U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:

TOASTMASTER - MACON
EPA ID NO. MOD991293564

COMPTON'S LLC AND
RICHARD COMPTON,

RESPONDENTS.

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

EPA Docket No.
CERCLA-07-2017-0457

MODIFIED UNILATERAL ADMINISTRATIVE ORDER FOR PARTICIPATION AND COOPERATION WITH ENGINEERING EVALUATION/COST ANALYSIS

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APPENDICES

"Appendix A" is a map depicting the Toastmaster-Macon Site.

"Appendix B" is the Administrative Settlement Agreement and Order On Consent.

"Appendix C" is the Unilateral Administrative Order for Participation and Cooperation with Engineering Evaluation/Cost Analysis (Oct. 25, 2017).

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14A and 14-14B. This authority was further redelegated by the Regional Administrator of EPA Region 7 to the director of the Superfund Division by Redelegation No. R7-14-14A and R7-14-14B.

2. This Order pertains to property located at or near 704 South Missouri Street in Macon, Missouri, known as the Toastmaster-Macon Site. This Order requires Respondent to participate and cooperate in the performance of all actions described herein to abate an imminent and substantial endangerment to the public health or welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

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

II. PARTIES BOUND

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

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

III. DEFINITIONS

6. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in appendices to or documents incorporated by reference into this Order, the following definitions shall apply:

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource

use restrictions are needed to implement the Work, including, but not limited to, the property located at 704 South Missouri Street in Macon, Missouri.

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

"Constituents of Concern" or "COCs" shall mean trichloroethene (TCE), 1,1-dichloroethene, cis-1,2 dichloroethene, trans-1,2- dichloroethene, and vinyl chloride.

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

"Effective Date" shall mean the effective date of this Order as provided in Section VII.

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

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

"Facility" shall mean the property located at 704 South Missouri Street in Macon, Missouri, near the center of Northwest Quarter of the Northeast Quarter of the Southeast Quarter of Section 21, Township 57 North, Range 14 West in Macon County, Missouri.

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

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

"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.

"Non-Respondent Owner" shall mean any person, other than a Respondent, that owns or controls any Affected Property. The phrase "Non-Respondent Owner's Affected Property" means Affected Property owned or controlled by Non-Respondent Owner.

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

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

"Parties" shall mean EPA and Respondents.

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

"Respondents" shall mean Compton's LLC and Richard Compton.

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

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

"Site" shall mean the Facility and all areas where the COCs from Facility operations have come to be located.

"State" shall mean the State of Missouri.

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

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

"Waste Material" shall mean any "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and/or any "pollutant or contaminant" as defined in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

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

IV. FINDINGS OF FACT

7. Compton's LLC (Compton's) is the current owner of property located at 704 South Missouri Street in Macon, Missouri. The Facility consists of approximately 15 acres and is located in an area that is primarily light industrial or residential. *See* Appendix A. Structures at the Facility include an approximately 175,000 square-foot building, a metal canopy and shed adjacent to the west side of the building, and a concrete foundation that housed above-ground storage tanks prior to 1991.

8. Small-electronic appliance manufacturing operations were conducted at the Facility from approximately 1956 until 2001, and from 2001 until 2012 the Facility was used for warehousing. Macon Industrial Development Corporation owned all or part of the Facility and leased the property to McGraw-Edison Company beginning in the mid-1950s for use by its Portable Appliance and Tool Group division. McGraw Edison operated the Facility from 1956 until 1980. Cooper Industries, LLC, is the successor corporation to McGraw-Edison.

9. From 1956 until at least 1996, TCE was stored and used in operations at the Facility. Until 1991, TCE was stored in a 5,000-gallon above-ground storage tank (AST) located outside, directly adjacent to the manufacturing building. After 1991, TCE was stored within the Facility in 55 gallon drums.

10. In 1991, during Toastmaster's ownership and operation of the Facility, a pinhole leak was discovered in a 5,000-gallon fuel oil AST. The 5,000 gallon AST containing TCE was also located next to the fuel oil AST. Both of these tanks were located within a concrete foundation on a gravel bed.

11. During subsequent site investigation by the State, Facility personnel reported that TCE use since 1956 resulted in spillage during filling of the AST.

12. In September 1991, after discovering the fuel leak, Toastmaster contracted to perform a soil gas survey to evaluate the potential presence of volatile organic compounds (VOCs) in soils under and adjacent to the AST area, and estimate the quantity of VOCs that may have been released in this area. Soil gas sampling was conducted on September 14-16, 1991. This sampling revealed the presence of total VOCs and TCE, along with traces of benzene and toluene, in the storage area.

13. Based on the results of the soil gas survey, Toastmaster initiated a Phase II Environmental Site Assessment (ESA) to verify the results of the soil gas survey and to delineate the vertical and horizontal extent of the VOC contamination. At that time, a Phase I ESA had not been completed. Field work on the Phase II ESA began on January 20, 1992, which included the installation of ten groundwater monitoring wells.

14. The Phase II ESA documented that soils down-gradient and cross-gradient from the former location of the TCE and diesel fuel ASTs were contaminated with VOCs. The Phase II ESA also documented that groundwater in both an upper water-bearing zone and a lower water-bearing zone were contaminated with VOCs, most significantly, TCE.

15. On June 17, 1992, Toastmaster reported a spill of TCE at the Facility to the U.S. Coast Guard's National Response Center. This report indicated that Toastmaster had performed a Site assessment and discovered off-site contamination of TCE in groundwater. The contamination was reported to be a result of historical spills of TCE during refilling of the AST.

16. On September 17, 1993, MDNR received a Cleanup Assessment Report for the Toastmaster site from the Missouri Department of Health. The report concluded that a health risk existed at the Site based on the high levels of VOCs, especially TCE, in the soil and groundwater. However, the magnitude of the health risk could not be determined without

additional information regarding the presence and vulnerability of public and private water supplies near the Site.

17. After the Phase II ESA was completed, Toastmaster contracted to design and oversee the response to subsurface TCE contamination. In January 1995, groundwater from the monitoring wells was sampled. Some samples showed a slight increase, while some showed a slight decrease, of contaminants from the 1992 sampling results.

18. In December 1995, Toastmaster installed thirteen additional monitoring wells to further characterize the extent of contamination and the direction of groundwater flow.

19. MDNR submitted a CERCLIS Site Identification Form to EPA for the Site on February 8, 1996. Toastmaster submitted an application to MDNR's Hazardous Substances Environmental Remediation Program for the remediation of contaminants under the review and oversight of MDNR. Toastmaster was accepted into MDNR's Voluntary Cleanup Program (VCP) by a letter dated March 29, 1996. MDNR requested that Toastmaster conduct a Phase I ESA, which was completed on June 14, 1996.

20. In April and July 1996, MDNR issued two comment letters on previous investigations conducted at the Site. In July 1998, a pump and treat system was evaluated as a remediation technique. In October 1998, MDNR issued a third comment letter requiring the installation of additional monitoring wells including wells drilled to bedrock, sampling of intermittent streams down-gradient from the Site, and investigation of the TCE source area. In March 1999, MDNR approved the well installation work plan, including the wells drilled to bedrock.

21. In January 2001, MDNR issued a letter to Toastmaster indicating that, although characterization was not yet complete, response actions were necessary at the Site. In April 2001, MDNR approved a pilot test for the use of Hydrogen Release Compound at the Site. In October 2001, MDNR requested additional sampling at the Site and approved Toastmaster's sampling plan in November 2001.

22. On April 14, 2004, MDNR issued a letter stating that the use of Hydrogen Release Compound at the Site had been effective, but that it should be combined with another remediation technology that will be effective in the source area.

23. In March 2005, MDNR issued a letter to Toastmaster indicating that a new guidance document would be used in the investigation and/or remediation of the Site with respect to source areas, indoor air, groundwater, and its associated contaminant plume.

24. In April 2010, MDNR issued a letter to Toastmaster indicating that additional Site investigation was needed. In June 2011, the Site investigation work plan was approved by MDNR. In March 2012, MDNR issued a letter requesting additional investigation and remedial action.

25. In June 2012, Compton's purchased the Facility and assumed, by contractual indemnity, all environmental liabilities associated with the Facility. MDNR received a letter of agreement enrolling Compton's in MDNR's VCP on May 23, 2012.

26. On June 13, 2013, MDNR issued comments on the groundwater monitoring report, and again set a deadline for submission of a remedial action plan. On December 11, 2013, MDNR established a thirty-day deadline for remedial action plan submittal, or the Site would be terminated from MDNR's VCP. On January 16, 2014, the Site was terminated from Missouri's VCP.

27. In May 2014, MDNR conducted indoor air sampling to determine whether COC vapors from subsurface contamination were resulting in exposures within the building at the Facility. The sampling documented elevated levels of TCE in the indoor air within the building. In June 2014, MDNR requested that EPA take action to respond to vapor intrusion exposures within the building at the Facility, and address the source of those exposures.

28. In July 2014, MDNR conducted indoor air, and sub-slab soil gas sampling at residences in the immediate vicinity of the Facility to determine whether the COCs from the Facility were impacting nearby residences. The results of this sampling, received by MDNR in August 2014, documented elevated indoor and/or sub-slab levels of TCE in two of the nearby residences. In September 2014, MDNR referred the Site to EPA, requesting that EPA investigate and respond to contamination at the Facility, as well as contamination emanating from the Facility. On October 2, 2014, EPA conducted a fund-lead removal action and installed sub-slab vapor mitigation devices in the two residences that had elevated levels of TCE.

29. On November 20, 2015, EPA entered into an Administrative Settlement Agreement and Order on Consent for Removal Actions, CERCLA-07-2015-0006, with Compton's and Spectrum requiring installation of a vapor mitigation system in the former manufacturing building, conducting sub-slab and indoor air sampling of residences, installation of vapor mitigation systems in residences containing elevated and unacceptable levels of TCE, and monitoring the effectiveness of the vapor mitigation systems, in both the Facility and residences, by conducting confirmatory indoor air sampling following the installation of the systems. That work was commenced in August 2016.

30. On October 25, 2017, EPA issued a Unilateral Administrative Order for Participation and Cooperation with Engineering Evaluation/Cost Analysis ("October 2017 Order"), which is attached as Appendix C to this Order. Pursuant to Section VII of the October 2017 Order, Respondents requested a conference with EPA to discuss the appropriateness of actions that Respondents were ordered to take. Respondents conferred with EPA via teleconference on November 17, 2017, and thereafter submitted written comments to EPA on November 22, 2017. Based on the comments received from Respondents, EPA notified Respondents on December 4, 2017, that it intended to modify the October 2017 Order and issue this Order to address Respondents' concerns.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The Toastmaster-Macon Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

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

(1) Respondent Compton's LLC is an "owner" and/or "operator" of OU-1, 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); and

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

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

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

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

VI. ORDER

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

VII. EFFECTIVE DATE

33. Pursuant to Paragraph 34 of the October 2017 Order, this Order shall be effective 5 days after it is signed by the director of the Superfund Division.

VIII. NOTICE OF INTENT TO COMPLY

34. On or before the Effective Date, Respondents shall notify EPA in writing of Respondents' irrevocable intent to comply with this Order. Such written notice shall be sent to:

Jared Pessetto, Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

(913) 551-7793
pessetto.jared@epa.gov

Respondents' written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defense asserted by such Respondents under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of Respondents' assertions. Failure of Respondents to provide such notice of intent to comply within this time period shall, as of the Effective Date, be treated as a violation of this Order by Respondents.

IX. DESIGNATION OF PROJECT COORDINATORS

35. Within 30 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Order and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. Respondents shall have the right to change their Project Coordinator, subject to EPA's right to disapprove. Respondents shall notify EPA 7 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the Project Coordinator. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

36. EPA has designated John Frey of the Assessment, Emergency Response, and Removal Branch as its Project Coordinator. EPA will notify Respondents of a change of its designated Project Coordinator. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to EPA's Project Coordinator in accordance with Paragraph 44.a.

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

X. WORK TO BE PERFORMED

38. Contemporaneous with issuance of the October 2017 Order, EPA entered into and issued to Spectrum Brands, Inc. and Cooper Industries, LLC (collectively, the "Settling Parties") an Administrative Settlement Agreement and Order on Consent, Docket No. CERCLA-07-2016-0014 (EE/CA Order). The EE/CA Order requires the Settling Parties to perform all actions necessary for the preparation of an Engineering Evaluation/Cost Analysis (EE/CA) for the Site, as memorialized in the EE/CA Work Plan attached as Appendix B to the EE/CA Order. The

EE/CA Order and its appendices are incorporated by reference herein as Appendix B to this Order.

39. Duty to Coordinate. Respondents shall make their best efforts to coordinate with the Settling Parties in the performance of EE/CA activities required by the EE/CA Order. Best efforts to coordinate shall include, at a minimum, that Respondents shall:

a. communicate in writing within 10 days of the Effective Date of this Order to the Settling Parties and EPA as to Respondents' intent to comply with this Order and specifically their intent to participate in the performance of the EE/CA activities required under the EE/CA Order, or to contribute to, and/or reimburse the Settling Parties for the costs of performing such activities;

b. submit within 20 days of the Effective Date of this Order a good-faith offer to the Settling Parties detailing Respondents' proposed participation in the performance of EE/CA activities required under the EE/CA Order, contribution for the performance of those activities, and/or reimbursement of the Settling Parties for their performance such activities; and

c. engage in good-faith negotiations with the Settling Parties with regard to Respondents' participation in the performance of the EE/CA activities required under the EE/CA Order, contribution for the performance of such activities, and/or reimbursement of the Settling Parties for their performance of the Work.

40. Duty to Participate. To the extent that the Settling Parties perform or financially contribute to the performance of the EE/CA activities required by the EE/CA Order, Respondents shall make best efforts to participate in the performance of such activities and/or financially contribute to its performance. Best efforts to participate shall include, at a minimum, that Respondents shall:

a. perform any activities as agreed to by Respondents and the Settling Parties; and

b. financially contribute all amounts as agreed to by Respondents and the Settling Parties.

41. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, or if Respondents specifically object to any aspect of proposed EE/CA activities required by Paragraph 40, they shall send written notice to EPA describing the steps taken to comply with the requirements and/or Respondents' objections to the proposed activities. Respondents' compliance with the terms of this Order shall be determined at the sole discretion of EPA.

42. Undertaking or completing any of the EE/CA activities required under the EE/CA Order and/or the payment of any required amounts by any other person, with or without the participation of Respondents, shall not relieve Respondents of their obligation to the requirements of this Order. Any failure to perform the EE/CA activities required under the

EE/CA Order, and/or any failure to make required payments to Spectrum Brands and/or Cooper Industries by any other person with whom Respondents are coordinating or participating with in the performance of the Work shall not relieve Respondents of their obligation to fulfill the requirements of this Order. Nothing in this Order shall alter the rights or obligations of Cooper Industries and/or Spectrum Brands under any other order.

43. Submission of Documents. On EPA's request and subject to any claims of applicable privilege, Respondents shall submit to EPA all documents in their possession, custody, or control relating to Respondents': (a) offers to Spectrum Brands and/or Cooper Industries to perform or pay for the Work; or (b) performance or payment for the Work required by this Order in conjunction with Spectrum Brands and/or Cooper Industries.

44. Submission of Deliverables.

a. Except as otherwise provided in this Order, Respondents shall direct all submissions required by this Order to EPA's Project Coordinator:

John Frey
U. S. Environmental Protection Agency, Region 7
8600 N.E. Underground Drive, Pillar 253
Kansas City, Missouri 64161
(913) 551-7994
frey.john@epa.gov

Respondents shall submit all deliverables required by this Order and any approved work plan to EPA in accordance with the schedule set forth in such plan.

b. Respondents shall submit all deliverables in electronic form. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide EPA with paper copies of such exhibits.

XI. PROPERTY REQUIREMENTS

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

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

XII. ACCESS TO INFORMATION

47. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or

control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

48. Privileged and Protected Claims.

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

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

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

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

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

XIII. RETENTION OF RECORDS

51. During the pendency of this Order and for a minimum of 10 years after Respondents' receipt of EPA's notification pursuant to Section XXIII (Notice of Completion of

Work), Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with respect to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondents must also retain, and instruct their contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that Respondents (and their contractors and agents) must retain, in addition, copies of all data generated during performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

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

53. Within 10 days after the Effective Date, Respondents shall submit a written certification to EPA's Project Coordinator that, to the best of their knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to their potential liability regarding the Site since notification of their potential liability by the United States, and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927. Any Respondents unable to so certify shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

XIV. COMPLIANCE WITH OTHER LAWS

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

55. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

56. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of any Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify EPA's Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at (913) 281-0991 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, EPA reserves the right to pursue cost recovery.

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

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

XVI. PAYMENT OF RESPONSE COSTS

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

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

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

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" and shall reference Site/Spill ID Number B792 and the EPA docket number for this action.

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

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

Such notice shall reference Site/Spill ID Number B792 and EPA docket number for this action.

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

XVII. ENFORCEMENT/WORK TAKEOVER

63. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondents to civil penalties of up to $53,907 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43,091, 40 C.F.R. Part 19.4. In the event of such willful violation, or failure or refusal to comply, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

XVIII. RESERVATIONS OF RIGHTS BY EPA

64. Nothing in this Order shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Order shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site.

XIX. OTHER CLAIMS

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

66. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

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

XX. MODIFICATION

69. EPA's Project Coordinator may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA within 15 days, but shall have as its effective date the date of the EPA Project Coordinator's oral direction. Any other requirements of this Order may be modified in writing by signature of the director of the Superfund Division.

70. If Respondents seek permission to deviate from any approved Work Plan or schedule, Respondents shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving approval from EPA's Project Coordinator pursuant to Paragraph 69.

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

XXI. DELAY IN PERFORMANCE

72. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to EPA's Project Coordinator within 48 hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within 7 days after notifying EPA by telephone and email, Respondents shall provide to EPA written notification fully describing the nature of the delay, the anticipated

duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or minimize the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

73. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of Paragraph 72 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to fully perform all obligations under the terms and conditions of this Order.

XXII. ADDITIONAL REMOVAL ACTIONS

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

XXIII. NOTICE OF COMPLETION OF WORK

75. When EPA determines that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including reimbursement of Response Costs, and Record Retention, EPA will provide written notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Order, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies within 30 days after receipt of the EPA notice.

XXIV. SEVERABILITY

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

It is so ORDERED.

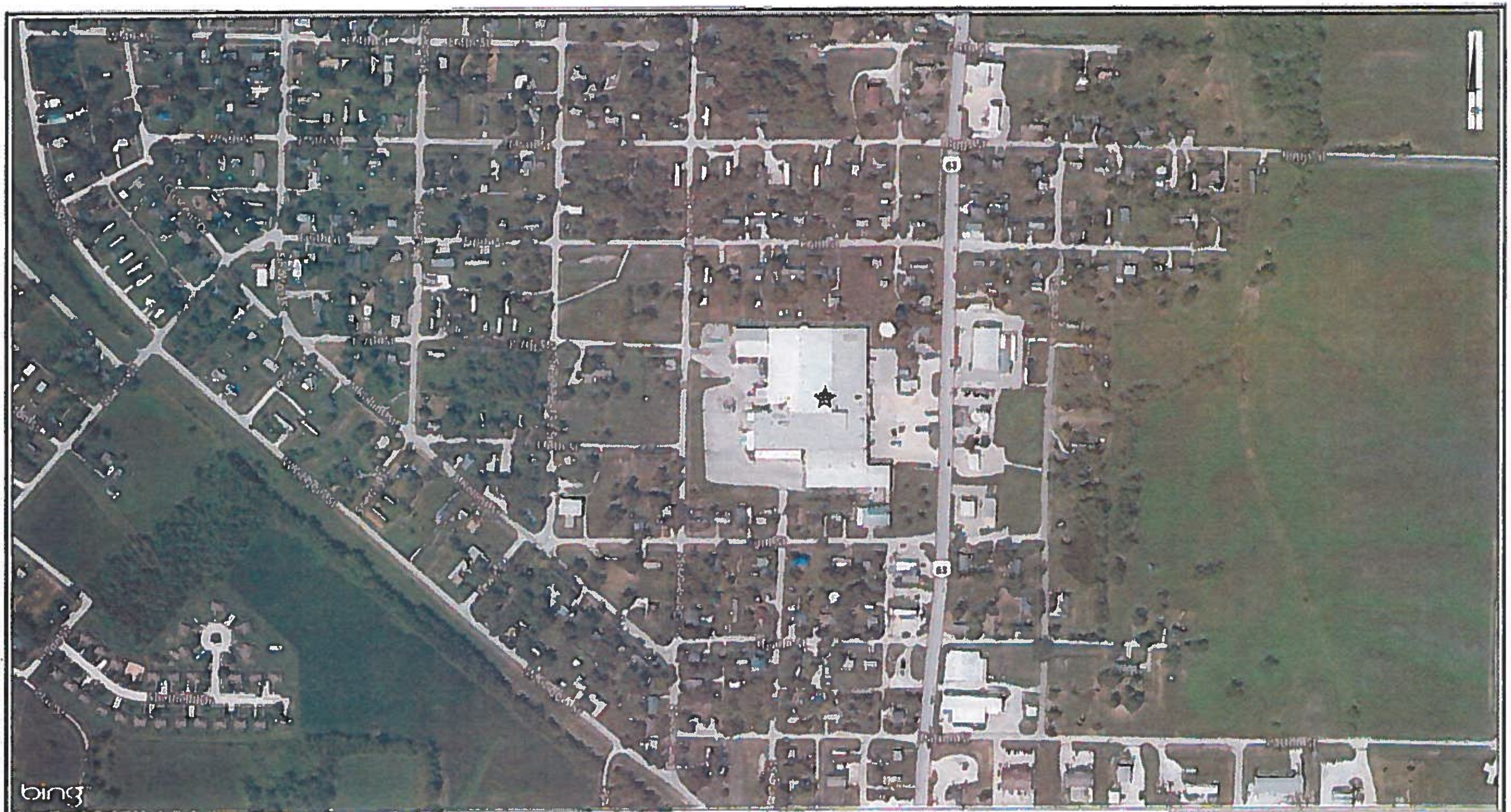
12-6-17
Date

Mary P. Peterson
Director
Superfund Division

12/5/2017
Date

Jared Pessetto
Assistant Regional Counsel
Office of Regional Counsel

EFFECTIVE DATE: 12/11/2017



LEGEND

★ SITE LOCATION

0 300 600

GRAPHIC SCALE IN FEET

FORMER TOASTMASTER SITE
704 SOUTH MISSOURI STREET
MACON, MISSOURI

VICINITY MAP

ARCADIS

APPENDIX A

Appendix B

Administrative Settlement Agreement and Order on Consent (Oct. 25, 2017)

Appendix B

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF: **TOASTMASTER - MACON** **EPA ID NO. MOD991293564** **SPECTRUM BRANDS, INC., AND COOPER INDUSTRIES, LLC,** **RESPONDENTS.** **Proceeding under Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622.**	**EPA Docket No.** **CERCLA-07-2016-0014**

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON CONSENT

TABLE OF CONTENTS

APPENDICES

"Appendix A" is a map depicting the Toastmaster-Macon Site.

"Appendix B" is the Engineering Evaluation/Cost Analysis Work Plan.

"Appendix C" is the Health and Safety Plan.

"Appendix D" is the Sampling and Analysis Plan.

I. JURISDICTION AND GENERAL PROVISIONS

0. This Administrative Settlement Agreement and Order on Consent is entered into voluntarily by the United States Environmental Protection Agency, Spectrum Brands, Inc. and Cooper Industries, LLC. This Settlement Agreement provides for the performance of a removal action by Respondents and the payment of certain response costs incurred by the United States at or in connection with the "Toastmaster-Macon Site" (the Site) generally located at, and in the area of, 704 South Missouri Street in Macon, Missouri.

1. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A (Determinations of Imminent and Substantial Endangerment, Nov. 1, 2001), 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). This authority was further redelegated by the Regional Administrator of EPA Region 7 to the Director of the Superfund Division, EPA Region 7, by Regional Delegation Nos. R7-14-014A, R7-14-014-C, and R7-14-014-D.

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

II. PARTIES BOUND

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

5. The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Respondents to this Settlement Agreement.

6. Respondents shall provide a copy of this Settlement Agreement to each contractor hired to perform the Work required by this Settlement Agreement and to each person representing Respondents with respect to the Site or the Work, and shall require as a condition of the contract with such contractor that any work performed shall be in conformity with the terms of this Settlement Agreement. Respondents or their contractors shall provide written notice of the Settlement Agreement to all subcontractors hired to perform any portion of the Work required by this Settlement Agreement. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement Agreement.

III. DEFINITIONS

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

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

"Constituents of Concern" or "COCs" shall mean trichloroethene (TCE), 1,1-dichloroethene, cis-1,2 dichloroethene, trans-1,2- dichloroethene, and vinyl chloride.

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

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

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

"Facility" shall mean the property located at 704 South Missouri Street in Macon, Missouri, near the center of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter of Section 21, Township 57 North, Range 14 West in Macon County, Missouri.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs following 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 attorney's fees and any monies paid to secure access, including the amount of just compensation), Paragraph 57 (Emergency Response), and Paragraph 84 (Work Takeover). Any costs incurred by the United States prior to the Effective Date of this Settlement

Agreement and costs reimbursed to EPA pursuant to Paragraph 105 (Access to Financial Assurance) shall not be considered "Future Response Costs."

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

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

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

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

"Parties" shall mean EPA and Respondents.

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

"Respondents" shall mean Spectrum Brands, Inc. and Cooper Industries, LLC, each of which individually is a "Respondent."

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

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

"Site" shall mean the Facility and all areas where the COCs from Facility operations have come to be located.

"State" shall mean the State of Missouri.

"Waste Material" shall mean any "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and/or any "pollutant or contaminant" as defined in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

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

IV. FINDINGS OF FACT

8. Compton's LLC (Compton's) is the current owner of property located at 704 South Missouri Street in Macon, Missouri. The Facility consists of approximately 15 acres and is located in an area that is primarily light industrial or residential. *See* Appendix A. Structures at the Facility include an approximately 175,000 square-foot building, a metal canopy and shed adjacent to the west side of the building, and a concrete foundation that housed above-ground storage tanks prior to 1991.

9. The Facility was developed in 1950 by the City of Macon and was occupied by a roller skate manufacturing company until 1955. Small-electronic appliance manufacturing operations were conducted at the Facility from approximately 1956 until 2001, and from 2001 until 2012 the Facility was used for warehousing. Macon Industrial Development Corporation owned all or part of the Facility and leased the property to McGraw-Edison Company beginning in the mid-1950s for use by its Portable Appliance and Tool Group division. McGraw-Edison Company operated the Facility from 1956 until 1980. Cooper Industries, LLC, is the successor corporation to McGraw-Edison Company.

10. In 1980, McGraw-Edison, as part of an asset sale, sold its Portable Appliance and Tool Group division as part of a leveraged buy-out, resulting in the formation of Toastmaster, Inc. (Toastmaster). In October 1983, Toastmaster was acquired by Magic Chef, Inc. and was operated as a wholly-owned subsidiary of Magic Chef, Inc. until it was acquired by Maytag Company in 1986. Toastmaster was then sold to a portion of its management team in January 1987. In 1992, Toastmaster became a publicly-traded company. On January 8, 1999, Toastmaster was acquired by Salton, Inc. Salton, Inc. later changed its name to Russell-Hobbs, Inc. and Toastmaster operated as a wholly-owned subsidiary of Russell-Hobbs, Inc. Spectrum Brands, Inc. acquired Russell-Hobbs in 2010. Toastmaster has now been merged into Spectrum Brands, Inc.

11. From 1956 until at least 1996, TCE was stored and used in operations at the Facility. Until 1991, TCE was stored in a 5,000-gallon above-ground storage tank (AST) located outside, directly adjacent to the manufacturing building. After 1991, TCE was stored within the Facility in 55 gallon drums. In the 1996 Preliminary Assessment/Site Investigation conducted by the State, Facility personnel indicated that they believed the source of the TCE contamination was historical leakage over a long period of time.

12. In 1991, during Toastmaster's ownership and operation of the Facility, a pinhole leak was discovered in a 5,000-gallon fuel oil AST. The 5,000 gallon AST containing TCE was located next to the fuel oil AST. Both of these tanks were located within a concrete foundation on a gravel bed. A subsequent investigation by MDNR reported that TCE use since 1956 resulted in spillage during storage tank filling and that this spillage occurred over a long period of time.

13. In September 1991, after discovering the fuel leak, Toastmaster contracted to perform a soil gas survey to evaluate the potential presence of volatile organic compounds (VOCs) in soils under and adjacent to the AST area and estimate the quantity of VOCs that may have been

released in this area. Soil gas sampling was conducted on September 14-16, 1991. This sampling revealed the presence of total VOCs and TCE, along with traces of benzene and toluene, in the storage area.

14. Based on the results of the soil gas survey, Toastmaster initiated a Phase II Environmental Site Assessment (ESA) to verify the results of the soil gas survey and to delineate the vertical and horizontal extent of the VOC contamination. At that time, a Phase I ESA had not been completed. Field work on the Phase II ESA began on January 20, 1992, which included the installation of ten groundwater monitoring wells.

15. The Phase II ESA documented that soils down-gradient and cross-gradient from the former location of the TCE and diesel fuel ASTs were contaminated with VOCs. The Phase II ESA also documented that groundwater in both an upper water-bearing zone and a lower water-bearing zone were contaminated with VOCs, most significantly, TCE.

16. On June 17, 1992, Toastmaster reported a spill of TCE at the Facility to the U.S. Coast Guard's National Response Center. This report indicated that Toastmaster had performed a Site assessment and discovered off-site contamination of TCE in groundwater. The contamination was reported to be a result of historical leaks of TCE from the AST.

17. On September 17, 1993, MDNR received a Cleanup Assessment Report for the Site from the Missouri Department of Health. The report concluded that a health risk existed at the Site based on the high levels of VOCs, especially TCE, in the soil and groundwater. However, the magnitude of the health risk could not be determined without additional information regarding the presence and vulnerability of public and private water supplies near the Site.

18. After the Phase II ESA was completed, Toastmaster contracted to design and oversee the response to subsurface TCE contamination. In January 1995, groundwater from the monitoring wells was sampled. Some samples showed a slight increase, while some showed a slight decrease, of contaminants from the 1992 sampling results.

19. In December 1995, Toastmaster installed thirteen additional monitoring wells to further characterize the extent of contamination and the direction of groundwater flow.

20. MDNR submitted a CERCLIS Site Identification Form to EPA for the Site on February 8, 1996. Toastmaster submitted an application to MDNR's Hazardous Substances Environmental Remediation Program for the remediation of contaminants under the review and oversight of MDNR. Toastmaster was accepted into MDNR's Voluntary Cleanup Program (VCP) by a letter dated March 29, 1996. MDNR requested that Toastmaster conduct a Phase I ESA, which was completed on June 14, 1996.

21. In April and July 1996, MDNR issued two comment letters on previous investigations conducted at the Site. In July 1998, a pump and treat system was evaluated as a remediation technique. In October 1998, MDNR issued a third comment letter requiring the installation of additional monitoring wells including wells drilled to bedrock, sampling of intermittent streams

down-gradient from the Site, and investigation of the TCE source area. In March 1999, MDNR approved the well installation work plan, including the wells drilled to bedrock.

22. In January 2001, MDNR issued a letter to Toastmaster indicated that, although characterization was not yet complete, response actions were necessary at the Site. In April 2001, MDNR approved a pilot test for the use of Hydrogen Release Compound at the Site. In October 2001, MDNR requested additional sampling at the Site and approved Toastmaster's sampling plan in November 2001.

23. On April 14, 2004, MDNR issued a letter stating that the use of Hydrogen Release Compound at the Site had been effective, but that it should be combined with another remediation technology that will be effective in the source area.

24. In March 2005, MDNR issued a letter to Toastmaster indicating that a new guidance document would be used in the investigation and/or remediation of the Site with respect to source areas, indoor air, groundwater, and its associated contaminant plume.

25. In April 2010, MDNR issued a letter to Toastmaster indicating that additional Site investigation was needed. In June 2011, the Site investigation work plan was approved by MDNR. In March 2012, MDNR issued a letter requesting additional investigation and remedial action.

26. In June 2012, Compton's purchased the Facility and assumed, by contractual indemnity, all environmental liabilities associated with the Facility. MDNR received a letter of agreement enrolling Compton's in MDNR's VCP on May 23, 2012.

27. On June 13, 2013, MDNR issued comments on the groundwater monitoring report, and again set a deadline for submission of a remedial action plan. On December 11, 2013, MDNR established a thirty-day deadline for remedial action plan submittal, or the Site would be terminated from MDNR's VCP. On January 16, 2014, the Site was terminated from Missouri's VCP.

28. In May 2014, MDNR conducted indoor air sampling to determine whether COC vapors from subsurface contamination were resulting in exposures within the building at the Facility. The sampling documented elevated levels of TCE in the indoor air within the building. In June 2014, MDNR requested that EPA take action to respond to vapor intrusion exposures within the building at the Facility, and address the source of those exposures.

29. In July 2014, MDNR conducted indoor air, and sub-slab soil gas sampling at residences in the immediate vicinity of the Facility to determine whether the COCs from the Facility were impacting nearby residences. The results of this sampling, received by MDNR in August 2014, documented elevated indoor and/or sub-slab levels of TCE in two of the nearby residences. In September 2014, MDNR referred the Site to EPA, requesting that EPA investigate and respond to contamination at the Facility, as well as contamination emanating from the Facility. On

October 2, 2014, EPA conducted a fund-lead removal action and installed sub-slab vapor mitigation devices in the two residences that had elevated levels of TCE.

30. On November 20, 2015, EPA entered into an Administrative Settlement Agreement and Order on Consent for Removal Actions, CERCLA-07-2015-0006, with Compton's and Spectrum requiring installation of a vapor mitigation system in the former manufacturing building, conducting sub-slab and indoor air sampling of residences, installation of vapor mitigation systems in residences containing elevated and unacceptable levels of TCE, and monitoring the effectiveness of the vapor mitigation systems, in both the Facility and residences, by conducting confirmatory indoor air sampling following the installation of the systems. That work was commenced in August 2016.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) as each was an "owner" and/or "operator" of the Facility at the time of disposal of hazardous substances at the Facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

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

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

VI. SETTLEMENT AGREEMENT AND ORDER

32. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the administrative record for the Site, it is hereby Ordered and Agreed that Respondents shall

comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR AND PROJECT COORDINATOR

33. Respondents designate as their Project Coordinator:

Warren French, PG
Arcadis U.S., Inc.
5100 East Skelly Drive, Suite 400
Tulsa, Oklahoma 74135
(539) 302-0526
warren.french@arcadis.com

By execution and acceptance hereof, EPA does not disapprove of Respondents' selection of Project Coordinator.

34. Respondents' Project Coordinator shall be responsible for administration of all the actions required of Respondents by this Settlement Agreement. To the greatest extent possible, Respondents' Project Coordinator shall be readily available by telephone during Site Work.

35. Arcadis U.S., Inc., shall serve as Respondents' initial contractor. EPA retains the right to disapprove of any, or all, of the contractors, or subcontractors or Project Coordinator subsequently selected by Respondents. If EPA disapproves of a subsequently selected contractor, subcontractor, or Project Coordinator, Respondents shall retain a different person and shall notify EPA of that person's name, address, telephone number, and qualifications within thirty (30) days following Respondents' receipt of EPA's written notice of disapproval. Receipt by each of the following of any notice or communication from EPA relating to the Work shall constitute receipt of the same by Respondents: (a) Respondents' Project Coordinator; (b) Andrew Perellis, Seyfarth Shaw LLP, 233 S. Wacker Drive, Suite 8000, Chicago, Illinois 60606-6448, *aperellis@seyfarth.com*; and (c) Michael H. Ginsberg, Jones Day, 500 Grant Street, Suite 4500, Pittsburgh, Pennsylvania 15219, *mhginsberg@jonesday.com*. Respondents shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform Work under this Settlement Agreement at least ten (10) days prior to commencement of such Work.

36. EPA has designated John Frey as its Project Coordinator for the Work. Respondents shall direct all submissions required by this Settlement Agreement to:

John Frey
U. S. Environmental Protection Agency, Region 7
8600 N.E. Underground Drive, Pillar 253
Kansas City, Missouri 64161
(913) 551-7994
frey.john@epa.gov

37. EPA and Respondents shall have the right to change their designated Project Coordinators and contractors. To the extent practicable, oral notice of such change shall be provided to the other party within forty-eight (48) hours of such change and written notice shall follow within five (5) working days of such change.

VIII. WORK TO BE PERFORMED

38. Respondents shall perform, at a minimum, all actions necessary to implement the requirements of this Settlement Agreement, which provides for preparation of an Engineering Evaluation/Cost Analysis (EE/CA) for the Site.

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

40. Work Plan and Implementation.

a. Respondents shall perform the activities detailed in the Engineering Evaluation/Cost Analysis Work Plan (EE/CA Work Plan), attached to this Settlement Agreement as Appendix B. The attached EE/CA Work Plan has been prepared in accordance with EPA's *Guidance on Conducting Non-Time-Critical Removal Actions Under CERCLA* (EPA/540-R-93-057, Publication 9360.0-32, August 1993) and approved by EPA, and it shall be incorporated into and become fully enforceable under this Settlement Agreement.

b. Respondents shall commence implementation of the Work in accordance with the schedule included in the EE/CA Work Plan. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement.

41. Submission of Deliverables.

a. General Requirements for Deliverables.

(1) Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to EPA's Project Coordinator. Respondents shall submit all deliverables required by this Settlement

Agreement, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

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

b. Technical Specifications for Deliverables.

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

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

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

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

42. Health and Safety Plan. Respondents shall implement the Health and Safety Plan (HASP), attached to this Settlement Agreement as Appendix C, to ensure the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan is prepared in accordance with OSWER *Integrated Health and Safety Program Operating Practices for OSWER Field Activities* (Pub. 9285.0-OlC, Nov. 2002), available on the NSCEP database at *http://www.epa.gov/nscep*, and *EPA's Emergency Responder Health and Safety Manual* (OSWER Directive 9285.3-12, July 2005 and updates), available at *http://www.epaosc.org/_HealthSafetyManual/manual-index.htm*. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. Respondents shall implement the HASP during the pendency of the removal action.

43. Quality Assurance, Sampling, and Data Analysis.

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

b. Sampling and Analysis Plan. Respondents shall implement the Sampling and Analysis Plan (SAP), attached as Appendix D, which consists of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the NCP and EPA guidance, including, but not limited to, *Guidance for Quality Assurance Project Plans (QA/G-5)* (EPA/240/R-02/009, December 2002), *EPA Requirements for Quality Assurance Project Plans (QA/R-5)* (EPA 240/B-01/003, March 2001, reissued May 2006), and *Uniform Federal Policy for Quality Assurance Project Plans* Parts 1-3 (EPA/505/B-04/900A-900C, March 2005). The SAP shall be incorporated into and become enforceable under this Settlement Agreement.

c. Respondents shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Settlement Agreement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with *EPA QA Field Activities Procedure* (CIO 2105-P-02.1, 9/23/2014) available at *http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures*. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement Agreement meet the competency requirements set forth in EPA's *Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions*, available at *http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements*, and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program, available at *http://www.epa.gov/clp*; SW 846 *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, available at *http://www3.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm*; *Standard Methods for the Examination of Water and Wastewater*, available at *http://www.standardmethods.org/*; 40 C.F.R. Part 136; and *Air Toxics - Monitoring Methods*, available at *http://www3.epa.gov/ttnamti1/airtox.html*.

d. However, upon approval by EPA, Respondents may use other appropriate analytical method(s), as long as: (i) QA/QC criteria are contained in the method(s) and the method(s) are included in the QAPP; (ii) the analytical method(s) are at least as stringent as the methods listed above; and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondents shall ensure that all laboratories that they use

for analysis of samples taken pursuant to this Settlement Agreement have a documented Quality System that complies with ASQ/ANSI E4:2014 *Quality management systems for environmental information and technology programs - Requirements with guidance for use* (American Society for Quality, February 2014), and *EPA Requirements for Quality Management Plans (QA/R-2)* (EPA/240/B-01/002, March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement Agreement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

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

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

g. Respondents waive any objections to any data gathered, generated, or evaluated by EPA or Respondents in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by this Settlement Agreement or any EPA-approved work plans or the SAP. If Respondents object to any other data relating to the Work, Respondents shall submit to EPA a report that specifically identifies and explains their objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within fifteen (15) days after the monthly progress report containing the data.

44. Progress Reports. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement on a monthly basis, unless a lesser frequency is requested by EPA, from the date of receipt of EPA's approval of the EE/CA Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVII, unless Respondents are directed in writing by EPA's Project Coordinator that they may cease submitting monthly progress reports sooner. 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.

45. Off-Site Shipments

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

b. Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to EPA's Project Coordinator. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (i) the name and location of the receiving facility; (ii) the type and quantity of Waste Material to be shipped; (iii) the schedule for the shipment; and (iv) the method of transportation. Respondents also shall notify the state environmental official referenced above and EPA's Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

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

IX. PROPERTY REQUIREMENTS

46. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by a Respondent, that Respondent shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than a Respondent, Respondents shall use their best efforts to obtain all necessary access agreements within thirty (30) days after the Effective Date, or a longer period as specified in writing by EPA's Project Coordinator. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes at a minimum, a certified letter from Respondents to the present owner of such property requesting access agreements to permit Respondents, their contractors, EPA and EPA's representatives to enter such property. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate.

Respondents shall reimburse EPA for all costs (including payment, if any, of reasonable sums of money to the property owner in consideration of access) and attorneys' fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XIV (Payment of Response Costs).

47. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

48. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

49. Privileged and Protected Claims.

a. Respondents may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 49.b., and except as provided in Paragraph 49.c.

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

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

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

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

XI. RECORD RETENTION

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

53. At the conclusion of the document retention period, Respondents shall notify EPA at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 49 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA.

54. Respondents certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to their potential liability regarding the Site since notification of potential liability by EPA or the State and that they have fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and

122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. COMPLIANCE WITH OTHER LAWS

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

56. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-Site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

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

58. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately orally notify EPA's Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at (913) 281-0991, and the

National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(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.

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

XIV. PAYMENT OF RESPONSE COSTS

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

a. Periodic Bills. On a periodic basis, EPA will send to Respondents a bill for Future Response Costs requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondents shall make all payments within thirty (30) days after Respondents' receipt of each bill requiring payment, except as otherwise provided in Paragraph 62 (Contesting Future Response Costs). Respondents shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

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

and shall reference Site/Spill ID Number B792 and the EPA docket number for this action.

In the alternative, Respondents shall make payment to EPA by Automated Clearinghouse (ACH) to:

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

and shall reference Site/Spill ID Number B792 and the EPA docket number for this action.

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

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

c. Such notice shall reference Site/Spill ID Number B792 and the EPA docket number for this action.

d. Deposit of Future Response Costs Payments. The total amount to be paid by Respondents pursuant to this Section shall be deposited by EPA in the Toastmaster-Macon Special Account to be retained and used to conduct or finance response actions at or in connection with the Site. Monies in the Toastmaster-Macon Special Account in excess of the amount necessary to complete response actions at the Site may be transferred by EPA to the EPA Hazardous Substance Superfund.

61. Interest. In the event that any payment for Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Paragraph 73 (Stipulated Penalty Amounts).

62. Contesting Future Response Costs. Respondents may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 60 (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to EPA's Project Coordinator within thirty (30) days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 60, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to EPA's Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity

of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within five (5) days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 60. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 60. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

63. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Settlement Agreement. However, the procedures set forth in this Section shall not apply to actions by, or on behalf of, EPA to enforce obligations of Respondents that have not been timely disputed in accordance with this Section.

64. Any dispute regarding this Settlement Agreement shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless the period is extended by written agreement of the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

65. Statements of Position.

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within twenty (20) days after the conclusion of the informal negotiation period, Respondents invoke the formal dispute resolution procedures of this Section by submitting to EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Respondents. The Statement of Position shall specify Respondents' position as to whether formal dispute resolution should proceed under Paragraph 66 (Record Review) or Paragraph 67.

b. Within twenty (20) days after receipt of Respondents' Statement of Position, EPA will submit to Respondents its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 66 (Record Review) or Paragraph 67. Within twenty (20) days after receipt of EPA's Statement of Position, Respondents may submit a Reply.

c. If there is disagreement between EPA and Respondents as to whether dispute resolution should proceed under Paragraph 66 (Record Review) or Paragraph 67, the

Parties shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if Respondents ultimately appeal to Region 7's Regional Judicial Officer (RJO) to resolve the dispute, the RJO shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 66 (Record Review) and 67.

66. Record Review. Formal dispute resolution for disputes pertaining to EPA's selection or the adequacy of any response action shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Settlement Agreement, and the adequacy of the performance of response actions taken pursuant to this Settlement Agreement.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the Parties.

b. The Director of EPA Region 7's Superfund Division, or his or her designee ("Division Director"), will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.a. This decision shall be binding upon Respondents, subject only to the right to seek RJO review pursuant to Paragraphs 66.c. and 66.d.

c. Any administrative decision made by EPA pursuant to Paragraph 66.b. shall be reviewable by the RJO, provided that a request for RJO review of the decision is submitted to EPA by Respondents within ten (10) days after receipt of the Division Director's decision. This submittal shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Settlement Agreement. EPA may submit a response to Respondents' submittal.

d. In proceedings on any dispute governed by this Paragraph, Respondents shall have the burden of demonstrating that the Division Director's decision is arbitrary and capricious or otherwise is not in accordance with law. RJO review of the Division Director's decision shall be on the administrative record compiled pursuant to Paragraph 66.a. Stipulated penalties may be waived at the discretion of the RJO.

67. Formal dispute resolution for disputes that do not pertain to EPA's selection or adequacy of any response action shall be governed by this Paragraph. Following receipt of Respondents' Statement of Position submitted pursuant to Paragraph 65, the Division Director will issue a final decision resolving the dispute. The Division Director's decision shall be binding on Respondents.

68. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Respondents under this Settlement Agreement, not directly in dispute, unless EPA or the RJO agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 77. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement Agreement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties). In this context, stipulated penalties may be waived at the discretion of the Division Director.

XVI. FORCE MAJEURE

69. Respondents agree 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 Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

70. 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, Respondents shall notify EPA orally within seven (7) days of when Respondents first knew that the event might cause a delay. Within seven (7) days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, 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 Respondents 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.

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

XVII. STIPULATED PENALTIES

72. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 73 and 74 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Respondents shall include completion of all activities and obligations, including payments, required under this Settlement Agreement, or any deliverable approved under this Settlement Agreement, in accordance with all applicable requirements of law, this Settlement Agreement, and any deliverables approved under this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

73. Stipulated Penalty Amounts.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with the Settlement Agreement identified in Paragraph 73.b.:

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

b. Compliance Milestones.

(1) Designation of Project Coordinator (Section VII);

(2) Submission of the EE/CA Work Plan, and any required revisions (Paragraph 40);

(3) Submission of the Health and Safety Plan, and any suggested revisions (Paragraph 42);

(4) Submission of the Sampling and Analysis Plan, and any required revisions (Paragraph 43.b.);

(5) Submission of Progress Reports (Paragraph 44);

(6) Emergency response/release reporting (Section XIII)

(7) Provision of insurance (Section XXIV);

(8) Provision of financial assurance (Section XXV); and

(9) Any other milestone established by this Settlement Agreement.

74. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 84 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of $100,000. Stipulated penalties under this Paragraph are in addition to the remedies

available to EPA under Paragraphs 84 (Work Takeover) and 105 (Access to Financial Assurance).

75. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within fifteen (15) days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: with respect to a decision by the EPA Management Official at the Division Director level or higher, under Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

77. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 60 (Payments for Future Response Costs).

78. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 75 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 77 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

80. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not

seek civil penalties pursuant to Section 106(b) or Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement Agreement, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 84 (Work Takeover). Notwithstanding any other provision in this Section, EPA may in its unreviewable discretion waive any or all of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVIII. COVENANTS BY EPA

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

XIX. RESERVATIONS OF RIGHTS BY EPA

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

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

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

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

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

d. criminal liability;

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

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

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

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

84. Work Takeover.

a. In the event that EPA determines that Respondents: (i) have ceased implementation of any portion of the Work; (ii) are seriously or repeatedly deficient or late in their performance of the Work; or (ii) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notice issued by EPA (which may be electronic) will specify the grounds upon which such notice was issued and will provide to Respondents a period of not less than three (3) days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the notice period specified in Paragraph 84.a., Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 84.b. Funding of Work Takeover costs is addressed under Paragraph 105 (Access to Financial Assurance).

c. Respondents may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 84.b. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 84.b. until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Section XV (Dispute Resolution).

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

XX. COVENANTS BY RESPONDENTS

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

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

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

c. 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, or at common law; or

86. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 83.d. (criminal liability), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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).

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

XXI. OTHER CLAIMS

89. 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 Respondents. The United States or EPA shall not be deemed a party to any contract entered into

by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

90. Except as expressly provided in Section XVIII (Covenants by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents 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.

91. 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).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

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

93. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondents have, as of the Effective Date and subject to Section XVIII (Covenants by EPA), resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs. Notwithstanding anything in this Paragraph to the contrary, the Parties further agree that this Settlement Agreement (a) does not alter, impair, waive or bar claims asserted by Respondents' against one another in the currently pending lawsuit identified in Paragraph 95; and (b) does not alter, impair or bar Respondents from seeking recovery, or from bringing any other action or claim, (i) pursuant to the 1980 Asset Purchase Agreement entered into by Respondents' predecessors, or (ii) preserved, allowed or established by a separate agreement between Respondents regarding their participation in this Settlement Agreement.

94. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondents have, as of the Effective Date and subject to Section XVIII (Covenants by EPA), resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

95. Respondents shall, with respect to any suit or claim brought by them for matters related to this Settlement Agreement, notify EPA in writing no later than sixty (60) days after the initiation of such suit or claim. Respondents also shall, with respect to any suit or claim brought against them for matters related to this Settlement Agreement, notify EPA in writing within ten (10) days after service of the complaint or claim upon them. In addition, Respondents shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement. EPA is already aware of the current litigation between Respondents pending in the United States District Court for the Eastern District of Missouri at case number 2:16-cv-00039 and of the court's June 5, 2017 order setting the case for trial on December 3, 2018.

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

XXIII. INDEMNIFICATION

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

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

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

XXIV. INSURANCE

100. Before commencing any on-Site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVII (Notice of Completion of Work), commercial general liability insurance with limits of $1,000,000, for any one occurrence, and automobile insurance with limits of $1,000,000, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement Agreement. In addition, for the duration of the Settlement Agreement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XXV. FINANCIAL ASSURANCE

101. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of $500,000, for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at *https://cfpub.epa.gov/compliance/models/*, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, escrow accounts, and/or insurance policies.

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

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

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

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

e. A demonstration by a Respondent that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

f. A guarantee to fund or perform the Work executed in favor of EPA by one of the following: (1) a direct or indirect parent company of a Respondent; or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; provided, however, that any company providing such a guarantee must demonstrate to EPA's satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee.

g. An escrow account that provides EPA security and rights equivalent to those provided by a trust fund that meets the requirements of 40 C.F.R. § 264.151(a)(1) to finance the Work in accordance with this Settlement Agreement. The escrow account shall provide that the funds placed therein are specifically and irrevocably reserved for the Work. Respondents shall include in any progress reports submitted pursuant to this Settlement Agreement or the EE/CA Work Plan a report on the status of payments out of the escrow account. At EPA's request, Respondents shall make available to EPA any financial reports or other similar documents prepared by the escrow agent or other person responsible for approving payments out of the escrow account. Upon completion of the Work any funds remaining in the escrow account may be disbursed to the Respondents.

102. Respondents have selected, and EPA has found satisfactory, as an initial financial assurance an escrow account prepared in accordance with Paragraph 101.g. Within sixty (60) days after the Effective Date, or sixty (60) days after EPA's approval of the form and substance of Respondents' financial assurance, whichever is later, Respondents shall secure all executed

and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the EPA's Project Coordinator pursuant to Paragraph 36.

103. If Respondents provide financial assurance by means of a demonstration or guarantee under Paragraph 101.e. or 101.f., Respondents shall also comply and shall ensure that their guarantors comply with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including, but not limited to: (a) the initial submission to EPA of required documents from the affected entity's chief financial officer and independent certified public accountant no later than thirty (30) days after the Effective Date; (b) the annual resubmission of such documents within ninety (90) days after the close of each such entity's fiscal year; and (c) the notification of EPA no later than thirty (30) days, in accordance with Paragraph 104, after a Respondent determines that it no longer satisfies the relevant financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). Respondents agree that EPA may also, based on a belief that an affected entity may no longer meet the financial test requirements of Paragraph 101.e. or 101.f., require reports of financial condition at any time from such entity in addition to those specified in this Paragraph. For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (i) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (ii) the phrase "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" includes the sum of all environmental obligations (including obligations under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work under this Settlement Agreement; (iii) the terms "owner" and "operator" include each Respondent making a demonstration or obtaining a guarantee under Paragraph 101.e. or 101.f.; and (iv) the terms "facility" and "hazardous waste management facility" include the Site.

104. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Respondents of such determination. Respondents shall, within thirty (30) days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Respondents, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed sixty (60) days. Respondents shall follow the procedures of Paragraph 106 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Settlement Agreement, including, without limitation, the obligation of Respondents to complete the Work in accordance with the terms of this Settlement Agreement.

105. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 84.b., then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (i) the performance of the Work; and/or (ii) require that any funds guaranteed be paid in accordance with Paragraph 105.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and Respondents fail to provide an alternative financial assurance mechanism in accordance with this Section at least thirty (30) days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 105.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 84.a., either: (i) EPA is unable, after good faith efforts, for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (ii) the financial assurance is not provided under Paragraph 101.e. or 101.f., then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within thirty (30) days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 105 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA must deposit the payment into the Toastmaster-Macon Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site.

106. Modification of Amount, Form, or Terms of Financial Assurance. Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 102, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement Agreement or in any other forum. Within thirty (30) days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall

submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 102.

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

XXVI. MODIFICATION

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

109. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from EPA's Project Coordinator pursuant to Paragraph 108.

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

XXVII. NOTICE OF COMPLETION OF WORK

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

XXVIII. INTEGRATION/APPENDICES

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

a. "Appendix A" is a map depicting the Toastmaster-Macon Site.

b. "Appendix B" is the EE/CA Work Plan.

c. "Appendix C" is the Health and Safety Plan.

d. "Appendix D" is the Sampling and Analysis Plan.

XXIX. EFFECTIVE DATE

113. This Settlement Agreement shall be effective upon signature by the Director of the Superfund Division, EPA Region 7.

114. Respondents' obligation to perform the Work will begin on the Effective Date of this Settlement Agreement.

FOR RESPONDENT SPECTRUM BRANDS, INC.

10/16/17
Date

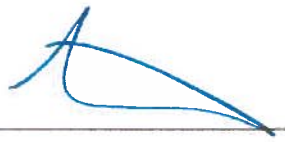
Signature: [signature]

Print Name: Matthew E Fague

Title: Sr. Vice President & General Counsel

FOR RESPONDENT COOPER INDUSTRIES, LLC

October 5, 2017
Date

Signature: 

Print Name: Lizbeth Wright

Title: Vice President and Secretary

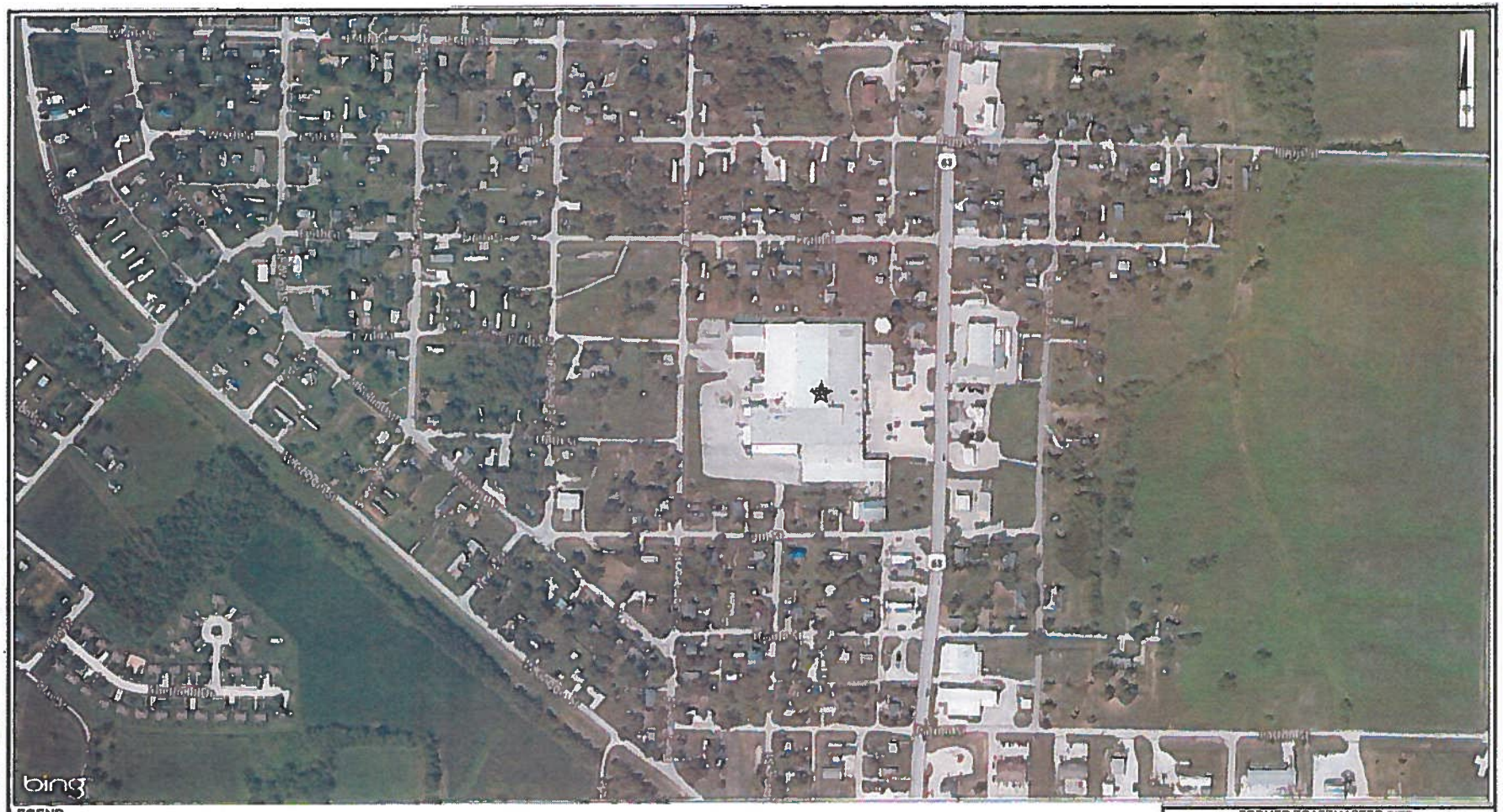
FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

10/25/2017
Date

Mary P. Peterson
Director
Superfund Division

10/24/2017
Date

Jared Pessetto
Attorney
Office of Regional Counsel



LEGEND

★ SITE LOCATION

0 300 600

GRAPHIC SCALE IN FEET

FORMER TOASTMASTER SITE
704 SOUTH MISSOURI STREET
MACON, MISSOURI

VICINITY MAP

ARCADIS

APPENDIX A

Appendix B

Last Saved By: bbush
Project Z:\GIS\Projects_ENV\Documents\Former_Toastmaster_Site\MXD\FIG 1 VICINITY MAP AERIAL 11X17.mxd 3/28/2017

Appendix C

Unilateral Administrative Order for Participation and Cooperation with Engineering Evaluation/Cost Analysis (Oct. 25, 2017)

Appendix C

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:

TOASTMASTER - MACON
EPA ID NO. MOD991293564

COMPTON'S LLC AND
RICHARD COMPTON,

RESPONDENTS.

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

EPA Docket No.
CERCLA-07-2017-0457

UNILATERAL ADMINISTRATIVE ORDER
FOR PARTICIPATION AND COOPERATION
WITH ENGINEERING EVALUATION/COST ANALYSIS

TABLE OF CONTENTS

APPENDICES

"Appendix A" is a map depicting the Toastmaster-Macon Site.

"Appendix B" is the Administrative Settlement Agreement and Order On Consent.

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14A and 14-14B. This authority was further redelegated by the Regional Administrator of EPA Region 7 to the director of the Superfund Division by Redelegation No. R7-14-14A and R7-14-14B.

2. This Order pertains to property located at or near 704 South Missouri Street in Macon, Missouri, known as the Toastmaster-Macon Site. This Order requires Respondent to participate and cooperate in the performance of all actions described herein to abate an imminent and substantial endangerment to the public health or welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

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

II. PARTIES BOUND

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

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

III. DEFINITIONS

6. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in appendices to or documents incorporated by reference into this Order, the following definitions shall apply:

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource

use restrictions are needed to implement the Work, including, but not limited to, the property located at 704 South Missouri Street in Macon, Missouri.

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

"Constituents of Concern" or "COCs" shall mean trichloroethene (TCE), 1,1-dichloroethene, cis-1,2 dichloroethene, trans-1,2- dichloroethene, and vinyl chloride.

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

"Effective Date" shall mean the effective date of this Order as provided in Section VIII.

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

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

"Facility" shall mean the property located at 704 South Missouri Street in Macon, Missouri, near the center of Northwest Quarter of the Northeast Quarter of the Southeast Quarter of Section 21, Township 57 North, Range 14 West in Macon County, Missouri.

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

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

"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.

"Non-Respondent Owner" shall mean any person, other than a Respondent, that owns or controls any Affected Property. The phrase "Non-Respondent Owner's Affected Property" means Affected Property owned or controlled by Non-Respondent Owner.

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

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

"Parties" shall mean EPA and Respondents.

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

"Respondents" shall mean Compton's LLC and Richard Compton.

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

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

"Site" shall mean the Facility and all areas where the COCs from Facility operations have come to be located.

"State" shall mean the State of Missouri.

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

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

"Waste Material" shall mean any "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and/or any "pollutant or contaminant" as defined in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

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

IV. FINDINGS OF FACT

7. Compton's LLC (Compton's) is the current owner of property located at 704 South Missouri Street in Macon, Missouri. The Facility consists of approximately 15 acres and is located in an area that is primarily light industrial or residential. *See* Appendix A. Structures at the Facility include an approximately 175,000 square-foot building, a metal canopy and shed adjacent to the west side of the building, and a concrete foundation that housed above-ground storage tanks prior to 1991.

8. Small-electronic appliance manufacturing operations were conducted at the Facility from approximately 1956 until 2001, and from 2001 until 2012 the Facility was used for warehousing. Macon Industrial Development Corporation owned all or part of the Facility and leased the property to McGraw-Edison Company beginning in the mid-1950s for use by its Portable Appliance and Tool Group division. McGraw Edison operated the Facility from 1956 until 1980. Cooper Industries, LLC, is the successor corporation to McGraw-Edison.

9. From 1956 until at least 1996, TCE was stored and used in operations at the Facility. Until 1991, TCE was stored in a 5,000-gallon above-ground storage tank (AST) located outside, directly adjacent to the manufacturing building. After 1991, TCE was stored within the Facility in 55 gallon drums.

10. In 1991, during Toastmaster's ownership and operation of the Facility, a pinhole leak was discovered in a 5,000-gallon fuel oil AST. The 5,000 gallon AST containing TCE was also located next to the fuel oil AST. Both of these tanks were located within a concrete foundation on a gravel bed.

11. During subsequent site investigation by the State, Facility personnel reported that TCE use since 1956 resulted in spillage during filling of the AST.

12. In September 1991, after discovering the fuel leak, Toastmaster contracted to perform a soil gas survey to evaluate the potential presence of volatile organic compounds (VOCs) in soils under and adjacent to the AST area, and estimate the quantity of VOCs that may have been released in this area. Soil gas sampling was conducted on September 14-16, 1991. This sampling revealed the presence of total VOCs and TCE, along with traces of benzene and toluene, in the storage area.

13. Based on the results of the soil gas survey, Toastmaster initiated a Phase II Environmental Site Assessment (ESA) to verify the results of the soil gas survey and to delineate the vertical and horizontal extent of the VOC contamination. At that time, a Phase I ESA had not been completed. Field work on the Phase II ESA began on January 20, 1992, which included the installation of ten groundwater monitoring wells.

14. The Phase II ESA documented that soils down-gradient and cross-gradient from the former location of the TCE and diesel fuel ASTs were contaminated with VOCs. The Phase II ESA also documented that groundwater in both an upper water-bearing zone and a lower water-bearing zone were contaminated with VOCs, most significantly, TCE.

15. On June 17, 1992, Toastmaster reported a spill of TCE at the Facility to the U.S. Coast Guard's National Response Center. This report indicated that Toastmaster had performed a Site assessment and discovered off-site contamination of TCE in groundwater. The contamination was reported to be a result of historical spills of TCE during refilling of the AST.

16. On September 17, 1993, MDNR received a Cleanup Assessment Report for the Toastmaster site from the Missouri Department of Health. The report concluded that a health risk existed at the Site based on the high levels of VOCs, especially TCE, in the soil and groundwater. However, the magnitude of the health risk could not be determined without

additional information regarding the presence and vulnerability of public and private water supplies near the Site.

17. After the Phase II ESA was completed, Toastmaster contracted to design and oversee the response to subsurface TCE contamination. In January 1995, groundwater from the monitoring wells was sampled. Some samples showed a slight increase, while some showed a slight decrease, of contaminants from the 1992 sampling results.

18. In December 1995, Toastmaster installed thirteen additional monitoring wells to further characterize the extent of contamination and the direction of groundwater flow.

19. MDNR submitted a CERCLIS Site Identification Form to EPA for the Site on February 8, 1996. Toastmaster submitted an application to MDNR's Hazardous Substances Environmental Remediation Program for the remediation of contaminants under the review and oversight of MDNR. Toastmaster was accepted into MDNR's Voluntary Cleanup Program (VCP) by a letter dated March 29, 1996. MDNR requested that Toastmaster conduct a Phase I ESA, which was completed on June 14, 1996.

20. In April and July 1996, MDNR issued two comment letters on previous investigations conducted at the Site. In July 1998, a pump and treat system was evaluated as a remediation technique. In October 1998, MDNR issued a third comment letter requiring the installation of additional monitoring wells including wells drilled to bedrock, sampling of intermittent streams down-gradient from the Site, and investigation of the TCE source area. In March 1999, MDNR approved the well installation work plan, including the wells drilled to bedrock.

21. In January 2001, MDNR issued a letter to Toastmaster indicated that, although characterization was not yet complete, response actions were necessary at the Site. In April 2001, MDNR approved a pilot test for the use of Hydrogen Release Compound at the Site. In October 2001, MDNR requested additional sampling at the Site and approved Toastmaster's sampling plan in November 2001.

22. On April 14, 2004, MDNR issued a letter stating that the use of Hydrogen Release Compound at the Site had been effective, but that it should be combined with another remediation technology that will be effective in the source area.

23. In March 2005, MDNR issued a letter to Toastmaster indicating that a new guidance document would be used in the investigation and/or remediation of the Site with respect to source areas, indoor air, groundwater, and its associated contaminant plume.

24. In April 2010, MDNR issued a letter to Toastmaster indicating that additional Site investigation was needed. In June 2011, the Site investigation work plan was approved by MDNR. In March 2012, MDNR issued a letter requesting additional investigation and remedial action.

25. In June 2012, Compton's purchased the Facility and assumed, by contractual indemnity, all environmental liabilities associated with the Facility. MDNR received a letter of agreement enrolling Compton's in MDNR's VCP on May 23, 2012.

26. On June 13, 2013, MDNR issued comments on the groundwater monitoring report, and again set a deadline for submission of a remedial action plan. On December 11, 2013, MDNR established a thirty-day deadline for remedial action plan submittal, or the Site would be terminated from MDNR's VCP. On January 16, 2014, the Site was terminated from Missouri's VCP.

27. In May 2014, MDNR conducted indoor air sampling to determine whether COC vapors from subsurface contamination were resulting in exposures within the building at the Facility. The sampling documented elevated levels of TCE in the indoor air within the building. In June 2014, MDNR requested that EPA take action to respond to vapor intrusion exposures within the building at the Facility, and address the source of those exposures.

28. In July 2014, MDNR conducted indoor air, and sub-slab soil gas sampling at residences in the immediate vicinity of the Facility to determine whether the COCs from the Facility were impacting nearby residences. The results of this sampling, received by MDNR in August 2014, documented elevated indoor and/or sub-slab levels of TCE in two of the nearby residences. In September 2014, MDNR referred the Site to EPA, requesting that EPA investigate and respond to contamination at the Facility, as well as contamination emanating from the Facility. On October 2, 2014, EPA conducted a fund-lead removal action and installed sub-slab vapor mitigation devices in the two residences that had elevated levels of TCE.

29. On November 20, 2015, EPA entered into an Administrative Settlement Agreement and Order on Consent for Removal Actions, CERCLA-07-2015-0006, with Compton's and Spectrum requiring installation of a vapor mitigation system in the former manufacturing building, conducting sub-slab and indoor air sampling of residences, installation of vapor mitigation systems in residences containing elevated and unacceptable levels of TCE, and monitoring the effectiveness of the vapor mitigation systems, in both the Facility and residences, by conducting confirmatory indoor air sampling following the installation of the systems. That work was commenced in August 2016.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The Toastmaster-Macon Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

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

(1) Respondent Compton's LLC is an "owner" and/or "operator" of OU-1, 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); and

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

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

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

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

VI. ORDER

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

VII. OPPORTUNITY TO CONFER

32. No later than 7 days after this Order is signed by the director of the Superfund Division, Respondents may, in writing, (a) request a conference with EPA to discuss this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions that Respondents are ordered to take, or any other relevant and material issues or contentions that Respondents may have regarding this Order; or (b) notify EPA that it intends to submit written comments or a statement of position in lieu of requesting a conference.

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

Jared Pessetto, Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

Phone: (913) 551-7793
pessetto.jared@epa.gov

VIII. EFFECTIVE DATE

34. This Order shall be effective 7 days after the Order is signed by the director of the Superfund Division unless a conference is requested or notice is given that written materials will be submitted in lieu of a conference in accordance with Section VII (Opportunity to Confer). If a conference is requested or such notice is submitted, this Order shall be effective on the 10th day after the day of the conference, or if no conference is requested, on the 10th day after written materials, if any, are submitted, unless EPA determines that the Order should be modified based on the conference or written materials. In such event, EPA shall notify Respondents, within the applicable 10-day period, that EPA intends to modify the Order. The modified Order shall be effective 5 days after it is signed by the director of the Superfund Division.

IX. NOTICE OF INTENT TO COMPLY

35. On or before the Effective Date, Respondents shall notify EPA in writing of Respondents' irrevocable intent to comply with this Order. Such written notice shall be sent to EPA as provided in Paragraph 33. Respondents' written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defense asserted by such Respondents under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of Respondents' assertions. Failure of Respondents to provide such notice of intent to comply within this time period shall, as of the Effective Date, be treated as a violation of this Order by Respondents.

X. DESIGNATION OF PROJECT COORDINATORS

36. Within 30 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Order and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. Respondents shall have the right to change their Project Coordinator, subject to EPA's right to disapprove. Respondents shall notify EPA 7 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the Project Coordinator. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

37. EPA has designated John Frey of the Assessment, Emergency Response, and Removal Branch as its Project Coordinator. EPA will notify Respondents of a change of its designated Project Coordinator. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to EPA's Project Coordinator in accordance with Paragraph 44.a.

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

XI. WORK TO BE PERFORMED

39. Contemporaneous with the issuance of this Order, EPA has entered into and issued to Spectrum Brands, Inc. (Spectrum Brands) and Cooper Industries, LLC (Cooper Industries) an Administrative Settlement Agreement and Order on Consent, Docket No. CERCLA-07-2016-0014 (EE/CA Order). The EE/CA Order requires Spectrum Brands and Cooper Industries to perform all actions necessary for the preparation of an Engineering Evaluation/Cost Analysis (EE/CA) for the Site, as memorialized in the EE/CA Work Plan attached as Appendix B to the EE/CA Order. The EE/CA Order and its appendices are incorporated by reference herein as Appendix B to this Order.

40. Duty to Coordinate. Respondents shall make their best efforts to coordinate with Spectrum Brands and Cooper Industries in the performance of EE/CA activities required under the EE/CA Order. Best efforts to coordinate shall include, at a minimum, that Respondents:

a. communicate in writing within 10 days of the Effective Date of this Order to Spectrum Brands, Cooper Industries, and EPA as to Respondents' intent to comply with this Order and specifically their intent to participate in the performance of the EE/CA activities required under the EE/CA Order, or to contribute to, and/or reimburse Spectrum Brands and Cooper Industries, for the costs of performing such activities;

b. submit within 20 days of the Effective Date of this Order a good-faith offer to Spectrum Brands and Cooper Industries detailing Respondents' proposed participation in the performance of EE/CA activities required under the EE/CA Order, contribution for the performance of those activities, and/or reimbursement of Spectrum Brands and Cooper Industries for their performance such activities; and

c. engage in good-faith negotiations with Spectrum Brands and Cooper Industries with regard to Respondents' participation in the performance of the EE/CA activities required under the EE/CA Order, contribution for the performance of such activities, and/or reimbursement of Spectrum Brands and Cooper Industries for their performance of the Work.

41. Duty to Participate. To the extent that Spectrum Brands and Cooper Industries perform or financially contribute to the performance of the EE/CA activities required under the EE/CA Order, Respondents shall make best efforts to participate in the performance of such activities and/or financially contribute to its performance. Best efforts to participate shall include, at a minimum, that Respondents:

a. perform any activities as agreed to by Respondents, Spectrum Brands, and Cooper Industries; and

b. financially contribute all amounts as agreed to by Respondents, Spectrum Brands, and Cooper Industries.

42. Undertaking or completing any of the EE/CA activities required under the EE/CA Order and/or the payment of any required amounts by any other person, with or without the participation of Respondents, shall not relieve Respondents of their obligation to the requirements of this Order. Any failure to perform the EE/CA activities required under the EE/CA Order, and/or any failure to make required payments to Spectrum Brands and/or Cooper Industries by any other person with whom Respondents are coordinating or participating with in the performance of the Work shall not relieve Respondents of their obligation to fulfill the requirements of this Order. Nothing in this Order shall alter the rights or obligations of Cooper Industries and/or Spectrum Brands under any other order.

43. Submission of Documents. On EPA's request and subject to any claims of applicable privilege, Respondents shall submit to EPA all documents in their possession, custody, or control relating to Respondents': (a) offers to Spectrum Brands and/or Cooper Industries to perform or pay for the Work; or (b) performance or payment for the Work required by this Order in conjunction with Spectrum Brands and/or Cooper Industries.

44. Submission of Deliverables.

a. Except as otherwise provided in this Order, Respondents shall direct all submissions required by this Order to EPA's Project Coordinator:

John Frey
U. S. Environmental Protection Agency, Region 7
8600 N.E. Underground Drive, Pillar 253
Kansas City, Missouri 64161
913-551-7994
frey.john@epa.gov

Respondents shall submit all deliverables required by this Order and any approved work plan to EPA in accordance with the schedule set forth in such plan.

b. Respondents shall submit all deliverables in electronic form. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide EPA with paper copies of such exhibits.

XII. PROPERTY REQUIREMENTS

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

46. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use

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

XIII. ACCESS TO INFORMATION

47. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

48. Privileged and Protected Claims.

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

b. If Respondents asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that it claims to be privileged or protected until EPA or a court determines that such Record is privileged or protected.

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

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

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

XIV. RETENTION OF RECORDS

51. During the pendency of this Order and for a minimum of 10 years after Respondents' receipt of EPA's notification pursuant to Section XXIV (Notice of Completion of Work), Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with respect to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondents must also retain, and instruct their contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that Respondents (and their contractors and agents) must retain, in addition, copies of all data generated during performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

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

53. Within 10 days after the Effective Date, Respondents shall submit a written certification to EPA's Project Coordinator that, to the best of their knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to their potential liability regarding the Site since notification of their potential liability by the United States, and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927. Any Respondents unable to so certify shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

XV. COMPLIANCE WITH OTHER LAWS

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

55. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XVI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

56. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of any Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify EPA's Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at (913) 281-0991 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, EPA reserves the right to pursue cost recovery.

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

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

XVII. PAYMENT OF RESPONSE COSTS

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

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

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

and shall reference Site/Spill ID Number B792 and the EPA docket number for this action.

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

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

Such notice shall reference Site/Spill ID Number B792 and EPA docket number for this action.

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

XVIII. ENFORCEMENT/WORK TAKEOVER

63. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondents to civil penalties of up to $53,907 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43,091, 40 C.F.R. Part 19.4. In the event of such willful violation, or failure or refusal to comply, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

XIX. RESERVATIONS OF RIGHTS BY EPA

64. Nothing in this Order shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the

environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Order shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site.

XX. OTHER CLAIMS

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

66. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

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

XXI. MODIFICATION

69. EPA's Project Coordinator may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA within 15 days, but shall have as its effective date the date of the EPA Project Coordinator's oral direction. Any other requirements of this Order may be modified in writing by signature of the director of the Superfund Division.

70. If Respondents seek permission to deviate from any approved Work Plan or schedule, Respondents shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving approval from EPA's Project Coordinator pursuant to Paragraph 69.

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

XXII. DELAY IN PERFORMANCE

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

73. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of Paragraph 72 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to fully perform all obligations under the terms and conditions of this Order.

XXIII. ADDITIONAL REMOVAL ACTIONS

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

XXIV. NOTICE OF COMPLETION OF WORK

75. When EPA determines that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including reimbursement of Response Costs, and Record Retention, EPA will provide written notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Order, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents in order to correct such deficiencies within 30 days after receipt of the EPA notice.

XXV. SEVERABILITY

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

It is so ORDERED.

10/25/2017
Date

Mary P. Peterson
Mary P. Peterson
Director
Superfund Division

10/24/2017
Date

Jared Pescetto
Jared Pescetto
Assistant Regional Counsel
Office of Regional Counsel

EFFECTIVE DATE: 11/2/2017