UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF: Intercontinental Terminals Company LLC Deer Park, Harris County, Texas Respondent Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622)	CERCLA Docket No. ____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION**

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

90022406

TABLE OF CONTENTS

I. JURISDICTION AND GENERAL PROVISIONS 2
II. PARTIES BOUND 3
III. DEFINITIONS 4
IV. FINDINGS OF FACT 6
V. CONCLUSIONS OF LAW AND DETERMINATIONS 6
VI. SETTLEMENT AGREEMENT AND ORDER 7
VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR 7
VIII. WORK TO BE PERFORMED 8
IX. ACCESS 11
X. ACCESS TO INFORMATION 13
XI. RECORD RETENTION 14
XII. COMPLIANCE WITH OTHER LAWS 15
XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES 15
XIII. PAYMENT OF RESPONSE COSTS 15
XIV. DISPUTE RESOLUTION 18
XV. FORCE MAJEURE 19
XVI. STIPULATED PENALTIES 20
XVII. COVENANTS BY EPA 22
XVIII. RESERVATIONS OF RIGHTS BY EPA 23
XIX. COVENANTS BY RESPONDENT 24
XX. OTHER CLAIMS 26
XXI. EFFECT OF SETTLEMENT/CONTRIBUTION 26
XXII. INDEMNIFICATION 27
XXIII. INSURANCE 28
XXIV. FINANCIAL ASSURANCE 28
XXV. MODIFICATION 31
XXVI. ADDITIONAL REMOVAL ACTION 32
XXVII. NOTICE OF COMPLETION OF WORK 32
XXVIII. INTEGRATION/APPENDICES 32
XXIX. EFFECTIVE DATE 33

Deleted: 2
Deleted: 3
Deleted: 4
Deleted: 6
Deleted: 12
Deleted: 13
Deleted: 14
Deleted: 15
Deleted: 15
Deleted: 15
Deleted: 18
Deleted: 19
Deleted: 20
Deleted: 22
Deleted: 23
Deleted: 24
Deleted: 26
Deleted: 26
Deleted: 27
Deleted: 28
Deleted: 28
Deleted: 31
Deleted: 32
Deleted: 32

JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Intercontinental Terminals Company LLC ("Respondent"). This Settlement Agreement provides for the performance of a removal action by Respondent and the payment of certain response costs incurred by the United States at or in connection with the "Intercontinental Terminals Company LLC Deer Park Facility Site" (the "Site") generally located at the

Intercontinental Terminals Company LLC's Deer Park facility, Tucker Bayou, Buffalo Bayou and the Houston Ship Channel in Harris County, Texas.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 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. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders). This authority was further redelegated by the Regional Administrator of EPA Region 6 to the Superfund Division Director by EPA Region 6 Delegation Nos. R6-14-14-C and R614-14-D.

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

4. On March 23, 2019, the EPA issued to Respondent an Order pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §1321. This Settlement Agreement supersedes and hereby terminates the March 23, 2019 Section 311 Clean Water Act Order. Furthermore, this Settlement Agreement does not preclude the authority of any other federal entity, including but not limited to the United States Coast Guard, to issue or enter into any other order(s) or settlement agreement(s) under any other provisions of law, including the Clean Water Act as amended by the Oil Pollution Act. The EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections III (Findings of Fact) and IV (Conclusions of Law and Determinations) of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

Deleted: IV

I. PARTIES BOUND

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

6. This paragraph intentionally left blank.

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

7. Respondent shall provide a copy of this Order to each contractor hired to perform the Work required by this Order and to each person representing Respondent 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. Respondent or its contractors shall provide

written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Order.

II. DEFINITIONS

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

"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 Agreement, 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 Agreement as provided in SectionXXIX.

Deleted:

Deleted: 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.

"TCEQ" shall mean the Texas Commission on Environmental Quality 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, including but not limited to the EPA and the United States Coast Guard, incurs in reviewing or developing plans, reports, and other deliverables submitted pursuant to this Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section VIII (Access) (including, but not limited to, the cost of attorney time and any monies paid to secure access including, but not limited to, the amount of just compensation), Section XII (Emergency Response and Notification of Releases), Paragraph 65 (Work Takeover), Section XIV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry ("ATSDR") costs regarding the Site. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall

Deleted: X

Deleted: IX

Deleted: I

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.[1]

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

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

"Parties" shall mean EPA and Respondent.

"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 Agreement 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).

"Respondent" shall mean Intercontinental Terminals Company LLC.

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

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

"Site" shall mean the Intercontinental Terminals Company LLC Deer Park Facility Superfund Site, located at Respondent's Deer Park, Texas facility and including Tucker Bayou, Buffalo Bayou and the Houston Ship Channel in Harris County, Texas.

"Intercontinental Terminals Company LLC Deer Park Superfund Site 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 40.d (Prepayment of Future Response Costs).

Deleted: 40.e

---

[1] The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

"State" shall mean the State of Texas.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the removal action to be performed pursuant to this Settlement Agreement, as set forth in Appendix A, and any modifications made thereto in accordance with this Settlement Agreement.

"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), or Section 361.003 of the Texas Solid Waste Disposal Act, Tex. Health & Safety Code § 361.003.

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

III. FINDINGS OF FACT

9. Respondent is the owner, operator or person in charge of an onshore petrochemicals and tank farm facility located at or near the City of Deer Park in Harris County, Texas.

10. On or about March 17, 2019, the Respondent's facility experienced a fire, resulting in the continued use of firefighting water and foam needed to extinguish the fire. The resulting firefighting wastewater and foam collected in a tank farm's secondary containment within Respondent's facility. On or about March 22, 2019, the secondary containment breached, resulting in an ongoing discharge of an unknown quantity of wastewater. On or about March 22 or 23, 2019, EPA contractors took samples of the discharge from the secondary containment's outfall. Sample analyses detected petroleum mixed with wastes and substances and, which include but are not limited to; xylene, among other hazardous substances. The discharge went into Tucker Bayou, and from there reached Buffalo Bayou, also known as the Houston Ship Channel, a navigable water of the U.S. The Site has not been proposed to the National Priorities List.

11. ITC is responding to the discharge and part of its response to the discharge currently includes the use and application of booms.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

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

Deleted: For worker safety reasons, Respondent discharged some material from the secondary containment into nearby ditches on March 17, 2019. …

Deleted: that includes, but is not limited to, the following substances

Deleted: hazardous substances

Deleted: is

Deleted:

Deleted: toluene, benzene,

Deleted: ,

Deleted: naphthalene, ethylbenzene, and styrene_____, _____, …

Deleted: s.

Deleted: H

Deleted: 's

Deleted: , in part,

a. The Intercontinental Terminals Company LLC Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and "oil" as defined by Section 1001(23) of the Oil Pollution Act, 33 U.S.C. § 2701(23).

Deleted: .

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

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

(1) Respondent is the "owner(s)" and/or "operator(s)" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

(2) Respondent 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).

Commented [A1]: This includes the discharge into Tucker and Buffalo Bayous, which are not owned or operated by Respondent.

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

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

V. SETTLEMENT AGREEMENT AND ORDER

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

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

14. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within one (1) day after the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any

other contractor(s) or subcontractor(s) retained to perform the Work within one (1) day after the Effective Date. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within three (3) days after EPA's disapproval.

15. Respondent has designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement: [**insert name, address, phone number, and email address**. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. Notice or communication relating to this Settlement Agreement from EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent. EPA has designated Adam Adams of the Prevention and Response Branch, Superfund Division, EPA Region 6, as its On-Scene Coordinator ("OSC"). EPA and Respondent shall have the right, subject to this paragraph, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA seven (7) days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

16. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at EPA Region 6, 1445 Ross Ave., Dallas, TX 75202. Respondent shall submit two (2) copies of all plans, reports, or other deliverables required by this Settlement Agreement, the Statement of Work, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form. All data evidencing Site conditions shall be submitted to EPA in electronic form. Sampling and monitoring data contained in any deliverables must be submitted in Electronic Data Deliverable (EDD) format.

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

VII. WORK TO BE PERFORMED

18. Respondent shall perform, at a minimum, all actions necessary to implement the Statement of Work, attached as Appendix A and incorporated herein by reference.

19. Incident Action Plans, Wastewater Management Plans and Implementation.

a. As part of its response under the March 23, 2019 Section 311 Clean Water Act Order, Respondent submitted Incident Action Plans, which EPA subsequently approved, for performing a removal action under the Statement of Work for the March 23, 2019 Order. [OSC may have already approved WMP. If so, use same language as with IAP] Respondent shall continue to implement the Incident Action Plans pursuant to this Settlement Agreement and shall

submit within seven (7) days after the Effective Date a Waste Management Plan ("WMP") and a Wastewater Management and Disposal Plan ("WWMD Plan") for TCEQ review and EPA approval.

b. EPA may approve, disapprove, require revisions to, or modify the Incident Action Plan(s), WMP and WWMD Plan) in whole or in part if EPA determines a need for revision or modification exists. If EPA requires revisions, Respondent shall submit a revised draft Incident Action Plan, WMP or WWMD Plan within one (1) day after receipt of EPA's notification of the required revisions. Respondent shall implement the Incident Action Plan(s), WMP and/or WWMD Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Incident Action Plan(s), WMP and/or WWMD Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

Deleted: Wastewater Management and Disposal Plan ("

Deleted: "

c. Respondent shall implement the Incident Action Plan(s), WMP and WWMD Plan in accordance with any schedule included therein. Respondent shall not commence or continue any Work except in conformance with the terms of this Settlement Agreement.

Deleted: of

d. Unless otherwise provided in this Settlement Agreement, any additional plans, reports, or other deliverables that require EPA approval under the SOW or Incident Action Plan(s) and/or WWMD Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

20. Health and Safety Plan.

a. Within three (3) days after the Effective Date, Respondent 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 Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

21. Quality Assurance, Sampling, and Data Analysis.

a. Respondent 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 subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. Upon request, Respondent shall provide split or duplicate samples to EPA and the State or their authorized representatives. Respondent shall notify EPA and the State not less than one (1) day 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 necessary. Upon request, EPA and the State shall provide to Respondent split or duplicate samples of any samples they take as part of EPA's oversight of Respondent's implementation of the Work.

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

d. The United States and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, the Clean Water Act and any other applicable statutes and regulations.

22. Post-Removal Site Control. In accordance with the Incident Action Plan schedule, or as otherwise directed by the EPA, or TCEQ upon EPA approval of the Notice of Completion in Section XXVII, Respondent shall submit a proposal for Post-Removal Site Control, which shall include the continued management and disposal of wastes and wastewater. Upon EPA, or TCEQ approval if EPA has approved the Notice of Completion in Section XXVII, Respondent 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, or TCEQ upon EPA approval of the Notice of Completion in Section XXVII, determines that no further Post-Removal Site Control is necessary. Respondent shall provide EPA and TCEQ with documentation of all Post-Removal Site Control commitments.

Deleted: Removal Work

Deleted: .

Deleted: which shall include, but not be limited to: [**insert list of applicable post-removal site controls**].

Deleted: [Maybe add that if EPA transfers lead to TCEQ, then TCEQ shall approve above]

23. Reporting and Community Notifications.

a. Respondent shall submit daily updates and a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every seven (7) days after the Effective Date 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.

b. Within ninety (90) days after the Effective Date, unless otherwise stated by the EPA, Respondent shall host an emergency notification workshop in Harris County that will focus on emergency notifications by facilities and community notifications during an incident in the Harris County area. Respondent shall coordinate the conference with TCEQ and EPA and include facility representatives, local and state officials and community representatives.

24. Final Report. Within thirty (30) days after completion of all Work required by this Settlement Agreement, other than continuing obligations listed in Paragraph 95 (notice of

completion), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of 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 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. Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains 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). Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-site facility only if Respondent complies with EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992). [What can R do now to get prior determination?]

Deleted: 2

b. Respondent 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. Respondent 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. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

VIII. ACCESS

26. If the Site, or any other real property where access and/or land, water, or other resource use restrictions are needed, is owned or controlled by Respondent:

a. Such Respondent shall, commencing on the Effective Date, provide the United States, the State and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity regarding the Settlement Agreement including, but not limited to, the following activities:

(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, or implementing additional response actions at or near the Site;

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

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 65 (Work Takeover);

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

(9) Assessing Respondent's compliance with the Settlement Agreement; and

(10) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement.

27. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within three (3) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Section, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this

Settlement Agreement, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs incurred, direct or indirect, by the United States in obtaining such access, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation, in accordance with the procedures in Section XIII (Payment of Response Costs).

28. Notwithstanding any provision of the Settlement Agreement, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto under CERCLA, RCRA, the Clean Water Act and any other applicable statute or regulations.

IX. ACCESS TO INFORMATION

29. Respondent 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 Respondent's possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondent 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.

30. Privileged and Protected Claims.

a. Respondent may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 30.b and except as provided in Paragraph 30.c.

b. If Respondent asserts such a privilege or protection, it 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, the Record shall be provided to EPA and the State in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondent 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 evidence conditions at or around the Site; or

(2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement Agreement.

31. Business Confidential Claims. Respondent may assert that all or part of a Record provided to EPA and the State under this Section or Section X (Records 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). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Respondent asserts 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 Respondent 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 Respondent.

Deleted: XI

Deleted: Retention of

32. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, the Clean Water Act and any other applicable statutes or regulations.

X. RECORD RETENTION

33. Until ten (10) years after EPA provides Respondent with notice, pursuant to Section XXVII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement Agreement, 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 regard to the Site, provided, however, that Respondent who is potentially liable as the owner or operator 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. 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 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.

Deleted: I

34. At the conclusion of the document retention period, Respondent shall notify EPA and the State at least 90 days prior to the destruction of any Records, and, upon request by EPA or the State, and except as provided in Paragraph 30 (Privileged and Protected Claims), Respondent shall deliver any such records to EPA or the State.

35. 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.

XI. COMPLIANCE WITH OTHER LAWS

36. Nothing in this Settlement Agreement 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 Settlement Agreement 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.

XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

37. Emergency Response. In the event any action or occurrence during performance of the Work causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate, or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at (866) 372-7745 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIII (Payment of Response Costs).

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

Formatted: Underline

XIII. PAYMENT OF RESPONSE COSTS

39. Payment for Past Response Costs. Payment for past response costs are not sought in this Settlement Agreement. The EPA hereby reserves its right to seek past response costs in any subsequent administrative and/or judicial settlement agreement or action.

40. Payment for Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs for the removal actions performed under this Settlement Agreement not inconsistent with the NCP. EPA estimates the amount of Future Response Costs is projected to exceed the prepayment amount below. Based on this estimate, within one (1) business day after the Effective Date, Respondent shall pay EPA $300,000 for Future Response Costs ("Prepayment"). Respondent shall make all payments required by this Paragraph 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, New York 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" and be accompanied by appropriate transmittal communication identifying the name and address of the party(ies) making payment and EPA Site/Spill ID number A6SN and the EPA docket number for this action.

b. At the time of payment, Respondent shall send notice that payment has been made to:

Chief, Enforcement Assessment Section (6SF-TE)
US EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

And to the EPA Cincinnati Finance Center by e-mail at CINWD_AcctsReceivable@epa.gov, or by mail to:

EPA Cincinnati Finance Center
26 West Martin Luther King Drive
Cincinnati, Ohio 45268

c. If the Prepayment is depleted, EPA will send Respondent a bill for the Future Response Costs incurred for the Site under this Settlement Agreement requiring payment. Such bills will include an unreconciled Standard Cost Accounting Report (SCORPIOS report) which contains a summary itemization of EPA's and its contractors' Future Response Costs, including costs incurred from the Prepayment, including direct and

Deleted: has

Deleted: d

Deleted: that

Deleted: that will be expended at this Site under this Settlement Agreement will be $2,600,000_____.

Deleted: _____

indirect costs incurred by EPA and its contractors incurred under this Settlement Agreement. Respondent shall make all payments within seven (7) days after Respondent's receipt of such bill requiring payment, except as otherwise provided in Paragraph 48, and in accordance with the procedures described in Subparagraphs 40.a & b., including without limitation the procedure for providing notice of the remittance.

d. The total amount to be paid by Respondent pursuant to Subparagraph 40.a. (Prepayment) and Subparagraph 40.c. (billed amounts) shall be deposited by EPA in the Intercontinental Terminals Company LLC Deer Park Superfund Site Special Account within the EPA Hazardous Substances Superfund to be retained and used by EPA to conduct or finance response actions at or in connection with the Site.

e. After EPA issues the Notice of Completion of Work pursuant to Paragraph 95 and a final accounting of the Special Account, EPA will apply any unused amount as a result of payments from Subparagraph 40.a (Prepayment) to any other unreimbursed response costs or response actions associated with response actions at the Site. In addition, EPA will send Respondent an unreconciled SCORPIOS report, which includes a summary itemization of EPA and its contractors' Future Response Costs including costs incurred from the Prepayment, direct and indirect costs incurred under this Settlement Agreement. If the final accounting of the Special Account shows a credit for any amounts received under Subparagraph 40.c (periodic bill), EPA may apply any unused amount as a result of payment from Subparagraph 40.c (periodic bill) to any other unreimbursed response costs or response actions at the Site or may transfer such unused amount to the EPA Hazardous Substances Superfund. Any decision by EPA to apply unused amounts to unreimbursed response costs or response actions remaining at the Site (from amounts paid under Subparagraph 40.c periodic bill) shall not be subject to challenge by Respondent pursuant to dispute resolution provisions of this Settlement Agreement or in any other forum.

Deleted: P

41. Interest. In the event that the payments for Future Response Costs are not made within seven (7) day after Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVI (Stipulated Penalties).

42. Respondent may submit a Notice of Dispute, initiating the procedures of Section XIV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 40 if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess

costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within thirty (30) days after receipt of the bill and must be sent to the OSC. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall, within the 30-day period, pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 40. Simultaneously, Respondent shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the 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, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 40. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 40. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XIV. DISPUTE RESOLUTION

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

44. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within seven (7) days after such action. EPA and Respondent shall have thirty (30) days from EPA's receipt of Respondent's 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 Agreement.

45. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within twenty (20) days thereafter, submit a statement of position. Thereafter, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement

Agreement. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

46. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Respondent under this Settlement Agreement, not directly in dispute, unless EPA provides otherwise in writing. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 55. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement Agreement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

XV. FORCE MAJEURE

47. "Force Majeure" for purposes of this Settlement Agreement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent 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.

48. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 6, within three (3) days of when Respondent first knew that the event might cause a delay. Within seven (7) days thereafter, Respondent 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; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent 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 47 and whether Respondent has exercised its best efforts under Paragraph 47, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

49. 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 Agreement 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 Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

50. If Respondent elects to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent 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 Respondent complied with the requirements of Paragraphs 47 and 48. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement Agreement identified to EPA.

XVI. STIPULATED PENALTIES

51. Respondent shall be liable for stipulated penalties in the amounts set forth in Paragraphs 52 and 53 to EPA for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XV (Force Majeure). "Compliance" by Respondent shall include completion of all payments and activities required under this Settlement Agreement, or any plan, report, or other deliverable approved under this Settlement Agreement, in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans, reports, or other deliverables approved under this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

52. Stipulated Penalty Amounts - Work (Including Payments and Excluding Plans, Reports, and Other Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraphs 52 and 53:

Penalty Per Violation Per Day	Period of Noncompliance
$1500	1st through 14th day
$2000	15th through 30th day

$2500	31st day and beyond

b. Compliance Milestones

(1) Commencement of work pursuant to the schedules in the Work Plan.

(2) Completion of work pursuant to the schedules in the Incident Action Plan(s).

53. Stipulated Penalty Amounts - Plans, Reports, and Other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to this Settlement Agreement:

Penalty Per Violation Per Day	Period of Noncompliance
$1500	1st through 14th day
$2000	15th through 30th day
$2500	31st day and beyond

54. In the event that EPA assumes performance of all or any portion(s) of the Work pursuant to Paragraph 65 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of $250,000.

55. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 19 (Incident Action Plan(s), WWMD and Implementation), during the period, if any, beginning on the first (1st) day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Division Director level or higher, under Paragraph 45 of Section XIV (Dispute Resolution), during the period, if any, beginning 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 Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement. 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.

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

57. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XIV (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 40 (Payments for Future Response Costs).

58. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has 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 51 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 56 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

60. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that the EPA shall not seek civil penalties pursuant to Section 106(b) or 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement Agreement, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 65 (Work Takeover).

61. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVII. COVENANTS BY EPA

62. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. These covenants shall take effect upon the Effective Date and are conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Paragraph 40 (Payments for Future

Response Costs). These covenants extend only to Respondent and do not extend to any other person.

XVIII. RESERVATIONS OF RIGHTS BY EPA

63. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement 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 Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

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

Deleted: I

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

b. liability for costs not included within the definition 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 Agreement.

65. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work

Takeover Notice") to Respondent and assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued. Respondent may invoke the procedures set forth in Section XIV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover until the earlier of the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 45. Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XIX. COVENANTS BY RESPONDENT

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

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

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

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or State law relating to the Work or Future Response Costs.

d. Any direct or indirect claim for return of unused amounts from the Intercontinental Terminals Company LLC Deer Park Superfund Site Future Response Costs Special Account, except for unused amounts that EPA determines shall be returned to Respondent in accordance with Paragraph 40.

67. Except as provided in Paragraph 70 (Claims Against De Micromis Parties), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVIII (Reservations of Rights by EPA), other than in Subparagraph 64.a (liability for failure to meet a requirement of the Settlement Agreement) or Subparagraph 64.d (criminal liability), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

Deleted: P

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

69. Respondent reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA 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 Respondent's plans, reports, other deliverables or activities.

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

71. The waiver in Paragraph 70 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

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

XX. OTHER CLAIMS

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

73. Except as expressly provided in Paragraph 70 (Claims Against De Micromis Parties) and Section XVII (Covenants by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XXI. EFFECT OF SETTLEMENT/CONTRIBUTION

75. Except as provided in Paragraph 70 (Claims Against De Micromis Parties), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XIX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

76. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work and Future Response Costs.

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

78. 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, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVII (Covenants By EPA).

79. Effective upon signature of this Settlement Agreement by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Respondent the payment(s) required by Section XIII (Payment of Response Costs) and, if any, Section XVI (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 76 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 Respondent that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

XXII. INDEMNIFICATION

80. Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to 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 Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement

Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

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

XXIII. INSURANCE

83. Within three (3) days after the Effective Date, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, commercial general liability insurance with limits of one million dollars, for any one occurrence, and automobile insurance with limits of two million dollars, combined single limit, naming the EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement Agreement. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXIV. FINANCIAL ASSURANCE

84. In order to ensure completion of the Work, Respondent shall establish, maintain, and submit to EPA financial assurance, initially in the amount of $5,000,000 (the "Estimated Cost of the Work"), for the benefit of EPA. The financial assurance, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms (provided that, if Respondent intends to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds, letters of credit, trust funds, and insurance policies).

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

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 acceptable in all respects to EPA;

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

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

f. a written guarantee to fund or perform the Work executed in favor of EPA provided by one 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 Respondent; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (8) of 40 C.F.R. § 264.143(f) and this Section with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee).

85. Within fifteen (15) days after the Effective Date, Respondent shall submit all executed or otherwise finalized mechanisms or other documents required to the OSC.

86. If Respondent provides or obtains financial assurance for completion of the Work by means of a demonstration or guarantee pursuant to Subparagraph 84.e or 84.f, Respondent and/or its guarantors shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Settlement Agreement, and with the requirements of this Section, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant to EPA no later than fifteen (15) days after the Effective Date; (b) the annual re-submission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (c) the notification of EPA no later than thirty (30) days after any such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 days after the close of any fiscal year for which the year-end financial data show that such entity no longer satisfies such financial test requirements. Respondent agrees that EPA may also, based on a belief that the relevant entity

Deleted: P

may no longer meet the financial test requirements of this Section, require reports of financial condition at any time from the relevant entity in addition to those specified in this Section. For purposes of the financial assurance mechanisms specified in this Section, references in 40 C.F.R. Part 264, Subpart H to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall also include the Estimated Cost of the Work; (2) "the sum of current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental obligations" (including obligations under CERCLA, RCRA, EPA's Underground Injection Control program, 40 C.F.R. Part 144, enacted as part of the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 to 6992k, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 to 2695d, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work to be performed in accordance with this Settlement Agreement; (3) the terms "owner" and "operator" shall be deemed to refer to Respondent obtaining a guarantee or making a demonstration under Subparagraph 84.e or 84.f; and (4) the terms "facility" and "hazardous waste management facility" shall be deemed to include the Site.

Deleted: P

87. Respondent shall diligently monitor the adequacy of the financial assurance. In the event that EPA determines and so notifies Respondent, or Respondent becomes aware of information indicating, that financial assurance provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Respondent shall notify EPA of the inadequacy within seven (7) days and, within seven (7) days after providing to or receiving from EPA such notice, shall obtain and submit to EPA for approval a proposal for a revised or alternative form of financial assurance that satisfies the requirements set forth in this Section. If EPA approves the proposal, Respondent shall provide a revised or alternate financial assurance mechanism in compliance with and to the extent permitted by such written approval and shall submit all documents evidencing such change to EPA pursuant to the delivery instructions in Paragraph 85 within thirty (30) days after receipt of EPA's written approval. In seeking approval for a revised or alternate form of financial assurance, Respondent shall follow the procedures set forth in Paragraph 89. If EPA does not approve the proposal, Respondent shall follow the procedures set forth in Paragraph 89 to obtain and submit to EPA for approval another proposal for a revised or alternate form of financial assurance within seven (7) days after receipt of EPA's written disapproval.

88. The issuance of a Work Takeover Notice pursuant to Paragraph 65 (Work Takeover) shall trigger EPA's right to receive the benefit of any financial assurance(s) provided pursuant to this Section. At such time, EPA shall have the right to enforce performance by the issuer of the relevant financial assurance mechanism and/or immediately access resources guaranteed under any such mechanism, whether in cash or in kind, as needed to continue and complete all or any portion(s) of the Work assumed by EPA. In the event (a) EPA is unable to promptly secure the resources guaranteed under any such financial assurance mechanism, whether in cash or in kind, necessary to continue and complete the Work assumed by EPA, or (b) the financial assurance involves a demonstration of satisfaction of the financial test criteria pursuant to Subparagraph 84.e or 84.f, Respondent shall immediately upon written demand from

Deleted: P

EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA. All EPA Work Takeover costs not paid pursuant to this Paragraph shall be reimbursed under Section XIII (Payment of Response Costs). In addition, if at any time EPA is notified by the issuer of a financial assurance mechanism that such issuer intends to cancel the financial assurance mechanism it has issued, then, unless Respondent provides an alternate financial assurance mechanism in accordance with this Section no later than seven (7) days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is seven (7) days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing financial assurance.

89. Respondent shall not reduce the amount of, or change the form or terms of, the financial assurance until Respondents receive written approval from EPA to do so. Respondent may petition EPA in writing to request such a reduction or change on any anniversary of the Effective Date, or at any other time agreed to by the Parties. Any such petition shall include the estimated cost of the remaining Work and the basis upon which such cost was calculated, and, for proposed changes to the form or terms of the financial assurance, the proposed revision(s) to the form or terms of the financial assurance. If EPA notifies Respondent that it has approved the requested reduction or change, Respondent may reduce or otherwise change the financial assurance incompliance with and to the extent permitted by such written approval and shall submit all documents evidencing such reduction or change to EPA pursuant to the delivery instructions in Paragraph 85 within thirty (30) days after receipt of EPA's written decision. If EPA disapproves the request, Respondent may seek dispute resolution pursuant to Section XIV (Dispute Resolution), provided however, that Respondent may reduce or otherwise change the financial assurance only in accordance with an agreement reached pursuant to Section XIV or EPA's written decision resolving the dispute.

90. Respondent shall not release, cancel, or discontinue any financial assurance provided pursuant to this Section until: (a) Respondent receives written notice from EPA in accordance with Paragraph 95 that the Work has been fully and finally completed in accordance with this Settlement Agreement; or (b) EPA otherwise notifies Respondent in writing that it may release, cancel, or discontinue the financial assurance(s) provided pursuant to this Section. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XIV (Dispute Resolution), and may release, cancel, or discontinue the financial assurance required hereunder only in accordance with an agreement reached pursuant to Section XIV or EPA's written decision resolving the dispute.

XXV. MODIFICATION

91. The OSC may modify any plan or schedule or Statement of Work 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 Agreement may be modified in writing by mutual agreement of the parties.

92. If Respondent seeks permission to deviate from any approved work or Incident Action Plan or schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 91.

93. 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 Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVI. ADDITIONAL REMOVAL ACTION

94. If EPA determines that additional removal actions not included in the Incident Action Plan(s), or other approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days after receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a work plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the plan pursuant to Paragraph 19 (Incident Action Plan(s) and Implementation), Respondent 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 XXV (Modification).

Deleted: I

XXVII. NOTICE OF COMPLETION OF WORK

95. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including post removal site control (continued waste and wastewater management), payment of Future Response Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Incident Action Plan(s), WMP and/or WWMD Plan, if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Incident Action Plan(s), WMP and/or WWMD Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Incident Action Plan(s), WMP and/or WWMD Plan shall be a violation of this Settlement Agreement.

XXVIII. INTEGRATION/APPENDICES

96. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this

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

XXIX. EFFECTIVE DATE

97. This Settlement Agreement shall be effective on the same day the Settlement Agreement is signed by the Regional Administrator or his/her delegatee.

The undersigned representative of Respondent certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party it represents to this document.

Formatted: Space After: 10 pt, Line spacing: Multiple 1.15 li

Agreed this ___ day of April, 2019 .

For Respondent _____

By

Title _____

It is so ORDERED and Agreed this _____ day of April, 2019.

BY: _____ DATE:_____
Carl Edlund, P.E.
Director, Superfund Division
Region 6
U.S. Environmental Protection Agency

EFFECTIVE DATE: _____