



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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Office of Regional Counsel

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January 21, 2029

**VIA FIRST CLASS MAIL
AND EMAIL**

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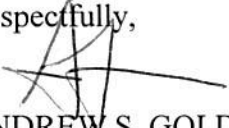
**Re: Culpeper Wood Preservers Site: Settlement For Removal
For Removal Response Action (No. CERC-03-2020-0055DC)**

Dear Dan:

Enclosed find a fully executed copy of the above-referenced settlement. Pursuant to Paragraphs 101 (Effective Date) and 9 (definition of "Day"), the effective date of the settlement is January 27, 2020.

Thanks for all of your assistance in completing this settlement. If you have further questions, please contact me at (215) 814-2487 or goldman.andrew@epa.gov.

Respectfully,


ANDREW S. GOLDMAN
Sr. Assistant Regional Counsel

Enclosures

cc: Kevin Clark
Evelyn Sorto
Christopher Corbett
Charlie Fitzsimmons

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

)	
IN THE MATTER OF:)	
)	Docket No. CERCLA-03-2020-0055DC
Culpeper Wood Preservers Site)	
)	
Jefferson Homebuilders, Inc.,)	
)	
Respondent)	
)	
Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622)	ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION
)	

TABLE OF CONTENTS

I	Jurisdiction and General Provisions	1
II	Parties Bound	2
III	Definitions	2
IV	Findings of Fact	5
V	Conclusions of Law and Determinations	6
VI	Settlement Agreement and Order	7
VII	Designation of Contractor, Project Coordinator, and EPA Project Coordinator	7
VIII	Work to be Performed	9
IX	Property Requirements	14
X	Access to Information	15
XI	Record Retention	16
XII	Compliance With Other Laws	17
XIII	Emergency Response and Notification of Releases	18
XIV	Payment of Response Costs	18
XV	Dispute Resolution	21
XVI	Force Majeure	21
XVII	Stipulated Penalties	23
XVIII	Covenants by EPA	26
XIX	Reservations of Rights by EPA	26

XX	Covenants by Respondent	28
XXI	Other Claims	30
XXII	Effect of Settlement/Contribution	30
XXIII	Indemnification	31
XXIV	Insurance	32
XXV	Reserved	32
XXVI	Modification	33
XXVII	Additional Removal Action	33
XXVIII	Notice of Completion of Work	34
XXIX	Integration/Appendices	34
XXX	Effective Date	34

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:)	
)	
Culpeper Wood Preservers Site)	Docket No. CERCLA-03-2019--0110DC
)	
Jefferson Homebuilders, Inc.,)	
)	
Respondent)	
)	
Proceeding Under Sections 104, 106(a),)	ADMINISTRATIVE SETTLEMENT
107 and 122 of the Comprehensive)	AGREEMENT AND ORDER ON
Environmental Response, Compensation,)	CONSENT FOR REMOVAL ACTION
and Liability Act, 42 U.S.C. §§ 9604,)	
9606(a), 9607 and 9622)	

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent for Removal Action (“Settlement”) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Jefferson Homebuilders, Inc. (“Respondent”). This Settlement provides for the performance of a removal action by Respondent and the payment of certain response costs incurred by the United States at or in connection with the Culpeper Wood Preservers Site (the “Site”) generally located at and near 15487 Braggs Corner Road, Culpeper, Virginia. In entering into this Settlement, the mutual objectives of EPA and Respondent are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate and/or eliminate threats to human health presented by the release or threat of release of hazardous substances at the Site (as hereinafter described), by connecting certain properties identified herein to the existing municipal water line.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Director of the Region III Superfund & Emergency Management Division.

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

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

II. PARTIES BOUND

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

6. Reserved.

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

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

III. DEFINITIONS

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

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the removal action.

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

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

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

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

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

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 74 (Work Takeover), Paragraph 23 (Community Involvement Plan) (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site.

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

“Municipal solid waste” or “MSW” shall mean waste material: (a) generated by a household (including a single or multifamily residence); or (b) generated by a commercial, industrial, or institutional entity, to the extent that the waste material (1) is essentially the same as waste normally generated by a household; (2) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (3) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

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

“Non-Settling Owner” shall mean any person, other than Respondent, that owns or controls any Affected Property. The clause “Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by Non-Settling Owner.

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

“Parties” shall mean EPA and Respondent.

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

“Respondent” shall mean Jefferson Homebuilders, Inc.

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

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent for Removal Action.

“Site” shall mean the Culpeper Wood Preservers Superfund Site as further described in Paragraph 10.a of this Settlement.

The “Culpeper Wood Preservers 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).

“State” shall mean the Commonwealth of Virginia.

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

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

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any “hazardous waste” under the Virginia Waste Management Act, Chapter 14, § 10.1-1400.

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

IV. FINDINGS OF FACT

10. EPA makes the following findings of fact:

a. The Culpeper Wood Preservers Site consists of (1) property located at and near 15487 Braggs Corner Road, Culpeper, Culpeper County, Virginia, where wood treatment operations have occurred (Property), and (2) all locations to which wastes from wood treatment operations have migrated from the Property.

b. Respondent Jefferson Homebuilders Inc. is a Virginia corporation formed in or around 1972. Respondent acquired the Property in 1976 and is the current owner of the Property.

c. The Property is approximately 21.58 acres and contains, among other things, eleven roofed structures used to store and process lumber; four main buildings housing offices, a mechanical shop, and a treatment building; drip pads; a retention pond; and a wetland that extends beyond the Property boundary. The Property is located in a mixed commercial and residential area.

d. Respondent represents that an affiliate of Respondent, Culpeper Wood Preservers, Inc., has operated a wood treatment facility at the Property since approximately 1976 and used chromated copper arsenate (CCA) to treat wood until 2002.

e. Operation of the wood treatment facility has led to the contamination of soils, sediments, surface water, and groundwater both on and off the Property.

f. In October 1981, EPA and Respondent entered into a RCRA Consent Agreement and Consent Order (Docket No. RCRA-III-01) (RCRA Settlement). In the RCRA Settlement, EPA acknowledged that Respondent had taken numerous actions as part of an ongoing facility upgrade in conjunction with the Virginia State Water Control Board. The RCRA Settlement set forth additional actions to be undertaken by Respondent. Facility improvements conducted by Respondent included upgrades to drip pads to maximize the capture of drips, implementation of a groundwater monitoring program, and reconstruction of the retention pond.

g. On October 15, 1984, EPA proposed the Site to the CERCLA National Priorities List (NPL). The Site was placed on the NPL on October 4, 1989.

h. In June 1993, EPA and Respondent entered into a CERCLA Administrative Order on Consent (Docket No. III-93-28-DC) under which Respondent agreed to conduct a Remedial Investigation/Feasibility Study (RI/FS) for the Site under EPA oversight.

i. Between 1994 and 1995, the Virginia Department of Environmental Quality (VADEQ) constructed a waterline along the northern side of Brandy Road to provide potable water to properties impacted by the release of petroleum products from an underground storage tank at a gasoline station in the vicinity of the Site. Sixteen private wells located east of the Property on Brandy Road were taken out of service and the residences and businesses were connected to the waterline and are currently served by the municipal water distribution system.

j. As part of the RI, Respondent collected samples from several in-service private wells located downgradient of the Property in August and November 2008, and again in February and June 2009. Analyses of the samples indicated that groundwater in some of the private wells contained, among other things, arsenic, hexavalent chromium, and copper. In April 2009, Respondent began to voluntarily provide bottled water to five impacted residential properties. Respondent expanded distribution of bottled water to an additional thirteen residences between 2011 and 2019. Sampling data from 2016 and 2018 from wells servicing both residential and commercial properties confirmed elevated levels of hexavalent chromium and/or arsenic throughout the area immediately downgradient of the Property.

k. Respondent's RI report was finalized on September 22, 2016 and the FS report was finalized on May 13, 2019. The RI and FS reports identified groundwater impacts in shallow groundwater on the Property from, among other things, arsenic, hexavalent chromium, and copper; and in intermediate/deep groundwater on the Property from arsenic and hexavalent chromium.

l. Groundwater with elevated levels of hexavalent chromium and arsenic is migrating from the Property and impacting private wells located downgradient of the Property.

m. On October 2, 2019, EPA determined that the release and threatened release of hexavalent chromium and arsenic from the Site may present an imminent and substantial endangerment to public health or the environment.

n. Arsenic, chromium compounds, and copper are listed as hazardous substances at 40 C.F.R. § 302.4.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

11. Based on the Findings of Fact set forth above, and the administrative record supporting selection of the response action required to be performed under this Settlement, 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. Arsenic and chromium found at the Site as described in Section IV (Findings of Fact), above, are “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and are so identified at 40 C.F.R. § 302.4.

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

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Specifically, Respondent is the “owner” and/or “operator” of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

e. The conditions described in Paragraphs 10.j-m of the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. EPA determined on October 2, 2019 that conditions at the Site may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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

VI. SETTLEMENT AGREEMENT AND ORDER

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

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND EPA PROJECT COORDINATOR

13. Respondent shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors and subcontractors within 10 days after the Effective Date. Respondent shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 10 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the

contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 10 days after EPA's disapproval. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

14. Within 5 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, contact information (including address, telephone number, and email address), and qualifications. Respondent's Project Coordinator shall be a technical and/or managerial representative of the Respondent and may be a contractor and/or consultant; provided, however, the Respondent's Project Coordinator shall not be its legal representative(s) in this matter. Respondent's Project Coordinator shall either be fluent in Spanish or shall arrange for a representative who is fluent in Spanish and locally available such that he/she can communicate with Spanish-speaking owners of Affected Property. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information (including address, telephone number, and email address), and qualifications within 10 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent.

15. EPA has designated the following as its Project Coordinator (EPA PC):

Evelyn Sorto (3SD23)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
(215) 814-2123
Sorto.evelyn@epa.gov

EPA and Respondent shall have the right, subject to Paragraph 14, to change its respective designated EPA PC or Project Coordinator. Respondent shall notify EPA 10 days before such a change is made. The initial notification by Respondent may be made verbally, but shall be promptly followed by a written notice.

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

VIII. WORK TO BE PERFORMED

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

a. Water Line Connections. Connect, to the existing municipal waterline, and in accordance with this Paragraph, properties identified by EPA where EPA has determined there is an actual or threatened risk of exposure to contaminated drinking water (collectively “Affected Properties”).

1. EPA has determined that the properties identified (by aliases) in Attachment A are Affected Properties. The list in Attachment A shall hereinafter be referred to as the “Affected Properties List.”

2. Respondent shall follow the procedures outlined in Appendix B of this Settlement with respect to the Affected Properties List as well as all other documents described in Appendix B.

3. Within 30 days after EPA approval of the Work Plan required by Paragraph 19 of this Settlement, Respondent shall, in accordance with the requirements of this provision, contact the owner(s) of each Affected Property and obtain either (1) written consent to be connected to the municipal water line, or (2) a written refusal to be connected to the municipal water line. For each property where the owner(s) decline to provide a decision in writing, Respondent shall document the owner(s)’ decision in writing. Unless waived by the EPA Project Coordinator, (1) Respondent shall provide to EPA, for review and approval, a copy of all written correspondence (including letters and email) Respondent intends to send to the owner of each Affected Property to comply with this Paragraph 17.a.3, and (2) Respondent shall not meet with the owner of any Affected Property to comply with this Paragraph 17.a.3 without the EPA Project Coordinator or the EPA Community Involvement Coordinator or their designee present.

4. Respondent shall provide to EPA, within 35 days after EPA approval of the Work Plan required by Paragraph 19 of this Settlement, a list that identifies (by aliases):

a. All Affected Properties for which Respondent has secured consent to be connected to the water line (“Consenting Properties”);

b. All Affected Properties for which Respondent has obtained a refusal to be connected to the water line (“Refusing Properties”); and

c. All Affected Properties for which Respondent was unable to obtain a decision after Respondent has used reasonable efforts to secure one (“No Decision Properties”).

5. Respondent shall connect the Consenting Properties to the municipal water line.

6. Respondent shall not be required hereunder to connect, to the municipal water line, any Refusing Properties or any properties EPA agrees are No Decision Properties. At all such properties Respondent shall install a stub out at the water line to ready the water line for connection to the property at a later point in time. Disputes regarding EPA's determination that a property is not a No Decision Property shall be resolved in accordance with Section XV (Dispute Resolution) of this Settlement.

b. **Monitoring Well Conversions.** Respondent shall convert water wells, at Consenting Properties chosen by EPA, to monitoring wells in accordance with this Paragraph. Respondent shall not be required hereunder to convert more than five (5) wells.

1. For each Consenting Property, Respondent shall determine the owner(s)' willingness to permit the water well on such property to be converted into a monitoring well for subsequent groundwater sampling by EPA or others on behalf of EPA. Respondent shall provide a list of all such properties ("Willing to Monitor List") to EPA at the time it provides the documentation required by Paragraph 17.a.4 above.

2. EPA will review the Willing to Monitor List and provide Respondent with a list of no more than five (5) properties where EPA agrees a monitoring well would be useful to monitor Site-related contamination ("Conversion List").

3. For each property on the Conversion List, Respondent shall convert the well into a groundwater monitoring well capable of being used by EPA or others to monitor Site-related groundwater contamination over time.

4. Respondent shall have no obligation to convert a water well into a monitoring well for any property that is not on the Willing to Monitor List.

c. **Well Closures.** Respondent shall arrange for the proper abandonment and sealing of water wells, in accordance with State and local regulations, at Consenting Properties that are not on the EPA-approved Conversion List. Respondent shall not be required hereunder to close the water well on any property that (a) is on the Consenting Properties List and the Conversion List, or (b) that is on the Consenting Properties List but not the Conversion List and the property owner refuses to permit closure of the well. Respondent shall provide EPA with a list that identifies (by aliases) all properties falling into (b), above.

d. **Surface Restoration.** Respondent shall restore to its original condition the surface, structures, and facilities disturbed by the Work (to include backfilling with clean fill/stone, revegetation, damage repair, etc.) at all Consenting Properties.

e. Respondent shall follow the substantive requirements of local and state regulations in conducting the Work. Respondent shall obtain all local and state permits

associated with the Work except as exempted by Section 121(e) of CERCLA, 42 U.S.C. § 9621(e).

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

19. Work Plan and Implementation.

a. Within 20 days after the Effective Date, in accordance with Paragraph 20 (Submission of Deliverables), Respondent shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan") generally described in Paragraph 17, above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Removal Work Plan within 7 days after receipt of EPA's notification of the required revisions. Respondent shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

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

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

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

20. Submission of Deliverables.

a. General Requirements for Deliverables.

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

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

3. All deliverables shall conform to the requirements of Appendix A of this Settlement.

b. Technical Specifications for Deliverables.

1. Sampling and monitoring data should be submitted in accordance with the EPA Region 2 Electronic Data Deliverable Specifications (<https://www.epa.gov/superfund/region-2-superfund-electronic-data-submission-documents>). Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

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

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

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

21. Health and Safety Plan. Within 20 days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site Work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <https://www.epa.gov/nscep>, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at <https://www.epaossc.org/HealthSafetyManual/manual-index.htm>. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA)

regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

22. Reserved.

23. Community Involvement Plan. EPA will prepare a community involvement plan, in accordance with EPA guidance and the NCP. If requested by EPA, Respondent shall participate in community involvement activities, including participation in (i) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (ii) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondent's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (i) any community advisory groups, (ii) any technical assistance grant recipients and their advisors, and (iii) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondent at EPA's request are subject to EPA's oversight. Upon EPA's request, Respondent shall update the community information repository at or near the Site to house one copy of the administrative record.

24. Reserved.

25. Progress Reports. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement on a bi-weekly basis (i.e., every two weeks), or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVIII, unless otherwise directed in writing by the EPA PC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

26. Final Report. Within 30 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 99 (notice of completion), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to implement the tasks identified in Paragraph 17 of this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Respondent:

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

27. Reserved.

IX. PROPERTY REQUIREMENTS

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

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

1. Monitoring the Work;
2. Verifying any data or information submitted to EPA;
3. Conducting investigations regarding contamination at or near the Site;
4. Obtaining samples;
5. Assessing the need for, planning, implementing, or monitoring response actions;
6. Implementing the Work pursuant to the conditions set forth in Paragraph 74 (Work Takeover);
7. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section X (Access to Information);

8. Assessing Respondent's compliance with the Settlement;
9. Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted; and
10. Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

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

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

31. Reserved.

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

X. ACCESS TO INFORMATION

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

34. Privileged and Protected Claims.

a. Respondent may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 34.b, and except as provided in Paragraph 34.c.

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

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

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

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

XI. RECORD RETENTION

37. Until ten (10) years after EPA provides Respondent with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with

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

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

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

XII. COMPLIANCE WITH OTHER LAWS

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

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

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

42. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the EPA PC or, in the event of his/her unavailability, the National Response Center ((800) 424-8802) of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

43. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately verbally notify the EPA PC or, in the event of his/her unavailability, the National Response Center ((800) 424-8802). This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

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

XIV. PAYMENT OF RESPONSE COSTS

45. Reserved.

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

a. Periodic Bills. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a summary of costs which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within thirty (30) days after Respondent's receipt of each bill requiring payment, except as otherwise provided in this Paragraph and in Paragraph 48 (Contesting Future Response Costs), and in accordance with Paragraphs 46.b and 46.c. Upon request made within ten (10) days of receiving a bill, EPA will provide Respondent with standard backup documentation supporting the bill provided Respondent executes a confidentiality agreement similar to the example attached as Appendix C of this Settlement.

Payment of a bill for which backup documentation has been requested shall be due within thirty (30) days of receipt of the backup documentation.

b. Respondent shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

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

and shall reference Site/Spill ID Number 03M3 and the EPA docket number for this action.

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

Recipient	By
Daria Arnold (3MD30) Financial Management Officer U.S. Environmental Protection Agency 1650 Arch Street Philadelphia, PA 19103	Mail
Andrew Goldman (3RC10) Sr. Assistant Regional Counsel U.S. Environmental Protection Agency 1650 Arch Street Philadelphia, PA 19103	Mail
EPA Cincinnati Finance Office	Email at cinwd_acctsreceivable@epa.gov

Such notices shall reference Site/Spill ID Number 03M3 and the EPA docket number for this action.

d. Deposit of Future Response Costs Payments.

The total amount to be paid by Respondent pursuant to this Section shall be deposited by EPA in the Culpeper Wood Preservers Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time

the payment is received, EPA estimates that the Culpeper Wood Preservers Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

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

48. Contesting Future Response Costs. Respondent may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 46 (Payments for Future Response Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondent shall submit a Notice of Dispute in writing to the EPA PC within thirty (30) days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 46, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA PC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within five (5) days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 46. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 46. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

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

50. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within 7 days after such action. EPA and Respondent shall have 7 days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

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

52. Except as provided in Paragraph 48 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Except as provided in Paragraph 64, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

53. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential

force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

54. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify the EPA PC verbally or, in his or her absence, the EPA PC's Branch Chief or, in the event both of EPA's designated representatives are unavailable, the Chief of the Preparedness & Response Branch within the Superfund & Emergency Management Division, within 3 days of when Respondent first knew that the event might cause a delay. Within 3 days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 53 and whether Respondent has exercised its best efforts under Paragraph 53, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

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

56. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 53 and 54. If

Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

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

XVII. STIPULATED PENALTIES

58. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 59 and 60 for failure to comply with the obligations specified below, unless excused under Section XVI (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondent with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

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

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

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$3,000	15th through 30th day
\$4,000	31st day and beyond

b. Obligations.

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

2. Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 48 (Contesting Future Response Costs).

3. All requirements of Paragraphs 13 (including, but not limited to, the identification of contractors and subcontractors); 14 (including, but not limited to, the designation of a Project Coordinator); 19 (including, but not limited to, the submission of a Removal Work Plan for EPA approval); 20 (including, but not limited to, following the general and technical requirements for submission of deliverables to EPA); 21 (including, but not limited to, the submission of a Health and Safety Plan to EPA); 25 (including, but not limited to, submission of Progress Reports); 26 (including, but limited to, submission of a Final Report); 28-29 (including, but not limited to, obtaining access and providing access to EPA); 42-44 (including, but not limited to, providing notice, and responding to, emergencies); 64 (including,

but not limited to, payment of stipulated penalties); Section XXIV (including, but not limited to, obtaining insurance); and Section XXVII (including, but not limited to, performing additional removal actions).

60. Reserved.

61. Reserved.

62. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 73 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of \$5,000.

63. Reserved.

64. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within fifteen (15) days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 19 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the Chief of the Preparedness & Response Branch under Paragraph 51 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that such person issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

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

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

66. Payment/Dispute of Demanded Penalties. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invoke the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 46 (Payments for Future Response Costs). Notice of payment shall be sent as follows:

- a. Via email to: CINWD_AcctsReceivable@epa.gov;
- b. Via email to: R3_Hearing_Clerk@epa.gov
- c. Via regular mail to:

Andrew S. Goldman (3RC10)
Sr. Assistant Regional Counsel
US EPA
1650 Arch Street
Philadelphia, PA 19103

The payment and each notice required hereunder shall contain the paying party's name, street/P.O. Box address, email address, and telephone number; the EPA Docket Number of this Settlement; the amount of the payment; and the method of payment. If Respondents dispute all or a portion of the demand for stipulated penalties under Section XV (Dispute Resolution) of this Settlement, a copy of the Notice of Dispute shall be sent to (a)-(c), above.

67. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 6466 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 66 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

69. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is collected in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 74 (Work Takeover).

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

XVIII. COVENANTS BY EPA

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

XIX. RESERVATIONS OF RIGHTS BY EPA

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

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

- a. liability for failure by Respondent to meet a requirement of this Settlement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the Work;

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

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

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

74. Work Takeover.

a. In the event EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondent. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of seven (7) days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 7-day notice period specified in Paragraph 74.a, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 74.

c. Respondent may invoke the procedures set forth in Paragraph 51 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 74. Such process must be commenced by Respondent's submission to EPA, no later than twenty (20) days after Respondent's receipt of a notice from EPA pursuant to Paragraph 74.b, of a Notice of Dispute and a statement of position. The dispute shall then be resolved in accordance with the second through fifth sentences in Paragraph 51. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 74.0 until the earlier of (1) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 51 (Formal Dispute Resolution).

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

XX. COVENANTS BY RESPONDENT

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

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

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

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

76. Except as provided in Paragraph 80 (Waiver of Claims by Respondent), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 73.a (liability for failure to meet a requirement of the Settlement), 73.d (criminal liability), or 73.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

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

79. Reserved.

80. Waiver of Claims by Respondent.

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

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

2. MSW Waiver. For all matters relating to the Site against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of MSW at the Site, if the volume of MSW disposed, treated, or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site.

b. Exceptions to Waivers.

1. The waivers under this Paragraph 80 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against Respondent.

2. The waiver under Paragraph 80.a.1 (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

3. The waiver under Paragraph 80.a.2 (MSW Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section

3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

XXI. OTHER CLAIMS

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

82. Except as expressly provided in Paragraphs 80 (Waiver of Claims by Respondent) and Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

84. Except as provided in Paragraphs 80 (Waiver of Claims by Respondent), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

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

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

87. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

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

89. Reserved.

XXIII. INDEMNIFICATION

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

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

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

XXIV. INSURANCE

93. No later than 15 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Culpeper Wood Preservers Site and the EPA docket number for this action.

XXV. RESERVED

XXVI. MODIFICATION

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

95. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving verbal or written approval from the EPA PC pursuant to Paragraph 94.

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

XXVII. ADDITIONAL REMOVAL ACTION

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

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

XXVIII. NOTICE OF COMPLETION OF WORK

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

XXIX. INTEGRATION/APPENDICES

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

“Appendix A” identifies the Affected Properties.

“Appendix B” identifies procedures for Handling Information for Residential Properties.

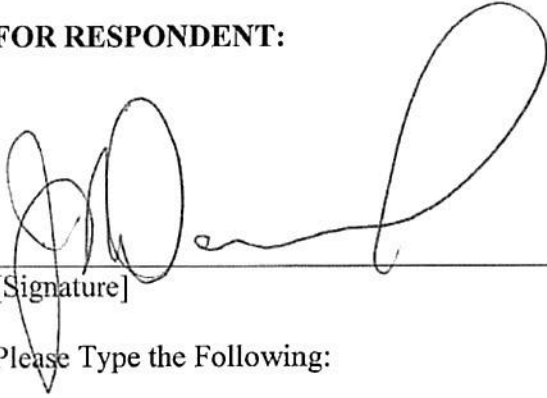
“Appendix C” is a sample confidentiality agreement.

XXX. EFFECTIVE DATE

101. This Settlement shall be effective 5 days after transmittal of a fully executed copy of this Settlement to counsel representing the Respondent.

IT IS SO AGREED AND ORDERED:

FOR RESPONDENT:



[Signature]

12/23/19
Date

Please Type the Following:

Name: Joseph R. Daniel

Title: President

Address: 501 North Main Street, Culpeper, VA 22701

FOR EPA:



Paul Leonard
Acting Director, Superfund & Emergency
Management Division
U.S. Environmental Protection Agency
Region III

January 16, 2020
Date

ATTACHMENT A

Affected Properties List

	Alias
1	BY-06
2	BY-07
3	BY-09
4	BY-10
5	BY-11
6	BY-12
7	BY-13
8	BY-14A
9	BY-14
10	BY-15
11	BY-16
12	BY-17
13	BY-18
14	BY-19
15	BY-20
16	BY-21
17	BY-22
18	BY-23
19	BY-24
20	BY-25*
21	BY-26
22	BY-27*
23	Culpeper Wood Preservers Facility 15487 Braggs Corner Road

ATTACHMENT B

(Handling Information from Residential Properties)

The following procedures shall be used to protect the privacy interests of owners of residential properties included on the Affected Properties List:

1. Each property included on the Affected Properties List provided by EPA will be assigned an alias by EPA.
2. All documents provided to EPA by Respondent under this Settlement, including progress reports, shall use the EPA-assigned aliases and no other identifying information to reference properties on the Affected Properties List unless specifically required by the EPA Project Coordinator.
3. Any maps or drawings identifying the location of residential properties on the Affected Properties List and which are provided by Respondent to EPA under this Settlement shall be marked "Confidential-Privacy" at the top and bottom of each map.
4. Unless specifically directed by the EPA Project Coordinator, Respondent shall not include, in documents provided to EPA under this Settlement:
 - a. the name, address, phone number, email address, or any other information that might be used to identify the owner(s) of any residential property on the Affected Properties List, or
 - b. pictures, videos, GPS coordinates, or other information that might be used to identify the location of residential properties on the Affected Properties List.

ATTACHMENT C

(Sample Confidentiality Agreement)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:	:	AGREEMENT REGARDING
	:	CONFIDENTIALITY OF
Culpeper Wood Preservers Site	:	INFORMATION AND
Culpeper County, Virginia	:	ANNEXES
	:	
	:	
	:	

EPA and Jefferson Homebuilders, Inc., a potentially responsible party (hereinafter "PRP") with respect to the Culpeper Wood Preservers Superfund Site ("Site"), hereby agree that settlement of the United States' claim concerning the Site will involve the production of documents which have been submitted to the United States Environmental Protection Agency ("EPA") by various contractors (listed in Annex 1) (hereinafter "submitters") containing certain information which may be entitled to confidential treatment under 40 CFR Part 2. Furthermore, the parties herein agree that the limitation on the disclosure of the documents subject to this Agreement is necessary in order to protect the interests of the submitters in the confidentiality of their business information.

The terms of this Agreement Regarding Confidentiality of Business Information (hereinafter "Agreement") are as follows:

1. EPA shall provide the documents containing information which may be entitled to confidential treatment to the PRP and such documents shall be handled in accordance with the terms of this Agreement.

2. As used in this Agreement, the term "confidential business information" means trade secrets or commercial or financial information submitted by a person to EPA and which may be

entitled to confidential treatment under 40 CFR Part 2. This information has not been determined by EPA under 40 CFR Part 2, Subpart B not to be entitled to confidential treatment.

3. Any information to be produced by EPA pursuant to this Agreement shall be stamped conspicuously with the word "CONFIDENTIAL BUSINESS INFORMATION" by EPA on each page of each document prior to production to the PRP. The transmittal of information designated as confidential business information shall be done by letter from EPA stating that the information designated as confidential business information is subject to this Agreement.

4. Information designated as confidential business information under this Agreement shall not be used or disclosed by the PRP or any other person subject to paragraph 7 below for any purpose other than the preparation for negotiation of a settlement.

5. The PRP and PRP's counsel who obtain information designated as confidential business information hereunder, and any nonparty subject to this Agreement, shall not disclose or permit disclosure of this information to any other person, including without limitation any officer, director, employee, agent, or representative of the PRP, the PRP's counsel, or any nonparty, except in the following circumstances:

a. Disclosure may be made to employees of the PRP or of the PRP's counsel who have responsibility for settlement negotiations involving the Site. Any employee to whom disclosure is made shall be advised of, and become subject to, the provisions of this Agreement prior to such disclosure by executing the Confidentiality Agreement (Annex 2) annexed hereto. Employees do not include persons, firms or corporations engaged by the PRP or the PRP's

counsel on a contract basis, who shall be subject to the requirements of subparagraph (b) of this paragraph.

b. Disclosure may be made to consultants, witnesses, experts, or employees of experts (hereinafter "Experts") employed or otherwise engaged by the PRP or PRP's counsel to assist in the preparation for negotiations. Prior to disclosure to any Expert, the Expert must agree to be bound by the terms of this Agreement by executing the Confidentiality Agreement annexed hereto. A copy of each executed Confidentiality Agreement shall be furnished to EPA and submitter not less than five (5) business days prior to disclosure to the Experts of the business information.

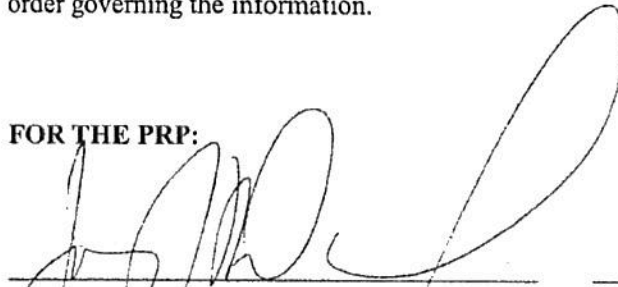
6. The PRP, PRP's counsel and any other person subject to this Agreement who obtains information designated as confidential business information hereunder, shall take all necessary and appropriate measures to maintain the confidential nature of the information, shall share such information only with persons authorized to receive it pursuant to this Agreement, and shall retain the information in a secure manner. Except as provided in paragraph 5 above, no other person shall be permitted access to the information.

7. Any person who obtains access to information designated as confidential business information under this Agreement may make copies, duplicates, extracts, summaries, or descriptions of the information or any portion thereof only for the purpose of the preparation for settlement negotiations for cost recovery at the Site. All copies, duplicates, extracts, etc. shall be subject to terms of this Agreement to the same extent and manner as original documents.

8. Any unauthorized disclosure of information designated as confidential business information under this Agreement shall not result in a waiver of any submitter's claim of confidentiality.

9. Within 60 days after termination of negotiations, or as determined by EPA, any person who obtained information designated as confidential business information under this Agreement shall assemble and return such information to EPA, including all copies, extracts, summaries, or descriptions of the information or portions thereof. Such return shall be certified in writing by the person who obtained the information from EPA. All such information covered by this Agreement which constitutes the work product of counsel or the PRP shall be destroyed. However, if before the expiration of the 60 days the United States has filed in Federal court a cost recovery action for the Site, naming the PRP as a party, the PRP may retain the information. Such retention shall be governed by the provisions of this Agreement until entry of a protective order governing the information.

FOR THE PRP:



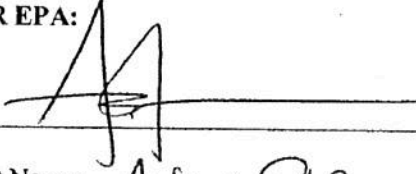
Print Name: Joseph A. Daniel

2/23/07
Date

Title: President

*Agreement Regarding Confidentiality of Information
Culpeper Wood Preservers Site*

FOR EPA:



2/27/07
Date

Print Name: Andrew Goldman

Title: Sr Assistant Regional Counsel

ANNEX 1: LIST OF CONTRACTORS

Tetra Tech NUS, Inc.
600 Clark Avenue
Suite 3
King of Prussia, PA 19406-1433
68-S6-3003

CDM Federal Program Corporation
993 Old Eagle School Road
Suite 408
Wayne, PA 19087
68-S7-3003

**ANNEX 2:
BUSINESS INFORMATION CONFIDENTIALITY AGREEMENT**

The undersigned is currently working at _____ which is located at _____.
During the past year the undersigned has been employed or otherwise engaged as a consultant or contractor by the following companies located at the corresponding addresses:

- 1) _____
- 2) _____

The undersigned hereby acknowledges that he/she has read the foregoing Agreement Regarding Confidentiality of Business Information ("Agreement") executed by the attorneys for the parties involved in settlement of the United States' claim concerning the _____ Superfund Site, understands the terms thereof, and agrees to be bound by such terms. The undersigned understands that disclosure of information which has been designated as confidential business information by the submitter of that information may cause substantial harm to the affected business' competitive position. Accordingly, among other responsibilities, the undersigned shall only share such information with persons specifically authorized to receive the information pursuant to the Agreement, shall retain the information in a secure manner, and shall use such information only for the purposes authorized by the Agreement. The undersigned understands that the pledge of confidentiality under this Confidentiality Agreement continues after any lawsuit associated with the settlement negotiations is over. Furthermore, the undersigned understands that a breach of the Agreement may subject him/her to civil claims for damages and to criminal prosecution under 42 U.S.C. § 9604(e)(7)(B).

Dated: _____ Signed: _____