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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

IN THE MATTER OF:

Hayford Bridge Road Groundwater
Superfund Site

St. Charles, St. Charles County, Missouri

Respondents

Findett Real Estate Corporation
The Goodyear Tire & Rubber Company
Mallinckrodt LLC f/k/a Mallinckrodt Inc.
Pharmacia Corporation

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR EMERGENCY
RESPONSE ACTION

U.S. EPA Region VII
CERCLA -07-2012-0025

Proceeding Under Sections 104, 106, 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C. §§
9604, 9606, 9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the Missouri Department of Natural Resources ("MDNR") and the following Respondents: Findett Real Estate Corporation, The Goodyear Tire & Rubber Co., Mallinckrodt LLC f/k/a Mallinckrodt Inc., and Pharmacia Corporation. This Settlement Agreement provides for the performance of environmental response actions by Respondents, the reimbursement of certain future response costs incurred by the United States and MDNR at or in connection with the Work required under this Settlement Agreement and disbursement of certain special account funds to Respondents.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606, 9607 and 9622, as amended ("CERCLA"). This authority was delegated to the Administrator of EPA on January 27, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to the Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator of EPA Region VII to the Director of the Superfund Division by R7-14-14-C and R7-14-014-D.

3. MDNR enters into this Settlement Agreement pursuant to Section 260.500 through 260.550 RSMo. By MDNR's entering into this Settlement Agreement, EPA shall be deemed to have notified the State of Missouri of this action, including any required notice under Section 104(b)(2) of CERCLA, 42 U.S.C. § 9604(b)(2).

4. EPA, MDNR, and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings, the validity of the findings of facts, conclusions of law, determinations in Sections V and VI of this Settlement Agreement, and EPA's June 25, 2012, Action Memorandum (Appendix A hereto). Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the validity of this Settlement Agreement or its terms with EPA.

II. PARTIES BOUND

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

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining

Respondents shall complete all such requirements, subject to Section XVIII (Disbursement of Special Account Funds) and Section XXX (Financial Assurance) herein.

7. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement.

III. STATEMENT OF PURPOSE

8. In entering into this Agreement, the objectives of EPA, MDNR and Respondent are: (a) to perform emergency response actions to protect the Elm Point Wellfield from becoming contaminated; (b) to provide additional information concerning the nature and extent of contamination identified along Huster Road north of an Ameren Missouri electrical substation, located in the City of St. Charles, St. Charles County, Missouri, and depicted generally on the map attached as Appendix C and defined as the Northern Plume below; (c) to recover Interim and Future Response Costs incurred by EPA and MDNR with respect to this Agreement; and (d) to create a Disbursement Special Account and establish the terms to disburse funds from the Disbursement Special Account to Respondents.

9. The Work conducted under this Agreement is subject to approval by EPA after a reasonable opportunity for review and comment by MDNR. Respondents shall conduct all Work under this Agreement in compliance with CERCLA, the NCP, and with consultation to applicable EPA guidances, policies, and procedures.

IV. DEFINITIONS

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

a. "Action Memorandum" shall mean the EPA Action Memorandum signed on June 25, 2012, by the Director, Superfund Division, EPA Region VII, or her delegate, and all attachments thereto. The "Action Memorandum" is attached as Appendix A.

b. "1990 Consent Decree" shall mean the consent decree captioned *U.S. v. Findett Corp.*, District Court for the Eastern District of Missouri, Civil Action No. 90-8417(c)(6).

c. "2007 Consent Decree" shall mean the consent decree captioned *U.S. v. Findett Real Estate Corp.*, District Court for the Eastern District of Missouri, Civil Action No. 07-1215, attached hereto as Appendix B.

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

e. "Contaminants of Concern" or "COCs" shall mean volatile organic compounds including trichloroethylene, benzene, cis-1,2 dichloroethene, chloroethane, and vinyl chloride.

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

g. "Effective Date" shall be as provided in Section XXXIV.

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

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

j. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and MDNR incur after the Effective Date of this Settlement Agreement in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred by EPA pursuant to Paragraph 37 (costs and attorneys' fees and any monies paid to secure access, including the amount of just compensation) Paragraph 47 (emergency response) and Paragraph 79 (work takeover). Future Response Costs shall also include all Interim Response Costs.

k. "Hayford Bridge Road Groundwater Superfund Site" shall mean the Superfund site located in the City of St. Charles, St. Charles County, Missouri and depicted generally as OU 1 and OU 3 on the map attached as Appendix C, and includes contaminated soils at the 8 Governor Drive property and contaminated groundwater emanating from that property.

l. "Hayford Bridge Road Groundwater Superfund Site Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

m. "Hayford Bridge Road Groundwater Superfund Site Disbursement Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and Paragraph 52.

n. "Interim Response Costs" shall mean all costs including, but not limited to, direct and indirect costs, that the United States and MDNR incur in connection with this Settlement Agreement between April 9, 2012 and the Effective Date of this Agreement.

o. "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.

p. "MDNR" shall mean the Missouri Department of Natural Resources and any successor departments or agencies of the State of Missouri, including, but not limited to, Natural Resource Damages trustees.

q. "MLC Settlement Agreement" shall mean the Consent Decree and Settlement Agreement entered in the United States Bankruptcy Court for the Southern District of New York, captioned *In re: Motors Liquidation Company et al., f/k/a General Motors Corp. et al.*, Chapter 11, Case No. 09-50026 (REG), attached hereto as Appendix D.

r. "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.

s. "Operable Unit 1" or "OU 1" shall mean the soils and shallow groundwater contaminated with polychlorinated biphenyls and volatile organic compounds which were released into the environment at the former Findett facility located at 8 Governor Drive, St. Charles, Missouri and which is generally depicted on the Map, Appendix C.

t. "Operable Unit 3" or "OU 3" shall mean the groundwater plume at the Hayford Bridge Road Groundwater Superfund Site underlying property that is downgradient of the former Findett facility at 8 Governor Drive, in St. Charles, Missouri that is contaminated with volatile organic compounds emanating from OU 1. OU 3 is partially depicted on the Map, Appendix C.

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

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

w. "Parties" shall mean EPA, MDNR and Respondents.

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

y. "Respondents" shall mean those Parties identified in Paragraph 1 who are signatories to this Settlement Agreement and signatories to the 2007 CD where they are identified as Settling Performing Defendants.

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

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

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

cc. "Work" shall mean all activities Respondents are required specifically to perform to implement the response actions cited in Paragraph 30 herein and all other activities required by this Settlement Agreement.

dd. "Northern Plume" shall mean the groundwater plume that has been identified along Huster Road north of an Ameren Missouri electrical substation, located in the City of St. Charles, St. Charles County, Missouri and depicted generally on the map attached as Appendix C.

V. EPA'S FINDINGS OF FACT

A. Emergency Response Action

11. Between 1962 and 1975, Findett Service Company ("Findett") owned and operated a manufacturing facility located at 8 Governor Drive in St. Charles, Missouri where it reprocessed heat transfer fluids, hydraulic fluids, solvents, and catalysts. The process fluids and materials contained hazardous substances including volatile organic compounds ("VOCs") and polychlorinated biphenyls ("PCBs") which leaked, spilled and discharged onto the Findett property in soils and groundwater.

12. In 1988, EPA issued a Record of Decision which selected the remedial action to address the contamination found to be present at the Findett property, later identified as OU 1. Due to the concerns with protecting the nearby Elm Point Wellfield ("EPW"), which supplies the drinking water to the City of St. Charles, the remedial action was divided into a shallow groundwater phase and a soils phase to expedite cleanup. Findett agreed to perform the remedial action pursuant to the 1990 Consent Decree.

13. Analytical results collected from wells located downgradient of the Findett property indicated that VOCs were migrating downgradient towards the EPW. EPA identified the off-site groundwater plume as OU 3 and in 2005, issued a Record of Decision which selected the remedial action to address the OU 3 groundwater contamination.

14. ACF Industries, LLC, The Goodyear Tire & Rubber Co., Mallinckrodt Inc., Pharmacia Corporation, and Findett Real Estate Corporation, successor to Findett Corporation and Findett Service Company, and General Motors Corporation (GM) were signatories to the

2007 Consent Decree and, except for GM, are implementing the OU 3 remedial action which includes, among other things, groundwater monitoring.

15. Results of the OU 3 groundwater monitoring conducted in 2009 indicated that cis-1,2-dichloroethene ("DCE") was found to be present in the EPW in City Well W-4 at levels below the Maximum Contaminant Level ("MCL") established under the Safe Drinking Water Act. DCE was also found to be present in City Well W-5 at levels ranging from 7 to 14 parts per billion ("ppb") (below the MCL) in the last three quarters of 2010 and in monitoring well MW-13 at levels exceeding the MCL in the February 2011 first quarter sampling results. In addition, sampling results indicated that vinyl chloride and benzene are present in other monitoring wells that are part of the monitoring well system for OU 3.

16. Based on the analytical results cited in Paragraph 15 above, EPA determined that a Removal Action or Emergency Response Action was necessary to prevent further migration of the contamination in order to protect the City of St. Charles' public water supply system. On June 25, 2012, EPA issued an Action Memorandum, attached hereto as Appendix A, which identified the specific activities that are necessary as a Removal Action.

17. As part of the Emergency Response Action, between October and December 2011, Respondents collected samples using direct push technology ("DPT") in 84 sampling locations including certain samples on or near property owned by Ameren Missouri, located about 3000 feet northeast and downgradient of OU 1. Results of these samples indicated the presence of cis-1,2-DCE and vinyl chloride on and near the northwest corner of the Ameren property.

18. Based on the analytical results cited in Paragraph 17 above, EPA determined that further investigation of the Ameren property is necessary to fully characterize this property as a source of contamination.

B. Disbursement of Special Account

19. On June 1, 2009, General Motors Corporation, now known as Motors Liquidation Corporation ("MLC"), filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court").

20. The United States, on behalf of EPA, filed a proof of claim in the Bankruptcy Court on November 28, 2009, against MLC with respect to EPA's claims at more than 100 Superfund sites. The United States, on behalf of EPA, contended in the bankruptcy proceedings that MLC was liable under CERCLA for costs incurred and to be incurred by the United States in response to releases and threats of releases of hazardous substances at or in connection with the sites.

21. On December 11, 2009, MLC notified Respondents that MLC was no longer able to provide any funds for the work performed under the 2007 CD. Through an agreement among Respondents, GM had been paying 40% of costs incurred in performing work required by the 2007 CD.

22. On November 9, 2010, EPA entered into a Bond Payment Reduction and Discharge Agreement with Westchester Fire Insurance Company, which had issued a surety bond on behalf of GM for the 2007 CD in the amount of \$448,000. Pursuant to that agreement, Respondents began drawing down on that bond as they were incurring costs for work they performed under the 2007 CD. Through a payment to Respondents in April 2012, the bond was fully paid out.

23. The first proof of claim referenced in Paragraph 20 above was subsequently superseded by a second proof of claim filed on April 8, 2011, which asserted claims regarding non-owned sites including the Hayford Bridge Road Groundwater Superfund Site. The United States and MLC settled the second proof of claim concerning the Site in a consent decree and settlement agreement ("MLC Settlement Agreement"), attached hereto as Appendix D, approved and entered by the Bankruptcy Court on or about March 29, 2012. Under the terms of Section VIII of the MLC Settlement Agreement (Covenants Not to Sue and Reservations of Rights), the United States on behalf of EPA, covenants not to file a civil action or to take any administrative or other civil action against MLC and other debtors, and the General Unsecured Creditors Trust, created by the bankruptcy court to resolve outstanding claims of unsecured creditors.

24. Pursuant to the MLC Settlement Agreement, MLC will make a non-cash distribution to the United States on behalf of EPA valued at \$1,402,000. The United States will sell this stock and deposit the proceeds into the Hayford Bridge Road Groundwater Site Special Account.

VI. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

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

- a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
- b. The contamination found at or near the Site and/or the Northern Plume, as identified in the Findings of Fact above, includes "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.
 - i. Respondent Findett Real Estate Corporation is the former "owner" and "operator" of the facility at 8 Governor Drive, 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. Respondents The Goodyear Tire & Rubber Co., Mallinckrodt LLC f/k/a Mallinckrodt Inc., and Pharmacia Corporation arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

e. The conditions described in Paragraphs 11, 15, and 17 of the Findings of Fact above constitute an actual or threatened of "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

VII. SETTLEMENT AGREEMENT AND ORDER

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

VIII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR

26. Respondents shall retain one or more contractors to perform the Work and shall notify EPA and MDNR of the name(s) and qualifications of such contractor(s) within 5 days of the Effective Date. Respondents shall also notify EPA and MDNR of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 5 days prior to commencement of such Work. EPA, after consultation with MDNR, retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA, after consultation with MDNR, disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA and MDNR of that contractor's name and qualifications within 7 days of EPA's disapproval.

27. Respondents have designated Mr. Kenny Hemmen of Geotechnology, Inc. as Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement. To the greatest extent possible, the Project Coordinator shall be present or readily available during the Work. If Respondents choose to retain a different Project Coordinator, they shall notify EPA and MDNR of that person's name, address, telephone number, and qualifications within 5 days of such decision. EPA, in consultation with MDNR, retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA, after consultation with MDNR, disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA and MDNR of that contractor's name and qualifications within 5 days of EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this

Settlement Agreement shall constitute receipt by all Respondents.

28. EPA has designated Mr. Craig Smith of the Region VII Superfund Division as its Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to Mr. Smith at EPA Region VII, Superfund Division, 901 N. Fifth Street, Kansas City, KS 66101 and smith.craig@epa.gov.

29. MDNR has designated Ms. Candice McGhee, Hazardous Waste Program Superfund Section, as the State Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to Ms. Candice McGhee at P.O. Box 176, Jefferson City, Missouri 65102-0176 or candice.mcghee@dnr.mo.gov.

IX. WORK TO BE PERFORMED

30. Respondents shall perform the following actions set forth in Section V.A.1. of the Action Memorandum: (1) completion of the direct push technology groundwater investigation; (2) expansion of the EPW through installation of two to three new vertical wells or a radial well; (3) construction of a temporary containment well system; and (4) preparation of an air stripping tower design and bid package for the EPW water treatment plant facility.

31. Work Plan and Implementation.

a. Within 45 days after the Effective Date, Respondents shall submit to EPA and MDNR a draft Work Plan for performing the Work generally described in Paragraph 30 above, for EPA approval. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement. The Work Plan shall incorporate the actions set forth in Section V.A.1. of the Action Memorandum and shall describe the specific subactions and milestone schedule for each of the four response actions listed therein.

b. EPA, after reasonable opportunity for review and comment by MDNR, may approve, disapprove, require revision or modify the draft Work Plan in whole or in part. If EPA, in consultation with MDNR, requires revisions, Respondents shall submit a revised draft Work Plan within 30 days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan as approved in writing by EPA, after reasonable opportunity for review and comment by MDNR, in accordance with the schedule approved by EPA, in consultation with MDNR. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall become fully enforceable under this Settlement Agreement.

c. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 31(b).

32. Health and Safety Plan. Respondents shall follow the Health and Safety Plan they submitted to EPA pursuant to the 2007 Consent Decree in performing Work under this Settlement Agreement and shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910.

33. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures, in consultation with MDNR. Respondents shall follow the existing approved Quality Assurance Project Plan ("QAPP") that Respondents submitted and EPA approved pursuant to the 2007 Consent Decree. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA, in consultation with MDNR. EPA, in consultation with MDNR, may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

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

c. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA and MDNR not less than 14 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA, in consultation with MDNR. EPA and MDNR shall have the right to take any additional samples that EPA or MDNR deems necessary. Upon request, EPA or MDNR shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

34. Reporting.

a. Respondents shall submit electronically a progress report to EPA and MDNR concerning actions undertaken pursuant to this Settlement Agreement beginning the 10th day after the date of receipt of EPA's approval of the Work Plan and every month thereafter until termination of this Settlement Agreement, unless otherwise directed in writing by EPA. These

reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondents shall submit electronic copies of all plans, reports or other submissions required by this Settlement Agreement or any approved work plan to EPA and MDNR. Respondents shall provide two printed copies of longer documents to EPA and one printed copy of longer documents to MDNR. Printed copies will be provided only when specifically requested through electronic mail by EPA and/or MDNR.

c. Respondents shall participate in periodic technical meetings and/or telephone conference calls to exchange information, track progress and resolve technical issues.

d. Respondents who own or control property that is subject to the Work shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property subject to the Work also agree to require that their successors comply with the immediately preceding sentence and Sections X (Property Access) and XI (Access to Information).

35. Final Report. Within 45 days after completion of all Work required by this Settlement Agreement, Respondents shall submit to EPA and MDNR, for their review and approval, a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall include a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

36. Waste Material Shipments.

a. Respondents shall, prior to any shipment of Waste Material related to the Work to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the EPA and MDNR Project Coordinators. However, this notification requirement shall not apply to any Work-related Waste Material shipments when the total volume of all such

shipments will not exceed 10 cubic yards.

i. Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the response action. Respondents shall provide the information required by Paragraph 36(a) and 36(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

X. PROPERTY ACCESS

37. Respondents have obtained access onto property owned by or in possession of others for the purpose of implementing the Work. If additional access is needed, Respondents shall use their best efforts to obtain all necessary access agreements within 15 days after the Effective Date, or as otherwise specified by the EPA Project Coordinator. Respondents shall immediately notify EPA if, after using their best efforts, they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVI (Payment of Response Costs).

38. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. ACCESS TO INFORMATION

39. Respondents shall provide to EPA and MDNR, upon request, and subject to Paragraph 41 herein, copies of all non-privileged documents and information within their

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

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

41. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA and MDNR with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

42. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data evidencing conditions at or around the Site.

XII. RECORD RETENTION

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

44. At the conclusion of this document retention period, Respondents shall notify EPA and MDNR at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or MDNR, Respondents shall deliver any such records or documents to EPA or MDNR. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA or MDNR with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

45. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Work since notification of potential liability by EPA or MDNR or the filing of suit against it regarding the Work and that it has fully complied with any and all EPA requests for information 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.

XIII. COMPLIANCE WITH OTHER LAWS

46. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all Work required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA in consultation with MDNR, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws.

XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

47. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material related to the Work that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the EPA Project Coordinator at (913) 551-7683 or, in the event of his unavailability, the Region VII Emergency Response 24-hour line at (913) 281-0991 of the incident or conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and

EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payment of Response Costs).

48. In addition, in the event of any release of a hazardous substance related to the Work, Respondents shall immediately notify the Region VII Emergency Response 24-hour line at (913) 281-0991, the National Response Center at (800) 424-8802, and Missouri Emergency Response 24-hour Spill Line at (573) 634-2436. Respondents shall submit a written report to EPA and MDNR within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XV. AUTHORITY OF EPA PROJECT COORDINATOR

49. The EPA Project Coordinator shall be responsible for overseeing Respondents' implementation of this Settlement Agreement, in consultation with the State Project Coordinator. The EPA Project Coordinator shall have the same authority as that vested in an On-Scene Coordinator by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement. Absence of the EPA Project Coordinator from the Work shall not be cause for stoppage of work unless specifically directed by the EPA Project Coordinator.

XVI. PAYMENT OF RESPONSE COSTS

50. Payments for Future Response Costs.

a. Respondents shall pay EPA all Interim and Future Response Costs incurred in connection with the implementation of the Work under this Settlement Agreement, not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a cost summary which includes direct and indirect costs incurred by EPA, MDNR and their contractors. Respondents shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 52 of this Settlement Agreement.

b. Respondents shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number 0795. Respondents shall send the check(s) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000.

c. At the time of payment, Respondents shall send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

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

d. The total amount to be paid by Respondents pursuant to Paragraph 50 (a) shall be deposited by EPA in the Hayford Bridge Road Groundwater Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

51. Respondents may contest payment of any Future Response Costs billed under Paragraph 50 if they determine that EPA has made a mathematical error, or if such costs were not incurred in connection with the Work implemented under this Settlement Agreement, if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall, within the 30-day period, pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 50. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Missouri and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 50. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 50. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XVII. CREATION OF DISBURSEMENT SPECIAL ACCOUNT

52. Within thirty (30) days of the effective date of the Settlement Agreement, EPA will transfer funds from the Hayford Bridge Road Groundwater Superfund Site Special Account

received through the MLC Settlement Agreement into the Hayford Bridge Road Groundwater Superfund Site Disbursement Special Account (“Disbursement Special Account”). EPA agrees to make the funds in the Disbursement Special Account, including Interest earned on the funds in the Disbursement Special Account, available to be disbursed to Respondents subject to the terms, conditions and limitations set forth in this Settlement Agreement.

XVIII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

53. Requests for Disbursement of Special Account Funds. Three months after the Disbursement Special Account is created, and every three months thereafter while the Settlement Agreement is in effect, Respondents shall submit to EPA a Cost Summary and Certification covering the Work performed during that time period pursuant to this Settlement Agreement.

a. Each Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid by Respondents for the Work covered by the particular submission, excluding costs not eligible for disbursement under Paragraph 56 below (Costs Excluded from Disbursement). Each Cost Summary and Certification shall contain the following statement signed by an Independent Certified Public Accountant:

To the best of my knowledge, after thorough investigation and review of Respondents’ documentation of costs incurred and paid for Work performed pursuant to this Settlement Agreement, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.

b. The Independent Certified Public Accountant shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, Respondents shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.

c. Respondents shall not include in any submission costs included in a previous Cost Summary and Certification.

54. Timing, Amount, and Method of Disbursing Funds From the Disbursement Special Account. Within 120 days after EPA’s receipt of a Cost Summary and Certification, submitted in accord with Paragraph 53, or if EPA has requested additional information or a revised Cost Summary and Certification under Paragraph 55, within 60 days after receipt of the additional information or revised Cost Summary and Certification, whichever is later, and subject to the conditions set forth in this Settlement Agreement, EPA shall disburse the funds from the Disbursement Special Account subject to the conditions set forth in this Settlement Agreement.

Respondents shall provide EPA the name and address for payment or instructions for electronic fund transfer within 90 days of the Effective Date.

55. Recalculation of Costs. If EPA finds that a Cost Summary and Certification includes a mathematical error, costs excluded under Paragraph 56 (Costs Excluded from Disbursement), costs that are inadequately documented, or costs submitted in a prior Cost Summary and Certification, it will notify Respondents and provide them an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Respondents fail to cure the deficiency within 30 days after being notified of, and given the opportunity to cure the deficiency, EPA will recalculate Respondents' costs eligible for disbursement for that submission and disburse the corrected amount to Respondents in accordance with the procedures in Paragraph 54. Respondents may dispute EPA's recalculation under this Paragraph pursuant to Section XIX (Dispute Resolution). In no event shall Respondents be disbursed funds from the Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

56. Costs Excluded from Disbursement. The following costs are excluded from, and shall not be sought by Respondents for, disbursement from the Disbursement Special Account:

- a. payments made by Respondents to EPA pursuant to this Settlement Agreement, including, but not limited to, Future Response Costs and the Stipulated Penalties section of this Settlement Agreement;
- b. Respondents' attorneys' fees;
- c. costs of any response activities Respondents perform that are not required by this Settlement Agreement or approved by EPA through this Settlement Agreement;
- d. Respondents' costs related to litigation, settlement, investigation, and development of potential contribution claims or identification of defendants;
- e. internal costs of Respondents, including but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of Respondents directly performing the Work under this Settlement Agreement;
- f. any costs incurred by Respondents prior to the Effective Date of this Settlement Agreement unless such costs relate to the Work required under this Settlement Agreement.
- g. costs included in a previous Cost Summary and Certification; or
- h. any costs incurred by Respondents pursuant to Section XIX (Dispute Resolution).

57. Termination of Disbursements from the Special Account. EPA's obligation to disburse funds from the Disbursement Special Account under this Settlement Agreement shall terminate upon EPA's determination that Respondents: (a) have knowingly submitted a materially false or misleading Cost Summary and Certification; (b) have submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within 30 days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification in accordance with Paragraph 53 within 30 days (or such longer period as EPA agrees, after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Section because of Respondents' failure to submit the Cost Summary and Certification as required by Paragraph 53. EPA's obligation to disburse funds from the Disbursement Special Account shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to the Work Takeover provision of the Settlement Agreement, when such assumption of performance of the Work is not challenged by Respondents or, if challenged, is upheld under Section XIX (Dispute Resolution). Respondents may dispute EPA's termination of special account disbursements under Section XIX of this Settlement Agreement (Dispute Resolution).

58. Recapture of Special Account Disbursements. Upon termination of disbursements from the Disbursement Special Account under Paragraph 57 (Termination of Disbursements from the Special Account), if EPA has previously disbursed funds from the Disbursement Special Account for activities specifically related to the reason for termination, e.g., discovery of a materially false or misleading submission after disbursement of funds based on that submission, EPA shall submit a bill to Respondents for those amounts already disbursed from the Disbursement Special Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by Respondents. Within 30 days after receipt of EPA's bill, Respondents shall pay the billed amount by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall refer to the name and address of the party making payment, and EPA site identification number 07/95. Respondents shall send the check to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000.

Upon receipt of payment, EPA may deposit all or any portion thereof in the Hayford Bridge Road Groundwater Superfund Site Special Account or the EPA Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by Respondents in any other forum. Respondents may dispute EPA's determination as to recapture of funds pursuant to Section XIX (Dispute Resolution).

59. Transfer of Disbursement of Special Account Funds. After EPA issues its written approval of Completion of Work pursuant to this Settlement Agreement, and after EPA completes all disbursement to Respondents in accordance with this Section, if any funds remain in the Disbursement Special Account, EPA may transfer such funds to the Hayford Bridge Road Groundwater Site Special Account or to the EPA Hazardous Substance Superfund.

XIX. DISPUTE RESOLUTION

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

61. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Response Costs, they shall notify EPA in writing of their objection(s) within 7 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 20 days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

62. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Region VII Branch Chief for the Missouri/Kansas Branch will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XX. FORCE MAJEURE

63. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, including, but not limited to, the City of St. Charles and the State of Missouri (including, *e.g.*, the timeliness of passage of ordinances, approvals, or permitting decisions), or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

64. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure*, Respondents shall notify EPA orally within 48 hours of when Respondents first knew that the event might cause a delay. Within 5 days thereafter, Respondents shall provide to EPA in writing (electronic mail is acceptable) 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; Respondents' rationale for attributing such delay to a *force majeure*; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

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

XXI. STIPULATED PENALTIES

66. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 67 and 68 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XX (Force Majeure). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the Work Plan, and any plans or other documents approved by EPA after reasonable opportunity for review and comment by MDNR, pursuant to this Settlement Agreement, and within the specified time schedules established by and approved under this Settlement Agreement.

67. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 67 (b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,250	1st through 14th day
\$3,000	15th through 30th day
\$8,500	31st day and beyond

b. Compliance Milestones

- Failure to complete DPT plume mapping field work, analytical work and final report within 90 days of obtaining property access.
- Failure to complete the Elm Point Wellfield Expansion and report within 160 days of contract award.
- Failure to construct fully operational and functional temporary containment well(s) within 210 days of construction contract approval.
- Failure to complete the Air Stripper Design (including complete final design documents and bid package) within 60 days of receipt of comments on Air Stripper Detailed Design and Bid Specifications from EPA and City of St. Charles.
- Failure to submit the Final Report in compliance with Paragraph 35 herein.

68. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 79 of Section XXIV, Respondents shall be liable for a stipulated penalty in the amount of the estimated cost to complete the remaining Work, as determined by EPA.

69. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section IX (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the Superfund Branch Chief, Missouri/Kansas Branch, Region VII, under Paragraph 62 of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the Superfund Branch Chief, Missouri/Kansas Branch, Region VII issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

70. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, EPA shall give Respondents written notification of the failure and describe the noncompliance. EPA shall send Respondents a written demand for payment of the penalties.

71. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XIX (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000.

The check(s) shall indicate that the payment is for stipulated penalties, and shall reference EPA Region VII and Site/Spill ID Number 0795, the EPA Docket Number CERCLA-07-2012-0025, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 50c.

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

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

74. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 71. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XXIV, Paragraph 79. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XXII. COVENANT NOT TO SUE BY EPA

75. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Interim and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement

Agreement, including, but not limited to, payment of Interim and Future Response Costs pursuant to Section XVI. This covenant not to sue extends only to Respondents and does not extend to any other person.

XXIII. COVENANT NOT TO SUE BY MDNR

76. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, MDNR covenants not to sue or to take administrative action against Respondents pursuant to Sections 260.500 to 260.550 RSMo and Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Interim and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement, including, but not limited to, payment of Interim and Future Response Costs pursuant to Section XVI. This covenant not to sue extends only to Respondents and does not extend to any other person.

XXIV. RESERVATIONS OF RIGHTS BY EPA AND MDNR

77. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA, the United States, MDNR or the State, 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 related to the Work. Further, nothing in this Settlement Agreement shall prevent EPA or MDNR from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

78. The covenants not to sue set forth in Sections XXII and XXIV above do not pertain to any matters other than those expressly identified therein. EPA and MDNR reserve, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;

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

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials unrelated to the Work; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry ("ATSDR") related to the Site; except that the parties recognize that the State and MDNR do not have jurisdiction or authority to enforce the statutes and rules relating to the ATSDR.

79. Work Takeover. In the event EPA, in consultation with MDNR, determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section XVI (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXV. COVENANT NOT TO SUE BY RESPONDENTS

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

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

b. any claim arising out of response actions required pursuant to this Settlement Agreement, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

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

81. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the response actions required pursuant to this

Settlement Agreement, including for contribution, against any person where the person's liability to Respondents is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances, or having accepted for transport for disposal or treatment of hazardous substances, 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 was less than 110 gallons of liquid materials or 200 pounds of solid materials.

82. The waiver in Paragraph 81 shall not apply with respect to any defense, claim, or cause of action that a Respondents may have against any person meeting the above criteria if such person asserts a claim or cause of action against such Respondents. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA, in consultation with MDNR, determines:

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

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

XXVI. OTHER CLAIMS

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

84. Except as expressly provided in Section XXII (Covenant Not to Sue by EPA) and Section XXIII (Covenant Not to Sue by MDNR), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607 and Sections 260.500 through 260.550, RSMo.

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

XXVII. EFFECT OF SETTLEMENT/CONTRIBUTION

86. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Interim and Future Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the United States for the Work and Interim and Future Response Costs.

c. Except as provided in Section XXV, Paragraph 81 of this Settlement Agreement, nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

87. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA and MDNR in writing no later than 10 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA and MDNR in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA and MDNR within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

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

XXVIII. INDEMNIFICATION

89. Respondents shall indemnify, save and hold harmless the United States, the State, their officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States and pay the State all costs incurred by the State, 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 or the State based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States or the State.

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

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

XXIX. INSURANCE

92. At least 10 days prior to commencing any Work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of \$5 million dollars, combined single limit, naming EPA as an additional insured. Such limits can be achieved by a combination of the underlying insurance policies and an excess liability policy. Within the same time period, upon request, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision

of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXX. FINANCIAL ASSURANCE

93. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security for the benefit of EPA in the amount of \$2,705,900 in one or more of the following forms, which shall be provided to the EPA Project Coordinator, in order to secure the full and final completion of Work by Respondents:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;
- e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Respondents, or by one or more unrelated companies that have a substantial business relationship with at least one of Respondents; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or
- f. a demonstration of sufficient financial resources to pay for the Work made by one or more of Respondents, which shall consist of a demonstration that any such Respondents satisfy the requirements of 40 C.F.R. Part 264.143(f).

94. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 93, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial

ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

95. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 93(e) or 93(f) of this Settlement Agreement, Respondents shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondents or guarantor to EPA by means of passing a financial test.

96. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 93 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondents may seek dispute resolution pursuant to Section XIX (Dispute Resolution). Respondents may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

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

98. In the event that any Respondent is granted relief by any U. S. Bankruptcy Court for obligations under this Settlement Agreement, the other Respondents shall have access to financial assurance such Respondent had provided to EPA pursuant to this Section upon demonstration to EPA that Respondents incurred costs for implementation of the Work. The amount of financial assurance available to the solvent Respondents shall be limited by the amount of costs such Respondents incurred in performing Work under this Settlement Agreement, as approved by EPA, and which i) has not already been disbursed to Respondents through Section XVIII (Disbursement of Special Account Funds) and ii) represents the proportional share of costs assumed by the insolvent Respondent as indicated by a written statement from Respondents to EPA submitted within five days of the Effective Date. Such statement shall identify the share of costs each Respondent is assuming under this Settlement Agreement.

XXXI. MODIFICATIONS

99. The EPA Project Coordinator, in consultation with MDNR, and the Respondents' Project Coordinator may make modifications to any schedule in the Work Plan by mutual agreement. Such modification shall be acknowledged in writing by all Project Coordinators, and shall become part of the Work Plan. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

100. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA (who may approve after consultation with MDNR), outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the EPA Project Coordinator.

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

XXXII. NOTICE OF COMPLETION OF WORK

102. EPA may approve the Final Report and will provide written notice of this approval to Respondents after consultation with MDNR, if EPA determines that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement. If EPA determines, after reasonable opportunity for review and comment by MDNR, that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXXIII. INTEGRATION/APPENDICES

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

In the Matter of the Hayford Bridge Road Groundwater Site CERCLA-07-2012-0025


Appendix A – Action Memorandum
Appendix B - 2007 CD
Appendix C - Map of Site
Appendix D - MLC Settlement Agreement


XXXIV. EFFECTIVE DATE

104. This Settlement Agreement shall be effective as of the date the Settlement Agreement is signed by the EPA Superfund Division Director or his/her delegatee.

It is so ORDERED and Agreed this 28 day of September 2012.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY


By:  Date: 9-28-12
Cecilia Tapia
Director
Superfund Division
Region VII
U.S. Environmental Protection Agency

By:  Date: 9/28/12
Audrey Asher
Senior Counsel
Office of Regional Counsel
Region VII
U.S. Environmental Protection Agency

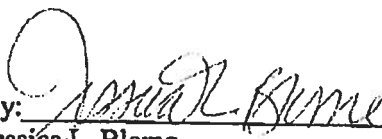
In the Matter of the Hayford Bridge Road Groundwater Site CERCLA-07-2012-0025

FOR THE STATE OF MISSOURI

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By:  Date: 9-27-12
Alan J. Reinkenmeyer
Acting Director, Division of Environmental Quality
P.O. Box 176
Jefferson City, Missouri 65102

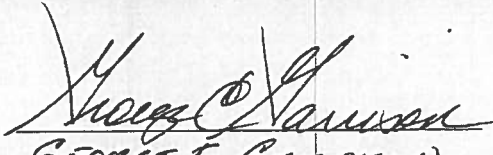
MISSOURI ATTORNEY GENERAL CHRIS KOSTER

By:  Date: 9/27/12
Jessica L. Blome
Assistant Attorney General
P.O. Box 899
Jefferson City, Missouri 65101

In the Matter of the Hayford Bridge Road Groundwater Site CERCLA-07-2012-0025

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

For Respondent FINDETT REAL ESTATE CORPORATION

By:  Date: Sept 29, 2012
Title: GEORGE E GARRISON
PRESIDENT
Address: P.O. Box 960, St Charles, MD 63302

In the Matter of the Hayford Bridge Road Groundwater Site CERCLA-07-2012-0025

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

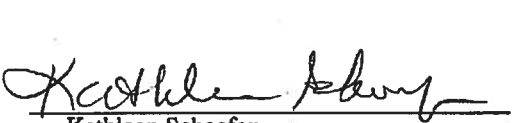
For Respondent THE GOODYEAR TIRE & RUBBER COMPANY

By: Donald E. Stoddy Date: 9/24/12
Title: Vice President
Address: 1144 E Market St
Akron OH 44316

In the Matter of the Hayford Bridge Road Groundwater Site CERCLA-07-2012-0025

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

For Respondent MALLINCKRODT LLC f/k/a MALLINCKRODT INC.


By:  Date: 9/24/12
Kathleen Schaefer

Title: Vice President

Address: 675 McDonnell Blvd, St. Louis, MO 63042

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

For Respondent PHARMACIA CORPORATION

By:  Julie Peshkin Date: 9/25/12
Title: Environmental Remediation Lead, Monsanto Company,
Address: 800 N. Lindbergh Blvd Attorney-in-fact for
St Louis, MO 63167 Pharmacia Corporation

APPENDIX A

ACTION MEMORANDUM



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

JUN 25 2012

ENFORCEMENT ACTION MEMORANDUM

SUBJECT: Request for a Time-Critical Removal Action at the Findett Corp. Site, St. Charles, St. Charles County, Missouri

FROM: Craig Smith, P.E.
Senior Engineer
Superfund Division

THRU: DeAndre Singletary, Chief *Mary P. Peterson for*
Missouri/Kansas Remedial Branch
Superfund Division

Scott Hayes, Chief *Mary P. Peterson for*
Emergency Response and Removal South Branch
Superfund Division

TO: Cecilia Tapia, Director
Superfund Division

Site ID: 0795

L PURPOSE

The purpose of this Action Memorandum is to request and document approval of the proposed time-critical removal action for the Findett Corp. site, also known as the Hayford Bridge Road Groundwater site (the Site), located in the city of St. Charles (City), St. Charles County, Missouri. The general objective of the action is to prevent the contamination of the City's drinking water supply with volatile organic compounds (VOCs) from the Site. This will be achieved by expansion of the existing Elm Point Wellfield (EPW) to replace existing contaminated and threatened public water supply (PWS) wells, installation and operation of a Temporary Containment Well (TCW), preparation of a drinking water treatment plant contingency Air Stripper Design (ASD) and additional groundwater and soil investigative work. The U.S. Environmental Protection Agency (EPA) anticipates that the potentially responsible parties (PRPs) will conduct the removal action.

II. SITE CONDITIONS AND BACKGROUND

A. Site Description

1. Removal site evaluation

Findett Corp. (Findett) began operating in 1962 as an industrial facility which reprocessed heat transfer fluids, hydraulic fluids, solvents and catalysts. The catalyst business spun off as a separate company (Cadmus) in 1973. The process fluids and materials contained hazardous substances including VOCs and polychlorinated biphenyls (PCBs). The Site originally came to the EPA's attention in the late 1970s when Findett reported handling PCBs. During an EPA inspection, an unlined quench pond was identified on the boundary between the Findett and Cadmus properties. Findett used the quench pond by releasing hot residues into it from the recycling processes.

In 1977 and 1981, Findett excavated the pond and disposed of contaminated soils off-site. The PCB contamination in the surface soils was the primary concern in those early years of activity at the Site. Subsequent investigations identified the presence of VOC contamination in the subsurface soils and groundwater. The sources of contamination originated and continue to exist at the Findett property. Releases of VOCs and PCBs into both soils and groundwater at the Findett property (Operable Unit 1 or OU1) occurred as a result of operating practices. The historic and ongoing releases of VOCs, primarily dichloroethylene, trichloroethylene and vinyl chloride, from the former Findett plant are contaminating the alluvial aquifer and are consistent with contamination in at least one City PWS supplemental production well, W5.

The EPA identified the contaminated groundwater emanating from the Findett property as OU3, and in 2005, selected monitored natural attenuation as the remedy to address the OU3 contamination. As part of the routine quarterly monitoring performed by the PRPs who agreed to implement the remedy under a Consent Decree (2007 Consent Decree), contamination has repeatedly been found in W5. This occurrence was investigated using Direct Push Technology (DPT) Plume Mapping (DPM). The results indicated high concentrations of cis-1,2 dichloroethylene (DCE) in the vicinity of W5 and are consistent with the historic and ongoing releases of contaminants migrating from OU1 into the alluvial aquifer.

In addition, preliminary screening of the Ameren electrical substation property on Huster Road indicated the presence of tetrachloroethane (PCE), trichloroethylene (TCE), DCE and vinyl chloride in surface and subsurface soils. The Ameren property primarily consists of an electrical power distribution substation. In the course of conducting electrical equipment installation, maintenance and repair, Ameren and its predecessor, Union Electric, used a variety of commercial "Mozel" solvent blends on the substation property as cleaners, degreasers, dryers, etc., dating back to at least the 1960s. The preliminary screening results indicating solvent contamination of PCE, TCE and their degradation byproducts such as DCE and vinyl chloride are consistent with spills or other releases of solvents over a period of time, which are consistent with contamination found in W5 and in the vicinity of W5.

2. Physical location

The Findett/Hayford Bridge Road Groundwater site is located within the city of St. Charles, St. Charles County, Missouri, near the intersection of Elm Point Road and Governor Drive.

The source area is owned by Findett Real Estate Corporation, a successor to Findett Corporation. The Site includes adjacent property formerly owned by Cadmus Corporation, and all properties where groundwater contamination has migrated from the source areas (OU3).

A screening review of ecological risks was performed for the Remedial Investigation/Feasibility Study (RI/FS). It was concluded that the ecological risks at the Site were low.

3. Site characteristics

The Site is located in an area comprised primarily of mixed industrial and agricultural uses in the floodplain of the Mississippi River, which is approximately three miles north of the Site. There are several creeks between the Site and the river. A residential area, Deerfield Village Trailer Park, is also in the floodplain, approximately 1,500 feet due east of Huster Road. The closest municipal drinking water wells are designated as W5 and W8 which are located over 2,500 feet from the OU1 source area. The EPW currently consists of six production wells owned and operated by the City and used to provide approximately 40 percent of the drinking water supply to the City. The newest well is a radial collector well located 4,500 feet north of OU1, and is the primary production well in this field. The other existing vertical production wells (W5, W6 and W8) produce supplemental water on a rotating schedule during peak summer demand periods. W4 is shut down due to a meter-box fire and sand pumping. Due to the aquifer contamination, the City has voluntarily suspended use of W5 and has curtailed the use of W6 which the City considers threatened, thereby creating probable water shortages that are expected to become severe during the high demand summer season of 2012 and beyond.

The Site is divided into three OUs: (1) OU1 – soil and groundwater contamination on the Findett property, (2) OU2 – soil contamination on the former Cadmus property and (3) OU3 – contaminated groundwater that migrated downgradient from OU1 and OU2. Currently, OU3 includes approximately 200 acres located primarily north/northeast of OU1/OU2. The OU3 plume has not been fully delineated on its northern edge although DPT results are consistent with the contamination present in the vicinity of W9. This plume is generally bounded by Elm Point Road to the south, Hayford Bridge Road to the west, Deerfield Village to the east and W6 to the north.

The Site is not owned by any federal or state entity. There has been one previous removal action at OU2 where soils were excavated by PRPs pursuant to an administrative order on consent signed in 2000. Two remedial actions are presently underway. The shallow soils and groundwater are being remediated under a Consent Decree made effective in 1990. Remediation of the groundwater plume, which has migrated off the Findett property and moving downgradient (OU3), is the subject of the 2007 Consent Decree. Additional remedial and/or removal action is expected to be needed at OU1.

4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

Results of OU3 groundwater monitoring conducted by the OU3 PRPs in 2009 indicated the presence of DCE in the EPW in W4. A February 2009 evaluation of OU1 by the OU3 PRPs found inadequate hydraulic control/containment at OU3. Subsequent data that was collected support this finding. For example, monitoring of W5 during the last three quarters of 2010 indicated the presence of DCE in the EPW in W5 at levels ranging from 7 to 14 parts per billion (ppb). This contamination appears to have bypassed or locally overwhelmed the existing natural anaerobic biodegradation processes that the remedy assumed would prevent contamination from migrating significantly.

Monitoring of well MW13 in February 2011 indicated the presence of DCE at 81 ppb, which exceeds the Maximum Contaminant Level (MCL) of 70 ppb established under the Safe Drinking Water Act. In addition, sampling results indicated that vinyl chloride and benzene were occurring above their MCLs and are increasing in other monitoring wells that are part of the monitoring well system for OU3.

The results of the DPT conducted by OU3 PRPs¹ in the fall of 2011 and reported January 12, 2012, identified a northerly plume of DCE contamination that occurred north and west of the Ameren substation property along and east of Huster Road. This northerly plume had a high value of 829 ppb DCE and a large area greater than the MCL of 70 ppb for DCE. The results indicate this northerly plume extends north of Missouri Highway 370, as far north as W6, at levels exceeding 200 ppb. Most of the contamination occurred in the upper third of the aquifer below the cohesive/clay zone.

In April 2012, Ameren independently conducted a limited-screening site investigation on the substation property. The data from this limited-screening site investigation sampling was presented on May 15, 2012, in Ameren's Preliminary Screening Site Investigation (PSSI) report. The PSSI reported surface soil and soil boring concentrations of PCE as high as 2,000 ppb at the surface; DCE concentrations as high as 1,080 ppb at 15 feet below ground surface; and numerous widespread detections of a variety of VOCs across the substation property. Results from these two surface soil and soil boring locations, while not overseen by EPA, indicate contamination from VOCs above the State of Missouri Department of Natural Resources' Risk Based Corrective Action (MRBCA) trigger levels for soil contaminants affecting drinking water supplies (MRBCA Table 11).

All of the above contaminants of concern (COCs) are listed as Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) hazardous substances in Table 4 and Appendix A of 40 CFR § 302.4. These are, therefore, hazardous substances as defined by CERCLA at section 101(14), 42 U.S.C. § 9601(14).

5. NPL status

In 1984, the EPA nominated the Site for inclusion on the National Priorities List (NPL) for hazardous waste sites, mainly due to the potential exposure of contaminated groundwater to the nearby EPW. The nomination was later withdrawn due to potential overlapping jurisdiction with the EPA's Resource Conservation and Recovery Act (RCRA). However, the OUI Record of Decision (ROD) and corresponding Consent Decree with Findett were in place before the nomination withdrawal. As a result, the Site has continued being managed by the EPA using the Superfund authority and as an "NPL-caliber" site. Management of a NPL-caliber site follows the same Superfund process as a site on the NPL, without the access to federal funding.

6. Maps, pictures and other graphic representations

See Attachment 1 for a map of the Site.

¹ The OU3 PRPs are those parties who received notice letters in 1996-1997 (excluding General Motors Corporation): ACF Industries, LLC; Findett Real Estate Corporation; The Goodyear Tire & Rubber Company; Mallinckrodt LLC; and Pharmacia Corporation. In January 2012, the EPA noticed Ameren as a PRP for the Site.

B. Other Actions to Date

1. Previous actions

In the late 1980s, the EPA conducted an RI/FS for OU1 which led to a ROD in December 1988. The remedy selected in the OU1 ROD required removing the PCB-impacted soils above the groundwater table (or a maximum of a five-foot depth) and installing/operating an extraction and treatment system to hydraulically control the contaminated, shallow groundwater on the Findett property. The EPA and Findett entered into a Consent Decree requiring Findett to implement the remedy. The groundwater system was constructed in 1990 and has operated for the past 20 years. Findett implemented the soil remedy required by the Consent Decree (excavation and disposal of PCB-contaminated surface soils).²

In 1995, the EPA completed an evaluation of OU2 which resulted in a decision document requiring removal of PCB-contaminated soils above the groundwater table (or a maximum of a five-foot depth). In October 2000, the EPA entered into an Administrative Order on Consent (AOC) with a group of PRPs to conduct the soil removal action. The soil removal action was completed in 2001.

In September 2001, the EPA and a group of PRPs entered into an AOC to conduct an RI/FS for OU3. The RI/FS was completed in July 2005 with submittal of the final report. In 2005, the EPA issued a ROD for OU3. The major components of the selected OU3 remedy include:

- **Monitored Natural Attenuation (MNA)** – MNA is expected to (1) prevent contamination from reaching the drinking water supply for the city of St. Charles, and (2) reduce the contamination in the aquifer to achieve safe drinking water standards within an estimated cleanup time frame between 10 and 20 years. Computer modeling indicates that these expectations will be achieved under current and future conditions, including using the new radial collector well as the primary source for the public water supply.
- **Monitoring** – Groundwater monitoring is being implemented in OU3 to measure and track (1) the degradation rate(s) of the contamination in the body of the plume, (2) the boundaries of the plume, (3) the EPW to track levels of contamination, and (4) the influent stream to the City's water treatment plant to verify that it remains uncontaminated.
- **Aeration Upgrade** – Upgrade the aeration unit at the City's water treatment plant. The design of the aeration upgrade will (1) effectively remove VOCs at the concentrations documented in the OU3 aquifer, and (2) minimize maintenance for the City to operate.
- **Contingency Plans** – The purpose for the Contingency Plan is to require timely action if the natural attenuation processes do not achieve the expected outcomes of (1) maintaining an uncontaminated EPW, and (2) achieving performance standards in the aquifer within 10 to 20 years. To ensure the protection of the EPW, a monitoring well system provides an early warning if the contamination is migrating closer to the EPW. The Contingency Plan consists of two sections: the Emergency Contingency Plan Response (ECPR) and the Non-Emergency

² The OU1 ROD was amended in 1995 to allow biological treatment of the PCB-contaminated soils in an attempt to achieve the 25 ppm performance standard within five years. This remedy did not achieve the intended result and Findett implemented the original excavation and off-site disposal remedy.

Contingency Plan Response (NCPR). The NCPR defines the compliance monitoring wells to measure contaminant concentrations and the corresponding degradation rates. These results are compared to the outcomes listed above. If the results exceed the required outcomes, then more action is required. The ECPR defines a timely process designed to protect human health and the environment if COCs are detected in the EPW. Additional response actions could be required by either Contingency Plan Response.

- Institutional Controls (ICs) – The purpose for the ICs is to ensure that (1) the contaminated groundwater will not be used for potable purposes, and (2) ponds/lakes will not be constructed below the upper cohesive soils and into the contaminated aquifer. The type of restriction and enforceability may include deed restrictions, easements and/or covenants on private properties.

In 2007, the EPA entered into a Consent Decree with the OU3 PRPs to implement the OU3 ROD described above. The OU3 PRPs (identified in footnote 1) have been implementing the MNA remedy.

2. Current actions

The OU3 PRPs are voluntarily conducting informal developmental work to implement an Emergency Action Response approved by the EPA on December 19, 2011. They are identifying property ownership in the candidate new PWS well locations for the EPW expansion (EWE), conducting preliminary design on a TCW, exploring contract mechanisms for performing the EPW ASD and conducting surveying and other activities.

The city of St. Charles is relying primarily on the radial/collector well W9. Well W8 (a vertical well with much lower capacity than W9) can serve as a supplemental and/or partial backup well; W7 can serve as a partial backup well (vertical well); W4 is shut down due to mechanical problems; W5 is shut down due to contamination; and W6 is curtailed due to the threat of contamination. Therefore, the City has inadequate water supply to meet peak summer demand or to provide alternate captive supply if W9 is out of service for malfunction or maintenance.

As discussed in section II.A.1 above, Ameren independently conducted a PPSI in April 2012 without EPA approval or oversight and submitted its findings in a report dated May 8, 2012. The EPA and the Missouri Department of Natural Resources (MDNR) will be requiring a complete Site Investigation and Removal Site Evaluation (an Integrated Site Evaluation) for the Ameren substation property consisting of DPT Plume Mapping, soil and source area contaminant mapping and sampling surface and subsurface (soil samples and soil borings) to quantify contaminant mass and confirm contaminant source areas and evaluate and propose further response actions beyond the scope of this Action Memorandum.

State and Local Authorities' Roles

2. State and local actions to date

The EPA is the lead agency in the management of the various investigative, enforcement and remediation efforts at the Site. MDNR is the support agency and is a signatory to the OU3 Consent Decree. MDNR receives funding through the EPA's Management Assistance Cooperative Agreement program.

3. Potential for continued state/local response

MDNR will continue to have an active role and intends to be a signatory to the settlement agreement for implementing these response actions. The city of St. Charles is directly involved as the owner/operator of the affected PWS. This response action directly affects the City's water production and treatment and the quality of water in the aquifer from which its water is produced.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT AND STATUTORY AND REGULATORY AUTHORITIES

Site conditions meet the criteria for response action under 40 CFR § 300.415(b)(2) of the National Contingency Plan (NCP) under the following criteria:

Actual or potential contamination of drinking water supplies or sensitive ecosystems [40 CFR § 300.415(b)(2)(ii)]

Analytical results of sampling DPT temporary wells, PWS wells and monitoring wells at the Site indicate that the groundwater in the area is contaminated with VOCs at levels which threaten the City's drinking water supply. The contaminant plume is in the City's drinking water wellfield. One of the City's wells has already been impacted and has been voluntarily suspended from use for the water supply. This well may be used as an extraction well to intercept contaminated groundwater before it is drawn further north into additional PWS wells in the drinking water wellfield. A formerly used city well had become contaminated at the Site prior to being abandoned due to mechanical malfunctions.

The availability of other appropriate federal or state response mechanisms to respond to the release [40 CFR § 300.415(b)(2)(viii)]

No federal or state response mechanisms are available to address the problems or take the necessary immediate actions at the Site.

Other situations or factors that may pose threats to public health or welfare of the United States or the environment [40 CFR § 300.415(b)(2)(ii)]

The extent of groundwater contamination has not yet been fully determined. Contamination has been found in the PWS aquifer north of Missouri Highway 370 at levels exceeding the MCL and it is continuing to migrate northerly toward the City's high-production, primary water supply well. Thus, the full extent of the impact to the drinking water supply is unknown at this time.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this Site may present an imminent and substantial endangerment to public health, or welfare, or the environment based on the presence of VOCs in the aquifer of the municipal drinking water wellfield at levels exceeding remedial action levels/state standards and on the consistent occurrence of VOCs in municipal PWS drinking water wells above detection limits.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed action description

Through DPT Plume Mapping, a significant slug of contamination has been found in the alluvial aquifer downgradient of OU1 and of the Ameren substation property (see map, Attachment 1). Both of these source areas are consistent with a commingled contaminant plume migrating into the EPW. This plume of contamination requires that prompt, aggressive response actions be implemented as soon as practical to protect the City's PWS. Therefore, the EPA expects that the following four major emergency action response actions will be implemented:

- **Soil and Groundwater Sampling and Testing**

The DPT Plume Mapping will continue until the zone of higher DCE contaminant concentrations in the vicinity of EPW PWS W5, W6, W7, W8 and W9 are adequately characterized to better describe the threat to these wells. The DPT Plume Mapping may also identify potential secondary supplemental sources of possible groundwater contamination that will be reported to the EPA for evaluation, investigation and appropriate follow-up action. The aerial extent of the DPT Plume Mapping will include all of the original study areas including the demolition and construction fill areas west of Huster Road, the agricultural areas south of the substation and other areas in the vicinity of the known contaminant plume that have not yet been evaluated, including the sewer lines.

- **Expansion of Elm Point Wellfield**

The EPW will be expanded to the north and new wells will be installed to replace W5, W6 and W8. The new wells may be either two or three new vertical wells or a new radial/collector well connected to the City's raw water collection system for delivery to the Elm Point Water Treatment Plant. The revised and updated groundwater modeling will be calibrated based on the best technical information concerning aquifer characteristics, pumping effects, etc. The design and construction schedule for the new PWS wells will provide for the new wells to be in service as soon as practical. The wellfield expansion will be funded by the PRPs and will be conducted either as a "turnkey" PRP project or will be implemented through the City's acquisition, construction and operation processes.

- **Convert City Well W5 to Temporary Containment Well**

The TCW system will be operated to contain the slug of contamination in the vicinity of W5 and to prevent the continuing migration of contaminants toward W7, W9 (radial/collector well) and the new expansion wells. The design will consider supplemental, localized, shallow extraction well(s) to enhance contaminant removal and containment and will consider other technological enhancements (e.g., in situ oxidation, enhanced bioremediation, etc.). The TCW will be operated until it achieves nondetects at 4 ppb DCE (or the other COCs identified in the 2007 Consent Decree at their respective detection limits) for several consecutive quarterly monitoring periods.

- **Air Stripping System Design and Bid Package Preparation**

A final design and bid package will be prepared for the new Air Stripping System at the Elm Point Water Treatment Plant (EPWTP) to treat the finished drinking water prior to delivery to the distribution system. The triggers for construction of the air strippers will be any detects of DCE (or the other COCs identified in the 2007 Consent Decree at their respective detection limits) in the blended raw water entering the EPWTP from the newly configured expanded EPW. The completed air strippers will then be available on standby and will be operated if detections of the 2007 Consent Decree COCs are identified in the finished drinking water at the point of entering the city of St. Charles' distribution system. The final design and bid package will be completed as soon as practical.

2. Contribution to remedial performance

Performance of this removal action will contribute to the overall remediation of the Site by preventing expansion of the contaminant plume and preventing VOCs from entering the City's drinking water. The EPA will evaluate the effectiveness of this response action to prevent contamination from reaching the municipal drinking water system and determine if additional removal actions or additional remedial actions are necessary in the future.

3. Engineering evaluation/cost analysis

Not applicable.

4. Applicable or relevant and appropriate requirements

The National Oil and Hazardous Substances Pollution Contingency Plan at 40 CFR 300.415 requires that removal actions shall, to the extent practicable considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental or facility siting laws.

Federal:

- MCLs (40 CFR part 141),
- NPDES (40 CFR part 400 - 424)

State:

A letter dated June 13, 2012, has been sent to MDNR requesting a list of state ARARs that may apply to this action.

5. Project schedule

This action can begin immediately upon approval of this Action Memorandum and will coincide with the effective date of a Settlement Agreement and AOC with the OU3 PRPs. The time period for each of the actions required under this Action Memorandum will be specified in the work plan submitted pursuant to the Statement of Work under the AOC.

B. Estimated Costs

This will be PRP lead.

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

If the proposed removal action is not approved, VOCs from the Site will enter the City's drinking water, potentially putting the population of St. Charles at risk for health problems related to VOC exposure.

VII. OUTSTANDING POLICY ISSUES

None.

VIII. ENFORCEMENT

See attached Confidential Enforcement Addendum for this Site (Attachment II). For NCP consistency purposes, it is not a part of this Action Memorandum.

IX. RECOMMENDATION

This decision document represents the selected removal action for the Site developed in accordance with CERCLA, as amended, and is not inconsistent with the NCP. This decision is based on the Administrative Record for the Site. Conditions at the Site meet the NCP section 300.415(b) criteria for a removal.

It is recommended that you approve the proposed enforcement lead removal action.

Approved:



Cecilia Tapia, Director
Superfund Division

6/25/12

Date

Attachments

APPENDIX B

2007 CONSENT DECREE

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA
and STATE OF MISSOURI
Plaintiffs,

v.

Findett Real Estate Corp. *et al.*,

Defendants.

CIVIL ACTION NO. 07-1215

REMEDIAL DESIGN/REMEDIAL ACTION CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of Future Response Costs incurred and to be incurred by EPA and the Department of Justice for response actions at Operable Unit 03 of the Hayford Bridge Road Groundwater Superfund Site ("Site") in St. Charles, Missouri, together with accrued interest; and (2) performance of response work by the defendants at Operable Unit 03 of the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Missouri (the "State") on October 10, 2005, of negotiations with potentially responsible parties ("PRPs") regarding the implementation of the Remedial Design and Remedial Action for Operable Unit 03 of the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of Interior on October 10, 2005 of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

E. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from OU 03 of the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The Settling Federal Agency does not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendants.

F. In response to a release or a substantial threat of a release of hazardous substances into the groundwater at the Site in the area identified as OU 03, a group of PRPs completed a Remedial Investigation/Feasibility Study ("RI/FS") under an Administrative Order on Consent and pursuant to 40 C.F.R. § 300.430. The EPA approved the RI/FS Report submitted by the PRPs in June, 2005.

G. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the OU 03 FS and of the proposed plan for the OU 03 remedial action on August 5, 2005, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

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H. The decision by EPA on the Remedial Action to be implemented at OU 03 of the Site is embodied in a Record of Decision ("ROD"), executed on September 28, 2005, on which the State has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

1. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by the Settling Performing Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

J. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Performing Defendants shall constitute a response action taken or ordered by the President.

K. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of OU 03 of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and the State and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Performing Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Performing Defendant with respect to OU 03 of the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Performing Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Performing

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Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Performing Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

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

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 110.

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

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 90 of Section XXI. Future Response Costs shall also include all Interim Response Costs.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between October 1, 2005 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

"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

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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.

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

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

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work ("SOW").

"Operable Unit 03" or "OU 03" shall mean the contaminated groundwater plume underlying property in St. Charles, Missouri that is north and northeast of property at 8 Governor Drive and bounded by Elm Point Road to the south, Hayford Bridge Road to the west, Deerfield Village to the east, and closed municipal well W-3 to the north. OU 03 is depicted on the Map, Appendix C.

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

"Parties" shall mean the United States, the State of Missouri, and the Settling Defendants.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section VII of the ROD and Section II of the SOW.

"Plaintiffs" shall mean the United States and the State of Missouri.

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

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Operable Unit 03 of the Site signed on September 28, 2005, by the Regional Administrator of EPA Region VII, and all attachments thereto. The ROD is attached as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Performing Defendants to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by the Settling Performing Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

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"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 10 of this Consent Decree and approved by EPA, and any amendments thereto.

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

"Settling Defendants" shall mean Settling Performing Defendants and Settling Non-Performing Defendants.

"Settling Federal Agency" shall mean the United States Department of Energy and any successor departments or agencies.

"Settling Non-Performing Defendants" shall mean those Parties identified in Appendix D.

"Settling Performing Defendants" shall mean those Parties identified in Appendix E.

"Site" shall mean the Hayford Bridge Road Groundwater Superfund Site, consisting of three operable units and encompassing approximately 200 acres, located in St. Charles County, Missouri, approximately 25 miles west of St. Louis, and depicted generally on the map attached as Appendix C.

"State" shall mean the State of Missouri.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at OU 03 of the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Performing Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA, the Settling Federal Agency and any federal natural resources trustee.

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

"Work" shall mean all activities Settling Performing Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. **Objectives of the Parties.** The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at OU 03 of the Site by the Settling Performing Defendants, to reimburse Future Response Costs of the United States, and to resolve the claims of Plaintiffs against Settling Defendants, the claims of the State against the Settling Federal

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Agency, and the claims of the Settling Defendants which have been or could have been asserted against the United States with regard to this Site as provided in this Consent Decree.

6. Commitments by Settling Defendants and Settling Federal Agency.

a. Settling Performing Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all Work Plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Performing Defendants and approved by EPA pursuant to this Consent Decree. Settling Performing Defendants shall also reimburse the United States for Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Performing Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Performing Defendants to implement the requirements of this Consent Decree, the remaining Settling Performing Defendants shall complete all such requirements.

c. As negotiated between Settling Non-Performing Defendants and Settling Performing Defendants, the Settling Non-Performing Defendants individually have agreed to pay the Settling Performing Defendants, within thirty (30) days after this Consent Decree is lodged with the Court, all monies necessary to satisfy any of the claims Settling Performing Defendants have against the Settling Non-Performing Defendants arising pursuant to this Consent Decree. The Settling Federal Agency shall reimburse the Settling Performing Defendants for their response costs, as provided in this Consent Decree. Accordingly, subject to the United States' and the State's reservations of rights set forth in Paragraph 89 of Section XXI (Covenants by Plaintiffs), the Settling Non-Performing Defendants and the Settling Federal Agency shall have no further obligations under this Consent Decree except as otherwise specifically set forth in this Consent Decree.

7. Compliance With Applicable Law. All activities undertaken by Settling Performing Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable Federal and state laws and regulations. Settling Performing Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a Federal or state permit or approval, Settling Performing Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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b. The Settling Performing Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any Federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK BY SETTLING PERFORMING DEFENDANTS

9. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Performing Defendants pursuant to Sections VI (Performance of the Work by Settling Performing Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 20 days after the lodging of this Consent Decree, Settling Performing Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Performing Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Performing Defendants propose to change a Supervising Contractor, Settling Performing Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Performing Defendants in writing. Settling Performing Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Performing Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Performing Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Performing Defendants may seek relief under the provisions of Section XVIII (Force Majeure).

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10. Remedial Design.

a. Within 45 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 9, Settling Performing Defendants shall submit to EPA and the State a Work Plan for the design of the Remedial Action at OU 03 of the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree and/or SOW. Upon its approval by EPA, the RD Work Plan shall be incorporated into and become enforceable under this Consent Decree. Within 45 days after EPA's issuance of an authorization to proceed, the Settling Performing Defendants shall submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The RD Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Performing Defendants shall implement the Remedial Design Work Plan. The Settling Performing Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Performing Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

11. Remedial Action.

a. Settling Performing Defendants shall submit to EPA and the State, in accordance with the schedule in the SOW, a Work Plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan" or "RA Work Plan"). The RA Work Plan shall provide for implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, and the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the RA Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the RA Work Plan, Settling Performing Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by the RA Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include the following: (1) schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) groundwater monitoring

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plan; (5) methods for satisfying permitting requirements, if any; (6) methodology for implementation of the Operation and Maintenance Plan; (7) methodology for implementation of the Contingency Plan; (8) tentative formulation of the Remedial Action team; (9) construction quality control plan, if any construction is required; and (10) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Settling Performing Defendants' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Performing Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Performing Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Performing Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

12. The Settling Performing Defendants shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

13. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the Work specified in the SOW and/or in Work Plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such Work Plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 13. and Paragraph 51. only, the "scope of the remedy selected in the ROD" includes:

i) monitored natural attenuation to prevent contamination from reaching the Elm Point Wellfield and to reduce the contamination in the aquifer – monitoring to measure and track the degradation rates of the contamination and to verify that (a) the plume is not expanding, (b) the Elm Point Wellfield remains uncontaminated due to contaminants emanating from the Site, and (c) the influent stream to the city's water treatment plant remains uncontaminated;

ii) financially participating in the planned upgrade to the aeration unit at the city's water treatment plant so that it can effectively remove volatile organic compounds from the OU 03 aquifer and to minimize maintenance for the city to operate;

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iii) remedial contingency plan to be developed if the groundwater sampling results indicate that the Performance Standards will not be reached within 10 to 20 years or if the Elm Point Wellfield becomes endangered (as described in subparagraph 13.b.i. above; and

iv) institutional controls to ensure that no drinking water wells will be installed into the OU 03 contaminated aquifer, contaminated groundwater will not be used for potable purposes and ponds/lakes will not be constructed below the upper cohesive soils and into the contaminated aquifer.

c. If Settling Performing Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 71. (record review). The SOW and/or related Work Plans shall be modified in accordance with final resolution of the dispute.

d. Settling Performing Defendants shall implement any Work required by any modifications incorporated in the SOW and/or in Work Plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

14. Settling Performing Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the Work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

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

(1) The Settling Performing Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Performing Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and state will be determined by the Settling Performing Defendants following the award of the contract for Remedial Action construction. The Settling Performing Defendants shall provide the information required by Paragraph 15.a.1. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

VII. REMEDY REVIEW

16. **Periodic Review.** Settling Performing Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

17. **EPA Selection of Further Response Actions.** If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for OU 03 of the Site in accordance with the requirements of CERCLA and the NCP.

18. **Opportunity To Comment.** Settling Performing Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

19. **Settling Performing Defendants' Obligation To Perform Further Response Actions Due to Contaminants Emanating From the Site.** If EPA selects further response actions for the Site, the Settling Performing Defendants shall undertake such further response actions to protect the public from exposure to groundwater exceeding the Performance Standards for the COCs emanating from the Site, as set forth in Section II of the ROD. Settling Performing Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the Remedial Action is not protective of human health and the environment, or (2) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 71. (record review).

20. **Submissions of Plans.** If Settling Performing Defendants are required to perform further response actions pursuant to Paragraph 19., they shall submit a Remedial Contingency Plan for such Work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Performing Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

21. Settling Performing Defendants shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality

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Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Settling Performing Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Performing Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Performing Defendants shall ensure that EPA its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Performing Defendants in implementing this Consent Decree. In addition, Settling Performing Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Performing Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Settling Performing Defendants may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Settling Performing Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Performing Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Performing Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

22. Upon request, the Settling Performing Defendants shall allow split or duplicate samples to be taken by EPA or their authorized representatives. Settling Performing Defendants shall notify EPA and the State not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Performing Defendants to take split or duplicate samples of any samples it takes as part of the United States' oversight of the Settling Performing Defendants' implementation of the Work.

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23. Settling Performing Defendants shall submit to EPA two (2) copies and the State two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Performing Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

24. Notwithstanding any provision of this Consent Decree, the United States hereby 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.

IX. ACCESS AND INSTITUTIONAL CONTROLS

25. For any property where access and/or land/water use restrictions are needed to implement this Consent Decree, Settling Performing Defendants shall use best efforts to secure from those persons who own or control such property:

a. an agreement to provide access thereto for Settling Performing Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to,

- (1) monitoring the Work;
- (2) verifying any data or information submitted to the United States or the State;
- (3) conducting investigations relating to OU 03 contamination;
- (4) obtaining samples;
- (5) assessing the need for, planning, or implementing additional response actions at OU 03;
- (6) assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) implementing the Work pursuant to the conditions set forth in Paragraph 90 of this Consent Decree;
- (8) assessing Settling Performing Defendants' compliance with this Consent Decree; and
- (9) determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. an agreement or other legally enforceable property use restriction, such as an ordinance pursuant to Paragraph 27, enforceable by the Settling Performing Defendants and the United States or, if an ordinance is enacted pursuant to Paragraph 27, enforceable by the appropriate governmental entity, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or

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protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions are as follows: 1) no private drinking water wells installed into the OU 03 contaminated aquifer; 2) contaminated groundwater not to be used for potable purposes, and 3) ponds/lakes not to be constructed below the upper cohesive soils and into the contaminated aquifer; and

c. if EPA determines that an ordinance enacted pursuant to Paragraph 27 of this Consent Decree does not or ceases to adequately address access requirements and/or land/water use restrictions, EPA may request the execution and recordation in the Recorder's Office of St. Charles County, State of Missouri, of an easement or other legally enforceable property use restriction, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a. of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 25.b. of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to one or more of the following persons: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Settling Performing Defendants and their representatives, and/or (iv) other appropriate grantees. Within 45 days of EPA's request that this easement or other legally enforceable property use restriction be executed and recorded, Settling Performing Defendants shall submit to EPA for review and approval with respect to such property:

- (1) draft easement, in substantially the form attached hereto as Appendix F, or other legally enforceable property use restriction that is enforceable under the laws of the State of Missouri, and
- (2) current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement or other legally enforceable property use restriction to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Performing Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within 30 days of EPA's approval and acceptance of the easement or other legally enforceable property use restriction and the title evidence, Settling Performing Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder of Deeds of St. Charles County. Within 30 days of recording the easement or other legally enforceable property use restriction, Settling Performing Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement, or other legally enforceable property use restriction, showing the clerk's recording stamps. If the easement or other legally enforceable property use restriction is to be conveyed to the United States, the easement or other legally enforceable property use restriction and title evidence (including final title evidence) shall be prepared in accordance with the U.S.

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Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.27.

26. For purposes of Paragraphs 25. of this Consent Decree, "best efforts" includes, as the United States deems appropriate, the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs 25.a. or 25.b. of this Consent Decree are not obtained within six (6) months after EPA's approval of the "Area of Institutional Control" (AIC) map which is submitted as part of the RD/RA Construction Completion Report, (b) any access easements or restrictive easements or other legally enforceable property use restriction required by Paragraph 25.c. of this Consent Decree are not submitted to EPA in draft form within the time frame required by Paragraph 25.c. of this Consent Decree, or (c) Settling Performing Defendants are unable to obtain an agreement pursuant to Paragraph 25.c.(2) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this consent decree within the time frame required by Paragraph 25.c. of this Consent Decree, Settling Performing Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Performing Defendants have taken to attempt to comply with Paragraph 25 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Performing Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or other legally enforceable property use restriction, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Performing Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

27. Settling Performing Defendants shall communicate with the City of St. Charles for the purpose of obtaining an ordinance meeting the requirements for Institutional Controls as specified in the ROD. Prior to submitting proposed language for an ordinance to the City of St. Charles, Settling Performing Defendants shall submit such language to EPA for approval in accordance with the schedule established in the Remedial Design Work Plan. If changes are made to the language of the proposed ordinance subsequent to EPA's approval, Settling Performing Defendants shall submit a copy of the final proposed ordinance to EPA prior to enactment of any such ordinance by the City of St. Charles. The Settling Performing Defendants shall complete the ordinance process within six (6) months after EPA's approval of the "Area of Institutional Control" (AIC) map which is submitted as part of the RD/RA Construction Completion Report. If an approved ordinance is enacted, the status of the ordinance will be documented in groundwater monitoring reports.

28. If an Institutional Control ordinance acceptable to EPA cannot be enacted in accordance with the schedule established in the SOW, then the Settling Performing Defendants shall obtain restrictive covenants and easements to implement the Institutional Controls. Within 15 days after EPA determines that restrictive covenants and easements are necessary, Settling

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Performing Defendants shall submit to EPA for review and approval draft restrictive covenants and easements, consistent with Section IX of the Consent Decree. Within 120 days after EPA approval of the restrictive covenants and easements and title evidence referenced in Paragraph 25 of the Consent Decree, or within 120 days after EPA approval of the AIC, whichever is later, Settling Performing Defendants shall use best efforts to obtain signatures from the various property owners and file the restrictive covenants and easements with the St. Charles County Recorder of Deeds.

29. If EPA determines that additional land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Performing Defendants shall cooperate with EPA's efforts to secure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Settling Performing Defendants shall submit to EPA and the State of Missouri electronic copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Performing Defendants or their contractors or agents in the previous month; (c) identify all Work Plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of Work Plans, which are scheduled for the next six weeks, and provide other information relating to the progress of construction; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the Work Plans or other schedules that Settling Performing Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Performing Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the entry of this Consent Decree until EPA notifies the Settling Performing Defendants pursuant to Paragraph 51.b. of Section XIV (Certification of Completion). If requested by EPA, Settling Performing Defendants shall also provide briefings for EPA to discuss the progress of the Work.

32. The Settling Performing Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of Work Plans, no later than seven days prior to the performance of the activity.

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33. Upon the occurrence of any event during performance of the Work that Settling Performing Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Performing Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region VII, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within 20 days of the onset of such an event, Settling Performing Defendants shall furnish to the United States a written report, signed by the Settling Performing Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Performing Defendants shall submit a report setting forth all actions taken in response thereto.

35. Settling Performing Defendants shall submit two (2) copies of all plans, reports, and data required by the SOW, the RD Work Plan, the RA Work Plan, or any other approved plans to EPA and two (2) copies to the State in accordance with the schedules set forth in such plans. Upon request by EPA, Settling Performing Defendants shall submit in electronic form all portions of any report or other deliverable Settling Performing Defendants are required to submit pursuant to the provisions of this Consent Decree.

36. All reports and other documents submitted by Settling Performing Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Performing Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Performing Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Performing Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Performing Defendants at least one notice of deficiency and an opportunity to cure within 20 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37.(a), (b), or (c), Settling Performing Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA

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modifies the submission to cure the deficiencies pursuant to Paragraph 37.(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

39. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 37.(d), Settling Performing Defendants shall, within 20 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 20-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 40. and 41.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37.(d), Settling Performing Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Performing Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

40. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Performing Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Performing Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

41. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Performing Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Performing Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

42. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

43. Within 20 days of lodging this Consent Decree, Settling Performing Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project

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Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Performing Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Performing Defendants' Project Coordinator shall not be an attorney for any of the Settling Performing Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

44. The United States may designate other representatives, including, but not limited to, EPA and State employees, and Federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator ("OSC") by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

XIII. PERFORMANCE GUARANTEE

45. In order to ensure the full and final completion of the Work, Settling Performing Defendants shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of \$1,120,000 (hereinafter "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:

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

b. One or more irrevocable letters of credit, payable to EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

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

e. A demonstration by one or more Settling Performing Defendants that each such Settling Performing Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with

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respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Settling Performing Defendant, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Settling Performing Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

46. Settling Performing Defendants have selected, and EPA has approved, as initial Performance Guarantees a surety bond pursuant to Paragraph 45(a), an irrevocable letter of credit pursuant to Paragraph 45(b), and a demonstration of satisfaction of financial test criteria pursuant to Paragraph 45(e) with respect to Pharmacia Corporation, in the forms attached hereto as Appendix G. Within ten days after entry of this Consent Decree, Settling Performing Defendants shall execute or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantees legally binding in a form substantially identical to the documents attached hereto as Appendix G, and such Performance Guarantees shall thereupon be fully effective. Within thirty days of entry of this Consent Decree, Settling Performing Defendant(s) shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantees legally binding to the EPA Regional Financial Management Officer in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree and to the United States and EPA as specified in Section XXVI.

47. If at any time during the effective period of this Consent Decree, the Settling Performing Defendant(s) provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 45(e) or Paragraph 45(f) above, such Settling Performing Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Consent Decree, and the terms "current closure cost estimate" "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

48. In the event that EPA determines at any time that a Performance Guarantee provided by any Settling Performing Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section; whether due to an increase

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in the estimated cost of completing the Work or for any other reason, or in the event that any Settling Performing Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Performing Defendant(s), within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty days of any Settling Performing Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 45 of this Consent Decree that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Performing Defendants shall follow the procedures set forth in Paragraph 50(b)(ii) of this Consent Decree. Settling Performing Defendants' inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Performing Defendant(s) to complete the Work in strict accordance with the terms hereof.

49. The commencement of any Work Takeover pursuant to Paragraph 90 of this Consent Decree shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraph 45(a), (b), (c), (d), or (f), and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 45(e), Settling Performing Defendant(s) shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

50. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Settling Performing Defendant(s) believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 45 above, Settling Performing Defendant(s) may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Settling Performing Defendant(s) shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Performing Defendants shall follow the procedures set forth in Paragraph 50(b)(ii) of this Consent Decree. If EPA decides to accept such a proposal, EPA shall notify the petitioning Settling Performing Defendant(s) of such decision in writing. After receiving EPA's written acceptance, Settling Performing Defendant(s) may reduce the amount of the Performance Guarantee in accordance

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with and to the extent permitted by such written acceptance. In the event of a dispute, Settling Performing Defendant(s) may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 48 or 50(b) of this Consent Decree.

b. Change of Form of Performance Guarantee.

(i) If, after entry of this Consent Decree, Settling Performing Defendant(s) desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Settling Performing Defendant(s) may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 50(b)(ii) of this Consent Decree. Any decision made by EPA on a petition submitted under this subparagraph (b)(i) shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Performing Defendant(s) pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(ii) Settling Performing Defendant(s) shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Performing Defendant(s) shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Regional Financial Management Officer in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree. EPA shall notify Settling Performing Defendant(s) in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Settling Performing Defendant(s) shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Settling Performing Defendant(s) shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Regional Financial Management Officer within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree and to the United States and EPA as specified in Section XXVI.

c. Release of Performance Guarantee. If Settling Performing Defendant(s) receive written notice from EPA in accordance with Paragraph 51 hereof that the Work has been

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fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Performing Defendant(s) in writing, Settling Performing Defendant(s) may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Settling Performing Defendant(s) shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Settling Performing Defendant(s) may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XIV. CERTIFICATION OF COMPLETION

51. Completion of the Work.

a. Within 90 days after Settling Performing Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Performing Defendants and EPA. If, after the pre-certification inspection, the Settling Performing Defendants still believe that the Work has been fully performed, Settling Performing Defendants shall submit a written report in accordance with the Schedule in Section V. of the SOW, by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Performing Defendant or the Settling Performing Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Performing Defendants in writing of the activities that must be undertaken by Settling Performing Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Performing Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Performing Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Performing Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Performing Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in

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accordance with this Consent Decree, EPA will so notify the Settling Performing Defendants in writing.

XV. EMERGENCY RESPONSE

52. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Performing Defendants shall, subject to Paragraph 53., immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Performing Defendants shall notify the EPA Emergency Response Unit, Region VII. Settling Performing Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Performing Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Performing Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

53. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action by the Settling Performing Defendants, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants by Plaintiffs).

XVI. PAYMENTS FOR RESPONSE COSTS

54. **Payments for Future Response Costs.**

a. Settling Performing Defendants shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Settling Performing Defendants a bill requiring payment that includes a cost summary which reflects costs incurred by EPA and DOJ and their contractors. Settling Performing Defendants shall make all payments within 30 days of Settling Performing Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 55. Settling Performing Defendants shall make all payments required by Paragraph 54.a. by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 0795 and DOJ Case Number 90-11-2-417/2. Settling Performing Defendants shall send the check(s) to:

EPA Hazardous Substance Superfund
EPA Region VII

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P.O. Box 371099M
Pittsburgh, PA 15251

b. At the time of payment, Settling Performing Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. Future Response Costs shall be deposited in the Hayford Bridge Road Groundwater Superfund Site Special Account within the EPA Hazardous Substance Superfund.

d. Settling Performing Defendants shall fund a portion of the planned upgrade to the aeration unit at the City of St. Charles, Missouri's water treatment plant in an amount to be negotiated with the City of St. Charles. At the time payment is made to the City of St. Charles, Settling Performing Defendants shall send notice that payment has been made to the United States and to EPA in accordance with Section XXVI (Notices and Submissions). The Settling Performing Defendants shall use best efforts to facilitate the design and construction of the aeration upgrade within 24 months of EPA's notice to proceed pursuant to Paragraph 9 of this Consent Decree. Settling Performing Defendants shall make best efforts to obtain cooperation by the City of St. Charles and shall report to EPA, in a timely manner, if the schedule will not be achieved. For purposes of Paragraph 54.d. of this Consent Decree, "best efforts" includes, as the United States deems appropriate, the payment of a reasonable sum of money to the City of St. Charles, Missouri to fund the planned upgrade.

55. Settling Performing Defendants may contest payment of any Future Response Costs under Paragraph 54. if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Performing Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 54. Simultaneously, the Settling Performing Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Missouri and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Performing Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), 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. Simultaneously with establishment of the escrow account, the Settling Performing Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within five (5) days of the resolution of the dispute, the Settling Performing Defendants shall pay the sums due (with accrued interest) to the United

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States in the manner described in Paragraph 54. If the Settling Performing Defendants prevail concerning any aspect of the contested costs, the Settling Performing Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 54. Settling Performing Defendants 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 XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Performing Defendants' obligation to reimburse the United States for its Future Response Costs.

56. In the event that the payments required by Subparagraph 54.a. are not made within 30 days of Settling Performing Defendants' receipt of the bill, Settling Performing Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Performing Defendants' 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 Settling Performing Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 75. The Settling Performing Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 54.

57. Payment by Settling Non-Performing Defendants. As negotiated between Settling Performing Defendants and Settling Non-Performing Defendants, each Settling Non-Performing Defendant (except Honeywell) shall pay to Settling Performing Defendants, within thirty (30) days after this Consent Decree is lodged with the Court, all monies necessary to satisfy the claims of the Settling Performing Defendants against the Settling Non-Performing Defendants arising pursuant to this Consent Decree. The amount to be paid by each Settling Non-Performing Defendant is designated on the same line as their name appears in Appendix D of this Consent Decree. Pursuant to Paragraph 58 of this Consent Decree, the United States Department of Energy will pay the amount designated for Honeywell in Appendix D. At the time of payment, each Settling Non-Performing Defendant shall send notice that payment has been made to the United States and to EPA in accordance with Section XXVI (Notices and Submissions). In the event a Settling Non-Performing Defendant fails to make timely payment under this Paragraph, such Settling Non-Performing Defendant shall pay Interest on the unpaid balance to Settling Performing Defendants. Interest shall begin to accrue on the date payment was due. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs or Settling Performing Defendants by virtue of Settling Non-Performing Defendants' failure to make timely payment under this Consent Decree.

58. Payment by Settling Federal Agency.

a. As soon as reasonably practicable after the Effective Date of this Consent Decree, and consistent with subparagraph 58.b., the United States Department of Energy, on behalf of itself and Honeywell, shall cause to be paid to the Settling Performing Defendants the amount designated on the same line as Honeywell's name appears in Appendix D of this Consent Decree in reimbursement of the Settling Performing Defendants' future response

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costs. Payment to the Settling Performing Defendants shall be made by Electronic Funds Transfer in accordance with instructions provided by the Settling Performing Defendants.

b. If the payment to the Settling Performing Defendants required by subparagraph 58.a. is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the Effective Date of this Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

59. In the event that the payment required by Paragraph 58 is not made within 30 days of the Effective Date of this Consent Decree, Interest on the unpaid balance shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the effective date of this Consent Decree and accruing through the date of the payment.

60. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agency under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that the Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

XVII. INDEMNIFICATION AND INSURANCE

61. Settling Performing Defendants' Indemnification of the United States.

a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of Settling Performing Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Performing Defendants shall indemnify, save and hold harmless the United States (with the exception of the Settling Federal Agency) and the State and their officials, agents, employees, contractors, subcontractors, or 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 Settling Performing Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Performing Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Performing Defendants agree to pay the United States (with the exception of the Settling Federal Agency) and the State all costs they incur 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 or the State based on negligent or other wrongful acts or omissions of Settling Performing Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Settling Performing Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Performing Defendants nor any such contractor shall be considered an agent of the United States or the State.

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b. The United States and the State shall give Settling Performing Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 61.a. and shall consult with Settling Performing Defendants prior to settling such claim.

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

63. No later than 15 days before commencing any on-site Work, Settling Performing Defendants or their Supervising Contractor shall secure, and shall maintain comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of two million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Performing Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Performing Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Performing Defendants shall provide to EPA certificates of such insurance and, if requested, a copy of each insurance policy. Settling Performing Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Performing Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Performing Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVII. FORCE MAJEURE

64. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Performing Defendants, of any entity controlled by Settling Performing Defendants, or of Settling Performing Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Performing Defendants' best efforts to fulfill the obligation. The requirement that the Settling Performing Defendants 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 (1) as it is occurring and (2) following the potential force majeure such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

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65. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure the Settling Performing Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region VII, within 48 hours of when Settling Performing Defendants first knew that the event might cause a delay. Within seven (7) days thereafter, Settling Performing Defendants 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; the Settling Performing Defendants' rationale for attributing such delay to a force majeure if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Performing Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Performing Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Performing Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Performing Defendants shall be deemed to know of any circumstance of which Settling Performing Defendants, any entity controlled by Settling Performing Defendants, or Settling Performing Defendants' contractors knew or should have known.

66. If EPA agrees that the delay or anticipated delay is attributable to a force majeure the time for performance of the obligations under this Consent Decree 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 the Settling Performing Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure EPA will notify the Settling Performing Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

67. If the Settling Performing Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Performing Defendants 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 Settling Performing Defendants complied with the requirements of Paragraphs 64 and 65, above. If Settling Performing Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Performing Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

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XIX. DISPUTE RESOLUTION

68. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

69. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

70. **Statements of Position.**

a. In the event that the parties to the dispute cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 71. or Paragraph 72.

b. Within 21 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 71. or 72. Within seven (7) days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 71. or 72., the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 71. and 72.

71. **Disputes That Pertain to Selection or Adequacy of Response Action.** Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this

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Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

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

b. The Director of the Superfund Division, EPA Region VII, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 71.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 71.c. and 71.d.

c. Any administrative decision made by EPA pursuant to Paragraph 71.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 71.a.

72. Disputes That Do Not Pertain to Selection of Adequacy of Response Action. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 70., the Director of the Superfund Division, EPA Region VII, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph J of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

73. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise.

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Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 82. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

74. Settling Performing Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 75. and 76. to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Performing Defendants shall include completion of the activities under this Consent Decree or any Work Plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

75. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 75.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,500	1st through 14 th day
\$4,000	15th through 30 th day
\$11,000	31 st day and beyond

b. Compliance Milestones.

Requirements set forth in Paragraphs 10. (Remedial Design), 11. (Remedial Action), 13. (Modification of SOW) and 19. (Further Response Actions) and Sections IX (Access and Institutional Controls), XIII (Assurance of Ability to Complete Work), XV (Emergency Response), and XVI (Payments for Response Costs).

76. Stipulated Penalty Amounts - Reports.

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 15. (off-Site

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shipment notification), 63. (certificates of insurance), Section X (Reporting Requirements), and XIV (Certification of Completion):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 st through 14 th day
\$1,000	15 th through 30 th day
\$3,000	31 st day and beyond

77. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 90. of Section XXI (Covenants by Plaintiffs), Settling Performing Defendants shall be liable for a stipulated penalty in the amount of the then current estimated cost to complete the remaining Work.

78. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Performing Defendants of any deficiency; (2) with respect to a decision by the Director of the Waste Management Division, EPA Region VII, under Paragraph 71.b. or 72.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Performing Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

79. Following EPA's determination that Settling Performing Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Performing Defendants written notification of the same and describe the noncompliance. EPA may send the Settling Performing Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Performing Defendants of a violation.

80. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Performing Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Performing Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

EPA Hazardous Substances Superfund
EPA Region VII

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P.O. Box 371099M,
Pittsburgh, PA 15251

The check (s) shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region VII and Site/Spill ID #0795, the DOJ Case Number 90-11-2-417/2, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions).

81. The payment of penalties shall not alter in any way Settling Performing Defendants' obligation to complete the performance of the Work required under this Consent Decree.

82. Penalties shall continue to accrue as provided in Paragraph 78. during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Performing Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Performing Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Performing Defendants to the extent that they prevail.

83. If Settling Performing Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Performing Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 80.

84. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Performing Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(f) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(f) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

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85. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS BY PLAINTIFFS

86. In consideration of the actions that will be performed and the payments that will be made by the Settling Performing Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 89. of this Section, the United States and the State covenant not to sue or to take administrative action against Settling Performing Defendants pursuant to Sections 106 and 107(a) of CERCLA and state law for performance of the Work and for recovery of Future Response Costs. These covenants not to sue shall take effect upon the Effective Date. These covenants not to sue are conditioned upon the satisfactory performance by Settling Performing Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Performing Defendants and do not extend to any other person.

87. In consideration of the payments that will be made by the Settling Non-Performing Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 89. of this Section, the United States and the State covenant not to sue or to take administrative action against Settling Non-Performing Defendants pursuant to Sections 106 and 107(a) of CERCLA and state law for performance of the Work and for recovery of Future Response Costs. These covenants not to sue shall take effect as to each Settling Non-Performing Defendant upon the receipt of the complete payment required by that Settling Non-Performing Defendant pursuant to Paragraph 57 of Section XVI (Payments for Response Costs). These covenants not to sue are conditioned upon the satisfactory performance by Settling Non-Performing Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Non-Performing Defendants and do not extend to any other person.

88. In consideration of the payments that will be made by the Settling Federal Agency under the terms of this Consent Decree, and except as specifically provided in Paragraph 89 of this Section, EPA covenants not to take administrative action against the Settling Federal Agency pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Future Response Costs. In consideration of the payments that will be made by the Settling Federal Agency under the terms of this Consent Decree, and except as specifically provided in Paragraph 89 of this Section, the State covenants not to sue or to take administrative action against the Settling Federal Agency pursuant to Sections 106 and 107(a) of CERCLA and state law for performance of the Work and for recovery of Future Response Costs. EPA's and the State's covenants shall take effect upon the receipt of the payments required by Paragraph 58 of Section XVI (Payments for Response Costs). EPA's and the State's covenants are conditioned upon the satisfactory performance by the Settling Federal Agency of its obligations under this Consent Decree. These covenants extend only to the Settling Federal Agency and do not extend to any other person.

89. General reservations of rights. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and EPA and

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the Federal natural resource trustees and the State reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agency, with respect to all matters not expressly included within Plaintiffs' covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Settling Defendants and the Settling Federal Agency with respect to:

- a. claims based on a failure by Settling Defendants or the Settling Federal Agency to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based upon the Settling Defendants' or the Settling Federal Agency's ownership or operation of the Site, or upon the Settling Defendants' or the Settling Federal Agency' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants and the Settling Federal Agency;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of Federal or state law which occur during or after implementation of the Remedial Action; and
- g. liability of the Settling Performing Defendants, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 13. (Modification of the SOW or Related Work Plans);
- h. liability for additional operable units at the Site or the final response action;
- i. liability for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs; and
- j. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

90. **Work Takeover.**

(a) In the event EPA determines that Settling Performing Defendants have (i) ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Settling Performing Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide

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Settling Performing Defendants a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

(b) If, after expiration of the 10-day notice period specified in Paragraph 90(a), Settling Performing Defendants have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Settling Performing Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 90(b).

(c) Settling Performing Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 71 to dispute EPA's implementation of a Work Takeover under Paragraph 90(b). However, notwithstanding Settling Performing Defendants' 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 90(b) until the earlier of (i) the date that Settling Performing Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XIX (Dispute Resolution), Paragraph 71, requiring EPA to terminate such Work Takeover.

(d) After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII of this Consent Decree, in accordance with the provisions of Paragraph 49 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Settling Performing Defendant(s) fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 49, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Settling Performing Defendants shall pay pursuant to Section XVI (Payment for Response Costs).

91. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserve all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCY

92. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraph 94., Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the Work, past response actions, and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

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- b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site,
- c. any claims against the State of Missouri, including any department, agency or instrumentality of the State of Missouri under CERCLA Sections 107 or 113 related to the Site; or
- d. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Missouri Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraph 96. (Waiver of Claims Against De Micromis Parties) and Paragraph 101. (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 89 (b) -(d) or 89 (g)-(j), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

93. Covenant by Settling Federal Agency. The Settling Federal Agency hereby agrees not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Work, past response actions, and Future Response Costs as defined herein or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

94. The Settling Defendants reserve, and this Consent Decree is without prejudice to: (a) claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, 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 while acting within the scope of his 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, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a Federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA; and (b) contribution claims against the Settling Federal Agency in the event any claim is asserted by the United States against the Settling Defendants under the authority of or under Paragraphs 89(b)-(d) or 89(g)-(j) of Section XXI (Covenants by Plaintiffs), but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States against Settling Defendants.

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95. Nothing in this Consent Decree shall be deemed to constitute 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).

96. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants 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:

a. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site.

XXIII. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

97. Except as provided in Paragraph 96. (Waiver of Claims Against De Micromis Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 96. (Waiver of Claims Against De Micromis Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), 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.

98. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and the Settling Federal Agency are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. "Matters addressed" shall mean all Work required by this Consent Decree including payment of Future Response Costs.

99. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

100. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days of service or receipt of any

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Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

101. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants 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 by the United States 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 covenants not to sue set forth in Section XX1 (Covenants by Plaintiffs).

XXIV. ACCESS TO INFORMATION

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

103. **Business Confidential and Privileged Documents.**

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

b. The Settling Performing Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by Federal law. If the Settling Performing Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Performing Defendants.

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However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

104. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

105. Until 10 years after the Settling Performing Defendants' receipt of EPA's notification pursuant to Paragraph 51.b. of Section XIV (Certification of Completion of the Work), each Settling Performing Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Performing Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Performing Defendant 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 documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Performing Defendant (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 documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

106. At the conclusion of this document retention period, Settling Performing Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Performing Defendants shall deliver any such records or documents to EPA. The Settling Performing Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by Federal law. If the Settling Performing Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Performing Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

107. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed

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or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 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.

108. The United States acknowledges that the Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to Section 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.

XXVI. NOTICES AND SUBMISSIONS

109. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, except as otherwise specified in this Consent Decree or the SOW, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Settling Federal Agency, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-417/2

and

Chief, Environmental Defense Section
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 23986
Washington D.C. 20026-3986
Re: DJ # 90-11-6-17924

As to EPA:

Mr. Steve Auchterlonie
EPA Project Coordinator
U. S. EPA - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101

U.S. v. Findett Real Estate Corp. et al. Consent Decree Hayford Bridge Road Groundwater Site

and

**Mr. John Anderson
EPA Regional Financial Management Officer
U. S. EPA - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101**

As to the State:

**Candice McGhee
Missouri Department of Natural Resources
Hazardous Waste Program
P.O. Box 176
Jefferson City, MO 65102**

and

**Shelley A. Woods
Assistant Attorney General
Missouri Attorney General Office
P.O. Box 899
Jefferson City, Missouri 65102**

U.S. v. Findell Real Estate Corp. et al. Consent Decree Hayford Bridge Road Groundwater Site

As to the Settling Performing Defendants:

Kenny Hemmen
Settling Performing Defendants' Project Coordinator
Geotechnology, Inc.
11816 Lackland Road
St. Louis, MO 63146

and

William Ford
Lathrop & Gage L.C.
2345 Grand Blvd., Suite 2800
Kansas City, MO 64108

and

Eric Berry
Husch & Eppenberger, LLC
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105

XXVII. EFFECTIVE DATE

110. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

111. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

112. The following appendices are attached to and incorporated into this Consent Decree:

- "Appendix A" is the ROD.
- "Appendix B" is the SOW.
- "Appendix C" is the map of the Site.

U.S. v. Findett Real Estate Corp. et al. Consent Decree Hayford Bridge Road Groundwater Site

- "Appendix D" is the complete list of the Settling Non-Performing Defendants.
- "Appendix E" is the complete list of the Settling Performing Defendants.
- "Appendix F" is the Restrictive Covenant and Easement.
- "Appendix G" is the approved Performance Guarantee documentation.

XXX. COMMUNITY RELATIONS

113. Settling Performing Defendants shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Performing Defendants under the Plan. Settling Performing Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Performing Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

114. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Performing Defendants. All such modifications shall be made in writing.

115. Except as provided in Paragraph 13. (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Performing Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(B)(ii), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Performing Defendants.

116. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

117. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

U.S. v. Flindett Real Estate Corp. et al. Consent Decree Hayford Bridge Road Groundwater Site

118. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

119. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

120. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

121. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXIV. FINAL JUDGMENT

122. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

114. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 16th DAY OF August, 2007.


United States District Judge

U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Findett Real Estate Corp. et al.*, relating to the Hayford Bridge Groundwater Superfund Site.

FOR THE UNITED STATES OF AMERICA

6/29/07
Date



BRUCE S. GELBER
Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

6/29/07
Date



CYNTHIA M. FERGUSON
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Telephone: (202) 616-6560
Fax: (202) 514-4180
Email: cynthia.ferguson@usdoj.gov

U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

LOCAL COUNSEL:


CATHERINE L. HANA WAY
United States Attorney
Eastern District of Missouri

SUZANNE J. MOORE
Assistant United States Attorney
Eastern District of Missouri
U.S. Department of Justice
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, 20th Floor
St. Louis, Missouri 63102
Telephone: (314) 539-2200

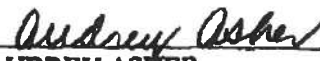
U.S. v. Findell Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Findell Real Estate Corp. et al.*, relating to the Hayford Bridge Groundwater Superfund Site.

12/22/06
Date


CECILIA TAPIA
Director, Superfund Division
U.S. Environmental Protection Agency
Region VII
901 N. Fifth Street
Kansas City, Kansas 66101

12/19/06
Date


AUDREY ASHER
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. Fifth Street
Kansas City, Kansas 66101

U.S. v. Findell Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v.*

Findell Real Estate Corp. et al., relating to the Hayford Bridge Groundwater Superfund Site.

3-13-07

Date

March, 2007

Date

FOR THE STATE OF MISSOURI



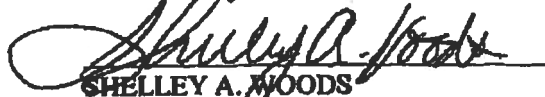
DOYLE CHILDERS

Director

Missouri Department of Natural Resources

P.O. Box 176

Jefferson City, Missouri 65102



SHELLEY A. WOODS

Assistant Attorney General

Missouri Attorney General Office

P.O. Box 899

Jefferson City, Missouri 65102

U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v.*

Findett Real Estate Corp. et al., relating to the Hayford Bridge Groundwater Superfund Site.

FOR ACF INDUSTRIES LLC

12/18/06
Date

Signature: William L. Finn
Name (print): William L. Finn
Title: President & CEO
Address: 101 Clark Street
Sr. Chester, Missouri 63301

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Julie O'Keefe
Title: Attorney for ACF Industries LLC
Address: Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
Ph. Number: 314-552-6679

U.S. v. Findell Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v.*

Findell Real Estate Corp. et al., relating to the Hayford Bridge Groundwater Superfund Site.

FOR Campbell Soup Company

1/4/07
Date

Signature: William J. O'Brien
Name (print): William J. O'Brien
Title: VP - Treasurer
Address: Campbell Soup Company
One Campbell Place
Camden, NJ 08103

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Anthony J. Kiefner
Title: Assistant Counsel
Address: Campbell Soup Company
One Campbell Place
Camden, NJ 08103
Ph. Number: 856-342-6140

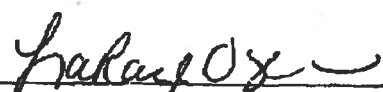
U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

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Findett Real Estate Corp. et al., relating to the Hayford Bridge Groundwater Superfund Site.

FOR GARGILL, INCORPORATED

1/2/07
Date

Signature: 
Name (print): LaRaya Osborne
Title: Vice President
Address: P.O. Box 5624
Minneapolis, MN 55440-5624

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): CT Corporation
Title: _____
Address: 405 Second Ave So.
Minneapolis, MN 55401
Ph. Number: 612-333-4315

Signature Page

The undersigned has executed this Hayford Bridge Road Site Operable Unit 3
Performance Agreement this 12th day of January, 2007.

CBS CORPORATION

Company name

Dorothy M. Alke

By Dorothy M. Alke

Vice President

Title

Subscribed and sworn to before me this 12th day of January,

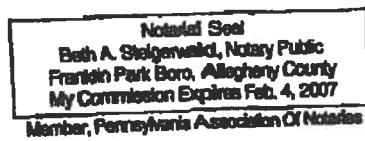
2007.

Beth A. Steigenwald

Notary Public

My Commission Expires:

2-4-2007

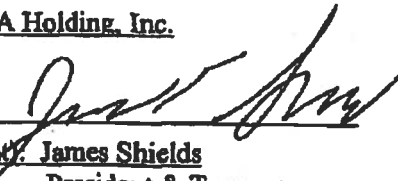



U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Findett Real Estate Corp. et al.*, relating to the Hayford Bridge Groundwater Superfund Site.

FOR CNA Holding, Inc.

12-19-06
Date

Signature:  
Name (print): James Shields
Title: President & Treasurer
Address: 1601 W. LBJ Fwy.
Dallas, TX 75234

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Gary Rowen
Title: Director EHS Law, Associate General Counsel
Address: 1601 W. LBJ Fwy.
Dallas, TX 75234
Ph. Number: 972-443-4525

U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v.*

Findett Real Estate Corp. et al., relating to the Hayford Bridge Groundwater Superfund Site.

FOR Cooper Industries LLC

1/5/2007
Date

Signature: Robert W. Teets
Name (print): Robert W. Teets
Title: Vice President, Environmental Affairs
and Risk Management
Address: P.O. Box 4446, Houston, TX 77210-4446

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

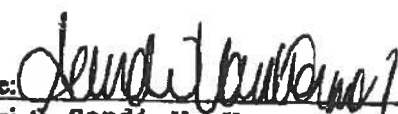
U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

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Findett Real Estate Corp. et al., relating to the Hayford Bridge Groundwater Superfund Site.

FOR The Dow Chemical Company

12/21/2007
Date

Signature: 
Name (print): Sandi VanWormer
Title: Senior Attorney
Address: 2030 Dow Center
Midland, MI 48674

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): CT Corporation System
Title: _____
Address: 120 South Central Ave.
Ste 400
Clayton, MO 63105
Ph. Number: _____


U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v.*

Findett Real Estate Corp. et al., relating to the Hayford Bridge Groundwater Superfund Site.

FOR E.I. du Pont de Nemours and Company

12/27/06
Date

Signature: 
Name (print): GUY V. JOHNSON
Title: CORPORATE COUNSEL
Address: LEGAL - 0-7090-2
1007 MARKET STREET
WILMINGTON,
DE 19898

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): GUY V. JOHNSON
Title: CORPORATE COUNSEL
Address: LEGAL 0-7090-2
1007 MARKET ST.
WILMINGTON, DE 19898
Ph. Number: (302) 774-5113

U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Findett Real Estate Corp. et al.*, relating to the Hayford Bridge Groundwater Superfund Site.

FOR FINDETT REAL ESTATE CORP.

Aug 9, 2006
Date

Signature: *George E. Garrison*
Name (print): GEORGE E. GARRISON
Title: PRESIDENT
Address: 8 GOVERNOR DRIVE
ST CHARLES, MD 63301


Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): ELLEN S. GOLDMAN
Title: ATTORNEY
Address: 7944 SANTA FE DRIVE
OVERLAND PARK, KS 66204
Ph. Number: 913-381-9580

U.S. v. Findell Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Findell Real Estate Corp. et al.*, relating to the Hayford Bridge Groundwater Superfund Site.

FOR FORD MOTOR COMPANY

12-20-06
Date

Signature: 
Name (print): Peter J. Sherry, Jr.
Title: Secretary
Address: One American Road
Dearborn, MI 48126

KJH

Agent Authorized to Accept Service on Behalf of Above-signed Party:

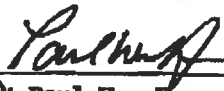
Name (print): Elaine Mills
Title: Counsel
Address: Suite 1500 PTW
Three Parklane Blvd.
Dearborn, MI 48126
Ph. Number: (313) 594-0096

U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Findett Real Estate Corp. et al.*, relating to the Hayford Bridge Groundwater Superfund Site.

FOR General Electric Company

12/18/2006
Date

Signature: 
Name (print): Paul H. Hara
Title: Manager, Northeast/Midwest Region
Address: 319 Great Oaks Office Park
Albany, NY 12203

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Dean S. Sommer, Esq.
Title: Young Sommer . . . LLC
Address: 5 Palisades Drive, Suite 300
Albany, NY 12205

Ph. Number: 518- 438-9907, Ext. 236

U.S. v. Findell Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Findell Real Estate Corp. et al.*, relating to the Hayford Bridge Groundwater Superfund Site.

FOR GENERAL MOTORS CORPORATION

Dec. 13, 2006
Date

Signature: James P. Walla
Name (print): James P. Walla
Title: Attorney P 31198
Address: GENERAL MOTORS CORPORATION
300 RENAISSANCE CENTER
M.C. 482-024-024
DETROIT, MI 48243

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): GT CORPORATION
Title: REGISTERED AGENT
Address: 120 S. CENTRAL AVE.
CLAYTON, MO
63105
Ph. Number: 314-863-5545

U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

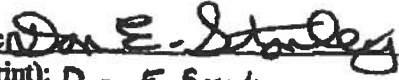
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Findett Real Estate Corp. et al.*, relating to the Hayford Bridge Groundwater Superfund Site.

FOR The Goodyear Tire & Rubber Company

January 11, 2007
Date

Attest: 
R Bell, Assistant Secretary

Date: January 11, 2007

Signature: 
Name (print): Dan E. Seanky
Title: VP, Product Quality & Plant Technology
Address: 1144 East Market Street
Akron, OH 44316

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Steven C. Bordenkircher
Title: Attorney
Address: 1144 East Market Street
Akron, OH 44316
Ph. Number: 330-796-6739

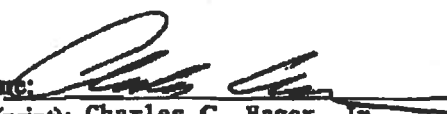
U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

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Findett Real Estate Corp. et al., relating to the Hayford Bridge Groundwater Superfund Site.

FOR C. Hager & Sons Hinge Manufacturing Company

1/3/07
Date

Signature: 
Name (print): Charles C. Hager, Jr.
Title: Vice Chairman, President & COO
Address: 139 Victor Street
St. Louis, MO 63104

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Dale A. Guariglia
Title: Partner, Bryan Cave LLP
Address: 211 N. Broadway
Suite 3600
St. Louis, MO 63102
Ph. Number: 314-259-2606

U.S. v. Findell Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Findell Real Estate Corp. et al.*, relating to the Hayford Bridge Groundwater Superfund Site.

FOR HEXAM SPECIALLY CHEMICALS, INC.
(AKA "BARDEN CHEMICAL, INC.")

12/20/06
Date

Signature: [Handwritten Signature]
Name (print): R. M. [Handwritten]
Title: EVP-EHS
Address: 180 EAST BRADEN STREET - 2nd Floor
COLUMBUS, OH 43215

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): COOPERATION SERVICE COMPANY (CSC)
Title: _____
Address: 2711 CENTRALVILLE ROAD
WILMINGTON, DE 19808
Ph. Number: 888.610.2882

Signature Page

The undersigned has executed this Hayford Bridge Road Site Operable Unit 3 Performance Agreement this 19th day of January, 2006.

Honeywell International, Inc.
Company name

[Signature]
By David A. Sosinski

Attorney
Title

Subscribed and sworn to before me this 19th day of January, 2006.

Karen Neland
Notary Public

My Commission Expires:

9/24/2007

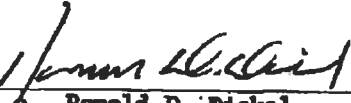
KAREN NELAND
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires Sept. 24, 2007

U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Findett Real Estate Corp. et al.*, relating to the Hayford Bridge Groundwater Superfund Site.

FOR Intalco Aluminum Corporation

12/14/06
Date

Signature: 
Name (print): Ronald D. Dickel
Title: Vice President
Address: Alcoa Inc.
201 Isabella Street
Pittsburgh, PA 15212

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Corporation Service Company
Title: _____
Address: 6500 Harbor Heights Parkway
Mukilteo, Washington 98275
Ph. Number: _____

U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Findett Real Estate Corp. et al.*, relating to the Hayford Bridge Groundwater Superfund Site.

FOR International Paper (as successor to
Union Corp)

12/14/2006
Date

Signature: Brian E. Heim
Name (print): Brian E. Heim
Title: Senior Counsel - EHS
Address: 6100 Poplar Avenue
Memphis, TN 38197

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Same as above
Title: _____
Address: _____


Ph. Number: 901-419-3824

U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Findett Real Estate Corp. et al.*, relating to the Hayford Bridge Groundwater Superfund Site.

FOR Mallinckrodt Inc. (a Delaware Corporation)

8/14/07
Date

Signature: 
Name (print): Douglas A. McKinney
Title: Vice President & CFO
Address: 675 McDonnell Blvd.
Hazelwood, MO 63042

Agent Authorized to Accept Service on Behalf of Above-signed Party:


Name (print): Patricia H. Duft
Title: Vice President & Assistant Secretary
Address: 675 McDonnell Blvd.
Hazelwood, MO 63042
Ph. Number: 314-654-6314

U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Findett Real Estate Corp. et al.*, relating to the Hayford Bridge Groundwater Superfund Site.

FOR Ni/ok Chemicals, Inc.

December 18, 2006
Date

Signature: 
Name (print): JOHN WNEK
Title: VP ESH Service
Address: 2 Turner Place
Piscataway NJ 08854

Agent Authorized to Accept Service on Behalf of Above-signed Party:

CSC
Name (print): ~~CS~~ Corp.
Title: 80 State St
Address: Albany, NY 12207
~~Albany~~
Ph. Number: 988-690-2882

U.S. v. Findett Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v.*

Findett Real Estate Corp. et al., relating to the Hayford Bridge Groundwater Superfund Site.

PHARMACIA CORPORATION

FOR by Monsanto Company, its Attorney-in-fact

12/15/06

Date

Signature: 

Name (print): JEFFREY R. KUEVE

Title: DIC. ENV. AFFAIRS

Address: MONSANTO COMPANY

800 N. LINDBERGH BLVD (B32A)

ST LOUIS MO 63167

mm3

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): MARY M. SHAFFER

Title: Asst. Gen. Counsel - Env't

Address: 800 N. Lindbergh Blvd (B32A)

St. Louis MO 63167

Ph. Number: 314 694 3883

Signature Page

The undersigned has executed this Hayford Bridge Road Site Operable Unit 3
Performance Agreement this 26 day of FEB, 2007

PPG INDUSTRIES, INC.
Company name

R.J. Norton
By Reginald J. Norton

VICE PRESIDENT ENVIRONMENT,
Title HEALTH & SAFETY

Subscribed and sworn to before me this 26 day of February,
2007.

Joan E. Goyka
Notary Public

My Commission Expires:

6-15-08

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Joan E. Goyka, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires June 15, 2008
Member, Pennsylvania Association Of Notaries

Signature Page

The undersigned has executed this Hayford Bridge Road Site Operable Unit 3
Performance Agreement this 6th day of February, 2007.

Reichhold, Inc.
Company name

[Signature]
By

Counsel
Title

Subscribed and sworn to before me this 6th day of February,
2007.

[Signature]
Notary Public

My Commission Expires:

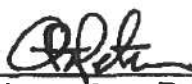
PATTI J. SCHIFFERLE
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires Oct. 18, 2010

U.S. v. Findell Real Estate Corp. et al Consent Decree Hayford Bridge Road Groundwater Superfund Site

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Findell Real Estate Corp. et al.*, relating to the Hayford Bridge Groundwater Superfund Site.

FOR ROHR INC. _____

12-20-06
Date

Signature:  12/20/06
Name (print): Mr. Greg Peters
Title: Vice President and General Manager, Operations
Address: 850 Lagoon Drive
Chula Vista, CA 91910

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Heidi B. Goldstein
Title: Partner - Thompson Hine LLP
Address: 3900 Key Center
127 Public Square
Cleveland, OH 44114
Ph. Number: 216-566-5500

APPENDIX C

MAP OF THE SITE



NOTE
Please refer to groundwater basing summary tables and related maps for additional information. Locations are shown approximately.

LEGEND

- Well of Elm Point Well Field
- Radial Well - Elm Point Well Field
- DIRECT PUSH W-30493
- X Calibration Boring
- Direct Push Groundwater Sampling Location (Approximate)
- Approximate extent of affected groundwater near City Well W-5 (DP-22 through DP-30 overlaid in this area)
- OUG Plume - Based on direct push and monitoring well sampling data



Drawn By: SLC	Chk By: KJH	App'd By: KJH
Date: 02-07-12	Date: 02-07-12	Date: 02-07-12
 GEOTECHNICAL <small>INCORPORATED</small>		
Operable Unit 3 Hayford Bridge Road Groundwater Sites St. Charles, Missouri		
Project Number: 100000000		PLATE 3

APPENDIX 2

APPENDIX D

MLC SETTLEMENT AGREEMENT

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Chapter 11
)	
MOTORS LIQUIDATION COMPANY <i>et al.</i> ,)	Case No. 09-50026 (REG)
)	
f/k/a/ GENERAL MOTORS CORP. <i>et al.</i> ,)	Jointly Administered
)	
Debtors.)	
_____)	

**ORDER APPROVING THE NON-OWNED SITE
ENVIRONMENTAL SETTLEMENT AGREEMENT**

Upon the Motion of the United States of America (the "United States") for entry of an order approving the environmental consent decree and settlement agreement between the Debtors and the United States (the "Approval Motion")¹; and it appearing that the relief requested is in the best interests of Debtors' estates, its creditors and other parties in interest; and the Court having jurisdiction to consider the Approval Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Approval Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and after lodging of the Non-Owned Site Settlement Agreement with this Court on January 30, 2012, and publication of the Non-Owned Site Settlement Agreement in the *Federal Register* for public comment; and notice of the Approval Motion having been filed by the United States on March 7, 2012; and the Court having reviewed the United States' memorandum of law in support of the Approval Motion; and

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Approval Motion.

the Court having determined that the legal and factual bases set forth in the Approval Motion establish just cause for the relief granted herein; and upon all of the proceedings before the Court and after due deliberation and sufficient cause appearing therefore, it is hereby

1. **ORDERED** that the Approval Motion is granted;
2. **ORDERED** that the Non-Owned Site Settlement Agreement (Docket No. 11361) is hereby approved as fair, reasonable and consistent with environmental law;
3. **ORDERED** that the parties to the Non-Owned Site Settlement Agreement are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order;
4. **ORDERED** that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and
5. **ORDERED** that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

New York, New York
Date: March 29, 2012

s/ Robert E. Gerber
United States Bankruptcy Judge

PREET BHARARA
 United States Attorney for the
 Southern District of New York
 DAVID S. JONES
 NATALIE N. KUEHLER
 Assistant United States Attorneys
 86 Chambers Street, 3rd Floor
 New York, New York 10007
 Telephone: (212) 637-2741
 Facsimile: (212) 637-2750
 Email: natalie.kuehler@usdoj.gov

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

-----	x	
	:	
	:	
In re:	:	Chapter 11
	:	
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	Case No. 09-50026 (REG)
<i>f/k/a/</i> GENERAL MOTORS CORP., <i>et</i>	:	
<i>al.</i> ,	:	Jointly Administered
	:	
Debtors.	:	
	:	
-----	x	

**NOTICE OF LODGING OF PROPOSED NON-OWED
 SITE CONSENT DECREE AND SETTLEMENT AGREEMENT
 BETWEEN THE DEBTORS AND THE UNITED STATES OF AMERICA**

The United States of America hereby lodges with the Court the proposed non-owned site Consent Decree and Settlement Agreement attached hereto as Exhibit 1. This Settlement Agreement has been executed by all parties.

The United States requests that the Court not approve the proposed Settlement Agreement at this time. Notice of the lodging of the proposed Settlement Agreement will be published in the *Federal Register*, following which the United States Department of Justice will accept public comments on the proposed Settlement Agreement for a 30-day period. After the conclusion of the public comment period, the United States will file with the Court any comments received, as

well as responses to the comments, and at that time, if appropriate, will request that the Court approve the proposed Settlement Agreement.

Dated: New York, New York
January 30, 2012

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for the United States of America

By: /s/ Natalie N. Kuehler
DAVID S. JONES
NATALIE N. KUEHLER
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2741
Facsimile: (212) 637-2750
Email: natalie.kuehler@usdoj.gov

EXHIBIT 1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

MOTORS LIQUIDATION COMPANY *et al.*,
f/k/a GENERAL MOTORS CORP. *et al.*,

Debtors.

Chapter 11

Case No. 09-50026 (REG)

(Jointly Administered)

**CONSENT DECREE AND SETTLEMENT AGREEMENT BETWEEN
THE DEBTORS AND THE UNITED STATES OF AMERICA**

I. BACKGROUND

WHEREAS, on June 1, 2009, Motors Liquidation Company (*f/k/a* General Motors Corporation) (“MLC”) and its affiliated debtors (collectively, the “Initial Debtors”), commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) before the United States Bankruptcy Court for the Southern District of New York (the “Court”), Case No. 09-50026 (REG);

WHEREAS, on October 9, 2009, two additional debtors, REALM and ENCORE (together with the Initial Debtors, the “Debtors”), commenced voluntary cases under chapter 11 of the Bankruptcy Code;

WHEREAS, the chapter 11 cases filed by the Initial Debtors, REALM and ENCORE have been consolidated for procedural purposes and are being administered jointly as Case No. 09-50026 (REG) (the “Bankruptcy”);

WHEREAS, the United States of America (the “United States”), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, on behalf of the United States Environmental Protection Agency (“EPA”), has alleged that MLC and/or affiliated Debtors are

potentially responsible or liable parties with respect to the Diamond Alkali Superfund Site in New Jersey, the Kane & Lombard Street Drum Superfund Site in Maryland and the Hayford Bridge Road Groundwater Superfund Site in Missouri (the “**Settled Non-Owned Sites**”);

WHEREAS, the United States on behalf of EPA has alleged that the Debtors are liable under the Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”), 42 U.S.C. §§ 9601-9675, to comply with injunctive orders and for costs EPA has incurred or will incur in response to releases and threats of releases of hazardous substances at or in connection with the Settled Non-Owned Sites;

WHEREAS on March 29, 2011, the Court issued its Findings of Fact, Conclusions of Law, and Order Pursuant to Sections 1129(a) and (b) of the Bankruptcy Code and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming Debtors’ Second Amended Joint Chapter 11 Plan (the “**Plan of Liquidation**”) which, among other things, confirmed the Debtors’ Second Amended Joint Chapter 11 Plan (“**Plan**”), and established the Motors Liquidation GUC Trust (“**GUC Trust**”) pursuant to the Motors Liquidation Company GUC Trust Agreement;

WHEREAS pursuant to the Plan of Liquidation, the Debtors have dissolved and the GUC Trust is authorized to resolve all remaining claims on behalf of the Debtors;

WHEREAS, (i) on November 28, 2009, the United States timely filed duplicate copies of its proof of claim against MLC both in the Bankruptcy Court and directly with the Debtors’ claims agent, and the two copies of the identical proof of claim were assigned Nos. 67362 and 64064, and (ii) on April 16, 2010, the United States filed proofs of claim against REALM and ENCORE which were assigned Nos. 70254 and 70255, respectively, (collectively, the “**First U.S. Proof of Claim**”);

WHEREAS, on March 29, 2011, and June 17, 2011, the Bankruptcy Court entered a total of nine previous Consent Decrees and Settlement Agreements Between the Debtors and the United States resolving certain claims of the United States for various sites other than the Settled Non-Owned Sites;

WHEREAS, on April 8, 2011, the United States filed a second proof of claim (the "Second U.S. Proof of Claim") against MLC in the Bankruptcy Court that supersedes the First U.S. Proof of Claim;

WHEREAS, the GUC Trust and the United States (collectively, the "Parties") have differences of opinion with respect to the claims asserted by the United States regarding the Settled Non-Owned Sites in the Second U.S. Proof of Claim and wish to resolve their differences with respect to the Settled Non-Owned Sites in the Second U.S. Proof of Claim as provided herein;

WHEREAS, the treatment of liabilities provided for herein represents a compromise of the positions of the Parties and is entered into solely for purposes of this settlement;

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving these matters;

WHEREAS the claims set forth in the Second U.S. Proof of Claim for all sites other than the Settled Non-Owned Sites which have not been otherwise settled (the "Surviving Claims") shall survive and in no way be affected by this settlement, and the GUC Trust retains all existing rights to object to all or some of the Surviving Claims;

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the parties to this Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

II. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or its regulations or in the Bankruptcy Code shall have the meaning assigned to them in CERCLA, its regulations, or the Bankruptcy Code. Whenever terms listed below are used in this Settlement Agreement, the following definitions shall apply:

- a. **"Allowed General Unsecured Claim"** has the meaning set forth in the Plan of Liquidation.
- b. **"Bankruptcy"** has the meaning set forth in the recitals.
- c. **"Bankruptcy Code"** has the meaning set forth in the recitals.
- d. **"Bankruptcy Court"** or the **"Court"** has the meaning set forth in the recitals.
- e. **"CERCLA"** has the meaning set forth in the recitals.
- f. **"Claim"** has the meaning provided in section 101(5) of the Bankruptcy Code.
- g. **"Distribution"** has the meaning set forth in the Plan.
- h. **"Effective Date"** means the date an order is entered by the Bankruptcy Court approving this Settlement Agreement.
- i. **"EPA"** has the meaning set forth in the recitals.
- j. **"EPA Allowed Claim"** means the total amount of Allowed General Unsecured Claims by EPA in settlement and satisfaction of its claims concerning the Settled Non-Owned Sites.
- k. **"Motors Liquidation Company GUC Trust"** has the meaning set forth in the Plan.
- l. **"Hazardous Substance Superfund"** means the Hazardous Substance Superfund established by 26 U.S.C. § 9507.

- m. "MLC" has the meaning set forth in the recitals.
- n. "NPL" means the National Priorities List, 40 C.F.R. Part 300.
- o. "Parties" has the meaning set forth in the recitals.
- p. "Petition Date" means June 1, 2009, in the case of the Initial Debtors, and October 9, 2009, in the case of REALM and ENCORE.
- q. "Plan of Liquidation" or "Plan" has the meaning set forth in the recitals.
- r. "Second U.S. Proof of Claim" has the meaning set forth in the recitals.
- s. "Settlement Agreement" means this Consent Decree and Settlement Agreement between the Debtors and the United States of America.
- t. "Settled Non-Owned Sites" has the meaning set forth in the recitals.
- u. "United States" means the United States of America and all of its agencies, departments, and instrumentalities, including EPA.

III. JURISDICTION

2. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b).

IV. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

3. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the United States, the Debtors' estates, the GUC Trust, their legal successors and assigns, and any other trustee, examiner, or receiver appointed in the Bankruptcy Cases.

V. ALLOWED CLAIMS

4. In full settlement and satisfaction of the U.S. Proof of Claim with respect to the Diamond Alkali Superfund Site in New Jersey (the "Diamond Alkali Site"), the United States

shall receive an Allowed General Unsecured Claim in the amount of \$19,500,000, classified in Class 3 under the Plan of Liquidation.

5. With respect to the Kane & Lombard Street Drum Superfund Site in Maryland (the "Kane & Lombard Site"), MLC was required to maintain financial assurance securing its completion of remedial work. MLC satisfied its financial assurance obligation by executing a performance bond in the amount of \$2,448,334 with Westchester Fire Insurance Company ("Westchester"), naming EPA as beneficiary. EPA has notified Westchester that MLC had stopped performing remedial work at the Kane & Lombard Site and that its obligations under the bond had become due. In full settlement and satisfaction of the U.S. Proof of Claim with respect to the Kane & Lombard Site, and pursuant to an agreement entered into by EPA and Westchester on April 26, 2011, attached hereto as Exhibit A, Westchester will pay EPA up to \$2,448,334, as directed by EPA, for the cost of remedial work at the Kane & Lombard Site. The United States shall not receive any Allowed General Unsecured Claim for the Kane & Lombard Site under this Settlement Agreement.

6. With respect to the Hayford Bridge Road Groundwater Superfund Site in Missouri (the "Hayford Bridge Site"), MLC was required to maintain financial assurance securing its completion of remedial work. MLC satisfied its financial assurance obligation by executing a performance bond in the amount of \$448,000 with Westchester, naming EPA as beneficiary. Following the Bankruptcy, EPA notified Westchester that MLC had stopped performing remedial work at the Hayford Bridge Site and that its obligations under the bond had become due. In partial settlement and satisfaction of the U.S. Proof of Claim with respect to the Hayford Bridge Site, and pursuant to an agreement entered into by EPA and Westchester on November 9, 2011, attached hereto as Exhibit B, Westchester will pay EPA up to \$448,000, as

directed by EPA, for the cost of remedial work at the Hayford Bridge Site. The United States shall also receive an Allowed General Unsecured Claim for the Hayford Bridge Site in the amount of \$1,402,000, classified in Class 3 under the Plan of Liquidation. The performance bond in the amount of \$448,000 and the Allowed General Unsecured Claim in the amount of \$1,402,000 shall be in full settlement and satisfaction of the U.S. Proof of Claim with respect to the Hayford Bridge Site.

7. In light of the foregoing paragraphs 4, 5 and 6 the United States, on behalf of EPA, shall have an Allowed General Unsecured Claim in the total amount of \$20,902,000 (the "EPA Allowed Claim"). In accordance with bond requirements the United States, on behalf of EPA, will also receive up to \$2,896,334 for work performed at the Kane & Lombard and Hayford Bridge Sites.

8. Upon the Effective Date, the Second U.S. Proof of Claim shall be deemed fully settled and satisfied as to the Settled Non-Owned Sites only and the claims agent shall be authorized and empowered to adjust the claims register accordingly.

9. The Second U.S. Proof of Claim shall be deemed allowed in the respective amounts set forth herein as to the Settled Non-Owned Sites for purposes of distributions under the Plan of Liquidation, and shall be entitled to receive payment in the next distribution under the Plan.

10. As to those sites not resolved by this or any other settlement agreement between the United States and the GUC Trust, the Second U.S. Proof of Claim shall remain pending and the post-effective date Debtors and/or GUC Trust reserve all existing rights to object to the Second U.S. Proof of Claim.

11. Nothing contained herein shall reduce the ability of the GUC Trust to enforce as to all claimants, other than the United States, Section 7.2 of the Plan requiring that all claims must be resolved before any distribution on account of allowed claims may occur.

12. The GUC Trust shall reduce the distribution reserve amount to be used by the GUC Trust pursuant to Article VII of the Plan for the remaining unresolved general unsecured claims against Debtors asserted in the Second U.S. Proof of Claim to no less than \$200 million.

13. The allowed claims provided for herein shall be treated as provided under Section 4.3 of the Plan of Liquidation and shall not be subordinated to any other allowed Class 3 Unsecured Claim pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, Sections 105, 510, and 726(a)(4) of the Bankruptcy Code.

14. Any cash distribution or the proceeds of any non-cash distribution received by EPA on account of an Allowed General Unsecured Claim under this Settlement Agreement shall be deposited in a special account within the Superfund to be retained and used to fund response actions at the Settled Non-Owned Site for which it received the relevant Allowed General Unsecured Claim, or, if no further response action is required, or as otherwise required by EPA policy, transferred by EPA to the Superfund.

15. Only the amount of cash received by EPA (and net cash received upon sale of any non-cash distributions) pursuant to this Settlement Agreement for any Allowed General Unsecured Claim, and not the total amount of any Allowed General Unsecured Claim, shall be credited by EPA to its account for the Non-Owned Site for which it received an Allowed General

Unsecured Claim, and shall reduce the liability of non-settling potentially responsible parties for that site by the amount of the credit.

VI. PAYMENT INSTRUCTIONS

16. Cash distributions to the United States pursuant to this Settlement Agreement shall be made at <https://www.pay.gov> to the U.S. Department of Justice account in accordance with instructions provided to the Debtors by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of New York and shall reference Bankruptcy Case Number 09-50026 and DOJ File Number 90-11-3-09754.

17. Non-cash distributions to the United States shall be made to:

U.S. Environmental Protection Agency
Attn: Molly Williams
Suite 300
4411 Montgomery Rd.
Cincinnati, OH 45212

18. The GUC Trust shall transmit written confirmation of such cash and non-cash distributions to the United States at the addresses specified below:

The United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
Ref. DOJ File No. 90-11-3-1-09754

DAVID S. JONES
NATALIE N. KUEHLER
Assistant United States Attorney
Office of the United States Attorney
for the Southern District of New York
86 Chambers Street, Third Floor
New York, NY 10007

EPA:

CRAIG KAUFMAN
Attorney-Advisor
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

VII. COVENANTS NOT TO SUE AND RESERVATION OF RIGHTS

19. In consideration of the payments and/or distributions that will be made under the terms of this Settlement Agreement, and except as specifically provided in Paragraphs 21 through 23, the United States on behalf of EPA covenants not to file a civil action or to take any administrative or other civil action against the GUC Trust pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Settled Non-Owned Sites.

20. These covenants not to sue (and any reservations thereto) shall also apply to the GUC Trust's successors, assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor or assign, officer, director, employee, or trustee of the GUC Trust or the post-effective date Debtors is based solely on its status as and in its capacity as a successor or assign, officer, director, employee, or trustee of the GUC Trust or the post-effective date Debtors. For purposes of this Paragraph, New GM shall not be considered a successor or assign of the GUC Trust.

21. The covenants not to sue set forth in this Settlement Agreement shall extend only to the GUC Trust and the persons described in Paragraph 20 above and do not extend to any other person. Nothing in this Settlement Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than the GUC Trust, the United States, and the persons or entities described in Paragraph 20 above. The United States and the GUC Trust expressly

reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, entities, or predecessors of the GUC Trust for any matter arising at or relating in any manner to the Settled Non-Owned Sites.

22. The covenants not to sue set forth in Paragraph 19 do not pertain to any matters other than those expressly specified therein.

23. The United States expressly reserves, and this Settlement Agreement is without prejudice to, all rights against the GUC Trust with respect to all matters other than those set forth in Paragraph 19. The United States also specifically reserves, and this Settlement Agreement is without prejudice to, any action based on (i) a failure to meet a requirement of this Settlement Agreement; (ii) criminal liability; (iii) liability for damages for injury to, destruction of, or loss of natural resources; and (iv) liability with respect to any site other than the Settled Non-Owned Sites. In addition, the United States reserves, and this Settlement Agreement is without prejudice to, all rights against the GUC Trust with respect to the Settled Non-Owned Sites for liability under federal or state law for acts by the GUC Trust, or their respective successors, or assigns that occur after the date of lodging of this Settlement Agreement. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable law or regulation, or to excuse the Debtors or

the GUC Trust from any disclosure or notification requirements imposed by CERCLA or any other applicable law or regulation.

24. The GUC Trust and the Debtors' estates hereby covenant not to sue and agree not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the Settled Non-Owned Sites, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substances Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim against the United States under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613; or (iii) any claims arising out of response activities at the Settled Non-Owned Sites. Nothing in this Settlement Agreement shall be deemed to constitute 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).

VIII. CONTRIBUTION PROTECTION

25. The Parties agree, and by entering this Settlement Agreement the Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the GUC Trust is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. Subject to the last sentence of this Paragraph, the "matters addressed" in this Settlement Agreement, as that phrase is used in Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), include, without limitation, claims by EPA or potentially responsible parties for response costs at or in connection with the Settled Non-Owned Sites, including claims related to releases of hazardous substances from any portion of the Settled Non-Owned Sites and all areas affected by migration of hazardous substances emanating from the Settled Non-Owned Sites. The

“matters addressed” in this Settlement Agreement do not include claims against the Debtors or the GUC Trust for past response costs incurred by potentially responsible parties prior to the date of lodging this Settlement Agreement with the Bankruptcy Court and included in proofs of claim filed in any of the Bankruptcy Cases by potentially responsible parties with respect to the Settled Non-Owned Sites, nor do such “matters addressed” include any claim for natural resource damages, assessment costs, or restoration costs filed by or on behalf of the United States Department of Interior and/or National Oceanic and Atmospheric Administration.

26. The GUC Trust and the Debtors’ estates each agree that, with respect to any suit for contribution brought against any of them after the Effective Date for matters related to this Settlement Agreement, they will notify the United States within fifteen business days of service of the complaint upon them. In addition, in connection with such suit, the GUC Trust and the Debtors’ estates shall notify the United States within fifteen business days of service or receipt of any Motion for Summary Judgment and within fifteen business days of receipt of any order from a court setting a case for trial (provided, however, that the failure to notify the United States pursuant to this Paragraph shall not in any way affect the protections afforded under Section VIII of this Settlement Agreement).

IX. JUDICIAL APPROVAL AND PUBLIC COMMENT

27. The GUC Trust shall promptly seek approval of this Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code.

28. This Settlement Agreement shall be lodged with the Bankruptcy Court and shall thereafter be subject to a period of public comment following publication of notice of the Settlement Agreement in the *Federal Register*. After the conclusion of the public comment period, the United States will file with the Bankruptcy Court any comments received, as well as

the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of the Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is not in the public interest.

29. If for any reason (i) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 28, or (ii) the Settlement Agreement is not approved by the Bankruptcy Court: (a) this Settlement Agreement shall be null and void and the parties hereto shall not be bound under the Settlement Agreement or under any documents executed in connection herewith; (b) the parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; and (c) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

X. NOTICES

30. Whenever, under the terms of this Settlement Agreement, written notice is required to be given, or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below via U.S. mail, unless those individuals or their successors give notice of a change of address to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Except as otherwise provided in this Settlement Agreement, written notice as specified herein shall constitute complete satisfaction of any written notice requirement in the Settlement Agreement with respect to the United States and the GUC Trust or the Debtors' estates, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
Ref. DOJ File No. 90-11-3-09754

Natalie N. Kuehler
Assistant United States Attorney
Office of the United States Attorney
for the Southern District of New York
86 Chambers Street, Third Floor
New York, NY 10007

Craig Kaufman
Attorney-Advisor
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

As to the GUC Trust and the Debtors' estates:

David A. Vanaskey
Vice President
Wilmington Trust Company
Rodney Square North
1110 North Market Street
Wilmington, DE 19890-1615

David R. Berz
Weil, Gotshal & Manges LLP
Attorneys for Debtors and Debtors in Possession
1300 Eye Street, NW, Suite 900
Washington, D.C. 20005

XI. INTEGRATION, AMENDMENTS, AND EXECUTION

31. This Settlement Agreement constitutes the sole and complete agreement of the parties hereto with respect to the matters addressed herein. This Settlement Agreement may not be amended except by a writing signed by all parties to this Settlement Agreement.

32. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

XII. RETENTION OF JURISDICTION

33. The Bankruptcy Court shall retain jurisdiction over the subject matter of this Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

[SIGNATURE PAGE FOLLOWS]

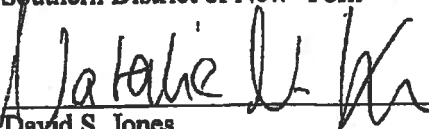
THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT:

FOR THE UNITED STATES:

Robert G. Dreher
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date: _____

PREET BHARARA
United States Attorney for the
Southern District of New York



David S. Jones
Natalie N. Kuehler
Assistant U.S. Attorneys
86 Chambers St., 3rd Floor
New York, NY 10007

Date: 1/30/2012

Alan S. Tenenbaum
National Bankruptcy Coordinator
Patrick Casey
Senior Counsel
Environment and Natural Resources Division
Environmental Enforcement Section
U.S. Department of Justice

Date: _____

Cynthia Giles
Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency

Date: _____

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT:

FOR THE UNITED STATES:

PREET BHARARA
United States Attorney for the
Southern District of New York



Robert G. Dreher
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

David S. Jones
Natalie N. Kuehler
Assistant U.S. Attorneys
86 Chambers St., 3rd Floor
New York, NY 10007

Date: 1/30/12

Date: _____



Alan S. Tenenbaum
National Bankruptcy Coordinator
Patrick Casey
Senior Counsel
Environment and Natural Resources Division.
Environmental Enforcement Section
U.S. Department of Justice

Date: 1/30/12

Cynthia Giles
Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency

Date: _____

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT:

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PREET BHARARA
United States Attorney for the
Southern District of New York

Robert G. Dreher
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

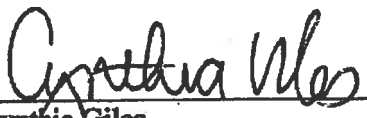
David S. Jones
Natalie N. Kuehler
Assistant U.S. Attorneys
86 Chambers St., 3rd Floor
New York, NY 10007

Date: _____

Date: _____

Alan S. Tenenbaum
National Bankruptcy Coordinator
Patrick Casey
Senior Counsel
Environment and Natural Resources Division
Environmental Enforcement Section
U.S. Department of Justice

Date: _____

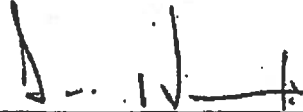


Cynthia Giles
Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency

Date: 1/30/12

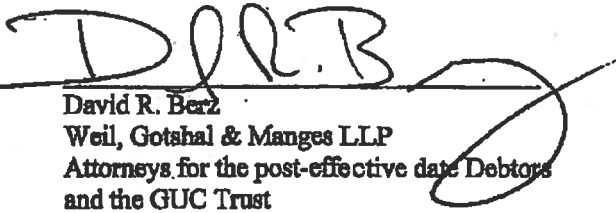
FOR THE GUC TRUST AND THE DEBTORS' ESTATES:

Date: 1/30/12



Motors Liquidation Company GUC Trust
By Wilmington Trust Company, not in its
individual capacity, but solely as MLC
GUC Trust Administrator

Date: 1/30/12



David R. Berz
Weil, Gotshal & Manges LLP
Attorneys for the post-effective date Debtors
and the GUC Trust
1300 Eye Street, NW, Suite 900
Washington, D.C. 20005
Tel.: (202) 682-7000
Fax: (202) 857-0939
Email: david.berz@weil.com

EXHIBIT A

Bond Payment Reduction and Discharge Agreement

The parties to this Bond Payment Reduction and Discharge Agreement ("Agreement"), the United States Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103 (hereafter, "U.S. EPA") and Westchester Fire Insurance Company, c/o ACE USA, 436 Walnut Street, Routing Code WA10A, Philadelphia, Pennsylvania 19106 (hereafter, "Westchester"), hereby enter into this Agreement as of this 26th day of April, 2011 to resolve the bond claim described herein by payment and discharge as set forth below.

WHEREAS, Westchester issued surety bond number K07593521 in the amount of \$2,448,334.00 (the "Bond") on behalf of General Motors Corporation ("GM") in favor of the U.S. EPA in connection with GM's obligations, under a certain Consent Decree entered on November 3, 2006, in the United States District Court for the District of Maryland in a case captioned United States of America and State of Maryland v. Browning-Ferris, Inc., et al. (No. L-06-1134) ("2006 Consent Decree"), to perform remedial action selected by U.S. EPA at the Kane and Lombard Superfund Site;

WHEREAS, GM subsequently defaulted on performance of the work required by the 2006 Consent Decree;

WHEREAS, Westchester is prepared to make payments under the Bond for performance of the work required by the 2006 Consent Decree or to implement any other remedial action selected by U.S. EPA for the Kane and Lombard Site (collectively, the "Work"), provided that such payments will reduce the penal sum of the Bond and, when the full penal sum has been paid, will discharge Westchester from all further liability in connection with the Bond and Westchester's obligations to perform work on behalf of GM pursuant to the terms of the Bond, Westchester and U.S. EPA agree as follows:

1. U.S. EPA will periodically send billing statements with costs incurred for performance of the Work to counsel for Westchester at the address set forth below. Within fifteen (15) business days of receipt of such statements, Westchester shall remit payment in accordance with payment instructions provided with each statement.
2. Upon receipt by U.S. EPA of confirmation of each such payment by the payee designated in each statement, the penal sum of the Bond shall be reduced in the amount of the payment; and
3. Upon the earlier of (i) the Work being completed or (ii) reduction in the penal sum of the Bond to \$0.00, Westchester's obligation to remit payment hereunder shall be satisfied, and Westchester shall be released and discharged from any and all obligations, liabilities, costs, expenses or claims arising from or related in any manner to the Bond or GM's performance of the Work including, without limitation, past, present or future claims.
4. Billing statements should be sent to counsel for Westchester at the following physical or e-mail address:

Robert McL. Boote
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
boote@ballardspahr.com

5. Westchester and U.S. EPA represent and warrant to each other that the signatories to this Agreement have full power and authority to enter into this Agreement to resolve the U.S. EPA bond claim as described herein. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: 
Printed Name:

Title: *Director, Financial Services
Cleanup Division*

Date Executed: *4/29/11*

WESTCHESTER FIRE INSURANCE
COMPANY

By: 
Henry R. Minissale

Title: Vice President

Date Executed: *3/29/11*

EXHIBIT B

Bond Payment Reduction and Discharge Agreement

The parties to this Bond Payment Reduction and Discharge Agreement ("Agreement"), the United States Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101 (hereafter, "U.S. EPA") and Westchester Fire Insurance Company, c/o ACE USA, 436 Walnut Street, Routing Code WA10A, Philadelphia, Pennsylvania 19106 (hereafter, "Westchester"), hereby enter into this Agreement as of this 9th day of Nov, 2010 to resolve the bond claim described herein by payment and discharge as set forth below.

WHEREAS, Westchester issued surety bond number K07734086 in the amount of \$448,000.00 (the "Bond") on behalf of General Motors Corporation ("GM") in favor of the U.S. EPA in connection with GM's obligations under a certain Consent Decree entered by the United States District Court for the Eastern District of Missouri on August 16, 2007, in United States et al. v. Pindett Real Estate Corp. et al., Docket No. 07-1215 ("Consent Decree"), for the Hayford Bridge Road Superfund site, which obligations are hereafter referred to as "Work";

WHEREAS, GM subsequently defaulted on performance of the Work required at the Hayford Bridge Road Superfund site;

WHEREAS, U.S. EPA submitted a claim under the Bond to Westchester on K07734086 by letter dated April 8, 2010; and

WHEREAS, Westchester is prepared to make payments under the Bond provided that such payments will reduce the penal sum of the Bond and, when the full penal sum has been paid, will discharge Westchester from all further liability in connection with the Bond, Westchester and U.S. EPA agree as follows:

1. U.S. EPA will send billing statements with costs incurred for performance of the Work under the Consent Decree and U.S. EPA's approval of such costs to counsel for Westchester at the address set forth below. Within fifteen (15) business days of receipt of such statements, Westchester shall remit payment to:

Hayford Bridge Road OU 3 Escrow Account,
UMB Bank N.A., Corporate Trust Division
South Broadway, Suite 435
St. Louis, MO 63102
Attention: Richard F. Novosak

2. Upon receipt of each such payment by UMB Bank N.A. (on behalf of the signatories to the Hayford Bridge Road OU3 Participation Agreement), the penal sum of the Bond shall be reduced in the amount of the payment; and

3. Upon the earlier of (i) the Work being completed or (ii) reduction in the penal sum of the Bond to \$0.00, Westchester's obligation to remit payment hereunder shall be satisfied, and Westchester shall be fully and unconditionally released and discharged from any and all obligations, liabilities, costs, expenses or claims, including, without limitation, past,

present or future claims arising from or related in any manner to the Hayford Bridge Road Superfund site and/or the Consent Decree and/or the Bond.


4. Billing statements should be sent to counsel for Westchester at the following physical or e-mail address:

Robert McL. Boote
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
boote@ballardspahr.com

5. Westchester and U.S. EPA represent and warrant to each other that the signatories to this Agreement have full power and authority to enter into this Agreement to resolve the U.S. EPA bond claim as described herein. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

WESTCHESTER FIRE INSURANCE
COMPANY

By 
CECILIA TAPIA
Division Director
Superfund Division

By 
ROBERT B. COLLINS
Director - Claim

Date executed: 11/9/10

Date executed: 10/25/10

IN THE MATTER OF Hayford Bridge Road Groundwater Superfund Site; St. Charles, St. Charles
County, Missouri, Respondents
Docket No. CERCLA-07-2012-0025

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following
manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Audrey Asher
Senior Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Certified Mail to:

Eric Berry, Esq
Husch Blackwell Sanders LLP
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105

Molly Shaffer, Esq.
Monsanto Company
800 Lindbergh Blvd.
St. Louis, Missouri 63167

Ellen Goldman, Esq.
7944 Santa Fe Drive
Overland Park, Kansas 66204


Jerssica L. Blome, Esq.
Assistant Attorney General
P.O. Box 899
Jefferson City, Missouri 65101

Patricia Duft, Esq.
Vice President and Assistant Secretary
Mallinckrodt, Inc.
675 McDonnell Blvd.
Hazelwood, Missouri 63042

Candice McGhee
Missouri Department of Natural Resources
Hazardous Waste Program Superfund Section
P.O. Box 176
Jefferson City, Missouri 65102-0176

Heidi Goldstein, Esq.
Thompson Hine LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114-1291

Dated: 10/1/12


Kathy Robinson
Hearing Clerk, Region 7

