall, with respect to Owner Respondent's Affected Property, execute and record], in accordance with the procedures of this Paragraph 109, Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Settlement, including those activities listed in Paragraph 27.a (Use Restrictions); and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in Paragraph 27.b (Land, Water, or Other Resource Use Restrictions).

a. Grantees. The Proprietary Controls must be granted to one or more of the following persons and their representatives, as determined by EPA: the United States, the State, Respondents, Owner Respondent, if any, and other appropriate grantees. Proprietary Controls in the nature of a Uniform Environmental Covenants Act (UECA) document granted to persons other than the United States must include a designation that [**for UECA states:** EPA (and/or the State as appropriate) is either an "agency" or a party] [**for non-UECA states:** EPA (and/or the State as appropriate) is a "third-party beneficiary"] expressly granted the right of access and the right to enforce the covenants allowing EPA [and/or the State] to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

[NOTE: "Agency" is a defined term in the statutes of states that have adopted UECA. For UECA states that have defined "agency" to exclude EPA (such as Delaware) and non-UECA states, the case team can usually substitute the term "third-party beneficiary." However, the case team should review state law to make sure that the term used will ensure that the United States will acquire the rights it needs, i.e., access and rights to enforce land use restrictions that are not real property interests, but that, similar to real property interests, run with the land and are enforceable against both present and future owners. For more specific information, see "Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls" (Apr. 19, 2004), available at http://www2.epa.gov/enforcement/guidance-third-party-beneficiary-rights-proprietary-institutional-controls.]

[NOTE: PCs should be prepared so that the United States does not acquire an interest in real property. PCs, however, may be prepared in a way that gives the United States, and perhaps others, rights, such as the right to enforce PCs that are defined as not being an interest in real property (as is often the structure found in state versions of UECA, and as may be the effect in non-UECA instruments designating the United States, and perhaps others, as "third-party beneficiaries"). For this reason EPA should conduct its own title review. The interest EPA acquires is not an interest in real property by definition in UECA, but it functions like an interest in real property, so it is essential that a title review be conducted to determine that the rights have been properly created so as to be enforceable under the applicable state UECA law, and so that liens and encumbrances that could defeat or interfere with the EPA interest are identified and released, subordinated, or otherwise addressed prior to EPA acquiring its interest.]

b. Initial Title Evidence. Respondents shall, within [45] days after the Effective Date:

(1) Record Title Evidence. Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names EPA, the State, the Respondents, or "To Be Determined;" (ii) covers the Affected Property that is to be encumbered; (iii) demonstrates that the person or entity that will execute and record the Proprietary Controls is the owner of such Affected Property; (iv) identifies all record matters that affect title to the Affected Property, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, "Prior Encumbrances"); and (v) includes complete, legible copies of such Prior Encumbrances; and

(2) Non-Record Title Evidence. Submit to EPA a report of the results of an investigation, including a physical inspection of the Affected Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

[NOTE: For general guidance on both record and non-record forms of title evidence acceptable to the United States, see the U.S. Department of Justice Title Standards 2001, available at http://www.justice.gov/enrd/Current_topics.html.]

c. Release or Subordination of Prior Liens, Claims, and Encumbrances.

(1) Respondents shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Affected Property revealed by the title evidence or otherwise known to any Respondent, unless EPA waives this requirement as provided under Paragraphs 109.c(2)-(4).

(2) Respondents may, by the deadline under Paragraph 109.b (Initial Title Evidence), submit an initial request for waiver of the requirements of Paragraph 109.c(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights to be granted by the Proprietary Controls and cannot interfere with the removal action or result in unacceptable exposure to Waste Material.

(3) Respondents may, within [90] days after the Effective Date, or if an initial waiver request has been filed, within [45] days after EPA's determination on the initial waiver request, submit a final request for a waiver of the requirements of Paragraph 109.c(1) regarding any particular Prior Encumbrance on the grounds that Respondents could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

[NOTE: Paragraph 109.c provides for an "initial" waiver request that addresses the issue of whether the Prior Encumbrance can adversely affect the PC, and then a "final" waiver request that addresses the issue of whether Respondents used best efforts. This is intentional and is for the purpose of streamlining and expediting the process. If the Respondents demonstrate to EPA that a particular Prior Encumbrance will not adversely affect the PC, then Respondents do not need to expend further time and effort to secure the release of such Prior Encumbrance.]

(4) The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.

(5) Respondents shall complete their obligations under Paragraph 109.c(1) regarding all Prior Encumbrances: within [180] days after the Effective Date; or if an initial waiver request has been filed, within [135] days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within [90] days after EPA's determination on the final waiver request.

d. Update to Title Evidence and Recording of Proprietary Controls.

(1) Respondents shall submit to EPA for review and approval, by the deadline specified in Paragraph 109.c(5), all draft Proprietary Controls and draft instruments addressing Prior Encumbrances. [The Proprietary Controls must be in substantially the form attached hereto as Appendix __.]

(2) Upon EPA's approval of the proposed Proprietary Controls and instruments addressing Prior Encumbrances, Respondents shall, within [15] days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under Paragraph 109.b (Initial Title Evidence). If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Respondents shall secure the immediate recordation of the Proprietary Controls and instruments addressing Prior Encumbrances in the appropriate land records. Otherwise, Respondents shall secure the release, subordination, modification, or relocation under Paragraph 109.c(1), or the waiver under Paragraph 109.c(2)-(4), regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Proprietary Controls and instruments addressing Prior Encumbrances.

[NOTE: The appropriate land records are most commonly in the county(ies) where the Affected Property is located.]

(3) If Respondents submitted a title insurance commitment under Paragraph 109.b(1) (Record Title Evidence), then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, Respondents shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for $100,000 or other amount approved by EPA; (iii) is issued to EPA, Respondents, or other person approved by EPA; and (iv) is issued on a current American Land Title Association (ALTA) form [**in Texas**: "Texas Land Title Association (TLTA) form"] or other form approved by EPA.

[NOTE: The $100,000 amount of the title insurance coverage in the policy was selected by EPA as appropriate and adequate. If there are questions or concerns the case team may consult with the Civil Rights and Finance Law Office of EPA's Office of General Counsel, 202-564-5461, concerning this issue.]

(4) Respondents shall, within [30] days after recording the Proprietary Controls and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide to EPA and to all grantees of the Proprietary Controls: (i) certified copies of the recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk's recording stamps; and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording of the Proprietary Controls and instruments.

e. Respondents shall monitor, maintain, enforce, and [annually] report on all Proprietary Controls required under this Settlement.

6. Modify "Best Efforts" Paragraph 28 as Follows

28. 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, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. 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, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. 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).

7. Modify Paragraph 29 as Follows

29. Owner Respondent shall not Transfer its Affected Property unless it has: (a) first secured EPA's approval of, and transferee's consent to, an agreement that: (i) is enforceable by EPA; and (ii) requires the transferee to provide access to and refrain from using the Affected Property to the same extent as is provided under Paragraphs 27.a (Access Requirements) and 27.b (Land, Water, or Other Resource Use Restrictions); and (b) executed and recorded all Proprietary Controls and instruments addressing Prior Encumbrances regarding such Affected Property in accordance with Paragraph 109 (Proprietary Controls).

8. Modify Paragraph 31 as Follows

31. 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 use restrictions regarding the Affected Property, and to implement, maintain, monitor, and report on Institutional Controls.

9. Modify Paragraph 33 as Follows

33. Notwithstanding any provision of the Settlement, EPA [and the State] retain[s] all of its [their] access authorities and rights, as well as all of its [their] rights to require land, water, or other resource use restrictions and Institutional Controls, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

10. Modify Paragraph 104 (Notice of Completion of Work) to add Institutional Controls to the bracketed list of continuing obligations.

Appendix B – Optional Model Orphan Share Forgiveness Language

[NOTE: If EPA determines that it is appropriate for the Settlement to provide orphan share compensation through forgiveness of removal action oversight costs, 1) add a "Future Oversight Costs" definition in addition to the standard "Future Response Costs" definition, and 2) modify the first sentence of Paragraph 47 (Payments for Future Response Costs), as shown below. Guidance on use of orphan share compensation in removal action administrative agreements is available in "Orphan Share Superfund Reform Questions and Answers" (Jan. 1, 2001) (http://www2.epa.gov/enforcement/qa-orphan-share-superfund-reform), and "Interim Guidance on Orphan Share Compensation for Settlors of Remedial Design/Remedial Action and Non-Time-Critical Removals" (June 3, 1996) (http://www2.epa.gov/enforcement/guidance-orphan-share-compensation-rdra-and-non-time-critical-removal-settlors).]

1. Add New Definition

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Respondents' performance of the Work to determine whether such performance is consistent with the requirements of this Settlement, including costs incurred in reviewing deliverables submitted pursuant to this Settlement, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by EPA pursuant to Section IX (Property Requirements), XIII (Emergency Response and Notification of Releases), and Paragraph 73 (Work Takeover), [**if Financial Assurance included:** Paragraph 97 (Access to Financial Assurance)], or the costs incurred by the United States in enforcing this Settlement, including all costs incurred under Section XV (Dispute Resolution) and all litigation costs.]

2. Modify First Sentence of Paragraph 47 (Payments for Future Response Costs)

47. Payments for Future Response Costs. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP, excluding the first $[**insert amount of future oversight compromise**] of Future Oversight Costs. [**Keep remainder of Paragraph 47 as is.**]

Instructions Regarding Automated Features

FEATURE	INSTRUCTIONS
INSERTING TEXT COPIED FROM A DIFFERENT DOCUMENT	Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. **Therefore, ALWAYS use the "Paste Special" function to insert text copied from another document**. Press Ctrl-Alt-V; in the pop-up menu, click "Unformatted Text" and OK. (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.)
INSERTING A NEW PARAGRAPH	Click at the end of the ¶ immediately preceding the place where you wish to add the new **paragraph**, and press Enter. To change the new ¶'s outline level use (under the Home tab) the styles menu. For example, to change ¶12.b into ¶12.a(1), click in that ¶ and then (using the Home tab) click the "LVL 3" style. To change ¶13.a into ¶14, click in that ¶ and then (using the Home tab) click the "LVL 1" Style. Note that in consent decree models, the letters denoting each background paragraph must be manually updated.
ADDING AN UPDATEABLE SECTION OR PARAGRAPH CROSS-REFERENCE	(a) Click where you wish to insert a cross-reference; (b) Click the "References" tab, and, in the "Captions" box, click "Cross-reference;" (c) In the pop-up menu that appears, make sure the "Reference type" field contains "Numbered item" and the "Insert reference to" field contains "Paragraph Number (full context); (d) In the "For which numbered item" field" select the numbered item (section, paragraph. or subparagraph) you wish to cross-reference, and click Insert.
UPDATING THE CROSS-REFERENCES	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click "Update Field;" click OK. Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: "Error! Reference source not found."
UPDATING THE TABLE OF CONTENTS	Right-click in the TOC, and in the pop-up menu, left-click "Update Field." Or click in the TOC, press F9, click Update Entire Table and OK. If you have just added a new section heading, click Update entire table before pressing Enter.
INSERTING A NEW SECTION HEADING	Click in the text of the new heading and assign the "SECTION" paragraph style to the text by clicking the "Home" tab, and in Styles box, clicking the "SECTION" style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents.
CHANGING THE FONT	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click "Font;" in the "font" field, select a new font; click OK.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION ___

IN THE MATTER OF: [Site Name and Location] [Names of Respondents (if many, reference attached list)], Respondents Proceeding under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9606(a).	)	U.S. EPA Region ____ CERCLA Docket No. ____ **UNILATERAL ADMINISTRATIVE ORDER FOR REMOVAL ACTIONS**

MODEL UNILATERAL ADMINISTRATIVE ORDER FOR REMOVAL ACTIONS

September 2015

This document contains automatic section and paragraph numbers and automatic section and paragraph cross references, and an automated Table of Contents. If you add or delete sections or paragraphs, please do not attempt to manually renumber any sections or paragraphs or cross references. Please see instructions at the end for more details.

This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order ("Order") is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. [**Insert if applicable:** This authority was further redelegated by the Regional Administrator of EPA Region ___ to the **_____** [**insert title of manager to whom delegation is made**] by [**insert numerical designations and dates of Regional delegations**].]

2. This Order pertains to property located at [**insert address or descriptive location of the Site**] in [**insert name of City or Town, County, State**] (the "[**insert name**] Site") or the "Site." This Order requires Respondents to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health or welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

3. EPA has notified the State [**insert "Commonwealth" if appropriate**] of _____ (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order applies to and is binding upon Respondents and their [heirs,] successors[,] and assigns. Any change in ownership or control of the Site or change in the corporate or partnership status of a Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this Order.

5. Respondents are jointly and severally liable for implementing all activities required by this Order. Compliance or noncompliance by any Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondents. No Respondent shall interfere in any way with performance of the Work in accordance with this Order by any other Respondent. In the event of the insolvency or other failure of any Respondent to implement the requirements of this Order, the remaining Respondents shall complete all such requirements.

6. Respondents shall provide a copy of this Order to each contractor hired to perform the Work required by this Order 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 Order. Respondents or their contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Order.

III. DEFINITIONS

7. Unless otherwise expressly provided in this Order, terms used in this Order 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 Order or in appendices to or documents incorporated by reference into this Order, the following definitions shall apply:

[**NOTE: In the definition below, it is generally sufficient to describe the property using the street address or the tax parcel ID number, but you also may use the legal property description. Legal property descriptions can be lengthy. It is common in conveyance documents to include the legal property description in an attachment. If using a legal property description, it should be the kind found in a deed.**]

"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 removal action, including, but not limited to, the following properties [**insert property descriptions**].

["Action Memorandum"] ["Action Memorandum-Enforcement"] shall mean the EPA Action Memorandum relating to the Site signed on _____, by the Regional Administrator, EPA Region __, or his/her delegate, and all attachments thereto. The ["Action Memorandum"] ["Action Memorandum-Enforcement"] is attached as Appendix __. **[NOTE: Hereinafter the model uses term "Action Memorandum."]**

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

"Day" or "day" shall mean a calendar day. In computing any period of time under this Order, 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 Order as provided in Section VIII.

"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.

["_____" shall mean the [**insert name of State pollution control agency or environmental protection agency**] and any successor departments or agencies of the State.]

[**NOTE: A definition for "Interest" should not be included if Section XVIII (Payment of Response Costs) is not included in the Order.**]

[“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 http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.]

“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.

[**NOTE: Include next definition if any “Affected Property” is owned or controlled by persons other than any Respondent.**]

[“Non-Respondent Owner” shall mean any person, other than a Respondent, that owns or controls any Affected Property, including [**insert names**]. The phrase “Non-Respondent Owner’s Affected Property” means Affected Property owned or controlled by Non-Respondent Owner.]

“Order” shall mean this Unilateral Administrative Order and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

[**NOTE: Include next definition if any “Affected Property” is owned or controlled by any Respondent.**]

[“Owner Respondent” shall mean any Respondent that owns or controls any Affected Property, including [**insert names**]. The clause “Owner Respondent’s Affected Property” means Affected Property owned or controlled by Owner Respondent.]

“Paragraph” shall mean a portion of this Order identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA and Respondents.

[“Post-Removal Site Control” shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Order consistent with Sections 300.415(l) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER Directive No. 9360.2-02, Dec. 3, 1990).]

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

“Respondents” shall mean [**insert name(s) of Respondents**] [**insert if applicable:** those Parties identified in Appendix __].

[**NOTE: A definition for “Response Costs” should not be included if Section XVIII (Payment of Response Costs) is not included in the Order.**]

[“Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in monitoring and supervising Respondents’ performance of the Work to determine whether such performance is consistent with the requirements of this Order, including costs incurred in reviewing deliverables submitted pursuant to this Order, as well as costs incurred in overseeing implementation of this Order, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs.]

“Section” shall mean a portion of this Order identified by a Roman numeral.

“Site” shall mean the _____ Superfund Site, encompassing approximately __ acres, located at [**insert address or description of location**] in [**insert name of City, County, State**] [**insert if applicable:** and depicted generally on the map attached as Appendix __.]

“State” [or “Commonwealth”] shall mean the State [or Commonwealth] of _____.

[“Statement of Work” or “SOW” shall mean the document describing the activities Respondents must perform to implement the removal action pursuant to this Order [, as set forth in Appendix __,] and any modifications made thereto in accordance with this Order.]

“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.

[NOTE: Substitute the following definition of “Tribe” for the definition of “State” if the Site is entirely on tribal land. Add a definition for “Tribe” in addition to the definition of “State” if both have a role at or interest in the Site. Additional changes will be needed throughout the Order to either add and/or substitute the Tribe for the State.]

[“Tribe” shall mean the _____ Tribe.]

“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); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any [“hazardous material”] under [**insert appropriate State statutory citation and “hazardous material” terminology**].

“Work” shall mean all activities Respondents are required to perform under this Order, except those required by Section XV (Retention of Records).

IV. FINDINGS OF FACT

[**NOTE: Because findings of fact are site-specific, no model language is provided. However, suggested topics are provided below for some findings. Facts should be presented concisely, accurately, and logically. Findings of fact should clearly support each conclusion of law. Regions should include a discussion of the following points: identification of Respondents; Site location and description; Site history and operations; Site ownership; enforcement history; general categories of Respondents' liability; past EPA and/or State activities and investigations; and conditions and data showing hazardous substances are present and releases or threats of releases exist.**

The Order should contain findings of fact sufficient to support the determination by the authorized delegated official of an imminent and substantial endangerment (ISE) to the public health or welfare or the environment, and reference the actual ISE determination. If such a determination has not been previously made and documented in an Action Memorandum in accordance with the "Superfund Removal Guidance for Preparing Action Memoranda" (September 2009), available at http://www2.epa.gov/emergency-response/superfund-removal-guidance-preparing-action-memoranda, this Section should include data clearly documenting that the releases or threats of releases may present an ISE, e.g., exposure routes, risk assessment, affected populations, environmental harm, potential for fire or explosion, or other dangers, and should be supported by an administrative record. If such a determination has been made in an Action Memorandum (and is not being made in the Order as well), the date of the signing of the Action Memorandum should be included as a finding, and the Action Memorandum should be attached and incorporated by reference into the Order.]

8. [Identification of the Site by name, location, and description (including characteristics of the Site and a description of the surrounding areas, e.g., commercial/industrial/residential area, nearest public supply wells, nearby water bodies, potentially sensitive ecological areas).]

9. [A brief history of the Site including Site ownership and operations (process or other activity producing waste, nature of wastes produced).]

10. [Information that there are hazardous substances at the Site by listing specific chemicals found at the Site, and their locations, concentrations, and quantities where known.]

11. [Description of actual and/or potential release (i.e. leaking drums, contaminated soils, etc.) and contaminant migration pathways, and possible or known routes of exposure, making clear that these are not exclusive.]

12. [Identification of the populations at risk, both human and non-human.]

13. [Health/environmental effects of some major contaminants.]

14. [Whether the Site is on the [proposed] National Priorities List. Sample language follows:

"The _____ Site was [listed on] [proposed for inclusion on] the National Priorities List (NPL) pursuant to CERCLA § 105, 42 U.S.C. § 9605, on [**insert month, day, year**], [**insert Federal Register citation**]."]

15. [Identification of Respondents, i.e., name/business; legal status (i.e., corporation, partnership, sole proprietor, trust, individual, federal, state, or local government, etc.), general categories of Respondents' liability under CERCLA § 107(a) and connection with the Site, e.g., owner or operator of hazardous waste site, including years of ownership or operation, or person who arranged for disposal or treatment of, or transporter of hazardous substances found at the Site.]

16. [Identification of prior response and enforcement actions, including investigations and assessments, if any, taken at the Site, by EPA or the State.]

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The [**insert name**] Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

c. Each Respondent is a liable party under one or more provisions of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). [**NOTE: Regions should specify each category of liability under Section 107. For example:**

(1) Respondents [**insert names**] 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) Respondents [**insert names**] were the "owners" and/or "operators" 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).

(3) Respondents [**insert names**] arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

(4) Respondents [**insert names**] accept 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).]

d. The contamination [**insert the names of the particular hazardous substances**] found at the Site, as identified in the Findings of Fact above, includes [a]

"hazardous substance[s]" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) [, and also includes [a] "pollutant[s] or contaminant[s]" that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1)].

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

f. The conditions at the Site may constitute a threat to public health or welfare or the environment, based on the factors set forth in Section 300.415(b)(2) of the NCP. These factors include, but are not limited to, the following [**include only those that apply**]:

(1) actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances [and pollutants or contaminants]; this factor is present at the Site due to the existence of [**identify**];

(2) actual or potential contamination of drinking water supplies or sensitive ecosystems; this factor is present at the Site due to the existence of [**identify**];

(3) hazardous substances [and 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 [**identify**];

(4) high levels of hazardous substances [and 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 [**identify**];

(5) weather conditions that may cause hazardous substances [and pollutants or contaminants] to migrate or be released; this factor is present at the Site due to the existence of [**identify**];

(6) threat of fire or explosion; this factor is present at the Site due to the existence of [**identify**];

(7) the unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Order at the Site because [**describe**];

(8) other situations or factors that may pose threats to public health or welfare or the environment; this factor is present at the Site due to the existence of [**identify**].

g. [**Insert if endangerment determination is being made in the Order:** The conditions described in [Paragraphs __ of] the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).] [**Insert if endangerment determination has being made previously:** EPA determined in an Action Memorandum dated

_____, that the conditions [at the Site] [described in [Paragraphs __ of] the Findings of Fact above] may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).]

h. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment.

VI. ORDER

18. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, Respondents are hereby ordered to comply with all provisions of this Order and any modifications to this Order, including all appendices to this Order and all documents incorporated by reference into this Order.

VII. OPPORTUNITY TO CONFER

19. Within [5] days after this Order is signed by the Regional Administrator or his/her delegatee, Respondents may, in writing, request a conference with EPA to discuss this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondents are ordered to take, or any other relevant and material issues or contentions that Respondents may have regarding this Order.

20. Respondents may appear in person or by an attorney or other representative at the conference. Any such conference shall be held at least [5] days after the conference is requested. Respondents may also submit written comments or statements of position on any matter pertinent to this Order no later than [5] days after the conference or within [10] days after this Order is signed if Respondents do not request a conference. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted to:

[**Attorney**], [**Office of Regional Counsel or Office of Environmental Stewardship**]
U.S. Environmental Protection Agency
[**Address**]
[**Telephone**]
[**Email**]

VIII. EFFECTIVE DATE

[**NOTE: Regions may modify Paragraph 21 in accordance with Regional practice. The provision for scheduling a conference date in Paragraph 19 should be drafted so that holding the conference will not unduly delay the Effective Date. Regions may issue UAOs that include a delayed effective date in order to encourage negotiation.**]

21. This Order shall be effective [5] days after the Order is signed by the Regional Administrator or his/her delegatee unless a conference is requested or written materials are submitted in accordance with Section VII (Opportunity to Confer). If a conference is requested

or written materials are submitted, this Order shall be effective on the later of the [10th] day after the day of the conference, or the [10th] day after written materials, if any, are submitted, unless EPA determines that the Order should be modified based on the conference or written materials. In such event, EPA shall notify Respondents, within the [10] day period, that EPA intends to modify the Order. The modified Order shall be effective [5] days after it is signed by the Regional Administrator or his/her delegatee.

IX. NOTICE OF INTENT TO COMPLY

22. On or before the Effective Date, each Respondent shall notify EPA in writing of Respondent's irrevocable intent to comply with this Order. Such written notice shall be sent to EPA as provided in Paragraph 20. Each Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defense asserted by such Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of any Respondent's assertions. Failure of any Respondent to provide such notification within this time period shall, as of the Effective Date, be treated as a violation of this Order by such Respondent.

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

23. Selection of Contractors, Personnel. All Work performed under this Order shall be under the direction and supervision of qualified personnel. Within 30 days after the Effective Date, and before the Work outlined below begins, Respondents shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. If, after the commencement of the Work, Respondents retain additional contractor(s) or subcontractor(s), Respondents shall notify EPA of the name(s) and qualification(s) of such contractor(s) or subcontractor(s) retained to perform the Work at least __ days prior to commencement of Work by such additional contractor(s) or subcontractor(s). EPA retains the right, at any time, 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 and qualifications within __ days after EPA's disapproval. [**NOTE: The following two sentences may be deleted if the removal work is being ordered under emergency circumstances or is non-complex. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from the OSC and Regional QA personnel to the Site file.**] 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 that such persons meet minimum technical background and experience requirements.

24. Within __ days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, email address, and qualifications within __ days following EPA's disapproval. Respondents shall have the right to change their Project Coordinator, subject to EPA's right to disapprove. Respondents shall notify EPA ___ days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the Project Coordinator. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

25. EPA has designated _____ of the [**insert Regional Office, e.g., Emergency and Enforcement Response Branch, Region __**], as its On-Scene Coordinator (OSC) [**replace with "Remedial Project Manager" (RPM), as appropriate, here and throughout Order**]. EPA will notify Respondents of a change of its designated OSC. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the OSC in accordance with Paragraph 30.a(1).

26. The OSC shall be responsible for overseeing Respondents' implementation of this Order. The OSC shall have the authority vested in a Remedial Project Manager (RPM) and an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other response action when s/he determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the OSC from the Site shall not be cause for stoppage or delay of Work.

XI. WORK TO BE PERFORMED

[NOTE: Regions may modify this Section on a site-by-site basis to reflect Site needs and Regional practice. Regions may specify formal standards for work quality and quality of deliverables. If no SOW is provided, this Section should provide a description, in sufficient detail and consistent with the Action Memorandum, to permit Respondents to draft a Removal Work Plan. Regions should ensure that the description is sufficiently broad and does not unintentionally limit removal actions in terms of hazardous substances to be addressed or site boundaries if hazardous substances are present or migrate beyond boundaries to be addressed. Regions may append their own SOW or Work Plan; if this situation occurs, modify Paragraph 29 as appropriate.]

27. Respondents shall perform, at a minimum, all actions necessary to implement the [Action Memorandum] [SOW] [the following items]. The actions to be implemented generally include, but are not limited to, the following: _____.

28. For any regulation or guidance referenced in the Order, 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.

29. Work Plan and Implementation.

a. Within __ days after the Effective Date, in accordance with Paragraph 30 (Submission of Deliverables), Respondents shall submit to EPA for review and approval a draft work plan for performing the removal actions (the "Removal Work Plan") generally described [in Paragraph 27 above] [in accordance with the SOW]. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the Work required by this Order.

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

c. Upon approval or approval with modifications of the Removal 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 Order. Respondents shall notify EPA at least 48 hours prior to performing any Work on-Site pursuant to the EPA-approved Removal Work Plan.

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

e. Any non-compliance with any EPA-approved plans, reports, specifications, schedules, or other deliverables shall be considered a violation of the requirements of this Order. Determinations of non-compliance shall be made by EPA. Approval of the Removal Work Plan shall not limit EPA's authority under the terms of this Order to require Respondents to conduct activities consistent with this Order to accomplish the Work outlined in this Section.

[**NOTE: If a planning period of at least 6 months exists, EPA shall require the performance of an Engineering Evaluation/Cost Analysis (EE/CA) as required by the NCP at 40 C.F.R. § 300.415(b)(4). Early Site security requirements, if any, should be added to this Section.**]

30. Submission of Deliverables

a. General Requirements for Deliverables.

(1) Except as otherwise provided in this Order, Respondents shall direct all submissions required by this Order to the OSC at [**insert OSC's name, address, phone**

number, email]. Respondents shall submit all deliverables required by this Order [, the SOW,] 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 30.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. [**NOTE: If paper copies of specific deliverables (in addition to large exhibits) are needed, this paragraph should be edited accordingly.**]

b. Technical Specifications for Deliverables.

[NOTE: The information in this paragraph is consistent with the EPA National Geospatial Data Policy 2008, which is under review and may be revised at any time. The case team should check http://www.epa.gov/geospatial/policies.html for the latest guidance on the policy and associated EPA and CERCLA procedures and technical specifications, including standards and quality assurance for geographic information system (GIS) deliverables.]

(1) Sampling and monitoring data should be submitted in standard Regional EDD format. [**Specify the EDD format that the Region uses.**] 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 [**or insert Regionally-preferred spatial file 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://edg.epa.gov/EME/.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult http://www.epa.gov/geospatial/policies.html 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.

31. [**NOTE: EPA shall require preparation of a Quality Assurance Project Plan (QAPP) as part of the Work Plan except in circumstances involving emergency or non-complex Work.**] Sampling and Analysis Plan. Within ___ days after the Effective Date, 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 [SOW] [Removal 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 Order.

32. Health and Safety Plan. Within __ days after the Effective Date, Respondents shall submit for EPA review and comment a Health and Safety Plan that ensures the protection of on-site workers and the public during performance of on-site Work under this Order. 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 http://www.epa.gov/nscep/index.html, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at http://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. [**NOTE: Regions may provide more detail, e.g., Spill Prevention Control and Countermeasures Plan, evacuation plans, etc.**] Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal actions.

[NOTE: Insert following paragraph if required by 40 C.F.R. § 300.415(n)(3) and applicable guidance.]

33. [Community Involvement Plan. EPA will prepare a community involvement plan in accordance with EPA guidance and the NCP. If requested by EPA, Respondents shall participate in community involvement activities, including participation in (a) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (b) public 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 (a) any community advisory groups, (b) any technical assistance grant recipients and their advisors, and (c) 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.]

34. [Post-Removal Site Control. In accordance with the Removal Work Plan schedule, or as otherwise directed by EPA, Respondents shall submit a proposal for Post-Removal Site Control which shall include, but not be limited to: [**insert list of applicable post-removal site controls**]. Upon EPA approval, Respondents shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is

necessary. Respondents shall provide EPA with documentation of all Post-Removal Site Control commitments.]

35. Progress Reports. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order on a [monthly/weekly] basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVII, 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. [**NOTE: The frequency and content of these reports may be determined on a Site-specific basis.**]

36. Final Report. Within __ days after completion of all Work required by this Order, with the exception of any continuing obligations required by this Order, including [**insert list of such obligations, e.g., post-removal site controls, reimbursement of Response Costs, or record retention**], Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. EPA will review and approve the final report in accordance with Section XXVII (Notice of Completion of Work). The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP, "OSC Reports." [**NOTE: For removals that are more extensive, Regions may require compliance with "Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994).**] The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, 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 actions (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondent's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than 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."

37. Off-Site Shipments.

a. Respondents may ship hazardous substances, pollutants, and contaminants 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 § 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 notice requirement will 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 shall also 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 notice after the award of the contract for the removal action 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.

XII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

38. 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).

39. Access to Laboratories.

a. Respondents shall ensure that EPA [and State] personnel and its [their] authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents pursuant to this Order. 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 EPA's "Field Operations Group Operational Guidelines for Field Activities" (http://www.epa.gov/region8/qa/FieldOperationsGroupOperationalGuidelinesForFieldActivities.pdf) and "EPA QA Field Activities Procedure" (http://www.epa.gov/irmpoli8/policies/2105-p-02.pdf). Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Order 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"

(http://www.epa.gov/fem/pdfs/fem-lab-competency-policy.pdf) and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/superfund/programs/clp/), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www.epa.gov/ttnamti1/airtox.html)." However, upon approval by EPA [, after a reasonable opportunity for review and comment by the State], 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 Order 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 (http://www.epa.gov/fem/accredit.htm) as meeting the Quality System requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

b. Upon request, Respondents shall provide split or duplicate samples to EPA [and the State] or its [their] authorized representatives. Respondents shall notify EPA [and the State] not less than [7] days in advance of any sample collection activity. In addition, EPA [and the State] shall have the right to take any additional samples that EPA [or the State] deem[s] necessary. Upon request, EPA [and the State] shall provide to Respondents split or duplicate samples of any samples it [they] take[s] as part of EPA's oversight of Respondents' implementation of the Work.

c. Respondents shall submit to EPA [and the State], in the next monthly progress report as described in Paragraph 35 (Progress Reports) copies of 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 Order.

XIII. PROPERTY REQUIREMENTS

40. Agreements Regarding Access and Non-Interference. Respondents shall, with respect to any Non-Respondent Owner's Affected Property, use best efforts to secure from such Non-Respondent Owner an agreement, enforceable by Respondents and EPA, providing that such Non-Respondent Owner [**if Owner Respondent:** , and Owner Respondent shall, with

respect to Owner Respondent's Affected Property]: (i) provide EPA [, the State,] Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Order, including those activities listed in Paragraph 40.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 removal action, [**insert if applicable:** including the restrictions listed in Paragraph 40.b (Land, Water, or Other Resource Use Restrictions)].

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

[NOTE: Augment this list as appropriate.]

(1) Monitoring the Work;

(2) Verifying any data or information submitted to EPA [or the State];

(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 provided in the SOW] [**if QAPP is required by Removal Work Plan insert:** as defined in the approved QAPP];

(7) Implementing the Work pursuant to the conditions set forth in Section XIX (Enforcement/Work Takeover);

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

(9) Assessing Respondents' compliance with the Order;

(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 Order; and

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

[**NOTE: Include Paragraph 40.b if land, water, or other resource use restrictions are needed.**]

b. Land, Water, or Other Resource Use Restrictions. The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

[NOTE: Customize and augment this list as appropriate. Be as specific as possible.]

(1) Prohibiting the following activities that could interfere with the removal action: _____;

(2) Prohibiting use of contaminated groundwater;

(3) Prohibiting the following activities that could result in exposure to contaminants in subsurface soils and groundwater: _____;

(4) Ensuring that any new structures on the Affected Property will not be constructed in the following manner that could interfere with the removal action: _____; and

(5) Ensuring that any new structures on the Affected Property will be constructed in the following manner that will minimize potential risk of inhalation of contaminants: _____.]

41. 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, within __days after the Effective Date, Respondents are unable to accomplish what is required through "best efforts" 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. EPA reserves the right to seek payment from Respondents for all costs, including cost of attorneys' time, incurred by the United States in obtaining such access or agreements to restrict land, water, or other resource use.

[**NOTE: Include Paragraph 42 if there is an Owner Respondent.**]

42. Owner Respondent shall not Transfer its Affected Property unless it has first secured EPA's approval of, and transferee's consent to, an agreement that: (i) is enforceable by EPA [and the State]; and (ii) requires the transferee to provide access to and refrain from using the Affected Property to the same extent as is provided under Paragraphs 40.a (Access Requirements) and 40.b (Land, Water, or Other Resource Use Restrictions).

43. 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 [and the State's] efforts to secure and ensure compliance with such institutional controls.

44. 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 this Order, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

45. [**Insert if needed:** Notice to Successors-in-Title.

a. Owner Respondent shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding Owner Respondent's Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title that: (i) the Affected Property is part of, or related to, the Site; (ii) EPA has selected a removal action for the Site; and (iii) EPA has ordered potentially responsible parties to implement that removal action; and (3) identify the EPA docket number and Effective Date of this Order. Owner Respondent shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Owner Respondent shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a removal action regarding the Site, that EPA has ordered potentially responsible parties to implement such removal action, (identifying the EPA docket number and the Effective Date of this Order); and

(2) Notify EPA [and the State] of the name and address of the proposed transferee and provide EPA [and the State] with a copy of the above notice that it provided to the proposed transferee.]

46. Notwithstanding any provision of this Order, EPA [and the State] retain[s] all of its [their] access authorities and rights, as well as all of its [their] 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.

XIV. ACCESS TO INFORMATION

47. Respondents shall provide to EPA [and the State], 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 Order, 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. Respondents shall also make available to EPA [and the State], for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

48. Privileged and Protected Claims.

a. Respondents may assert that all or part of a Record requested by EPA [or the State] is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 48.b, and except as provided in Paragraph 48.c.

b. If Respondents assert a claim of privilege or protection, they shall provide EPA [and the State] 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 [and the State] 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 [and the State] has [have] 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 Order.

49. Business Confidential Claims. Respondents may assert that all or part of a Record provided to EPA [and the State] under this Section or Section XV (Retention of Records) 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 UAO for which Respondents assert business confidentiality claims. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA [and the State], 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.

50. Notwithstanding any provision of this Order, EPA [and the State] retain[s] all of its [their] information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XV. RETENTION OF RECORDS

51. During the pendency of this Order and for a minimum of 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVII (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect 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 its possession or control or that come into its 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 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.

52. At the conclusion of this document retention period, Respondents shall notify EPA [and the State] at least 90 days prior to the destruction of any such Records, and, upon request by EPA [or the State], and except as provided in Paragraph 48, Respondents shall deliver any such Records to EPA [or the State].

53. Within __ days after the Effective Date, each Respondent shall submit a written certification to EPA's OSC 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 its potential liability by the United States [or the State], and that it has fully complied with any and all EPA [or 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, [or state law]. Any Respondent unable to so certify shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

XVI. COMPLIANCE WITH OTHER LAWS

54. Nothing in this Order limits Respondent's 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. § 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 Order 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. [Respondents shall identify ARARs in the Removal Work Plan subject to EPA approval.]

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

XVII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

56. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of any 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 all applicable provisions of this Order, 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 [**insert Regional spill phone number**] 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, EPA reserves the right to pursue cost recovery.

57. 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 [**insert Regional spill phone number**], and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, the reporting required by CERCLA § 103 or EPCRA § 304.

58. For any event covered under this Section, Respondents shall submit a written report to EPA within seven 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.

XVIII. PAYMENT OF RESPONSE COSTS

[**NOTE: Regions have discretion to include this section consistent with Regional practice and in light of site-specific circumstances.**]

59. Upon EPA's written demand, Respondents shall pay EPA all Response Costs incurred or to be incurred in connection with this Order. On a periodic basis, EPA will send Respondents a bill requiring payment of all Response Costs incurred by the United States with respect to this Order that includes a [**insert name of standard Regionally-prepared cost summary**], which includes direct and indirect costs incurred by EPA, its contractors, and the Department of Justice.

60. Respondents shall make all payments within 30 days after receipt of each written demand requiring payment. Payment shall be made to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

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

[**NOTE: Regions may substitute the following instructions for payment by Automated Clearinghouse (ACH) or for online payment:**

For ACH payment:

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

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

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

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

[**NOTE: If Respondents have difficulty making EFT, ACH, or online payments, you may substitute the following:** Respondents shall make payment by official bank check made payable to "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, Site/Spill ID Number___, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000]

61. At the time of payment, Respondents shall send notice that payment has been made to [**insert name and address of OSC or other receiving official in Region**], 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 _____ and EPA docket number for this action.

62. In the event that the payments for Response Costs are not made within 30 days after Respondents' receipt of a written demand requiring payment, Respondents shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the written demand and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section. Respondents shall make all payments required by this Paragraph in the manner described in Paragraphs 60 and 61.

XIX. ENFORCEMENT/WORK TAKEOVER

63. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondents to civil penalties of up to $37,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, 40 C.F.R. Part 19.4. In the event of such willful violation, or failure or refusal to comply, 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 Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. [**Include the following sentence if Section XXIII (Financial Assurance) is included in the Order:** In addition, nothing in this Order shall limit EPA's authority under Section XXIII (Financial Assurance).] Respondents may also be subject to punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

XX. RESERVATIONS OF RIGHTS BY EPA

64. Nothing in this Order 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 Order shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, 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. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site [and not paid by Respondents].

XXI. OTHER CLAIMS

65. By issuance of this Order, 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 Order.

66. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order, 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 under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

67. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), or 40 C.F.R. § 300.700(d).

68. No action or decision by EPA pursuant to this Order 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. INSURANCE

69. No later than ___ days before commencing any on-site Work, Respondents shall secure, and shall maintain for the duration of this Order, commercial general liability insurance with limits of ___ million dollars, for any one occurrence, and automobile insurance with limits of ___ million dollars, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Order. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificate and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Order, 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 Work on behalf of Respondents in furtherance of this Order. 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, then, with respect to that contractor or subcontractor, Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXIII. FINANCIAL ASSURANCE

[**NOTES ON SECTION XXIII: When determining whether to include this Section in the Order or whether to modify it to limit the form of the financial assurance to certain mechanisms, case teams should consider the facts and circumstances of each case, including: the estimated cost of Work to be performed; the estimated time to complete the Work; the nature and extent of contamination at the Site; whether the financial assurance can be secured before commencement of the Work (or soon thereafter); the industry sectors in which the Respondents operate; and the financial health of the Respondents. Regions are strongly encouraged to include this Section for the more costly and time-consuming removal actions. When this Section is included in an Order, Regions should examine the form and substance of all financial assurance mechanisms submitted by**

Respondents, both initially and over time, to ensure consistency and compliance with this Section (e.g., case teams should ensure that entities providing a demonstration or guarantee pursuant to Paragraph 70.d or 70.e have: (a) submitted all required documentation so that EPA can determine whether such financial assurance is adequate; and (b) fully and accurately reflected in their submission all of their financial assurance obligations (under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) to the United States or other governmental entities so all such obligations have been properly accounted for in determining whether such entity meets the financial test criteria). Financial assurance team members within the Office of Site Remediation Enforcement are available to assist with any financial assurance matters, including the evaluation of submissions.]

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

a. A trust fund: (1) established to ensure that funds will be available as and when needed for performance of the Work; (2) 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; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the [**insert appropriate Regional official (e.g., Superfund Division Director)]** advises the trustee in writing that: (i) payments are necessary to fulfill the affected Respondents' obligations under the Order; or (ii) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Order;

b. A surety bond, 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, guaranteeing payment or performance in accordance with Paragraph 75 (Access to Financial Assurance);

c. An irrevocable letter of credit, 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, guaranteeing payment in accordance with Paragraph 75 (Access to Financial Assurance);

d. A demonstration by one or more Respondents that each such Respondent meets the relevant financial test criteria of 40 C.F.R. § 264.143(f)) and reporting requirements of this Section for 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

e. A guarantee to fund or perform the Work executed by one or more of the following: (1) a direct or indirect parent company of a Respondent; or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; provided, however, that any company providing such a guarantee must demonstrate to EPA's satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for 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.

71. Standby Trust. If Respondents seek to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondents shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in Paragraph 70.a, and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 75 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with Paragraph 72. Until the standby trust fund is funded pursuant to Paragraph 75 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.

72. Within **[insert appropriate time period (e.g., 30)]** days after the Effective Date, Respondents shall submit to EPA proposed financial assurance mechanisms in draft form in accordance with Paragraph 70 for EPA's review. Within **[insert appropriate time period (e.g., 60-90)]** days after the Effective Date, or 30 days after EPA's approval of the form and substance of Respondents' financial assurance, whichever is later, 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 the [**insert desired recipient(s) (e.g., Regional Financial Management Officer, Regional financial assurance specialist, Regional attorney, and/or RPM) and relevant contact information if not provided elsewhere in the Order**].

73. If Respondents provide financial assurance by means of a demonstration or guarantee under Paragraph 70.d or 70.e, the affected Respondents shall also comply, and shall ensure that their guarantors comply, with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including: (a) the initial submission to EPA of required documents from the affected entity's chief financial officer and independent certified public accountant no later than 90 days after the Effective Date; (b) the annual resubmission of such documents within 90 days after the close of each such entity's fiscal year; and (c) the notification to EPA no later than 30 days, in accordance with Paragraph 74, after any such entity determines that it no longer satisfies the financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (2) "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" mean the sum of all environmental obligations (including obligations under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated, in addition to the

Estimated Cost of the Work under this Order; (3) the terms "owner" and "operator" include each Respondent making a demonstration or obtaining a guarantee under Paragraph 70.d or 70.e; and (4) the terms "facility" and "hazardous waste management facility" include the Site.

74. 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 30 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. Respondents shall follow the procedures of Paragraph 76 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Order, including, without limitation, the obligation of Respondents to complete the Work in accordance with the terms of this Order.

[NOTE: Case teams should make sure that the "trigger" regarding EPA's ability to direct the deposit of funds into a standby trust and/or demand work under the financial assurance mechanism is consistent with the trigger in the following paragraph, e.g., if the Order allows EPA to direct a financial assurance provider to deposit funds into a standby trust in the event of either a Performance Failure Notice that is not remedied by a Respondent within the allotted cure period or a Respondent's failure to provide alternative financial assurance 30 days prior to an impending mechanism cancellation, the mechanism should contain equivalent language.]

75. Access to Financial Assurance.

a. If 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 ("Performance Failure Notice") to both Respondents and the financial assurance provider regarding the affected Respondents' failure to perform. Any Performance Failure Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice. If, after expiration of the 10-day period specified in this Paragraph, Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any funds assured pursuant to this Section into the standby trust fund; or (ii) arrange for performance of the Work in accordance with this Order.

b. If EPA is notified by the provider 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, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.

76. Modification of Amount, Form, or Terms of Financial Assurance. Respondents may submit, on any anniversary of the Effective Date or following Respondents' request for, and EPA's approval of, another date, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the EPA individual(s) referenced in Paragraph 72, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of Paragraphs 70 and 71 (Standby Trust). EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change. Respondents may reduce the amount of the financial assurance mechanism, or make any other change, only in accordance with EPA's approval. Within 30 days after receipt of EPA's approval of the requested modifications pursuant to this Paragraph, Respondents shall submit to the EPA individual(s) referenced in Paragraph 72 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon EPA's approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Work in the approved proposal.

77. Release, Cancellation, or Discontinuation of Financial Assurance. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) after receipt of documentation issued by EPA certifying completion of the Work; or (b) in accordance with EPA's written approval of such release, cancellation, or discontinuation.

XXIV. MODIFICATION

78. The OSC may make modifications to any plan or schedule [or to the SOW] in writing [**insert if desired:** or by oral direction. Any oral modification will be memorialized in writing by EPA within ___ days, but shall have as its effective date the date of the OSC's oral direction.]. Any other requirements of this Order may be modified in writing by signature of the [**insert title of designated signatory or designee of EPA Region __**].

79. If Respondents seek permission to deviate from any approved Work Plan or schedule [or SOW], 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 approval from the OSC pursuant to Paragraph 78.

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

XXV. DELAY IN PERFORMANCE

81. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to the OSC within 48 hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within 7 days after notifying EPA by telephone and email, Respondents shall provide to EPA written notification fully describing the nature of the delay, the anticipated duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or minimize the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

82. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of Paragraph 81 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to fully perform all obligations under the terms and conditions of this Order.

XXVI. ADDITIONAL REMOVAL ACTIONS

83. [If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondents of that determination and will either modify this Order or issue a new Order to address any additional removal actions.]

[**Alternate provision:** "Unless otherwise stated by EPA, within 30 days of 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 Work Plan shall conform to the applicable requirements of Section XI (Work to Be Performed) of this Order. Upon EPA's approval of the Work Plan pursuant to Section XI, Respondents shall implement the Work Plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXIV (Modification)."]

XXVII. NOTICE OF COMPLETION OF WORK

84. When EPA determines, after EPA's review of the final report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including [**insert list of such obligations, e.g., post-removal site controls, land, water, or other resource use restrictions, reimbursement of Response Costs, and Record Retention**], EPA will provide written notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Order, 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 within __ days after receipt of the EPA

notice. The modified Work Plan shall include a schedule for correcting such deficiencies. Within __ days after receipt of written approval of the modified Work Plan, 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 Order.

XXVIII. ADMINISTRATIVE RECORD

[**NOTE: Paragraph 85 (Alternative 1) applies to non-time critical removals. For time-critical removals, use Paragraph 85 (Alternative 2).**]

85. [**Alternative 1**] EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of ___ and ___ at the EPA offices in [**insert Region-specific logistical information for review of the record**]. To review the administrative record, please contact [**insert name of Regional contact person**] at [**insert contact phone number**] to make an appointment. [**Optional:** A copy of the administrative record is also available for viewing at [**insert address where copy of the record is located**]]. [**Optional:** An index of the administrative record is attached.]

[**Alternative 2**] EPA will establish an administrative record which contains the documents that form the basis for the issuance of this Order. No later than 60 days after initiation of on-site removal activity, it shall be made available for review by appointment on weekdays between the hours of ___ and ___ at the EPA offices in [**insert Region-specific logistical information for review of the record**]. To review the administrative record, please contact [**insert name of Regional contact person**] at [**insert contact phone number**] to make an appointment.

XXIX. SEVERABILITY

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

It is so ORDERED.

BY: _____ DATE: _____
Name
Regional Administrator (or designee/delegatee)
Region (Number)
U.S. Environmental Protection Agency

EFFECTIVE DATE: _____

Appendix A – Optional Model Institutional Controls Language

[NOTE: If Proprietary Controls (PCs) have been selected in the Action Memorandum for the removal action, follow the instructions below to: 1) modify the definition of "Affected Property;" 2) add definitions for "Institutional Controls" (ICs) and "Proprietary Controls" (PCs); and 3) add or modify Section XIII (Property Requirements) as specified below.]

1. Modify "Affected Property" definition as follows

"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, and/or Institutional Controls are needed to implement the removal action, including, but not limited to, the following properties [**insert property descriptions**].

2. Add new definitions for "Institutional Controls" and "Proprietary Controls" (and capitalize "Institutional Controls" throughout the Order)

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

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

3. Modify Paragraph 40.a(11) as follows

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

4. Insert the paragraph below immediately after Paragraph 40 of the Order. (Paragraph numbers will automatically renumber when text is moved.) If implementation, maintenance, and enforcement of PCs is likely to be complicated or time-consuming, it is recommended that they be implemented pursuant to an "Institutional Controls Implementation and Assurance Plan" (ICIAP) as part of a SOW, rather than under the Property Requirements Section, and that the paragraph below be omitted. The OSC may consider including Paragraph 87's provisions in the ICIAP, including the requirement to use best efforts (as defined in Paragraph 41) to secure Non-Settling Owner's cooperation in executing and recording PCs.

87. Proprietary Controls. Respondents shall, with respect to any Non-Respondent Owner's Affected Property, use best efforts to secure Non-Respondent Owner's cooperation in executing and recording [; and Owner Respondent shall, with respect to Owner Respondent's

Affected Property, execute and record], in accordance with the procedures of this Paragraph 87, Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Order, including those activities listed in Paragraph 40.a (Use Restrictions); and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in Paragraph 40.b (Land, Water, or Other Resource Use Restrictions).

a. Grantees. The Proprietary Controls must be granted to one or more of the following persons and their representatives, as determined by EPA: the United States, the State, Respondents, and other appropriate grantees. Proprietary Controls in the nature of a Uniform Environmental Covenants Act (UECA) document granted to persons other than the United States must include a designation that [**for UECA states:** EPA (and/or the State as appropriate) is either an "agency" or a party] [**for non-UECA states:** EPA (and/or the State as appropriate) is a "third-party beneficiary"] expressly granted the right of access and the right to enforce the covenants allowing EPA [and/or the State] to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

[NOTE: "Agency" is a defined term in the statutes of states that have adopted UECA. For UECA states that have defined "agency" to exclude EPA (such as Delaware) and non-UECA states, the case team can usually substitute the term "third-party beneficiary." However, the case team should review state law to make sure that the term used will ensure that the United States will acquire the rights it needs, i.e., access and rights to enforce land use restrictions that are not real property interests, but that, similar to real property interests, run with the land and are enforceable against both present and future owners. If the interest EPA needs cannot be acquired through being designated as a third-party beneficiary, then it may be necessary for EPA to acquire an interest in real property. For more specific information, see "Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls" (Apr. 19, 2004), available at http://www2.epa.gov/enforcement/guidance-third-party-beneficiary-rights-proprietary-institutional-controls.]

[NOTE: PCs should be prepared so that the United States does not acquire an interest in real property. PCs, however, may be prepared in a way that gives the United States, and perhaps others, rights, such as the right to enforce PCs that are defined as not being an interest in real property (as is often the structure found in state versions of UECA, and as may be the effect in non-UECA instruments designating the United States, and perhaps others, as "third-party beneficiaries"). For this reason EPA should conduct its own title review. The interest EPA acquires is not an interest in real property by definition in UECA, but it functions like an interest in real property, so it is essential that a title review be conducted to determine that the rights have been properly created so as to be enforceable under the applicable state UECA law, and so that liens and encumbrances that could defeat or interfere with the EPA interest are identified and released, subordinated, or otherwise addressed prior to EPA acquiring its interest.]

b. Initial Title Evidence. Respondents shall, within [45] days after the Effective Date:

(1) Record Title Evidence. Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names EPA, the State, the Respondents, or "To Be Determined;" (ii) covers the Affected Property that is to be encumbered; (iii) demonstrates that the person or entity that will execute and record the Proprietary Controls is the owner of such Affected Property; (iv) identifies all record matters that affect title to the Affected Property, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, "Prior Encumbrances"); and (v) includes complete, legible copies of such Prior Encumbrances; and

(2) Non-Record Title Evidence. Submit to EPA a report of the results of an investigation, including a physical inspection of the Affected Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

[NOTE: For general guidance on both record and non-record forms of title evidence acceptable to the United States, see the U.S. Department of Justice Title Standards 2001, available at http://www.justice.gov/enrd/Current_topics.html.]

c. Release or Subordination of Prior Liens, Claims, and Encumbrances.

(1) Respondents shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Affected Property revealed by the title evidence or otherwise known to any Respondent, unless EPA waives this requirement as provided under Paragraphs 87.c(2)-(4).

(2) Respondents may, by the deadline under Paragraph 87.b (Initial Title Evidence), submit an initial request for waiver of the requirements of Paragraph 87.c(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights to be granted by the Proprietary Controls and cannot interfere with the removal action or result in unacceptable exposure to Waste Material.

(3) Respondents may, within [90] days after the Effective Date, or if an initial waiver request has been filed, within [45] days after EPA's determination on the initial waiver request, submit a final request for a waiver of the requirements of Paragraph 87.c(1) regarding any particular Prior Encumbrance on the grounds that Respondents could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

[NOTE: Paragraph 87.c provides for an "initial" waiver request that addresses the issue of whether the Prior Encumbrance can adversely affect the PC, and then a "final" waiver request that addresses the issue of whether Respondents used best efforts. This is intentional and is for the purpose of streamlining and expediting the process. If the Respondents demonstrate to EPA that a particular Prior Encumbrance will not adversely affect the PC, then Respondents do not need to expend further time and effort to secure the release of such Prior Encumbrance.]

(4) The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing

areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.

(5) Respondents shall complete their obligations under Paragraph 87.c(1) regarding all Prior Encumbrances: within [180] days after the Effective Date; or if an initial waiver request has been filed, within [135] days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within [90] days after EPA's determination on the final waiver request.

d. Update to Title Evidence and Recording of Proprietary Controls.

(1) Respondents shall submit to EPA for review and approval, by the deadline specified in Paragraph 87.c(5), all draft Proprietary Controls and draft instruments addressing Prior Encumbrances. [The Proprietary Controls must be in substantially the form attached hereto as Appendix __.]

(2) Upon EPA's approval of the proposed Proprietary Controls and instruments addressing Prior Encumbrances, Respondents shall, within [15] days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under Paragraph 87.b (Initial Title Evidence). If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Respondents shall secure the immediate recordation of the Proprietary Controls and instruments addressing Prior Encumbrances in the appropriate land records. Otherwise, Respondents shall secure the release, subordination, modification, or relocation under Paragraph 87.c(1), or the waiver under Paragraph 87.c(2)-(4), regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Proprietary Controls and instruments addressing Prior Encumbrances.

[NOTE: The appropriate land records are most commonly in the county(ies) where the Affected Property is located.]

(3) If Respondents submitted a title insurance commitment under Paragraph 87.b(1) (Record Title Evidence), then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, Respondents shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for $100,000 or other amount approved by EPA; (iii) is issued to EPA, Respondents, or other person approved by EPA; and (iv) is issued on a current American Land Title Association (ALTA) form [**in Texas**: "Texas Land Title Association (TLTA) form"] or other form approved by EPA.

[NOTE: The $100,000 amount of the title insurance coverage in the policy was selected by EPA as appropriate and adequate. If there are questions or concerns the case team may consult with the Civil Rights and Finance Law Office of EPA's Office of General Counsel, 202-564-5461, concerning this issue.]

(4) Respondents shall, within [30] days after recording the Proprietary Controls and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide EPA and all grantees of the Proprietary Controls: (i) certified copies of the

recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk's recording stamps; and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording of the Proprietary Controls and instruments.

e. Respondents shall monitor, maintain, enforce, and [annually] report on all Proprietary Controls required under this Order.

5. Modify "Best Efforts" Paragraph 41 as follows

41. 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, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If, within _ days after the Effective Date, Respondents are unable to accomplish what is required through "best efforts" 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, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. EPA reserves the right to seek payment from Respondents for all costs, including cost of attorneys' time, incurred by the United States in obtaining such access or agreements to restrict land, water, or other resource use.

6. Modify Paragraph 42 as follows

42. Owner Respondent shall not Transfer its Affected Property unless it has: (a) first secured EPA's approval of, and transferee's consent to, an agreement that: (i) is enforceable by EPA; and (ii) requires the transferee to provide access to and refrain from using the Affected Property to the same extent as is provided under Paragraphs 40.a (Access Requirements) and 40.b (Land, Water, or Other Resource Use Restrictions); and (b) executed and recorded all Proprietary Controls and instruments addressing Prior Encumbrances regarding such Affected Property in accordance with Paragraph 87 (Proprietary Controls).

7. Modify Paragraph 44 as follows

44. 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 this Order, including their obligation to secure access and ensure compliance with any use restrictions regarding the Affected Property, and to implement, maintain, monitor, and report on Institutional Controls.

8. Modify Paragraph 46 as follows

46. Notwithstanding any provision of this Order, EPA [and the State] retain[s] all of its [their] access authorities and rights, as well as all of its [their] rights to require land, water, or

other resource use restrictions and Institutional Controls, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

9. Modify Paragraph 84 to add Institutional Controls to the bracketed list of continuing obligations

Instructions Regarding Automated Features

FEATURE	INSTRUCTIONS
INSERTING TEXT COPIED FROM A DIFFERENT DOCUMENT	Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. **Therefore, ALWAYS use the "Paste Special" function to insert text copied from another document**. Press Ctrl-Alt-V; in the pop-up menu, click "Unformatted Text" and OK. (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.)
INSERTING A NEW PARAGRAPH	Click at the end of the ¶ immediately preceding the place where you wish to add the new **paragraph**, and press Enter. To change the new ¶'s outline level use (under the Home tab) the styles menu. For example, to change ¶12.b into ¶12.a(1), click in that ¶ and then (using the Home tab) click the "LVL 3" style. To change ¶13.a into ¶14, click in that ¶ and then (using the Home tab) click the "LVL 1" Style. Note that in consent decree models, the letters denoting each background paragraph must be manually updated.
ADDING AN UPDATEABLE SECTION OR PARAGRAPH CROSS-REFERENCE	(a) Click where you wish to insert a cross-reference; (b) Click the "References" tab, and, in the "Captions" box, click "Cross-reference;" (c) In the pop-up menu that appears, make sure the "Reference type" field contains "Numbered item" and the "Insert reference to" field contains "Paragraph Number (full context); (d) In the "For which numbered item" field" select the numbered item (section, paragraph. or subparagraph) you wish to cross-reference, and click Insert.
UPDATING THE CROSS-REFERENCES	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click "Update Field;" click OK. Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: "Error! Reference source not found."
UPDATING THE TABLE OF CONTENTS	Right-click in the TOC, and in the pop-up menu, left-click "Update Field." Or click in the TOC, press F9, click Update Entire Table and OK. If you have just added a new section heading, click Update entire table before pressing Enter.
INSERTING A NEW SECTION HEADING	Click in the text of the new heading and assign the "SECTION" paragraph style to the text by clicking the "Home" tab, and in Styles box, clicking the "SECTION" style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents.
CHANGING THE FONT	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click "Font;" in the "font" field, select a new font; click OK.