UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF: MOBERLY FMGP 501 FRANKLIN STREET MOBERLY, MISSOURI UNION ELECTRIC COMPANY, RESPONDENT. Proceeding under Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607, and 9622.	Docket No.: CERCLA-07-2007-0015

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

January 29, 2008

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Union Electric Company d/b/a AmerenUE, a public utility organized and existing under Missouri law ("Respondent"). This Settlement Agreement provides for the protection of public health or welfare or the environment by the design and implementation of certain response actions by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with property formerly owned and operated by Respondent's predecessors as a manufactured gas plant ("MGP") from approximately 1875 until 1935, located generally in the area of 501 Franklin Street in Moberly, Missouri (the "Site").

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

3. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent pursuant to 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 and Conclusions of Law and Determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

4. This Settlement Agreement applies to and 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 Respondent's responsibilities under this Settlement Agreement.

5. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which 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 the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Enforcement Action Memorandum pertaining to the Site signed on January 11, 2008, by the Director of EPA Region VII's Superfund Division. A copy of the Action Memorandum is included in the administrative record for the Site.

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

c. "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 holiday, the period shall run until the close of business of the next working day.

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

e. "Engineering Evaluation/Cost Analysis" or "EE/CA" refers to Engineering Evaluation/Cost Analysis dated August 2007, prepared by Burns and McDonnell on behalf of Respondent. The Engineering Evaluation/Cost Analysis is included in the administrative record for the Site.

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

g. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs from the Effective Date of this Settlement Agreement in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 46 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 57 (emergency response), Paragraph 84 (work takeover).

h. "Hazardous Substance" shall have the same meaning as set forth in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

i. "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 1st of each year, in accordance with 42 U.S.C.

§ 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1st of each year.

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

k. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

l. "Parties" shall mean EPA and Respondent.

m. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through the day preceding the Effective Date of this Settlement Agreement, plus Interest on all such costs through such date.

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

o. "Site" shall mean the Moberly Former Manufactured Gas Plant Superfund Site, encompassing approximately one acre, located at 501 Franklin Street in Moberly, Randolph County, Missouri, and depicted generally on the map attached as Figure 1.

p. "State" shall mean the State of Missouri.

q. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

r. "Waste Material" shall mean: (1) any "hazardous substances" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

s. "Work" shall mean all activities that Respondent is required to perform pursuant to this Settlement Agreement.

IV. FINDINGS OF FACT

7. The Site is located at 501 Franklin Street in Moberly, Randolph County, Missouri. The Site is located on the eastern portion of property currently occupied by the Ameren Moberly Works Headquarters. The Site encompasses approximately one acre. The Ameren Moberly Works Headquarters occupies approximately three acres and is comprised of a storage yard, substation, garage, and office structure. Approximately a dozen employees are based out of the Ameren Moberly Works Headquarters.

8. The Site is bound by Sturgeon Street to the north, Dameron Street to the east, Franklin Street to the south, and a former alley to the west which divided the western half of the block from the former manufactured gas plant ("MGP") operation. The Site location is generally depicted on Figure 1 and the Site is more specifically depicted on Figure 2. The Site is located in a light commercial/residential area. A chain-link fence topped with barbed wire restricts access to the Site, and an additional chain link fence surrounds the location of a former tar well. Structures from the former MGP remain on the surface and subsurface of the Site. The surface structures include the electric plant building which is used as a warehouse, the governor house which is vacant, and three-foot tall concrete containment structures which housed above ground fuel oil tanks. The tanks have been removed. The former MGP subsurface structures include the masonry tank of the relief gas holder, the concrete foundation for the tank for the 100,000 cubic foot gas holder, the concrete base for a purifier, the rectangular tar well, and the circular tar well. An electrical substation, garage and warehouse with offices occupy the property immediately to the west of the former MGP Site.

9. A brief history of the manufactured gas plant activities at the Site was developed by Respondent's contractor, Environmental Operations, Inc., based on a review of available Sanborn Fire Insurance Maps.

a. The 1893 Sanborn Map shows a gas holder (gasometer), coal house, retort house, purifier room, lime house, office, supply room, and a cistern just south of the retort house, as well as other unidentified structures.

b. The 1899 Sanborn Map shows all the features present in the 1893 Sanborn Map except for the cistern, and the addition of a circular tar well.

c. The 1909 Sanborn Map shows the same features indicated on the 1899 Sanborn Map except for the addition of a cistern west of the (unlabeled) gas plant building, a railroad spur in the former supply room area, and an apparent coal off-loading area.

d. The 1916 Sanborn Map depicts significant changes in the plant with the conversion to the Lowe process. The most significant changes include the addition of an above ground gas holder in the southwest corner of the Site, two

purifiers, a meter room, a crude-oil tank, a supply room and a coal shed. The previously depicted tar wells and cisterns are no longer shown on the 1916 Sanborn Map.

e. The 1923 Sanborn Map shows all the features depicted in the 1916 Sanborn Map except for the crude-oil tank. Two other oil tanks and several unidentified structures were added to the Site. The northern-most gas holder is labeled "relief gas holder."

f. The 1931 Sanborn Map indicates the same features depicted in the 1923 Sanborn Map with the addition of two water tanks and several unidentified structures.

10. In 1875, Moberly Gas Light & Coke Company commenced coal gasification operations at the Site. Coal gasification is a process for converting coal to combustible gases. In 1891, the Moberly MGP changed ownership and was renamed the Moberly Gas & Electric Company. In 1912, the plant changed ownership and was renamed the Moberly Light & Power Company. In 1927, the plant changed ownership and was renamed the Missouri Power & Light Company.

11. From the early 19th century until the 1940s almost all fuel gas distributed for residential and commercial use in the United States was produced by the gasification of coal or coke. By 1935, natural gas transported by pipeline became less expensive than manufactured gas. This resulted in a decreased demand for coal gas which resulted in the closure of most coal gasification facilities, including the Moberly MGP. In 1950, the North American Company transferred control of Missouri Power & Light Company to Union Electric Company, with Missouri Power & Light operating as a wholly owned subsidiary of Union Electric. In 1983, Missouri Power & Light merged into Union Electric.

12. Organic and inorganic process residuals are created during manufactured gas production. The contaminant most commonly found at former manufactured gas plant sites is coal tar, which was the by-product of the manufacturing process. Coal tar residuals are often found in surface soil in or near production buildings, tar wells, and gas holder areas. Sampling efforts conducted at the Site were concentrated near these structures.

13. On September 6, 1991, Ecology and Environment, Inc., an EPA contractor, completed a Preliminary Assessment ("PA") at the Site. The PA found a potential for a release of contaminants from the Site to groundwater due to former operating practices involving tar and purifier wastes at the Site. The PA also found evidence of surface and subsurface soil contamination.

14. On February 22, 2000, a Site sampling event was conducted by Environmental Operations, Inc., a consultant for the Respondent, in order to satisfy the requirements of the Missouri Department of Natural Resources ("MDNR") site evaluation and state cooperative agreement. MDNR representatives were present during the sampling event. This Site

assessment/characterization involved the collection of soil and groundwater samples. During the sampling event, 55 probeholes were advanced using a direct-push sampling system to allow for continuous soil sampling. Four shallow probeholes were advanced four feet below ground surface ("bgs"), 50 deep probeholes were advanced to or into the water-bearing zone, and one deep probehole was advanced to the water-bearing zone 32 feet bgs. Soil samples were collected from the probeholes for laboratory analysis at 0-3 feet bgs, and at greater than 3 feet bgs. On February 23 and 24, 2000, four groundwater monitoring wells were advanced into the groundwater-bearing zone on all four sides of the former MGP. Groundwater samples were collected from 10-20 feet bgs using a micro-purge technique. Eleven test pits were excavated to 6-8 feet bgs to observe subsurface conditions and assess the presence of below-grade structures.

15. Analytical results revealed that soil samples collected at the Site are impacted by several constituents of interest ("COI") at concentrations above EPA Region IX's preliminary remediation goals ("PRGs"). These COI include aromatic hydrocarbons (benzene, toluene, ethylbenzene, and total xylene), polycyclic aromatic hydrocarbons ("PAHs"), arsenic, and chromium.

16. The EPA Region IX PRGs are used to evaluate and clean up contaminated sites. They are risk-based concentrations that are intended to assist risk assessors in initial site screening and are frequently used as clean up goals. PRG levels are EPA guidelines, not legally enforceable standards. The PRGs are generic and calculated without site specific information. Therefore, analytical results at this Site are compared to the standards set forth under the PRG "industrial" standards. The PRG industrial standards for hazardous substances found at the Site are:

a. Benzene - 1.4 milligram per kilogram ("mg/kg").

b. Ethylbenzene - 400 mg/kg.

c. Toluene - 520 mg/kg.

d. Total xylene - 420 mg/kg.

e. Polycyclic aromatic hydrocarbons (PAHs) - benzo(a)anthracene - 2.1 mg/kg; benzo(b)fluoranthene - 2.1 mg/kg; benzo(k)fluoranthene - 21 mg/kg; benzo(a)pyrene - .21 mg/kg; dibenzo(a,h)anthracene - .21 mg/kg; indeno(1,2,3-cd)pyrene - 2.1 mg/kg; and chrysene - 210 mg/kg.

f. Arsenic - 1.6 mg/kg.

g. Chromium (1:6 ratio Cr VI:Cr III) - 38 mg/kg. The chromium value is based on a soil screening level for the protection of groundwater.

17. During the February 22, 2000, Site sampling event subsurface soil samples were collected at 0-3 feet bgs. The analytical results indicate the presence of the following hazardous substances in the subsurface soils:

a. Benzene to 610 mg/kg was detected in a sample collected 2 feet bgs.

b. Ethylbenzene to 63 mg/kg, toluene to 831 mg/kg, and total xylene to 519 mg/kg were detected in samples collected at a depth of 2 feet bgs. These samples were collected near the relief holder tank.

c. Seventeen samples exceeded PRG levels for PAHs. Specifically, the highest concentration of detected PAHs were identified at the following concentrations: benzo(a)anthracene - 1,580 mg/kg; benzo(b)fluoranthene - 584 mg/kg; benzo(k)fluoranthene - 724 mg/kg; benzo(a)pyrene - 1,370 mg/kg; dibenzo(a,h)anthracene - 91 mg/kg; indeno(1,2,3-cd)pyrene - 366 mg/kg; and chrysene - 1,320 mg/kg.

d. Arsenic ranged from 7 mg/kg to 45 mg/kg, exceeding PRG levels.

e. Chromium ranged from 7.6 mg/kg to 52 mg/kg, exceeding the PRG level for groundwater protection.

18. During the February 22, 2000, Site sampling event subsurface soil samples were also collected at depths greater than 3 feet bgs. The analytical results indicate the presence of the following hazardous substances in the subsurface soils:

a. Benzene to 13.6 mg/kg was detected in a sample collected 16 feet bgs.

b. Seven samples collected 3 feet bgs exceeded PRG levels for PAHs. Specifically, the highest concentration of detected PAHs were identified at the following concentrations: benzo(a)anthracene - 15 mg/kg; benzo(b)fluoranthene - 5.9 mg/kg; benzo(a)pyrene - 13 mg/kg; dibenzo(a,h)anthracene - 2.2 mg/kg; and indeno(1,2,3-cd)pyrene - 3.2 mg/kg.

c. Arsenic to 22 mg/kg was detected in a sample collected 4-6 feet bgs.

19. Groundwater samples collected from four shallow monitoring wells and a deep monitoring well indicate that the soil contamination does not significantly impact shallow groundwater quality. Water near the bedrock is not impacted by any COI.

20. Tar has impacted soil to a minimum of 20 feet bgs in the vicinity of the relief holder tank.

21. On July 2, 2001, additional sampling was completed in the nearby residential neighborhood as part of MDNR's Site Reassessment Report. Analytical results identified PAH concentrations in all residential soil samples at concentrations significantly higher than background samples. The report also stated that PAH concentrations in the residential yards cannot be attributed only to the former MGP Site. PAHs are ubiquitous in the environment, in addition to industrial sources such as coal tar, domestic sources can include exhaust from automobiles and trucks, and burning of wood, garbage and other organic substances. The levels of benzo(a)pyrene found in the neighborhood adjacent to the site are typical of what is found in rural soils from the United States. The other PAHs present in the neighborhood soil are typical of urban soil levels.

22. On May 8, 2002, the Missouri Department of Health and Senior Services, in cooperation with the federal Agency for Toxic Substances and Disease Registry completed a Health Consultation Report which evaluated the Site sampling data to determine the exposure risks of nearby residents to hazardous substances that could result in adverse health effects. The Health Consultation Report concluded that the presence of hazardous substances in Site soils posed a potential threat to humans through exposure to the carcinogens benzo(a)pyrene, benzene, and other PAHs should affected soils be disturbed.

23. On January 14, 2003, the Missouri Department of Natural Resources listed the Site on the Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites in Missouri ("Registry") pursuant to the Missouri Hazardous Waste Management Law, Section 260.440, RSMo. Sites listed on the Registry appear on a publicly available list, and a notice is filed with the Recorder of Deeds documenting hazardous waste contamination at the Site. Additionally, notice regarding contamination is also provided to prospective buyers by the seller. The Site is classified as a Class 2 site.

24. The following are the toxicological effects of exposure to the hazardous substances that have been determined to be present at the Site:

a. PAHs are harmful to human health under certain circumstances. Studies of people show that individuals exposed by breathing or skin contact for long periods to mixtures that contain PAHs and other compounds can develop cancer. As a result, certain PAH compounds, including benzo(a)pyrene ("BAP") are classified as probable human carcinogens. BAP has been found at the Site. In addition, studies in animals have shown that PAHs can cause harmful effects on skin, body fluids, and the body's system for fighting disease after both short and long-term exposures. There are more than 100 different PAHs. PAHs generally occur as complex mixtures, not as single compounds. Although the health effects of individual PAHs are not exactly alike, they are typically considered as a group rather than as individual compounds.

b. Toluene is a colorless, flammable liquid. Breathing large amounts of toluene for short periods of time adversely affects the human nervous system, kidneys, liver and heart. Some studies have shown that repeat exposure to large amounts of toluene during pregnancy can adversely affect a developing fetus. Toluene can contribute to the formation of photochemical smog when it reacts with other volatile organic carbon substances in air.

c. Benzene is a known carcinogen. People living around hazardous waste sites may be exposed to higher levels of benzene in the air. When exposed at low levels, benzene may cause drowsiness, dizziness, rapid heart rate, headaches, tremors, confusion, and unconsciousness. Prolonged exposure to benzene has been associated with development of one kind of leukemia.

d. Ethylbenzene occurs naturally in coal tar and petroleum. People living near hazardous waste sites may be exposed to elevated levels of ethylbenzene in the air, water, and soil. Exposure to high levels can cause dizziness and decreased mobility. At lower exposure levels, people may experience eye and throat irritation.

e. Xylene is a colorless, flammable liquid and is sometimes released into water and soil as a result of use, storage, and transport of petroleum products. Short-term exposure at high levels of xylene can cause irritation of the skin, eyes, nose, and throat. Short-term and long-term exposure to high concentrations of xylene can cause adverse effects to the nervous system. Exposure of high levels of xylene to pregnant women may cause harmful effects to the fetus.

f. Arsenic, if ingested through water or food sources, may irritate the stomach and intestines. At higher concentrations, swallowing arsenic has also been reported to increase the risk of cancer in the liver, bladder, kidneys, prostate, and lungs.

g. Chromium (VI) is much more toxic than chromium (III), for both acute and chronic exposures. The respiratory tract is the major target organ for chromium (VI) following inhalation exposure in humans. Ingestion of high amounts of chromium (VI) causes gastrointestinal effects in humans and animals, including abdominal pain, vomiting, and hemorrhage. Acute animal tests have shown chromium (VI) to have extreme toxicity from inhalation and oral exposure. Chromium (III) is an essential element in humans. Acute animal tests have shown chromium (III) to have moderate toxicity from oral exposure.

25. On September 6, 2006, EPA and Respondent entered into an Administrative Settlement Agreement and Order on Consent ("AOC") for the performance of an engineering evaluation/cost analysis at the Site. An EE/CA is a document that identifies and evaluates feasible and cost-effective alternatives for proposed removal actions, and recommends a specific

removal action. This AOC bears EPA Docket Number CERCLA-07-2006-0187 and is on file with EPA Region VII's Hearing Clerk.

26. In February 2007, Respondent submitted a draft EE/CA to EPA for review and approval. The EE/CA evaluated alternatives for responding to the presence of certain hazardous substances in Site soils and the groundwater. As a result of comments by EPA and MDNR, the EE/CA was revised by Respondent and resubmitted to EPA and MDNR in August 2007. EPA conducted a public availability session at the Site on October 24, 2007. In accordance with the NCP, EPA began publishing notice of the availability of the EE/CA in the *Moberly Monitor-Index*, a newspaper of general circulation in the Moberly area on November 2, 2007. EPA provided to the public a 30-day opportunity - from November 2, 2007, through December 1, 2007 - for submitting written and oral comments on the response alternatives set forth in the EE/CA. No comments were received by EPA.

27. In August 2007, EPA approved a baseline risk assessment (BRA) prepared by Burns and McDonnell, a consultant for Respondent. The BRA evaluated the following scenarios: current and future indoor worker, future groundskeeper, future construction worker, and future resident scenarios. The BRA identified two unacceptable human health risks for the current and future potential populations. The hazard indices for the future child resident scenario exceeded the EPA level of concern for non-cancer risk which has a hazard index greater than one. Additionally, the excess lifetime cancer risk values for the current and future indoor worker, future groundskeeper, and future resident scenarios exceeded the 1E-04 level identified in the NCP.

28. By Enforcement Action Memorandum dated January 11, 2008, EPA selected the combination of the second and third removal action alternative recommended in Section 6.0 of the EE/CA. The selected alternatives include the following actions:

a. Excavation and disposal of accessible source materials and impacted soil. Respondent shall conduct excavation in areas depicted in Figure 4-2 of the EE/CA. Figure 4-2 identifies the following areas for excavation. Two off-site areas along Sturgeon and Dameron Streets where excavation will reach at least three feet bgs and one area off-site where excavation will reach at least six feet bgs. Five areas on-site where excavation will reach at least three feet bgs. Those areas are near sample SB-43, SB-39, SS-02, SB-04 and SB-03. In the area near sample SB-03 Respondent shall explore a test pit between the Former Containment Area and the 100,000 cubic foot Gas Holder and then excavate where impacted soil is encountered. The area surrounding the purifier will be excavated at least nine feet bgs. The area surrounding the tar well will be excavated at least ten feet bgs, and the area surrounding the relief holder will be excavated at least sixteen feet bgs. The two abandoned underground storage tanks (UST) near sample SB-39 carry a "no further action" designation on the MDNR UST database, and no excavation is planned below the surface soil near

the USTs. Excavation shall be performed to the extent of contamination based on visual impacts. In areas of MGP-related subsurface structures and in areas where subsurface soil is visually impacted by source material, the excavation shall proceed to the bottom of visually impacted material, the water table, or the floor of an underground vault, whichever is encountered first. Unless there is cause to remove them, underground vaults may be left in place or scraped clean using an excavator.

b. Respondent shall conduct on-site solidification where heavily impacted soil by source material (i.e. tar) or water-saturated contaminated soils are encountered. Solidification shall include blending source impacted materials with absorbent blending materials such as clean onsite soil, clean clay from offsite, and a drying agent. Solidification shall be conducted on-Site. Solidification shall be performed in lifts. Once a lift is adequately solidified it shall be stockpiled and analyzed to ensure compliance with Subtitle D landfill requirements. Prior to removing materials from the site, the material shall pass the paint filter test. Materials that are not suitable for Subtitle D landfill disposal shall be disposed in an appropriately permitted Subtitle C landfill.

c. Respondent shall use a photoionization detector (PID) to screen soil for VOCs. Confirmation samples shall be taken at the limits of excavation and the analytical results shall be compared to Site-specific PRG concentrations included in the Removal Action Work Plan. Confirmation samples exceeding Site-specific PRGs shall be reported and discussed with EPA and MDNR. EPA and MDNR may require additional excavation and subsequent confirmation sampling where levels of contamination are judged to be too high by EPA and MDNR. Upon written approval by EPA and MDNR, low levels of contamination may remain in place.

d. During excavation, Respondent shall monitor ambient air to ensure emissions are maintained within acceptable Site-specific PRG limits described in the Ambient Air Monitoring Plan.

e. Respondent shall decontaminate all equipment and vehicles which come into contact with contaminated soils prior to leaving the work area.

f. Respondent shall dispose of excavated material off-site at either a Subtitle C or Subtitle D landfill depending on the type of impact to the soil. Impacted soil that is not visually impacted by source material shall be taken to a Subtitle D landfill as a special non-hazardous waste. Visually impacted soil having the presence of source material shall be taken to a Subtitle C landfill once it has been solidified and confirmed to pass disposal requirements. Respondent shall backfill all excavated areas using clean soil and maintain the natural surface level, drainage, and topography.

g. Respondent shall install an engineered barrier of four inches of asphalt pavement underlain by at least six inches of crushed stone to prevent direct contact with impacted materials left in place and vapor migration to receptors on the surface. The engineered barrier shall extend from Sturgeon Street on the north to Franklin Street on the south and Dameron Street on the east to the eastern edges of the office and garage and substation to the west. The engineered barrier is depicted in Figure 4-4 of the EE/CA.

h. Respondent shall conduct quarterly groundwater monitoring from five existing on-Site wells. Within 60 days of the effective date of this Settlement Agreement, Respondent shall submit to EPA and the State for review and approval a groundwater monitoring plan which shall include a sampling plan, schedule, and Quality Assurance/Quality Control ("QA/QC"). EPA may approve, disapprove, require revisions to, or modify the groundwater monitoring plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft groundwater monitoring plan within thirty (30) days of receipt of EPA's notification of the required revision. Once approved, or approved with modifications, the groundwater monitoring plan shall be incorporated into and become fully enforceable under this Settlement Agreement. As part of the groundwater monitoring requirement, Respondent shall report the quarterly groundwater monitoring results to EPA and MDNR. After one year, Respondent shall submit an annual report of groundwater results. Upon written approval by EPA, Respondent may cease groundwater monitoring. Upon written denial by EPA, Respondent shall continue quarterly groundwater monitoring and submit an annual groundwater monitoring report until EPA determines groundwater monitoring may cease.

i. Respondent shall implement appropriate institutional controls to minimize the potential for exposures to any remaining impacted media not meeting PRGs, and to protect against future exposure if the owner of the property ever changes. All institutional controls shall comply with the requirements set forth in Section IX (Access/Institutional Controls). The institutional controls shall prohibit residential use of the property, restrict land use and digging within property boundaries, ensure regular inspections and maintenance, and ensure that informational devices are continued so that EPA and MDNR are notified if the property is sold and that the restrictions are explained to any subsequent purchaser. The institutional controls are expected to include proprietary or governmental controls in the form of a deed restriction, restrictive covenant, easement, municipal ordinance, or other appropriate instrument and name the Missouri Department of Natural Resources as the grantee/holder.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The Moberly former MGP Superfund Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

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

d. Respondent is the "owner" 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).

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 actions required by this Settlement Agreement are 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 considered consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, as provided in Section 300.700(c)(3)(ii) of the NCP.

g. A planning period of at least 6 months exists before on-Site removal response activities must be initiated, and a non-time-critical removal action is appropriate.

VI. SETTLEMENT AGREEMENT AND ORDER

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

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

31. Respondent shall propose one or more contractors to perform the Work and shall notify EPA and the State of the name(s) and qualifications of such contractor(s) within ten (10) days after the Effective Date of this Settlement Agreement. Respondent shall also notify EPA and the State of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) proposed to perform Work at least thirty (30) days prior to the commencement of such Work, unless circumstances require that the Work be commenced less than thirty (30) days after the notice is provided. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors proposed by Respondent. If EPA disapproves of a proposed contractor, Respondent shall retain a different contractor and shall notify EPA and the State of that contractor's name and qualifications within thirty (30) days of receipt of EPA's disapproval.

32. Respondent has designated a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement. To the greatest extent possible, Respondent's Project Coordinator shall be present on Site or readily available during Site Work. While EPA does not disapprove of this Project Coordinator, EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within thirty (30) days of Respondent's receipt of EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent. Respondent's Project Coordinator is:

Steven L. Burns
Ameren Services
One Ameren Plaza
1901 Chouteau Avenue
P.O. Box 66149, MC 602
St. Louis, MO 63166-6149
Phone: 314-554-2253
Fax: 314-554-4182
slburns@ameren.com

33. Respondent has retained Burns & McDonald as its primary contractor to perform the Work. While EPA does not disapprove of this contractor, EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a contractor, Respondent shall retain a different contractor and shall notify EPA and the State of that contractor's name and qualifications within thirty (30) days of Respondent's receipt of EPA's disapproval.

34. EPA has designated Paul Doherty of EPA Region VII's Superfund Division as its On-Scene Coordinator ("OSC") and Project Coordinator with regard to the Work. Except as

otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to:

Paul Doherty
Superfund Division
U.S. Environmental Protection Agency, Region VII
901 North 5th Street
Kansas City, Kansas 66101
Telephone: 913-551-7924
Facsimile: 913-551-9924
doherty.paul@epa.gov

35. EPA and Respondent shall have the right, subject to Paragraph 32, to change their respective designated OSC or Project Coordinators. Respondent shall notify EPA and the State ten (10) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

36. Respondent shall perform, at a minimum, all actions necessary to implement the requirements of this Settlement Agreement, and perform, at a minimum, all actions necessary to implement the Action Memorandum and the alternatives chosen in the EE/CA. Specifically, Respondent shall: (a) excavate and dispose of accessible source material off-Site, (b) remove and dispose of impacted soil off-Site, (c) install asphalt cap over portions of the Site, (d) conduct groundwater monitoring, and (e) restrict land use and digging within property boundaries through institutional controls. The actions to be implemented generally include, but are not limited to, the following:

37. Work Plan and Implementation.

a. Respondent shall conduct a removal action at the Site by performing the Work as detailed in an EPA-approved Removal Action Work Plan ("Work Plan"). The Work Plan shall include all actions necessary to implement the requirements of this Settlement Agreement, the Action Memorandum, and the alternatives selected in the EE/CA. Within 30 days after the effective date of this Settlement Agreement, Respondent shall submit to EPA and the State for review and approval, a draft Work Plan prepared in accordance with this Settlement Agreement. Upon approval by EPA the draft Work Plan shall become the approved Work Plan and the approved Work Plan shall be incorporated in its entirety herein and shall be enforceable as part of this Settlement Agreement. The Work Plan shall include a detailed description of the tasks and submissions that Respondent will complete during the removal action and shall include an expeditious schedule for completing such tasks and submissions.

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

c. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 37(b).

38. Health and Safety Plan. Within thirty (30) 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 HSP shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. EPA may approve, disapprove, require revisions to, or modify the HSP. If EPA determines that it is appropriate, the HSP shall also include contingency planning. Respondent shall incorporate all changes to the HSP recommended by EPA and shall implement the HSP during the performance of the Work.

39. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that any laboratories used by Respondent to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

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

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 15 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's performance of the Work.

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

41. Reporting.

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

b. Respondent shall submit three (3) copies of all plans, reports, notifications or other submissions required by this Settlement Agreement or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form. Copies shall be sent to the OSC at the address in Paragraph 34.

c. Respondent shall submit to MDNR one copy of all plans, reports, notifications or other submissions required by this Settlement Agreement to:

Chrisi Ambruster
Hazardous Waste Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

d. Respondent shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA's Project Coordinator of the proposed conveyance, including the name and address of the transferee. Respondent also agrees to require that its successors comply with the immediately proceeding sentence and Sections IX (Access/Institutional Controls) and X (Access to Information).

42. Final Report. Within thirty (30) days after completion of all Work required by this Settlement Agreement, 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 this Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The Final Report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

43. Off-Site Shipments.

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

i. Respondent shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondent shall notify

the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 43(a) and 42(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

IX. ACCESS/INSTITUTIONAL CONTROLS

Property Owned or Controlled by Respondent

44. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall:

a. commencing on the effective date of this Settlement Agreement, provide to EPA and its representatives, including contractors, and the State access at all reasonable times to the Site, or other such property, for the purpose of conducting any activity related to this Settlement Agreement including, but not limited to, the following:

i. Monitoring the Work;
ii. Verifying any data or information submitted to EPA;
iii. Conducting any Site-related investigations relating to contamination at or from the Site;
iv. Obtaining samples;
v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
vi. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents;
vii. Assessing Respondent's compliance with this Settlement Agreement; and

viii. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Settlement Agreement;

b. commencing on the effective date of this Settlement Agreement, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response action to be implemented pursuant to this Settlement Agreement; and

c. execute and record in the Recorder's Office (or other appropriate land records office) of Randolph County, Missouri, an enforceable easement, restrictive covenant, environmental covenant, or other appropriate instrument ("instrument") that runs with the land, and ensures non-interference with and the protectiveness of the response action to be implemented pursuant to this Settlement Agreement. The Respondent shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA: i) the United States, on behalf of EPA, and its representatives, ii) the State of Missouri and its representatives, and/or iii) other appropriate grantees. Respondent shall, within 90 days of EPA's approval of the Work Plan, submit to EPA and the State for review and approval with respect to such property:

1. A draft instrument that is enforceable under the laws of the State of Missouri; and
2. A current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the instrument to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Respondent is unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the instrument and title evidence, Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to adversely affect title, record the instrument with the Recorder's Office (or other appropriate land records office) of Randolph County, Missouri. Within thirty (30) days of recording the instrument, Respondent shall provide to EPA and the State a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded instrument showing the clerk's recording stamps.

Property Owned or Controlled by Persons Other Than Respondent

45. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Settlement Agreement, is owned or controlled by persons other than Respondent, Respondent shall use best efforts to secure from such persons:

a. within sixty (60) days of EPA's approval of the Work Plan, an agreement to provide access to such property to EPA and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Settlement Agreement including, but not limited to, those activities set forth in Paragraph 44(a) above;

b. within sixty (60) days of EPA's approval of the Work Plan, an agreement, enforceable by Respondent and EPA, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response action to be implemented pursuant to this Settlement Agreement;

c. within ninety (90) days of EPA's approval of the Work Plan, an enforceable easement, restrictive covenant, environmental covenant, or other appropriate instrument ("instrument") that runs with the land, and ensures non-interference with and the protectiveness of the response action to be implemented pursuant to this Settlement Agreement. This instrument shall be recorded in the Recorder's Office (or other appropriate land records office) of Randolph County, Missouri. The Respondent shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA: i) the United States, on behalf of EPA, and its representatives, ii) the State of Missouri and its representatives, and/or iii) other appropriate grantees. Within ninety (90) days of EPA's approval of the Work Plan, Respondent shall submit to EPA and the State for review and approval with respect to such property:

    1. A draft instrument that is enforceable under the laws of the State of Missouri; and
    2. A current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the instrument to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Respondent is unable to obtain release or subordination of such prior liens or encumbrances).

    Within fifteen (15) days of EPA's approval and acceptance of the instrument and title evidence, Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to adversely affect title, record the instrument with the Recorder's Office (or other appropriate land records office) of Randolph County, Missouri. Within thirty (30) days of

recording the instrument, Respondent shall provide to EPA and the State a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded instrument showing the clerk's recording stamps.

46. As used in this Section, "best efforts" includes the payment of reasonable compensation in consideration of providing access, land/water use restrictions, a covenant, an easement, and/or an agreement to release or subordinate a prior lien or encumbrance. If: (a) any access, restriction, covenant, or easement required by this Section is not obtained within sixty (60) days of Respondent's receipt of EPA's approval of the Work Plan; (b) any instrument required by Paragraph 45(c) of this Settlement Agreement is not submitted to EPA in draft form within ninety (90) days of Respondent's receipt of EPA's approval of the Work Plan; or (c) Respondent is unable to obtain an agreement from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the instrument within sixty (60) days of Respondent's receipt of EPA's approval of the Work Plan, Respondent shall promptly notify EPA and the State in writing, and shall include in that notification a summary of the steps that it has taken to attempt to comply with Paragraphs 44 or 45 of this Settlement Agreement. EPA may, as it deems appropriate, assist Respondent in obtaining access or land/water use restrictions, or in obtaining the release or subordination of a prior lien or encumbrance. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with Section XV (Payment of Response Costs).

47. If EPA determines that land/water use restrictions in the form of State or local laws, regulations, ordinances or other governmental controls are needed to implement the response actions required by this Settlement Agreement, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Respondent shall cooperate with EPA's and the State's efforts to secure such governmental controls.

48. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

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

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

51. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to this Settlement Agreement shall be withheld on the grounds that they are privileged.

52. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information created and/or generated as part of the work required by this Settlement Agreement and evidencing conditions at or around the Site.

XI. RECORD RETENTION

53. Until ten (10) years after Respondent's receipt of EPA's notification, pursuant to Section XXIX (Notice of Completion of Work) Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after Respondent's receipt of EPA's notification, pursuant to Section XXIX (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

54. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, they shall provide EPA with the following: (a) the title of the document, record, or

information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to this Settlement Agreement shall be withheld on the grounds that they are privileged.

55. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site and that it has fully complied with all EPA requests for information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

XII. COMPLIANCE WITH OTHER LAWS

56. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, State, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by 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.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

57. In the event of any action or occurrence during performance of the Work which 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 EPA's OSC and the State of the incident, or in the event of EPA's OSC unavailability, it shall report the incident to EPA's Regional Spill Line at 913-281-0991. 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 XV (Payment of Response Costs).

58. In addition, in the event of any release of a hazardous substance, pollutant or contaminant from the Site, Respondent shall immediately notify EPA's OSC at 913-551-7924, the National Response Center at 800- 424-8802, and the State. Respondent shall submit a written report to EPA within seven (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.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

59. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. EPA's OSC shall have the authority vested in an On-Scene Coordinator 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. The absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

60. Payment for Past Response Costs.

a. Respondent shall reimburse EPA for all Past Response Costs not inconsistent with the NCP. Following the Effective Date of this Settlement Agreement, EPA will send to Respondent a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Within thirty (30) days following Respondent's receipt of such bill, Respondent shall reimburse EPA for such Past Response Costs. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with then current EFT procedures to be provided to Respondent by EPA Region VII, and shall be accompanied by a statement referencing Respondent's name and address, the Site name, and the Site/Spill identifier "A78Z", and the EPA docket number for this action.

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

c. The total amount to be paid by Respondent pursuant to Paragraph 60(a) shall be deposited in the Moberly former MGP Special Account within the EPA Hazardous Substance Superfund, and may be transferred by EPA to the EPA Hazardous Substance Superfund.

61. Payments for Future Response Costs.

a. Respondent shall reimburse EPA for all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 63 of this Settlement Agreement.

b. Respondent shall make all payments required by this Paragraph by Electronic Funds Transfer ("EFT") in accordance with then current EFT procedures to be provided to Respondent by EPA Region VII, and shall be accompanied by a statement referencing Respondent's name and address, the Site name, and the Site/Spill identifier "A78Z", and the EPA docket number for this action.

c. At the time of payment, Respondent shall send a copy of the transmittal of payment and a copy of the check to the OSC.

d. The total amount to be paid by Respondent pursuant to Paragraph 61(a) shall be deposited in the Moberly former MGP Special Account within the EPA Hazardous Substance Superfund, and may be transferred by EPA to the EPA Hazardous Substance Superfund.

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

63. Respondent may dispute all or part of a bill submitted under this Settlement Agreement, if Respondent determines that EPA has made an accounting error, or if Respondent believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Past Response Costs or Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested Past Response Costs and Future Response Costs to EPA in the manner described in Paragraph 61. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Missouri and remit to that escrow account funds equivalent to the amount of the contested Past Response Costs and/or Future Response Costs. Respondent shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Past

Response Costs and/or Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 61. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which Respondent did not prevail to EPA in the manner described in Paragraph 61. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Past Response Costs and/or Future Response Costs.

XVI. DISPUTE RESOLUTION

64. 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.

65. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Past Response Costs or Future Response Costs, it shall notify EPA in writing of its objections within fourteen (14) days of such action, unless the objections have been resolved informally. The Parties shall have thirty (30) days from EPA's receipt of Respondent's written objections to resolve the dispute through negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

66. An administrative record of any dispute under this Section will be maintained by EPA. The record shall include the written notification of such dispute, statements of position, if any, and EPA's response thereto.

67. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If EPA and Respondent are unable to reach an agreement within the Negotiation Period, the Director of EPA Region VII's Superfund Division 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. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJUERE

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

69. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 48 hours of when Respondent became aware that the event might cause a delay. Within seven (7) days thereafter, Respondent shall provide to EPA a written explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in Respondent's opinion, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

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

XVIII. STIPULATED PENALTIES

71. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 72 and 73 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents

approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

72. Stipulated Penalty Amounts - Work. The following stipulated penalties shall accrue per violation per day for failure to perform any Work, including the payment of Past Response Costs and Future Response Costs, required hereunder in a timely or adequate manner, or for failure to submit to EPA any submittal required by this Settlement Agreement (except the progress reports called for in Paragraph 41(a) hereof) in a timely or adequate manner:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 7th day
$2,000	8th through 30th day
$5,000	31st day and beyond

73. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit to EPA the progress reports required pursuant to Paragraph 41 hereof, in a timely or adequate manner:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 7th day
$1,000	8th through 30th day
$2,500	31st day and beyond

74. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 84, Respondent shall be liable for a stipulated penalty in the amount of $650,000.

75. All penalties shall begin to accrue on the day after the complete performance or payment is due or the date that notification of a violation is issued by EPA, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st 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 Director of EPA Region VII's Superfund Division, pursuant to Paragraph 67 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

76. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA will give Respondent written notification of the failure and describe the noncompliance. EPA may send to 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.

77. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). Respondent shall make all payments required by this Paragraph by Electronic Funds Transfer ("EFT") in accordance with then current EFT procedures to be provided to Respondent by EPA Region VII, and shall be accompanied by a statement referencing Respondent's name and address, the Site name, and the Site/Spill identifier "A78Z", and the EPA docket number for this action.

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

79. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision.

80. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 77. 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 Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 84. 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.

XIX. COVENANT NOT TO SUE BY EPA

81. In consideration of the actions that will be performed and the payments that will be made by Respondent under 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 recovery of Past Response Costs and Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XV of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV and XVIII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by

Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATION OF RIGHTS BY EPA

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

83. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

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

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

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

d. criminal liability;

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

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

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

84. Work Takeover. In the event that 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 which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures

set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

85. 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, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

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

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

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

86. These covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 83(b), (c), and (e) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

XXII. OTHER CLAIMS

88. 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 the Work pursuant to this Settlement Agreement.

89. Except as expressly provided in Section XIX (Covenant Not to Sue 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.

90. 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).

XXIII. CONTRIBUTION

91.

a. EPA and Respondent agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), 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), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the: (a) Work; (b) Past Response Costs; and (c) Future Response Costs. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Settlement Agreement for indemnification, contribution, or cost recovery.

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

XXIV. INDEMNIFICATION

92. 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 its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

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

XXV. INSURANCE

95. At least seven (7) days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of three (3) million dollars, combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on Respondent's behalf in performing the Work. 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.

XXVI. FINANCIAL ASSURANCE

96. Within thirty (30) days of the Effective Date, Respondent shall establish and maintain financial security in the amount of $600,000 for the estimated cost of performing the Work in one or more of the following forms:

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

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

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

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

e. a written guarantee to pay for or perform the Work provided by one or more parent corporations or subsidiaries of Respondent, or by one or more unrelated corporations that have a substantial business relationship with Respondent; including a demonstration that any such guarantor corporation satisfies the financial test requirements of 40 C.F.R. § 264.143(f); and/or

f. A demonstration of sufficient financial resources to pay for the Work made by Respondent, which shall consist of a demonstration that the Respondent satisfies the requirements of 40 C.F.R. § 264.143(f).

97. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 96, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within thirty (30) days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

98. If Respondent seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 96(a) of this Section, Respondent shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Respondent seeks to

demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 96(d) or (e) of this Section, it shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondent shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 96 of this Section. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Settlement Agreement.

99. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 96 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XVI (Dispute Resolution). Respondent may reduce the amount of the security in accordance with the written decision resolving the dispute.

100. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. MODIFICATIONS

101. The OSC may make modifications to any plan, schedule, or Work Plan 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.

102. If Respondent seeks permission to deviate from any approved plan, schedule, or Work Plan, 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 101.

103. 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.

XXVIII. ADDITIONAL REMOVAL ACTION

104. If EPA determines that additional removal actions not included in an approved Work Plan are necessary to protect public health, welfare, or the environment and that such additional removal actions are required to otherwise implement this Settlement Agreement as it relates to the property owned by Respondent and referred to as the Moberly former MGP Superfund Site, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit to EPA for approval a work plan for the additional removal actions. This work plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the work plan Respondent shall implement the work plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVII (Modifications).

XXIX. NOTICE OF COMPLETION OF WORK

105. When EPA determines, after 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 controls, payment of Future Response Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that any 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 Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXX. SEVERABILITY/INTEGRATION

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

107. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding between EPA and Respondent 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.

XXXI. EFFECTIVE DATE

108. This Settlement Agreement shall be effective upon signature of the Director of EPA Region VII's Superfund Division.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

2/28, 2008

CECILIA TAPIA
Director, Superfund Division
U.S. Environmental Protection
Agency, Region VII
901 North 5th Street
Kansas City, Kansas 66101

Feb. 24, 2008

KELLEY L. CATLIN
Attorney
U.S. Environmental Protection
Agency, Region VII
901 North 5th Street
Kansas City, Kansas 66101

The undersigned representative of Respondent certifies that he/she is fully authorized to enter into this Settlement Agreement and to bind Respondent to this Settlement Agreement.

FOR UNION ELECTRIC COMPANY

Feb 25, 2008

Signature: [signature]

Name (print): Michael L. Menne

Title: VP - Environmental Services