

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3

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IN THE MATTER OF:)	
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West Virginia Tire Disposal, Inc. Site)	Docket No. CERCLA-03-2022-0073DC
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West Virginia Tire Disposal, Inc.)	
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Respondent)	
)	
)	
Proceeding under Sections 104, 106(a),)	ADMINISTRATIVE SETTLEMENT
107 and 122 of the Comprehensive)	AGREEMENT AND ORDER ON
Environmental Response, Compensation,)	CONSENT FOR REMOVAL ACTION
and Liability Act of 1980, as amended,)	
42 U.S.C. §§ 9604, 9606(a), 9607 and 9622)	
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**Administrative Settlement Agreement and Order On Consent
For Removal Response Action**

JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent for Removal Action (“Settlement”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and West Virginia Tire Disposal, Inc. (“Respondent”). This Settlement provides for the performance of a removal action by Respondent and the payment of certain response costs incurred by the United States at or in connection with the West Virginia Tire Disposal, Inc. Site, generally located at and near 26 Bryant Branch Road in Summersville, Nicholas County, West Virginia (the “Site”). In entering into this Settlement, the mutual objectives of EPA and Respondent are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site (as hereinafter described), by, among other things, (i) prevention of discharge of hazardous substances into and from an on-site stormwater, retention pond (“Pond”); (ii) removal and containment of hazardous substances from the Pond, its shoreline, out-falls, retention areas, on-site wetlands, and other areas of the Site; (iii) on-site or off-site disposal, as approved, of any hazardous substances, pollutants or contaminants removed during the response action; (iv) containment of Pond liquids to reduce volume and prevent overflow; (v) excavation of waste debris in the Pond resulting from the December 25, 2021 tire fire; and (vi) control of runoff from tire-fire waste pile.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622. 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 Director of the Region III Superfund & Emergency Management Division.

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

4. EPA and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, 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. Respondent agrees to comply with and be bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms.

I. PARTIES BOUND

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

6. [Reserved.]

7. Any representative signing on behalf of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondent to this Settlement.

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

III. DEFINITIONS

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

“Affected Property” shall mean the real property at 26 Bryant Branch Road, Summersville, Nicholas County, West Virginia, and any other real property where EPA determines that access or activity and use limitations (“AULs”) are needed to implement the removal action.

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

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

“DEP” or “WVDEP” shall mean the West Virginia Department of Environmental Protection and any successor departments or agencies of the State.

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXX hereunder.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

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

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs (i) in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, as defined below, or otherwise implementing, overseeing, or enforcing this Settlement; (ii) all payroll costs, contractor costs, travel costs, and laboratory costs incurred by the United States; (iii) the costs incurred pursuant to Section IX (Property Requirements), including cost of attorney time and any monies paid to secure or enforce access or ensure long-term compliance with AULs, implementation of institutional controls, or the amount of any just compensation; (iv) the costs incurred pursuant to Section XIII (Emergency Response and Notification of Releases), Section XIV (Payment of Response Costs), and Paragraph 71 (Work Takeover); (v) costs incurred for community involvement, including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e); and (vi) costs incurred pursuant to Section XV (Dispute Resolution) and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (“ATSDR”) costs regarding the Site.

“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>.

“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 identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA and Respondent.

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

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

“Respondent” shall mean West Virginia Tire Disposal, Inc.

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

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent for Removal Action and all appendixes attached hereto (listed in Section XXIX

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

“Site” shall mean the West Virginia Tire Disposal, Inc. Superfund Site, located at and near 26 Bryant Branch Road, Summersville, Nicholas County.

“State” shall mean the State of West Virginia.

“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 (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any “hazardous material”, as defined under the West Virginia Waste Management Act and regulations promulgated thereunder at West Virginia State Code 22-11-1 et seq.

“The West Virginia Tire Disposal, Inc. Site Special Account” shall mean the special account for the Site within the EPA Hazardous Substance Superfund, established hereunder by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

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

IV. FINDINGS OF FACT

10. EPA makes the following findings of fact:

a. Respondent West Virginia Tire Disposal, Inc. (“WVTD, Inc.”), a West Virginia corporation, operates a commercial waste tire monofill facility at the Site under permits issued by WVDEP.

b. Robert L. Thompson, the principal of WVTD, Inc., manages, directs, or controls all operations at the Site, including all decisions having to do with the cleanup of hazardous substances, pollutants or contaminants and all decisions about compliance with State and federal environmental regulations.

c. West Virginia Land Management, Ltd., an Ohio limited liability company (“LLC”), owns the real property at the Site and leases it to WVTD, Inc.

d. On December 25, 2021, WVDEP responded to a tire fire at the Site. During the weeks following the initial response, WVDEP conducted ongoing emergency response activities at the Site, including measures to prevent and control the release of an oily waste byproduct (“oil-like substance”) from the tire fire into and from the Pond. This Pond discharges to Bryant Branch of Peters Creek, which discharges to the Gauley River, a State-designated high-quality waterway.

e. Sampling conducted by WVDEP of the surface water leaving the Site at the outfalls showed the presence of several hazardous substances including, benzene, phenol, styrene, and 4-Methyl-2-pentanone, all of which are listed hazardous substances in the NCP at 40 C.F.R. § 302.4, Table 302.4.

f. On or around February 9, 2022, WVDEP requested that EPA take over performance of the emergency response action under EPA’s CERCLA and NCP authorities.

g. Between February 10, 2022, and February 21, 2022, EPA’s On-Scene Coordinator (“OSC”) had multiple conversations with Respondent’s principal, Robert L. Thompson, about the takeover of the emergency response and provided Respondent WVTD, Inc. with an opportunity to perform the emergency response, but it could not promptly do so.

h. Between February 14 and 17, 2022, EPA conducted a removal site assessment at the Site, collecting surface water samples from the Pond, including samples of the oil-like substance described in Paragraph 10.d, and solid samples from in and near the Pond. Preliminary analytical results from EPA’s sampling documented the presence of several volatile organic compounds (“VOCs”) and semi-volatile organic compounds (“SVOCs”), including, among others, the hazardous substances, Cumene, Styrene, Toluene, Xylene, 4-Nitro phenol, Benzene, Ethyl-benzene, Phenol, Phenanthrene, and Pyrene, which are listed hazardous substances in the NCP at 40 C.F.R. § 302.4, Table 302.4.

i. In a Special Bulletin dated February 17, 2022, EPA made a determination in accordance with Section 104(a) of CERCLA that conditions at the Site posed an imminent and substantial endangerment to public health or welfare or the environment due to the presence of a hazardous substance, pollutant or contaminant, and that an immediate removal action is necessary to mitigate this threat (“Removal Action”) by the prevention and control of releases of hazardous substances from the Pond.

j. On or around February 20, 2022, WVDEP and its contractors demobilized from the Site, and EPA assumed responsibility for emergency response measures at the Site.

k. The area around the Site is mostly residential, with private homes located off State Route 39. Public water is supplied in the area, but homes in the area may also use private residential wells. EPA has identified at least one home close to the Site that uses a private well for drinking water.

1. On March 18, 2022, EPA issued an Action Memorandum selecting additional removal response activities for the Site and authorizing an increase in funding for the Removal Action. A copy of the Action Memorandum is included as Appendix A to this Settlement.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

11. Based on the Findings of Fact set forth above, and the administrative record supporting selection of the Removal Action required to be performed under this Settlement, EPA has determined that:

a. The West Virginia Tire Disposal, Inc. Site is a “facility,” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. VOCs and SVOCs, including Cumene, Styrene, Toluene, Xylene, 4-Nitro phenol, Benzene, Ethyl-benzene, Phenol, Phenanthrene, and Pyrene, among others found at the Site, as described in Section IV (Findings of Fact), above, and in the administrative record for the Removal Action, are “hazardous substances,” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and are listed in the NCP at 40 C.F.R. § 302.4, Table 302.4.

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

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

i. Respondent WVTD, Inc. is the “operator” of the tire-disposal facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

ii. Respondent WVTD, Inc. was the “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 Paragraphs 10.d through 10.k of the Findings of Fact, above, constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. EPA determined in a Special Bulletin dated February 18, 2022, that the conditions at the Site described in Paragraphs 10.d through 10.j of the Findings of Fact, above, may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

g. The Removal Action required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of

this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

12. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record supporting selection of the Response Action required to be performed under this Settlement, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

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

13. Respondent shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within fifteen (15) days after the Effective Date. Respondent shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least fifteen (15) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within fifteen (15) days after EPA's disapproval. Notwithstanding the required time frames for Respondent's designation of contractors or subcontractors under this Paragraph 13, Respondent shall notify EPA at least five (5) days prior to dismissing any contractor performing emergency response measures at the Site, including those activities described in Paragraphs 17.d through 17.g of this Settlement.

14. Within fifteen (15) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, contact information (including address, telephone number, and email address), and qualifications. Respondent's Project Coordinator shall be a technical or managerial representative of the Respondent and may be a contractor or consultant; provided, however, the Respondent's Project Coordinator shall not be its legal representative(s) in this matter. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information (including address, telephone number, and email address), and qualifications within fifteen (15) days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent.

15. EPA has designated the following person as its OSC:

Christine Wagner (3SD32)
U.S. Environmental Protection Agency – Region 3
c/o Virginia Department of Environmental Quality (#1503D)
1111 E. Main Street
Richmond, Virginia 23219
wagner.christine@epa.gov
(804) 337-3049 (cell)

EPA and Respondent shall have the right, subject to Paragraph 13, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA seven (7) days before such a change is effective. The initial notification by Respondent may be made verbally, but shall be promptly followed by a written notice.

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

VIII. WORK TO BE PERFORMED

17. Respondent shall perform, at a minimum, all actions necessary to implement the following items:

- a. Provide logistical support items on-Site, including, but not limited to, command post trailer(s), portable toilets, rehab areas, and other things necessary to perform the work;
- b. Provide security as needed to prevent unauthorized access to on-Site work areas;
- c. Conduct activities necessary to facilitate the Removal Action, including, but not limited to, clearing vegetation and debris and establishing access roads;
- d. Mitigate potential discharge of an oil-like substance containing hazardous substances, pollutants or contaminants from the Site including the Pond, outfalls, surface drainage areas, retention areas, or any other areas where the oil-like substance is being released to the environment;
- e. Remove and contain oil-like substance containing hazardous substances, pollutants or contaminants from Pond, shoreline, retention areas, and other areas contaminated with such substances;

f. Dispose of oil-like substance and debris containing hazardous substances, pollutants, or contaminants either (i) onsite with authorization from WVDEP, or (ii) offsite consistent with Paragraph 17.n, below;

g. Direct and pump stormwater away from pond for the purpose of reducing volume to prevent overflow from the Pond;

h. Excavate waste tire debris from the Pond followed by staging, containment, and off-site disposal;

i. Control runoff from quenched tire area;

j. Dewater the Pond to remove surface and subsurface contamination. Process the water from the Pond on-Site through a temporary treatment system to remove hazardous substances and suspended solids; or, in the alternative, contain the Pond water for offsite disposal, as provided in Paragraph 17.n, below. Discharge any treated water to surface water (Bryant Branch) in accordance with discharge criteria promulgated under West Virginia environmental law. Coordinate with WVDEP to identify applicable discharge limits, pump rates, and sampling criteria;

k. Remove all solids contaminated by oil-like substance from the Pond and on-Site retention areas;

l. Add stabilizing agent to contaminated solids removed under Paragraph 17.k to prevent leaching of hazardous substances, pollutants or contaminants. Dispose of these contaminated solids on-Site in existing cells permitted under West Virginia law;

m. Flush with water all oil-like substances from the natural wetlands areas on-Site, including the north end of the Pond, where cattails are abundant, and the banks of the entire Pond. Vacuum oil-like substances from the wetlands' surface into a containment tank for disposal;

n. Properly dispose of on-site or offsite, as approved by EPA, all hazardous substances, pollutants, and contaminants recovered at the Site. All off-site disposal shall comply with 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440.

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

19. Work Plan and Implementation.

a. Respondent shall continue to implement the provisional plan for the activities described in Paragraphs 17.d through 17.g of this Settlement and currently being conducted at the Site. There shall be no gap in performance of these activities prior to or after the

Effective Date without at least five (5) days prior notice to EPA. Within thirty (30) days after the Effective Date, in accordance with Paragraph 20 (Submission of Deliverables), Respondent shall submit to EPA for approval a draft work plan for performing the Removal Action (the “Removal Work Plan”) generally described in Paragraph 17, above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Removal Work Plan within ten (10) days after receipt of EPA’s notification of the required revisions. Respondent shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of the Removal Work Plan Respondent shall commence implementation of the Work in accordance with the schedule included therein. Respondent shall not commence or perform any Work except in conformance with the terms of this Settlement.

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

e. Additional actions that may be required under this Settlement are addressed in Section XXVII (Additional Removal Action) of this Settlement.

20. Submission of Deliverables.

a. General Requirements for Deliverables.

i. Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the OSC. Respondent shall submit all deliverables required by this Settlement or any approved work plan to EPA in accordance with the schedule set forth in such plan.

ii. Respondent shall submit all deliverables in electronic form via email to the OSC at wagner.christine@epa.gov. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 20.b. All other deliverables shall be submitted to EPA in the form specified by the OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches in their native format, Respondent shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Deliverables.

i. Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (“EDD”) format, MS Excel. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

ii. Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format, which is EPA’s preferred spatial file format, or in ArcGIS, if ESRI is unavailable; 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://www.epa.gov/geospatial/epa-metadata-editor>.

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

iv. Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

21. Health and Safety Plan (“HASP”). For purposes of this Settlement, Respondent may resubmit the HASP it already has in place for the response activities Respondent has been conducting at the Site. In the alternative, within ten (10) days after the Effective Date, Respondent may submit for EPA review and comment a new HASP that ensures the protection of the public health and safety during performance of on-site Work under this Settlement. This new HASP shall be prepared in accordance with “OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <https://www.epa.gov/nscep>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at <https://www.epaosc.org/HealthSafetyManual/manual-index.htm>. In addition, the new HASP shall comply with all currently applicable Occupational Safety and Health Administration (“OSHA”) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the new HASP shall also include contingency planning. Respondent shall incorporate all changes to the new HASP recommended by EPA and shall implement it during the pendency of the removal action.

22. Quality Assurance, Sampling, and Data Analysis.

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

b. Sampling and Analysis Plan. If EPA determines a Sampling and Analysis plan is needed to perform the work, Respondent shall incorporate a Sampling and Analysis Plan in the Work Plan for EPA review and approval. This plan shall consist of a Field Sampling Plan (“FSP”) and a Quality Assurance Project Plan (“QAPP”) that is consistent with the Removal Work Plan, the NCP and applicable guidance documents, including, but not limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissued May 2006), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Respondent shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. Respondent shall ensure that such laboratories 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 the Agency’s “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>. Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA’s “Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions” available at <https://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 (<http://www.epa.gov/clp>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<https://www.epa.gov/hw-sw846>), “Standard Methods for the Examination of Water and Wastewater” (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, “Air Toxics - Monitoring Methods” (<http://www3.epa.gov/ttnamtl1/airtox.html>).

d. However, upon approval by EPA, Respondent may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (“QA/QC”) criteria are contained in the method(s) and the method(s) are included in the QAPP; (ii) the analytical method(s) are at least as stringent as the methods listed above; and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and

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

e. Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent 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 shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA’s oversight of Respondent’s implementation of the Work.

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

g. Respondent waives any objections to any data gathered, generated, or evaluated by EPA or Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the Work, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within fifteen (15) days after the monthly progress report containing the data.

23. [Reserved.]

24. [Reserved.]

25. Progress Reports. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement on a weekly basis, or as otherwise requested by EPA, from the date of receipt of EPA’s approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVIII, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical

data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

26. Final Report. Within 30 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 104 (Notice of Completion), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to implement the Removal Action identified in Paragraph 17 of this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled “OSC Reports.” The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendixes containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Respondent:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

27. Off-Site Shipments.

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

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility’s state and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above

and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the Removal Action and before the Waste Material is shipped.

c. Respondent 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, and 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

28. Agreements Regarding Access and Non-Interference. Respondent shall, with respect to any Non-Settling Owner’s Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondent and the EPA, providing that such Non-Settling Owner and Respondent shall, with respect to the Affected Property: (i) provide the EPA, the State, Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 28.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Removal Action. Respondent shall provide a copy of such access agreement(s) to EPA and the State.

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

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to EPA;
- iii. Conducting investigations regarding contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, implementing, or monitoring response actions;
- vi. Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;
- vii. Implementing the Work pursuant to the conditions set forth in Paragraph 71 (Work Takeover);

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

ix. Assessing Respondent's compliance with the Settlement;

x. Documenting Respondent's compliance with the Settlement by photographing and videotaping performance of Work;

xi. Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted; and

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

b. [Reserved.]

29. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access or use restriction agreements, as required by this Section. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, Respondent shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIV (Payment of Response Costs).

30. [Reserved.]

31. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondent shall continue to comply with its obligations under the Settlement, including its obligation to secure access.

32. [Reserved.]

33. Notwithstanding any provision of the Settlement, 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.

X. ACCESS TO INFORMATION

34. Respondent 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 Respondent’s possession or control, or that of its contractors or agents, relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic-routing, correspondence, or other documents or information regarding the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work. Subject to Paragraph 35 (Privileged and Protected Claims), Respondent is not required to provide attorney-client privileged information to EPA or any other entity.

35. Privileged and Protected Claims.

a. Respondent 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 Respondent comply with Paragraph 35.b, and except as provided in Paragraph 35.c.

b. If Respondent asserts such a privilege or protection, it shall provide EPA with the following information regarding such Record: its title and 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, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent 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 Respondent’ favor.

c. Respondent may make no claim of privilege or protection regarding: (i) 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 (ii) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement.

36. **Business Confidential Claims.** Respondent 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). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records that Respondent claims 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 Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

37. Notwithstanding any provision of this Settlement, 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

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

39. At the conclusion of the document retention period, Respondent 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 35 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA.

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

XII. COMPLIANCE WITH OTHER LAWS

41. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 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 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 more stringent state environmental or facility siting laws. Respondent shall include any ARARs selected by EPA in the Removal Work Plan.

42. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the Removal Action or related response action), including studies, if such 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, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondent may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

43. 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 and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the OSC or, in the event of her unavailability, the National Response Center ((800) 424-8802), about the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

44. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondent is 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, Respondent shall immediately verbally notify the OSC or, in the event of her unavailability, the National Response Center ((800) 424-8802). This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004.

45. For any event covered under this Section, Respondent 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

46. [Reserved.]

47. Payments for Future Response Costs.

a. Respondent shall pay to EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, but no more often than once per year, EPA will send Respondent a bill requiring payment that includes a summary of costs, including direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within 30 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 47.f (Contesting Future Response Costs), and in accordance with Paragraphs 47.b and 47.c.

b. For all payments subject to this Paragraph 47, Respondent shall make such payment at <https://www.pay.gov> in accordance with the instructions set forth in the bill. Each payment shall include a reference to (i) the West Virginia Tire Disposal, Inc. Site, (ii) Site Spill ID No. B3BJ, and (iii) EPA Docket No. CERCLA-03-2022-0073DC.

c. At the time of payment, Respondent shall send notice that payment has been made to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov. Such notice shall reference (i) the West Virginia Tire Disposal, Inc. Site, (ii) Site Spill ID No. B3BJ, and (iii) EPA Docket No. CERCLA-03-2022-0073DC.

d. Deposit of Future Response Costs Payments. The total amount to be paid by Respondent pursuant to Paragraph 47.a (Periodic Bills) shall be deposited by EPA in the West Virginia Tire Disposal, Inc. Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the West Virginia Tire Disposal, Inc. Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

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

f. Contesting Future Response Costs. Respondent may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under this Paragraph 47 (Payments for Future Response Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondent shall submit a Notice of Dispute in writing to the OSC within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall, within the 30-day period, also as a requirement for initiating the dispute, (i) pay all uncontested Future Response Costs to EPA in the manner described in this Paragraph 47, and (ii) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (“FDIC”) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established, as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within thirty (30) days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in this Paragraph 47. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in this Paragraph 47. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes under Respondent’s obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

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

49. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within fifteen (15) days after such action. EPA and Respondent shall have ten (10) days from EPA’s receipt of Respondent’s Notice of Dispute to resolve the dispute through informal negotiations (the “Negotiation Period”). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

50. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within twenty (20) days thereafter, submit a statement of position. Thereafter, the Chief of the Region III Preparedness and Response Branch within the Superfund & Emergency Management Division will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

51. Except as provided in Paragraph 47.f (Contesting Future Response Costs) or as agreed by EPA, invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Except as provided in Paragraph 61, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

52. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement, despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (i) as it is occurring, and (ii) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

53. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's OSC verbally or, in her absence, the OSC's Section Chief or, in the event both of EPA's designated representatives are unavailable, the Chief of the Region III Preparedness and Response Branch within the Superfund & Emergency Management Division, within five (5) days of when Respondent first knew that the event might cause a delay. Within ten (10) days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health

or welfare, or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 52 and whether Respondent has exercised its best efforts under Paragraph 52, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

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

55. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 52 and 53. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

56. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondent from meeting one or more deadlines under the Settlement, Respondent may seek relief under this Section.

XVII. STIPULATED PENALTIES

57. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 58 and 59 for failure to comply with the obligations specified below, unless excused under Section XVI (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondent with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

58. Stipulated Penalty Amounts - Payments, Major Deliverables, and Other Milestones

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 58.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000.00	1st through 14th day
\$1,500.00	15th through 30th day
\$2,000.00	31st day and beyond

b. Obligations

i. Payment of any amount due under Section XIV (Payment of Response Costs).

ii. [Reserved.]

iii. Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 47.f (Contesting Future Response Costs).

iv. All requirements of Paragraphs 13 (including, but not limited to, the identification of contractors and subcontractors); 14 (including, but not limited to, the designation of a Project Coordinator); 19 (including, but not limited to, the submission of a Removal Work Plan for EPA approval); 20 (including, but not limited to, following the general and technical requirements for submission of deliverables to EPA); 21 (including, but not limited to, the submission of a Health and Safety Plan to EPA); 22 (including, but not limited to, use of approved Quality Assurance and Quality Control procedures); 25 (including, but not limited to, submission of Progress Reports); 26 (including, but limited to, submission of a Final Report); 27 (including, but not limited to, requirements for off-Site shipment of wastes); 28 (including, but not limited to, obtaining access and providing access to EPA); 29 (Best efforts); 32 (including, but not limited to, providing notice to successors-in-title); 43-45 (including, but not limited to, providing notice, and responding to, emergencies); 63 (including, but not limited to, payment of stipulated penalties); Section XXIV (including, but not limited to, obtaining insurance); and Section XXVII (including, but not limited to, performing additional removal actions).

59. Stipulated Penalty Amounts – Other Requirements.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 59.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 14th day
\$750.00	15th through 30th day
\$1,000.00	31st day and beyond

b. Obligations. All requirements of Paragraphs 34 (including, but not limited to, providing information and documents following a request from EPA); and Section XI (including, but not limited to, retaining records).

60. [Reserved.]

61. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA’s decision or order. However, stipulated penalties shall not accrue: (i) with respect to a deficient submission under Paragraph 19 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA’s receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (ii) with respect to a decision by the Branch Chief of the Region 3 Preparedness and Response Branch within the Superfund & Emergency Management Division under Paragraph 50 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the Branch Chief issues a final decision regarding the dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

62. Demand for Payment. Following EPA’s determination that Respondent has failed to comply with a requirement of this Settlement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation. If EPA sends a written demand for payment of stipulated penalties, a copy of the demand will be sent:

- a. Via email to: CINWD_AcctsReceivable@epa.gov; and
- b. Via email to: R3_Hearing_Clerk@epa.gov

63. Payment/Dispute of Demanded Penalties. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent’s receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution

procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall state that the payment is for stipulated penalties and shall be made in accordance with Paragraph 47.b. Notice of payment shall be sent to the following:

- a. Via email to: CINWD_AcctsReceivable@epa.gov;
- b. Via email to: R3_Hearing_Clerk@epa.gov; and
- c. Via email to: Senior Assistant Regional Counsel Robert Hasson at hasson.robert@epa.gov

The payment and each notice required hereunder shall contain the paying party's name, street/P.O. Box address, email address, and telephone number; the EPA Docket Number of this Settlement – CERCLA-03-2022-0073DC; the amount of the payment; and the method of payment. If Respondent disputes all or a portion of the demand for stipulated penalties under Section XV (Dispute Resolution) of this Settlement, a copy of the Notice of Dispute shall be sent to the persons listed in 63.a through 63.c, above.

64. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (i) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 61 until the date of payment; and (ii) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 63 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

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

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

XVIII. COVENANTS BY EPA

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

XIX. RESERVATIONS OF RIGHTS BY EPA

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

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

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

71. Work Takeover.

a. In the event EPA determines that Respondent: (i) has ceased implementation of any portion of the Work; (ii) is seriously or repeatedly deficient or late in its performance of the Work; or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Respondent. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of 30 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 30-day notice period specified in Paragraph 71.a, Respondent has 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 Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 71.b.

c. Respondent may invoke the procedures set forth in Paragraph 50 (Formal Dispute Resolution) to dispute EPA’s implementation of a Work Takeover under Paragraph 71.b. Such process must be commenced by Respondent’s submission to EPA, no later than 20 days after Respondent’s receipt of a notice from EPA pursuant to Paragraph 71.b, of a Notice of Dispute and a statement of position. The dispute shall then be resolved in accordance with Paragraph 50. However, notwithstanding Respondent’s invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 71.b until the earlier of (i) the date that Respondent remedies, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, or (ii) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 50 (Formal Dispute Resolution).

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

XX. COVENANTS BY RESPONDENT

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

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Section 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, Future Response Costs, and this Settlement;

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the West Virginia 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

73. Except as provided in Paragraph 77 (Waiver of Claims by Respondent), 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 70.a (liability for failure to meet a requirement of the Settlement), 70.d (criminal liability), or 70.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

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

76. [Reserved.]

77. Waiver of Claims by Respondent.

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

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

2. [Reserved.]

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

b. Exceptions to Waivers.

1. The waivers under this Paragraph 77 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against Respondent.

2. [Reserved.]

3. The waiver under Paragraph 77.a.1 (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

4. [Reserved.]

XXI. OTHER CLAIMS

78. By issuance of this Settlement, the United States, including EPA, assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States, including EPA, shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors,

representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

79. Except as expressly provided in Paragraphs 77 (Waiver of Claims by Respondent) and Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

81. Except as provided in Paragraphs 77 (Waiver of Claims by Respondent), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement 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).

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

83. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

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

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

86. [Reserved.]

XXIII. INDEMNIFICATION

87. The United States, including EPA, does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent 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). Respondent shall indemnify, save, and hold harmless the United States, including EPA, 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 Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent's behalf or under its control, in carrying out activities pursuant to this Settlement. Further, Respondent agrees to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States, including EPA, based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement. The United States, including EPA, shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States, including EPA.

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

89. Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States, including EPA, for damages or reimbursement or for set-off of any payments made or to be made to the United States or EPA, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United

States, including EPA, with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

90. No later than ten (10) days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent 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, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the West Virginia Tire Disposal, Inc. Site, Summersville, Nicholas County, West Virginia, and the EPA docket number for this action – CERCLA-03-2022-0073DC.

XXV. [Reserved]

- 91. [Reserved.]
- 92. [Reserved.]
- 93. [Reserved.]
- 94. [Reserved.]
- 95. [Reserved.]
- 96. [Reserved.]
- 97. [Reserved.]
- 98. [Reserved.]

XXVI. MODIFICATION

99. Other than requirements specifically contained within the text of this Settlement, the OSC may modify any plan or schedule in writing or by verbal direction. Any verbal modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's verbal direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

100. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving verbal or written approval from the OSC pursuant to Paragraph 99.

101. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding any deliverable submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVII. ADDITIONAL REMOVAL ACTION

102. If EPA determines that additional actions not included in the approved Removal Work Plan or other approved plan(s) are necessary to achieve the work items identified in Paragraph 17, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional actions are necessary to achieve the work items described in Paragraph 17, Respondent shall submit for approval by EPA a work plan for the additional actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the plan pursuant to Paragraph 19 (Work Plan and Implementation), Respondent shall implement the plan for additional actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make verbal modifications to any plan or schedule pursuant to Section XXVI (Modification).

103. If EPA determines that additional removal action not Identified in Paragraph 17 is necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination and request that Respondent perform such action. If Respondent agrees to perform such action, this Settlement Agreement will be modified to incorporate such work and Respondent shall submit, for approval by EPA, a work plan for the such work. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the plan pursuant to Paragraph 19 (Work Plan and Implementation), Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make verbal modifications to any plan or schedule pursuant to Section XXVI (Modification).

XXVIII. NOTICE OF COMPLETION OF WORK

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

XXIX. INTEGRATION/APPENDIXES

105. This Settlement and its appendixes constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. The following Appendix is attached to and incorporated into this Settlement: "Appendix A" is the Action Memorandum.

XXX. EFFECTIVE DATE

106. This Settlement shall be effective five (5) days after transmittal via email of a fully executed copy of this Settlement to counsel for Respondent.

Robert L. Thompson Jr
[Signature]

5-6-22
Date

Please Type the Following:

Name: Robert L. Thompson Jr

Title: President

Address: 1000 Spring Road, NE. Women Ohio

IT IS SO ORDERED AND AGREED.

PAUL LEONARD
Director, Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region III

Date

IT IS SO ORDERED AND AGREED.

PAUL LEONARD Digitally signed by PAUL LEONARD
Date: 2022.05.10 15:50:36 -04'00'

PAUL LEONARD
Director, Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region III

Date



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103**

SUBJECT: Request for Ceiling Increase and Change in Scope of Work
for a Removal Action at the West Virginia Tire Disposal, Inc. Site,
Summersville, Nicholas County, West Virginia

FROM: Christine Wagner, On-Scene Coordinator
Western Response Section (3SD32)

**DOMINIC
VENTURA**

Digitally signed by DOMINIC
VENTURA
Date: 2022.03.17 17:05:05
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THRU: Michael Towle, Chief
Preparedness and Response Branch (3SD30)

Michael Towle

Digitally signed by Michael
Towle
Date: 2022.03.18 08:55:24
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TO: Paul Leonard, Director
Superfund and Emergency Management Division (3SD00)

SITE ID #: B3BJ

I. PURPOSE

This Action Memorandum (“Action Memo”) is to request and document approval of additional funding and a change of scope for a time-critical removal action at the West Virginia Tire Disposal, Inc. Site (“Site”) in Summersville, Nicholas County, West Virginia (“WV”). West Virginia Tire Disposal, Inc. (“WVTD”) has a permit to operate a commercial waste tire monofill facility (“facility”) at the Site.

On February 9, 2022, the West Virginia Department of Environmental Protection (“WVDEP”) contacted the National Response Center (“NRC”) to report the release of hazardous substances and/or oil from a tire fire at the WVTD facility. As a result of the fire, oil and/or hazardous substances were released into and from a retention pond (“pond”) on Site to Bryant Branch of Peters Creek. Peters Creek discharges to the Gauley River which is a national recreation area. This natural recreation area is protected to preserve significant and natural and scenic resources.

The EPA On-Scene Coordinator (“OSC”) performed a removal site evaluation under the authority of 40 C.F.R. § 300.410. Based on the release and potential release of hazardous substances, pollutants, or contaminants, on February 17, 2022, the OSC activated emergency funds of \$250,000 under Delegation 14-2 to control a release from the pond and other discharge areas of the Site. Additional funds are necessary to mitigate the imminent and substantial threat posed by the release of hazardous substances, pollutants, or contaminants into the environment. A ceiling increase of \$1,440,000 is requested, bringing the total Site ceiling to \$1,690,000.

This Action Memo will also change the scope of this time-critical removal action to add additional tasks, including dewatering and treating contaminated water from the pond, which has been severely impacted by the fire; removing and treating contaminated sediments; flushing wetlands areas, and removing potential sources of contamination.

II. SITE DESCRIPTION AND BACKGROUND

A. Site Description

1. Removal Site Evaluation and State Response

On December 25, 2021, a tire fire occurred at the WVTD facility located at 26 Bryant Branch Road in Summersville, Nicholas County, WV. Local volunteer Fire Departments from Nicholas County and nearby Fayette County responded. Representatives from WVDEP's Office of Homeland Security and Emergency Response also responded. WVDEP observed oil and carbon had migrated to the pond by that evening. WVDEP advised the facility operator to hire a contractor to mitigate the fire and control offsite migration of contamination.

The contractor selected by WVTD performed an assessment visit to the Site on December 26, 2021 and began logistical planning to respond to and manage the fire and control contamination that had migrated to the pond. The pond outlets to a surface stream, Bryant Branch of Peters Creek. The facility operator did not provide adequate financial surety to the contractor for the initial good faith estimate. On December 27, 2021, WVDEP hired the same contractor originally contacted by the facility operator. The contractor mobilized personnel and equipment to the Site on December 28, 2021 and was fully engaged in firefighting operations by the next day.

The contractor also initiated measures to control oily runoff from the pond. Protective measures were installed in two of the four permitted outfalls (#3 and #4) at the Site. Outfalls #1 and #2 were not affected by the fire. The contractor also installed booms, underflow dams, and carbon filters at various discharge locations on the Site. WVDEP's contractor also constructed a diversion trench to direct water not affected by the fire away from the pond. A closed cell of approximately 3 million tires is present on the Site property but was not involved in the fire.

The contractor initiated efforts to remove fire-related runoff from the pond. These efforts included vacuum and skimming operations. The oily substance was stored in frac tanks on Site.

In January of 2022, WVDEP collected water samples from the outfalls. The results showed the presence of several hazardous substances including, but not limited to, benzene, phenol, styrene, and 4-methy-2-pentanone ("MIBK"), all of which are listed hazardous substances in 40 CFR § 302.4. Burning tires can produce volatile organic compounds ("VOCs") and semi-volatile organic compounds ("SVOCs"). The substances listed above fall into these categories of hazardous substances.

On February 9, 2022, WVDEP notified the NRC (Report # 1328557) about the Site. WVDEP spoke with the EPA Duty Officer and requested EPA assistance on scene. On February 10, 2022, the OSC responded to the Site and met with WVDEP. The WVTD facility is owned and operated by one individual, while the land on which the facility is located is owned by West Virginia Land Management, Ltd. (“WV Land Mgmt.”) which leases the Site property to WVTD. At the time of EPA’s arrival, containment and control measures were being performed by a contractor hired by WVDEP. Neither the facility owner nor the Site property owner was present on scene.

In accordance with 40 CFR § 300.135(j) of the NCP, EPA notified the natural resource trustees. The OSC was advised that federally listed mussels and the candy darter fish may be present in the area of the release. U.S. Fish & Wildlife Service has proposed to list the candy darter as threatened under the federal Endangered Species Act. Nearly half of the 35 known candy darter populations have disappeared since the species was first described in 1932.

On February 11, 2022, the OSC received permission to perform a visual assessment of the Site. The OSC was accompanied by a representative of WVDEP and the contractor working on the Site. The OSC observed an oil-like substance and solids covering the pond downgradient from the WVTD facility. The contractor had placed containment measures such as harbor boom, turbidity curtain, underflow dams, and absorbent boom in the areas of potential release. The contractor was also actively performing vacuum (“vac”) operations to remove the oil-like substance from the surface of the pond.

The OSC identified several major areas where response actions are necessary. The OSC observed a heavy oil-like thick sheen on a pond downgradient from the fire area. This oily substance will hereinafter be referred as “oil-like” substance. The OSC also observed seepage of the oil-like substance from the staging area where the burned tires were placed. The oil-like substance impacting the environment is not subject to the petroleum exclusion under CERCLA, as it is oil commingled with hazardous substances and is a waste byproduct of the tire fire.

On February 12, 2022, the OSC met on Site with the facility operator. The OSC requested access to perform sampling as part of a removal assessment under 40 CFR § 300.410. The facility operator agreed and signed a consent to enter. The OSC asked the facility operator if he was willing to hire a contractor to continue response actions. The facility operator stated he would get back in contact with EPA on February 14, 2022.

The OSC also contacted a representative for the Site property owner WV Land Mgmt. on February 12, 2022. The representative agreed to sign a consent to enter for EPA to continue its removal site assessment, including sampling. The representative for the property owner requested split samples. On February 12, 2022, the OSC activated its START contractor to arrive on Site beginning February 14, 2022, to perform sampling.

Bryant Branch of Peters Creek flows through the Site. Peters Creek is a tributary to the Gauley River, a navigable waterway under the definition in the Oil Pollution Act. Due to the potential threat of discharge to a navigable waterway, on February 14, 2022, the OSC requested funding from the USCG National Pollution Funds Center to take response actions to mitigate the discharge of oil into Bryant Branch of Peters Creek. The OSC requested funding from the USCG National Pollution Funds Center in the event any necessary response actions were performed strictly under the OSC's authority under the Clean Water Act, as amended by the Oil Pollution Act. To date, EPA has not expended any of these funds on contractor costs. On February 15, 2022, the OSC sent the facility operator a Notice of Federal Interest under the Oil Pollution Act.

On February 15, 2022, the facility operator informed the OSC he had reached out to a contractor who would be on scene the next day. On February 16, 2022, the OSC and WVDEP met on Site with the proposed contractor. The proposed contractor declined to perform the work. WVDEP informed EPA that WVDEP and their contractor planned to demobilize from the Site on February 18, 2022. At this time, the fire had been successfully extinguished.

During the week of February 14-18, 2022, EPA's contractor collected samples from the pond, the pit where the fire occurred ("tire fire pit") and areas around the burned tire pile ("quenched tire pile"). Split samples were sent to the property owner.

The area where the tire fire occurred is approximately 100 feet in elevation higher than the pond. Stormwater from the tire fire pit and the quenched tire pile flows directly to the pond. The pond is not accessible by vehicle. The only access is by walking approximately 2000 feet through muddy bogs or by all-terrain vehicle.

2. Physical Location

West Virginia Tire Disposal, Inc. is located at 26 Bryant Branch Road in Summersville, Nicholas County, WV. The facility is off Route 39, 1.5 miles northwest of Summersville along Bryant Branch.

The Site is located on an approximate 328-acre parcel, which includes the pond that discharges to Bryant Branch of Peters Creek, an office trailer with scale, a maintenance shed, and a residence which is currently unoccupied. The office trailer and scale are located on the upper portion of the Site near where the tire fire occurred. This is the area where tires were previously dropped off for disposal when WVTD was operational.

A private residence is located west of the Site. However, the Site access road is the only access to this residence. A permitted tire monofill is also located on the Site, although this monofill may not be situated on the same parcel as this residence. Approximately 66 trailers, some of which contain tires, are also staged on the Site property.

The facility operates under a Solid Waste Disposal Permit from WVDEP that is effective from May 17, 2017, through May 16, 2022. The facility was authorized to receive whole, baled,

split, cut, or shredded tires. The facility is currently under a February 21, 2020, Cease and Desist Order issued by WVDEP and is currently not permitted to receive waste tires and may not resume operations until WVDEP inspects the facility and determines that WVTD is in compliance with its permit and all related laws and regulations.

According to research performed by EPA's contractor, there are no historic or cultural sites located at the Site or on adjacent properties. There are several cemeteries located in the area, but they are located at higher elevations than the Site and would not be impacted by runoff or storm events/flooding events.

The nearest historical/cultural site is the Martin Hamilton House, National Register site identifier (ID) 99001403, located approximately 1.6 miles southeast of the Site. It is located on State Route (SR) 39, in Summersville, Nicholas County, West Virginia.

The City of Summersville is known for recreational tourism. Summersville Lake, located approximately twelve miles from the Site, is the largest lake in West Virginia and is a major recreation destination, attracting nearly 1 million visitors annually. The Lake offers many recreational opportunities, including a campground, beach, picnic shelters, playgrounds, boat launch, marina, hiking trails, rock climbing, fishing, and hunting opportunities, and some of the most scenic views in the country.

The Gauley River, to which the Bryant Branch flows approximately 17 miles downstream, is popular for whitewater rafting.

The area around the Site is mostly residential, with private homes located off WV Route 39. Public water is supplied in the area, although homes in the area may also use private residential wells. EPA has identified at least one home in the area that uses a private well for drinking water. The OSC continues coordination with the Nicholas County Health Department to identify additional drinking water wells.

EPA has also performed an environmental justice screening of the Site.

3. Quantities and Types of Substances Present

The pond on Site is directly downgradient from the quenched tire pile at an elevation at least 100 feet lower than the tire fire area. Hazardous substances have been identified in the pond, tire fire pit area, and quenched tire pile area.

Approximately 18,000 gallons of oil-like substance have already been removed from the pond. The pond is continually covered with the oily substance and sediments heavy with rubber granules.

A heavy sediment load has settled in the pond. Sediment on the south end fills the pond to the surface.



1 Heavy Sediment fills the pond to the surface on the south end

EPA’s contractor collected samples from the pond, the tire fire pit, and from areas at the toe of the quenched tire pile.

Hazardous substances detected in the pond sample include the following, among others:

Hazardous Substance (as listed at 40 CFR § 302.4)	Concentration (“mg/kg”)
Cumene	5.74
Styrene	7.98
Toluene	20.4
Xylene	34.4
4-nitro phenol	24.8
Benzene	4.79
Ethyl Benzene	18

During EPA’s assessment, samples were also collected from the tire fire pit and around the quenched tire pile. In addition to several of the hazardous substances listed above, the hazardous substance, phenol, was detected in the tire fire pit at a concentration of 7.24 mg/kg.

Six samples were collected from the base of the quenched tire pile. Additional hazardous substances detected in this area include phenanthrene (6.29 mg/kg) and pyrene (6.26 mg/kg).

Composite samples collected from the pond, tire fire pit, and quenched tire pile were also analyzed for hazardous waste for volatile and semi-volatile organic compounds. All results were below the regulatory limits for hazardous waste as described in 40 CFR § 261.

4. Release or Threatened Release of Hazardous Substance, Pollutant, or Contaminant into the Environment

The OSC has documented the release of hazardous substances into the environment at the Site, as defined by Section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”).¹

5. National Priority List (“NPL”) Status

The Site is not currently listed on the NPL. The OSC will coordinate with the EPA Site Assessment Manager regarding all activities performed under this removal action.

B. Other Actions To Date

1. Previous Actions

The facility is under a Solid Waste Disposal Permit from WVDEP that is effective from May 17, 2017, through May 16, 2022. Under the permit, the facility is authorized to receive construction debris, and whole, baled, split, cut, or shredded tires.

On February 21, 2020, WVDEP issued Order No. MM-20-19 to WVTD in response to violations that occurred at the facility from the time period of April 2016 through December 2019. Among other tasks, the Order required WVTD to submit a Plan of Corrective Action (“POCA”) outlining action items and completion dates for how and when WVTD would achieve compliance with its permit and all pertinent laws or rules.

On October 4, 2021, an Order for Case No. CC-34-2015-C-63 was entered in the Circuit Court of Nicholas County. The purpose of the Order was to properly address WVTD’s continuing violations at the facility that had been observed and documented by WVDEP personnel during multiple inspections of the facility. As a result of the court hearing, WVTD agreed to accomplish several action items that would ultimately result in compliance.

On December 25, 2021, a tire fire occurred in the shredder area of the facility. Local volunteer Fire Departments from Nicholas County and nearby Fayette County responded. Representatives from WVDEP’s Office of Homeland Security and Emergency Response also responded. WVDEP observed oil and carbon had migrated to the pond by that evening. WVDEP advised WVTD that it was necessary for the company to hire a contractor to mitigate the fire and control offsite migration of contamination.

The contractor made an assessment visit to the Site on December 26, 2021, and began making logistical plans to respond to and manage the fire and control contaminants that had migrated to the stormwater management pond, which outlets to Bryant Branch of Peters Creek.

¹ 42 U.S.C. § 9601(22).

WVTD did not provide adequate financial surety to the contractor, and, as a result, WVDEP hired the contractor to continue fire suppression and environmental protective measures.

The contractor excavated the burning tires from a pit near the shredder and staged them for further quenching. This area of the burned tires is now known as the quenched tire pile. The size of the quenched tire pile has an estimated surface area of 29,000 square feet and is approximately 25-30 feet high.



2 Tire Fire Pit on upper portion of Site



3 Quenched pile of burned tires

The fire was investigated but a cause has not yet been determined. The fire did not affect the existing monofill of tires north of the Site.



4 Permitted monofill. This area was not affected by the tire fire

On February 7, 2022, WVDEP issued another order (WV Order SW-22-001) because of the fire. The Order required WVTD to take certain actions including, but not limited to, sampling of the burned area for hazardous waste determination, preparing a disposal plan for the burned materials based on the waste characterization sampling, sampling soil between the burned tire pile and the pond, and providing a proposed remediation plan. To date, WVTD has not complied with the terms of this Order.

On February 9, 2022, WVDEP requested EPA's assistance at the Site to take over the response action.

On February 18, 2022, WVDEP and its contractor demobilized from the Site.

On February 25, 2022, WVDEP issued a Notice of Violation to WVTD for non-compliance with the requirements of the WV Order issued on February 7, 2022.

2. Current Actions

EPA responded to the Site on February 10, 2022 and performed a removal site evaluation in accordance with 40 CFR § 300.410. As a result of this assessment, EPA activated emergency response funds on February 18, 2022, to begin a removal action to control the release of hazardous substances, pollutants, or contaminants from the pond and to prevent harm to Bryant Branch of Peters Creek.

EPA has maintained a continual Site presence since this time. The OSC was informed by the owner and operator of WVTD that a contractor had been hired to continue response actions beginning February 21, 2022. However, that contractor failed to show up to begin the work.

On February 23, 2022, EPA issued an Administrative Order for access to WVTD and Robert L. Thompson, the principal of WVTD. Mr. Thompson signed a Notice of Intent to Grant

Access in compliance with the access order on February 24, 2022.

EPA's contractor has been performing response actions seven (7) days/week to control runoff from the pond. These actions include, but are not limited to, vacuuming surface oil from the pond; maintaining and reinforcing containment and control measures at two outfalls from the Site; installing containment measures including berms and dams at surface water overflow areas; pumping and redirecting water from an upgradient retention area, and constructing diversion trenches to direct unaffected stormwater from entering the pond.

On February 25, 2022, heavy rain caused the pond to overflow. The oil-like substance migrated to Outfall #3 and the retention trench on the east side of the Site. The OSC spoke with WVDEP and advised that emergency actions to discharge subsurface water from the pond through activated carbon were necessary. During this discharge operation, the discharge water was pumped to a diversion trench, visually monitored, and additional containment measures were installed.



5 Retention downgradient from Outfall #3 impacted by pond overflow

Since the event of February 25, 2022, EPA's contractor has been creating diversion paths to direct stormwater away from the pond. A retention area located downgradient from the quenched tire pile, but upgradient from the pond, has been upgraded to allow stormwater to collect here and be pumped away from the pond. WVDEP has been on Site and advised of all work EPA is performing.

During the period of late February to early March of 2022, the OSC has determined that any cumulative rainfall will cause the pond to overflow. The OSC has also observed that contaminated sediments continue to discharge oil-like substances that rise to the surface. Despite continuous vacuum operations, the pond remains covered in an oil-like substance and granules from the fire.



6 Despite vac operations, oil-like substances continue to surface

C. State, Tribal, and Local Authorities

WVDEP requested EPA assistance to perform the necessary response actions in the absence of the potentially responsible parties' failure to do so. The OSC and WVDEP communicate on most days, and representatives from WVDEP frequently visit the Site to assess conditions.

The OSC also has been coordinating with the Nicholas County Officer of Emergency Management.

III. THREATS TO PUBLIC HEALTH, WELFARE, OR THE ENVIRONMENT

Section 300.415(b) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP")² lists factors to be considered in determining the appropriateness of a removal action. As discussed immediately below, subparagraphs (b)(2)(i), (ii), (v), (vii), and (viii) directly apply to the conditions as they exist at the Site.

A. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants. 40 C.F.R. § 300.415(b)(2)(i).

The oil-like substance on the pond contains hazardous substances consistent with tire fire contamination. Continuous mitigation efforts are necessary to prevent the hazardous substances, pollutants, or contaminants from impacting the environment and surface waters. Local residents may fish in this area.

² 40 C.F.R. § 300.415(b).

A study performed by scientists at Oregon State University found that tire leachate may have detrimental effects on aquatic environments. A study that exposed various shrimp organisms to tire leachate found that this type of environment had significant impacts on swimming behaviors that the researchers believed could lead to an increased rate of predation and challenges to find food in the wild. (*“Tiny tire particles inhibit growth of organisms in freshwater, coastal estuaries, studies find”*, *Science News*, 3/1/22)

Bryant Branch of Peters Creek runs through the Site. Peters Creek enters the Gauley River approximately 16.9 miles downstream. U.S. Fish & Wildlife Services (“USFW”) has informed the OSC that Peters Creek and the Gauley River are high quality streams. Gauley River also is a state mussel stream. USFW would expect a heavy oil-like substance to pose a threat to sensitive mussel populations in the Gauley River and potentially other aquatic species in Peters Creek, although no mussels are expected in Peters Creek. Birds also populate the area. Birds using the pond may become contaminated by the oily substance, and this may affect their ability to fly.

Prior to initiation of the removal action on February 17, 2022, USFW had preliminarily opined that Bryant Branch of Peters Creek may be a critical habitat of the Candy Darter, proposed as a threatened species of fish under the federal Endangered Species Act. USFW has recently determined that there are, in fact, likely no known federally listed aquatic species near the Site. However, the Virginia spiraea, a federally threatened shrub, is located along the Gauley River. Where possible, equipment and material staging areas should be located outside of areas of natural/native vegetation.

The Site is unsecured. An unpaved road leads directly from Route 39 to the Site. No employees or representatives of WVTD are present on Site. During response actions, the OSC encounters visitors almost daily. Because the road to the Site is the only access for the neighboring resident, a gate is not practicable. Several persons have entered the Site with the intention of dropping of used tires. During EPA’s absence, there is no accountability of persons who may access the Site.

B. Actual or potential contamination of drinking water supplies or sensitive ecosystems. 40 C.F.R. § 300.415(b)(2)(ii).

Although the City of Summersville has a public drinking water system, the OSC has confirmed that the residence nearest to the Site has a private drinking water well. The OSC also confirmed with the Nicholas County Health Department that other private drinking water wells may be located in the area.

C. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released. 40 C.F.R. § 300.415(b)(2)(v).

The OSC has already observed a release from the pond during heavy rain. Without active maintenance of containment devices such as boom, underflow dams, and berms, the hazardous substances will release directly into Bryant Branch in an uncontrolled manner. Vacuum

operations must continue to control the source of hazardous substances on the surface of the pond. Furthermore, the pond is covered with contaminated heavy contaminated solids and sediments. Additional removal actions are needed to permanently remove the contamination from the pond.

D. The availability of other appropriate federal or state response mechanisms to respond to the releases. 40 C.F.R. § 300.415(b)(2)(vii).

WVDEP has requested the OSC's assistance in responding to the releases at the Site. WVDEP has indicated that West Virginia does not have the resources to conduct the necessary response actions. The OSC is also coordinating with Nicholas County government officials.

E. Other situations or factors that may pose threats to public health or welfare of the United States or the environment. 40 C.F.R. § 300.415(b)(2)(viii).

In addition to the hazardous substances contained in the pond, tire granules that are released when the tires are burned, create a thick cover on the water. This cover may affect the oxygen content of the surface waters, potentially leading to permanent environmental damage. Additional removal actions are necessary to control the releases of hazardous substances, pollutants, or contaminants.

IV. ENDANGERMENT DETERMINATION

Based on the removal site evaluation performed by the OSC at the Site, the OSC has determined that conditions at the Site pose an imminent and substantial threat to public health, welfare, and the environment due to the release and potential additional release of hazardous substances, pollutants, or contaminants.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

The overall objectives of the removal action are to remove the source(s) of hazardous substances, pollutants, or contaminants and to take actions necessary to protect the public health or welfare and the environment.

A. Proposed Action Description

The response actions described in this memorandum directly address actual or potential releases of hazardous substances on-Site that may pose an imminent and substantial endangerment to public health, or welfare, or the environment. The overall objectives of the removal action are to remove the contamination from the pond and source areas to prevent additional releases of hazardous substances, pollutants, or contaminants from the Site

The following removal actions were identified in EPA's Special Bulletin and are ongoing to mitigate the imminent and substantial threat posed by the uncontrolled release of hazardous substances, pollutants, or contaminants:

1. Mitigate potential discharge of an oil-like substance containing hazardous substances, pollutants, or contaminants from areas including, but not limited to pond, outfalls, surface drainage areas, retention areas, or any other areas where the oil-like substance, as described above, is being released to the environment;
2. Remove and contain the oil-like substance containing hazardous substances, pollutants, or contaminants from pond, shoreline, retention areas or other areas contaminated with such substances.
3. Dispose of off-site oil-like substance and debris containing hazardous substances, pollutants, or contaminants.
4. Direct and pump stormwater away from pond for the purpose of reducing volume to prevent overflow from the Pond.
5. Excavate waste tire debris from the pond followed by staging, containment, and off-site disposal.
6. Control runoff from burned tire pile area.
7. Provide logistical support items on the property including, but not limited to, command post trailer(s), portable toilets, rehab areas, etc.
8. Provide site security as needed to prevent unauthorized access to work areas.

Additional actions which comprise the proposed change in scope of work include:

9. Dewater the Pond to remove surface and subsurface contamination. Process the water from the Pond through a temporary treatment system to remove hazardous substances and suspended solids. Discharge treated water to surface water (Bryant Branch) in accordance with discharge criteria promulgated under West Virginia environmental law. The OSC will coordinate closely with WVDEP to identify appropriate discharge limits, pump rates, and sampling criteria.
10. Remove all solids contaminated by oil-like substance from the Pond and on-Site retention areas.
11. Add stabilizing agent to contaminated solids removed under Paragraph 10, above, to prevent leaching of hazardous substances, pollutants or contaminants. Dispose of these contaminated solids on-Site in existing cells permitted under West Virginia law.
12. Flush with water oil-like substance from the natural wetland areas on Site, including the north end of the Pond, where cattails are abundant, and the banks of the entire Pond. Vacuum oil-like substances from the wetlands' surface to containment for disposal.
13. Properly dispose of offsite all hazardous substances, pollutants, and contaminants recovered at the Site above in accordance with 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, except as provided in Paragraph 11, above.

14. Conduct actions necessary to facilitate removal activities, including but not limited to clearing vegetation and debris and establishing access roads.

The extent of any migration of the hazardous substances from the Site, as well as the groundwater conditions at the Site, are currently unknown. Accordingly, in addition to the removal activities described above, the OSC will continue to perform removal site evaluation to determine the extent of any groundwater contamination related to releases at the Site. This removal site evaluation will include possible sampling of groundwater wells to determine the environmental fate and transport of Site-related hazardous substances, pollutants, or contaminants over time.

Contribution to Remedial Performance

The Site is not currently on the NPL. All actions performed as described would be consistent with any long-term remedial actions that may be necessary.

B. Applicable or Relevant and Appropriate Requirements (ARARs)

The proposed removal action will attain Federal and State applicable or relevant and appropriate requirements (“ARARs”) to the extent practicable considering the exigencies of the situation.³ The OSC coordinates frequently with WVDEP and has already been in contact with the WVDEP Division of Water and Waste Management regarding state ARARs. The OSC will continue to work with WVDEP and EPA Region 3’s Water Division to identify other ARARs or guidance that may be considered in the implementation of the removal action.

C. Estimated Costs

Estimated Costs	Previous Action	This Action	Total
Extramural Costs:			
	\$250,000	\$1,200,000	\$1,450,000
Unallocated Costs:			
Extramural Costs Contingency (20% of Subtotal, Extramural Costs)		\$240,000	\$240,000
<u>Total Removal Action Project Ceiling</u>	\$250,000	\$1,440,000	\$1,690,000

³ 40 C.F.R. § 300.415(j).

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

If the actions described in this Action Memorandum are delayed or not conducted, the release or threat of release of hazardous substances or pollutants or contaminants will continue to exist at the Site. Without immediate actions to mitigate the release and potential release of hazardous substances or pollutants or contaminants at the Site, potential threats posed to human and ecological receptors may increase.

VII. OUTSTANDING POLICY ISSUES

There are no outstanding policy issues pertaining to the Site.

VIII. ENFORCEMENT STATUS

EPA has identified one or more potentially responsible parties for the Site. The OSC is coordinating with the EPA Cost Recovery Branch and the Office of Regional Counsel to pursue all enforcement actions pertaining to the Site. See the attached Confidential Enforcement Addendum, which is predecisional and not for public release.

The total cumulative EPA costs for this removal action, based on full cost accounting practices, that will be eligible for cost recovery are estimated below as:

Direct Extramural Cost:	\$ 1,690,000
Direct Intramural Costs:	<u>\$ 84,000</u>
Subtotal	\$ 1,774,000
Indirect Costs (66.79% of above)	\$ 1,184,855
Estimated EPA Costs for the Removal Action:	\$ 2,958,855

The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be \$ 2,958,855.⁴

IX. RECOMMENDATION

This decision document represents the selected Removal Action for the West Virginia Tire Disposal Site, located in Summersville, Nicholas County, WV developed in accordance

⁴ Direct Costs include direct extramural and direct intramural costs. Indirect Costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual costs from this estimate will affect the United States' right to cost recovery

with CERCLA and is not inconsistent with the NCP. This decision is based on the Administrative Record for the Removal Action at the Site.

By signing this Action Memorandum, you are also hereby supplementing the existing administrative record for this removal action with the documents listed below, pursuant to Section 113(k) of CERCLA and EPA Delegation No. 14-22.

(Refer to existing administrative record for documents 1-7. *See* February 17, 2022 Special Bulletin)

8. National Response Center Report #1328557
9. Email from TetraTech to OSC containing estimated areas of pond and tire pile
10. Nicholas County Records Parcel: Book 462, Page 26, Parcel No. 18/0065 0000 0000
11. WV Permit SWF-4026/WV0109550
12. Email from TetraTech to EPA (2/28/22) identifying historical/cultural Sites
13. Summersvillewv.org
14. Richwooders.com
15. wvpublic.org
16. email from Nicholas County Health Department to EPA (3/9/22) regarding possible wells in area of Site
17. Toxicity of Tire Rubber Microplastics to Freshwater Sediment Organisms (Carrasco-Navarro, Sorvari, Kukkonen, 2001)
18. “Tiny tire particles inhibit growth of organisms in freshwater, coastal estuaries, studies find”, Science News, 3/1/22
19. OSC memo to file 3/11/22 regarding conversation with local resident regarding fishing in the area
20. Pace Analytical Reports (3 reports for VOCs, SVOCs, and TCLP analyses) 2/24/22
“Tiny tire particles inhibit growth of organisms in freshwater, coastal estuaries, studies find”, Science News, 3/1/22
21. Email from USFW dated 2/23/22 to OSC identifying sensitive populations on Peters Creek and the Gauley River
22. Maps

Because conditions at the West Virginia Tire Disposal Site meet the removal action requirements of the NCP, I recommend your approval of the proposed Removal Action. The total Removal Action Project Ceiling, if approved, will be \$ 1,690,000.

X. ACTION BY THE APPROVING OFFICIAL

I have reviewed the above-stated facts and based upon those facts and the information compiled in the documents described above. I hereby determine that the release or threatened release of hazardous substances at and/or from the Site presents or may present an imminent and substantial endangerment to the public health or welfare or to the environment. I concur with the recommended Removal Action as outlined.

Digitally signed by LINDA
DIETZ
Date: 2022.03.18 09:22:33
-04'00



APPROVED:

Paul Leonard, Director
Superfund and Emergency Management Division
EPA Region III

DISAPPROVED:

Paul Leonard, Director
Superfund and Emergency Management Division
EPA Region III

Attachments:

Confidential Enforcement Memo
Special Bulletin 2/17/22