

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7

IN THE MATTER OF:

COMPASS PLAZA WELL TCE SITE
OPERABLE UNIT NO. 1
MON000706143

POSITRONIC INDUSTRIES, INC.

RESPONDENT.

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

CERCLA-07-2019-0270

**ADMINISTRATIVE SETTLEMENT AGREEMENT
AND ORDER ON CONSENT FOR
FEASIBILITY STUDY**

TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS	2
II.	PARTIES BOUND	2
III.	DEFINITIONS	3
IV.	FINDINGS OF FACT	5
V.	CONCLUSIONS OF LAW AND DETERMINATIONS	7
VI.	SETTLEMENT AGREEMENT AND ORDER.....	8
VII.	DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS	8
VIII.	WORK TO BE PERFORMED.....	9
IX.	SUBMISSION AND APPROVAL OF DELIVERABLES.....	12
X.	QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS.....	14
XI.	PROPERTY REQUIREMENTS.....	16
XII.	ACCESS TO INFORMATION	17
XIII.	RECORD RETENTION	18
XIV.	COMPLIANCE WITH OTHER LAWS	19
XV.	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES.....	20
XVI.	PAYMENT OF RESPONSE COSTS.....	20
XVII.	DISPUTE RESOLUTION.....	22
XVIII.	FORCE MAJEURE.....	22
XIX.	STIPULATED PENALTIES	24
XX.	COVENANTS BY EPA.....	26
XXI.	RESERVATIONS OF RIGHTS BY EPA	26
XXII.	COVENANTS BY RESPONDENT.....	27
XXIII.	OTHER CLAIMS	28
XXIV.	EFFECT OF SETTLEMENT/CONTRIBUTION	29
XXV.	INDEMNIFICATION	30
XXVI.	INSURANCE	30
XXVII.	FINANCIAL ASSURANCE.....	31
XXVIII.	MODIFICATION	35
XXIX.	NOTICE OF COMPLETION OF WORK.....	35
XXX.	INTEGRATION/APPENDICES	35
XXXI.	ADMINISTRATIVE RECORD	36
XXXII.	EFFECTIVE DATE.....	36

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Positronic Industries, Inc., a Missouri corporation (Respondent). This Settlement provides for the performance of a feasibility study (FS) in connection with the Compass Plaza Well TCE Superfund Site, which is located approximately 9 miles east of the eastern edge of Springfield on US Highway 60 in Rogersville, Missouri.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607, and 9622 (CERCLA). This authority was delegated to the Administrator of the EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions Through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). These authorities were further redelegated by the Regional Administrator of EPA Region 7 to the Director, Superfund and Emergency Management Division by R7-14-14C and R7-14-14D.

3. 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 Section 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

4. 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.

5. 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.

6. 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 under this Settlement 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

7. 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, land, water, or other resource use restrictions are needed to implement the FS, including, but not limited to, the following properties: the Compass Plaza commercial development at 201 South Marshall Street, Rogersville, Missouri; Respondent’s former property on West Center Street, Rogersville, Missouri (Former Property); and other private and commercial properties in Greene County and Webster County, Missouri.

“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 XXXII.

“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.

“Former Property” shall mean Respondent’s former property on West Center Street, Rogersville, Missouri.

“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 Paragraph 110 (Access to Financial Assurance), Section XVII (Dispute Resolution), and all litigation costs concerning the Work. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs related to the Site that arise prior to completion of the Work.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the response action pursuant to this Settlement; and/or (c) provide information intended to modify or guide human behavior at or in connection with 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>.

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

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

“Non-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.

“Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

“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 Positronic Industries, 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 and all appendices attached hereto (listed in Section XXX (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the contamination constituting Operable Unit No. 1 of the Compass Plaza Well TCE National Priorities List Superfund Site, located approximately 9 miles east of the eastern edge of Springfield on US Highway 60, around the Compass Plaza commercial development at 201 South Marshall Street, Rogersville, Missouri, as generally depicted on Figure 1.

“State” shall mean the State of Missouri.

“Statement of Work” or “SOW” shall mean the document describing the activities Respondent must perform to develop the FS for the Site, as set forth in Appendix A to this Settlement. The Statement of Work is incorporated into this Settlement and is an enforceable part of this Settlement as are any modifications made thereto in accordance with this Settlement.

“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).

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

IV. FINDINGS OF FACT

8. The Compass Plaza Well TCE Superfund Site is an area of one or more contaminated groundwater plumes affecting wells near the Compass Plaza commercial development in Rogersville, Missouri.

9. In March 2010, following routine public drinking water monitoring by MDNR, sampling by the MDNR Public Drinking Water Branch detected trichloroethylene (TCE) in two non-community public wells and one irrigation well on the western edge of Rogersville. TCE was also detected in the Compass Plaza development’s drinking water well and in two nearby public wells.

10. In response to these detections, MDNR’s Superfund Section initiated a combined Preliminary Assessment/Site Investigation (PA/SI) and started coordination with EPA and Greene County Resource Management. Investigations to identify possible source areas and exposure pathways for TCE were conducted by MDNR, EPA, and Greene County Resource Management. These investigations revealed evidence of one or more plumes of TCE in groundwater underneath the Compass Plaza development and other areas of Rogersville.

11. In August 2010, EPA initiated removal actions at the Site that extended the public and private well sampling. The goal of sampling was to assess the threat of exposure to TCE resulting from contact with contaminated groundwater. Sampling from 2010 to 2012 detected TCE in 13 of 350 private wells (domestic and irrigation wells) sampled. Of those 13 wells, five had detected TCE levels above the Maximum Contaminant Level (MCL) of 5 parts per billion (ppb). EPA installed water supply treatment systems at the five private residences that had detected TCE contamination above 5 ppb, and, in cooperation with MDNR, Greene County Resources Management and the Natural Resources Service, plugged a residential well with detected concentrations of TCE above 5 ppb. TCE was not detected in the municipal water supply.

12. In March 2012, the Site was listed on the National Priorities List (NPL), pursuant to CERCLA § 105, 42 U.S.C. § 9605. 77 Fed. Reg. 15276 (March 15, 2012).

13. In 2013, EPA commenced a remedial investigation to determine the full extent of TCE contamination at the Site. To date, sixteen monitoring wells have been installed and sampled at the Site to better delineate the contamination.

14. The volatile organic compounds or VOCs detected at the Site are acetone, benzene, chloroform, cis-1,2-dichloroethene (cis-1,2-DCE), trans-1,2-dichloroethene, tetrachloroethylene (PCE), and TCE. The VOCs most frequently identified in groundwater near the Site have been cis-1,2-DCE and TCE.

15. TCE is a volatile organic compound that is used as a solvent to remove oils and grease from metal products. It is a manufactured substance and does not occur naturally in the environment. TCE is used in industrial degreasing operations.

16. Respondent is a Missouri corporation that manufactures electronic connectors.

17. Between 1975 and 1983, Respondent owned and operated the Former Property, a manufacturing facility on West Center Street in the northwest part of Rogersville. During those years, Respondent performed degreasing operations at this facility.

18. While operating at the facility on West Center Street, Respondent used TCE during an electroplating process. Respondent reported that the facility purchased and received TCE in 55-gallon drums, which were stored temporarily on a covered, concrete loading dock on the north side of the facility. Drums were then moved inside the building and stored in a degreaser room on the northeastern side of the building. TCE would be hand-pumped into a closed-loop vapor degreaser machine, which was located in the degreaser room. Spent TCE was hand-pumped back into drums for off-site disposal. Respondent asserts it did not use PCE in its operations at the Former Property.

19. Investigation has revealed the presence of TCE at the Respondent's Former Property. Limited additional investigation of Respondent's Former Property and other areas up and down gradient from the Former Property may be useful to assess appropriate actions in response to the TCE contamination in Rogersville.

20. In 2013, the United States Geological Survey conducted a tree core investigation at the Respondent's Former Property, which revealed TCE and PCE near the northern property boundary. PCE was not detected in the soils on the Respondent's Former Property during a 2014 soils investigation, but was detected in soil vapors.

21. Between January 8 and January 13, 2018, samples were collected from 13 soil borings (SB-201 through SB-213) on the Respondent's Former Property on West Center Street. Soil sampling was conducted utilizing direct push technology equipment. Samples were collected from the soil borings approximately every five feet to a depth of 45 feet below ground surface (bgs) or refusal. EPA analyzed 112 samples for VOCs. EPA detected the presence of TCE, PCE, and other chlorinated VOCs in soils beneath the Respondent's Former Property, immediately south of the loading dock.

22. In August 2018, EPA, in conjunction with the University of Oklahoma, conducted a TCE compound specific isotope analysis (CSIA) of ground water samples collected by Region 7 and the U.S. Geological Survey for the purpose of profiling TCE in the area.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

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

e. The conditions described in Paragraphs 8–22 of the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The actions required by this Settlement are necessary to protect the public health, welfare, or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

g. EPA has determined that Respondent is qualified to conduct the FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondent complies with the terms of this Settlement.

VI. SETTLEMENT AGREEMENT AND ORDER

24. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, 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 CONTRACTORS AND PROJECT COORDINATORS

25. **Selection of Contractors, Personnel.** All Work performed under this Settlement shall be under the direction and supervision of qualified personnel. Within thirty (30) days after the Effective Date, and before the Work outlined below begins, Respondent shall notify EPA in writing of the names, titles, addresses, telephone numbers, email addresses, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. If, after the commencement of Work, Respondent retains additional contractors or subcontractors, Respondent shall notify EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least fourteen (14) days prior to commencement of Work by such additional contractors or subcontractors. EPA retains the right, at any time, to disapprove of any or all 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 fourteen (14) days after EPA's disapproval. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," EPA/240/B-01/002 (Reissued May 2006) or equivalent documentation as determined by EPA. 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.

26. Within thirty (30) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. EPA retains the right to disapprove of a designated Project Coordinator who does not meet the requirements of Paragraph 26 (Selection of Contractors, Personnel). 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, and qualifications within fourteen (14) days following EPA's disapproval.

27. EPA has designated Devin Pollock of EPA Region 7's Superfund and Emergency Response Division as its Remedial Project Manager (RPM). EPA will notify Respondent of a change of its designated RPM. Communications between Respondent and EPA, and all documents concerning the activities performed pursuant to this Settlement, shall be directed to the EPA RPM in accordance with Paragraph 36.a.

28. EPA's RPM shall be responsible for overseeing Respondent's implementation of this Settlement. EPA's RPM shall have the authority vested in an RPM or On-Scene Coordinator by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action undertaken at the Site. Absence of EPA's RPM from the Site shall not be cause for stoppage of work.

VIII. WORK TO BE PERFORMED

29. 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.

30. Respondent shall conduct a FS Supplemental Investigation and Report, complete the FS, and prepare all plans in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (RI/FS Guidance), OSWER Directive # 9355.3-01 (October 1988), available at <https://semspub.epa.gov/src/document/11/128301>, "Guidance for Data Useability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at <http://semspub.epa.gov/src/document/11/156756>, and guidance referenced therein, and guidance referenced in the SOW. The FS shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondent shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e). The tasks that the Respondent must perform are described more fully in the SOW and EPA guidances.

31. All written documents prepared by Respondent pursuant to this Settlement shall be submitted by Respondent in accordance with Section IX (Submission and Approval of Deliverables). All such submittals will be reviewed and approved by EPA in accordance with Section IX (Submission and Approval of Deliverables). Respondent shall implement all EPA approved, conditionally-approved, or modified deliverables.

32. EPA will work with the Respondent to determine Site-specific objectives for the FS Supplemental Investigation. The following deliverables pertaining to the FS Supplemental Investigation shall be submitted in accordance with the timeline set forth in the SOW:

a. FS Supplemental Investigation Work Plan. Respondent shall submit to EPA a complete FS Supplemental Investigation Work Plan (FS Work Plan). Upon its approval by EPA pursuant to Section IX (Submission and Approval of Deliverables), the FS Work Plan shall be incorporated into and become enforceable under this Settlement.

b. Sampling and Analysis Plan. Respondent shall submit a Sampling and Analysis Plan (SAP) to EPA for review and approval pursuant to Section IX (Submission and Approval of Deliverables). This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP), as described in the SOW, that is consistent with the NCP and “Guidance for Quality Assurance Project Plans (QA/G-5),” EPA/240/R-02/009 (December 2002), including, but not limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA/240/B-01/003 (March 2001, reissued May 2006), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA pursuant to Section IX (Submission and Approval of Deliverables), the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Health and Safety Plan. Respondent shall submit for EPA review and comment a Health and Safety Plan that ensures the protection of on-site workers and the public 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-O1C (November 2002), available on the NSCEP database at <https://www.epa.gov/nscep/index.html>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at https://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the 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 provided by EPA and shall implement the plan during the pendency of the FS Supplemental Investigation.

d. Draft FS Supplemental Investigation Report. Respondent shall submit to EPA for review and approval pursuant to Section IX (Submission and Approval of Deliverables), a draft FS Supplemental Investigation Report (“FS Supplemental Investigation Report”) consistent with the SOW, FS Work Plan, and SAP.

33. Off-Site Shipments

a. Respondent may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if

Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

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

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

34. **Meetings.** Respondent shall make presentations at, and participate in, meetings at the request of EPA during the preparation of the FS. In addition to discussion of the technical aspects of the FS, topics will include anticipated problems or new issues. Meetings will be scheduled, in coordination with Respondent, at EPA's discretion.

35. **Progress Reports.** In addition to the deliverables set forth in this Settlement, Respondent shall submit written monthly progress reports to EPA by the 15th day of each month following the Effective Date. At a minimum, with respect to the preceding month, these progress reports shall:

- a. describe the actions that have been taken to comply with this Settlement;
- b. include all results of sampling and tests and all other data received by Respondent;
- c. describe Work planned for the next two months with schedules relating such Work to the overall project schedule for FS completion; and
- d. describe all problems encountered in complying with the requirements of this Settlement and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

IX. SUBMISSION AND APPROVAL OF DELIVERABLES

36. 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 EPA's RPM and the State at:

Devin Pollock
Superfund and Emergency Response Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Phone: (913) 551-7275
pollock.devin@epa.gov

Candice McGhee
Hazardous Waste Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102
Phone: (913) 751-1738
candice.mcghee@dnr.mo.gov

Respondent shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan in accordance with the schedule set forth in such plan.

(2) Respondent shall submit all deliverables in electronic form. All other deliverables shall be submitted in the electronic form specified by EPA's RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondent shall also provide paper copies of such exhibits.

b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. 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: (i) in the ESRI File Geodatabase format; and (ii) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software,

the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <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.

37. **Approval of Deliverables**

a. **Initial Submissions**

(1) After review of any deliverable that is required to be submitted for EPA approval under this Settlement or the attached SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. **Resubmissions.** Upon receipt of a notice of disapproval under Paragraph 37.a(1) (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 37.a(1), Respondent shall, within seven (7) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Respondent to correct the deficiencies; or (e) any combination of the foregoing.

c. **Implementation.** Upon approval, approval upon conditions, or modification by EPA under Paragraph 37.a (Initial Submissions) or Paragraph 37.b (Resubmissions), of any deliverable, or any portion thereof: (i) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (ii) Respondent shall take any action required by such deliverable, or portion thereof. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for penalties under Section XIX (Stipulated Penalties) for violations of this Settlement.

38. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA.

39. Should EPA take over some of the tasks, but not the preparation of the FS Report, Respondent shall incorporate and integrate information supplied by EPA into those reports.

40. Respondent shall not proceed with any activities or tasks dependent on the following deliverables until receiving EPA approval, approval on condition, or modification of the draft FS Report. While awaiting EPA approval, approval on condition, or modification of the draft FS Report, Respondent shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement.

41. For all remaining deliverables not listed in Paragraph 40, Respondent shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval of the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work.

42. **Material Defects.** If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 37.a (Initial Submissions) or 37.b (Resubmissions) due to such material defect, Respondent shall be deemed in violation of this Settlement for failure to submit such plan, report, or other deliverable timely and adequately. Respondent may be subject to penalties for such violation as provided in Section XIX (Stipulated Penalties).

43. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

X. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

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

45. Laboratories

a. Respondent shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent pursuant to this Settlement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the Quality Assurance Project Plan (QAPP) for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure" CIO 2105-P-02.1 (9/23/2014), available at <https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondent shall ensure that the laboratories they utilize for the analysis of samples taken

pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions," available at <https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements>, and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (<https://www.epa.gov/superfund/programs/clp/>), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (<https://www.epa.gov/hw-sw846>), "Standard Methods for the Examination of Water and Wastewater" (<http://www.standardmethods.org/>), and 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (<https://www.epa.gov/ttnamti1/airtox.html>).

b. Upon approval by EPA, Respondent may use other appropriate analytical methods, as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at least as stringent as the methods listed above, and (iii) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc.

c. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality Management Systems for Environmental Information and Technology Programs – Requirements With Guidance for Use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements.

d. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the approved QAPP.

46. Sampling

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

b. Respondent shall submit to EPA, in the next monthly progress report as described in Paragraph 35 (Progress Reports) the results of all sampling and/or tests or other data

obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Settlement.

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

XI. PROPERTY REQUIREMENTS

47. **Agreements Regarding Access and Non-Interference.** Respondent shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondent and the United States, providing that such Non-Settling Owner: (i) provide EPA, Respondent, and its representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those listed in Paragraph 47.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 or integrity of the Work. 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) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 89 (Work Takeover);

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

(9) Assessing Respondent's compliance with the Settlement;

(10) 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 under the Settlement; and

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

48. **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, it 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 XVI (Payment of Response Costs).

49. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondent shall cooperate with EPA's efforts to secure and ensure compliance with such Institutional Controls.

50. 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 and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

51. 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.

XII. ACCESS TO INFORMATION

52. Respondent shall provide to EPA and the State, 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 and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

53. Privileged and Protected Claims

a. Respondent may assert that all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 53.b, and except as provided in Paragraph 53.c.

b. If Respondent asserts a claim of privilege or protection, it shall provide EPA and the State 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 and the State 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 and the State have 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.

54. **Business Confidential Claims.** Respondent may assert that all or part of a Record provided to EPA and the State under this Section or Section XIII (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 claimed as 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 and the State, 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.

55. Notwithstanding any provision of this Settlement, EPA and the State retain all their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RECORD RETENTION

56. Until ten (10) years after EPA provides Respondent with notice, pursuant to Section XXIX (Notice of Completion of Work), that all Work has been fully performed in

accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. 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.

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

58. 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.

XIV. COMPLIANCE WITH OTHER LAWS

59. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations when performing the FS. 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 XVIII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

60. **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 EPA's Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at (913) 281-0991 of the incident or Site conditions. In the event that 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 XVI (Payment of Response Costs).

61. **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 orally notify EPA's Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at (913) 281-0991, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 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.

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

XVI. PAYMENT OF RESPONSE COSTS

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

a. **Periodic Bill.** On a periodic basis, EPA will send Respondent a bill requiring payment that includes an itemized cost summary, 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 Paragraph 65 (Contesting Future Response Costs).

b. **Deposit of Future Response Costs Payments.** The total amount to be paid by Respondent pursuant to Paragraph 63.a (Periodic Bill) shall be deposited by EPA in the Compass Plaza Well TCE 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 Compass Plaza 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.

64. **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. 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 XIX (Stipulated Penalties).

65. **Contesting Future Response Costs.** Respondent may initiate the procedures of Section XVII (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 63 (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 a dispute, Respondent shall submit a Notice of Dispute in writing to EPA's RPM 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 63, 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 EPA's RPM 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 63. 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 63. 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 XVII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XVII. DISPUTE RESOLUTION

66. 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.

67. **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 thirty (30) days after such action. EPA and Respondent shall have thirty (30) 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.

68. **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 EPA's RPM. EPA may, within twenty (20) days thereafter, submit a statement of position. Thereafter, an EPA management official at the Branch Chief level or higher 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.

69. Except as provided in Paragraph 65 (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 79, 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 XIX (Stipulated Penalties).

XVIII. FORCE MAJEURE

70. "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 exercises "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.

71. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement, Respondent shall notify EPA's RPM orally or, in his or her absence, the alternate EPA RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund & Emergency Management Division, EPA Region 7, within seven (7) days of when Respondent first knew that the event might cause a delay. Within seven (7) 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 70 and whether Respondent has exercised its best efforts under Paragraph 70, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

72. 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.

73. If Respondent elects to invoke the dispute resolution procedures set forth in Section XVII (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 70 and 71. If Respondent carry 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.

74. 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.

XIX. STIPULATED PENALTIES

75. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 76.a and 77 for failure to comply with the obligations specified in Paragraphs 76.b and 77, unless excused under Section XVIII (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.

76. **Stipulated Penalty Amounts: Payments, Financial Assurance, Major Deliverables, and Other Milestones**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with any obligation identified in Paragraph 76.b:

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

b. **Obligations**

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

(2) Establishment and maintenance of financial assurance in accordance with Section XXVII (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 65 (Contesting Future Response Costs).

77. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement, other than those specified in Paragraph 76.b:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 125	1st through 14th day
\$ 250	15th through 30th day
\$ 500	31st day and beyond

78. If EPA assumes performance of a portion or all of the Work pursuant to Paragraph 89 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of \$100,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 89 (Work Takeover) and 110 (Access to Financial Assurance).

79. 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. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section IX (Submission and Approval of Deliverables), 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 EPA Management Official at the Branch Chief level or higher, under Paragraph 68 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

80. 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 the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

81. 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 invokes the Dispute Resolution procedures under Section XVII (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 63 (Payments for Future Response Costs).

82. 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 79 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 81 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.

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

84. 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 Section 122(l) of CERCLA, 42 U.S.C. § 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 Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 89 (Work Takeover).

85. 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.

XX. COVENANTS BY EPA

86. Except as provided in Section XXI (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.

XXI. RESERVATIONS OF RIGHTS BY EPA

87. 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.

88. The covenant not to sue set forth in Section XX (Covenants by EPA) above does 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.

89. Work Takeover

a. If 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 ten (10) days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in Paragraph 89.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 89.b. Funding of Work Takeover costs is addressed under Paragraph 110 (Access to Financial Assurance).

c. Respondent may invoke the procedures set forth in Section XVII (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 89.b. 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 89.b 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 68 (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.

XXII. COVENANTS BY RESPONDENT

90. 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, or 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 Missouri Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law;

91. 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 the reservations set forth in Section XXI (Reservations of Rights by EPA), other than in Paragraph 88.a (liability for failure to meet a requirement of the Settlement), 88.d (criminal liability), or 88.e (liability for violations of federal or state law), 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.

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

93. 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.

XXIII. OTHER CLAIMS

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

95. Except as expressly provided in Section XX (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.

96. 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).

XXIV. EFFECT OF SETTLEMENT/CONTRIBUTION

97. 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 XXII (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). Nothing in this Settlement is intended to limit EPA’s authority and discretion under its Orphan Share Compensation Policy.

98. 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.

99. 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).

100. 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.

101. 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 XX (Covenants By EPA).

XXV. INDEMNIFICATION

102. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as EPA's authorized representative 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, 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 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 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.

103. 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.

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

XXVI. INSURANCE

105. No later than thirty (30) 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 XXIX (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 Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to the contractor or subcontractor, 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 site name, city, state and the EPA docket number for this action.

XXVII. FINANCIAL ASSURANCE

106. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of \$200,000 (Estimated Cost of the Work), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondent may use multiple mechanisms if it is limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

- a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;
- c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;
- d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;
- e. A demonstration by a Respondent that it meets the financial test criteria of Paragraph 107, accompanied by a standby funding commitment, which obligates the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or
- f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of Paragraph 107.

107. If Respondent seeks to provide financial assurance by means of a demonstration or guarantee under Paragraph 106.e or 106.f, it must, within thirty (30) days of the Effective Date:

a. Demonstrate that:

(1) Respondent or guarantor has:

- i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through a financial test or guarantee; or

(2) Respondent or guarantor has:

- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance-Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

108. Respondent providing financial assurance by means of a demonstration or guarantee under Paragraph 106.e or 106.f must also:

a. Annually resubmit the documents described in Paragraph 107.b within ninety (90) days after the close of Respondent's or guarantor's fiscal year;

b. Notify EPA within thirty (30) days after Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within thirty (30) days of EPA's request, reports of the financial condition of Respondent or guarantor in addition to those specified in Paragraph 107.b; EPA may make such a request at any time based on a belief that Respondent or guarantor may no longer meet the financial test requirements of this Section.

109. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify EPA of such information within seven (7) days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Respondent of such determination. Respondent shall, within thirty (30) days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed sixty (60) days. Respondent shall follow the procedures of Paragraph 111 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

110. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 89.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 110.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least thirty (30) days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 110.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 89.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraphs 106.e or 106.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondent shall, within thirty (30) days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 110 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Compass Plaza Well TCE Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 110 must be reimbursed as Future Response Costs under Section XVI (Payment of Response Costs).

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

112. Release, Cancellation, or Discontinuation of Financial Assurance. Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a)

if EPA issues a Notice of Completion of Work under Section XXIX (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XVII (Dispute Resolution).

XXVIII. MODIFICATION

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

114. If Respondent seeks permission to deviate from any approved work plan (FS Work Plan) or schedule or the SOW, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from EPA's RPM pursuant to Paragraph 113.

115. No informal advice, guidance, suggestion, or comment by EPA's RPM 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.

XXIX. NOTICE OF COMPLETION OF WORK

116. When EPA determines 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 and Record Retention, EPA will provide written notice to Respondent. If EPA determines that any Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies, and require Respondent to modify the FS Work Plan, if appropriate, in order to correct such deficiencies. Respondent shall implement the modified and approved FS Work Plan and shall submit a modified draft FS Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified FS Work Plan shall be a violation of this Settlement.

XXX. INTEGRATION/APPENDICES

117. 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:

- a. "Figure 1" is the map of the Site.
- b. "Appendix A" is the SOW.

XXXI. ADMINISTRATIVE RECORD

118. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondent shall submit to EPA documents developed during the FS upon which selection of the remedial action may be based. Upon request of EPA, Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of EPA, Respondent shall additionally submit any previous studies conducted under state, local, or other federal authorities that may relate to selection of the remedial action, and all communications between Respondent and state, local, or other federal authorities concerning selection of the remedial action.

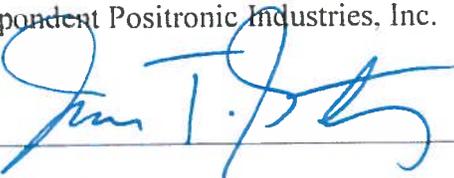
XXXII. EFFECTIVE DATE

119. This Settlement shall be effective on the date it has been signed by all Parties.

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 bind the parties he or she represents to this document.

Agreed this 18th day of September, 2019.

For Respondent Positronic Industries, Inc.

By  _____

Name John T. Gentry _____

Title CEO _____

It is so ORDERED and Agreed this 19 day of September, 2019.



Mary P. Peterson
Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency, Region 7



Katie Gulley
Attorney-Adviser
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7

FIGURE 1

Groundwater Well Network

Legend

- ◆ CP-0002 Groundwater Well with TCE Detection 2015-2018
- ◆ Groundwater Well with No TCE Detection 2015-2018

◆ Groundwater Well

— Major Road

— County Boundary

— Estimated Boundary of OU1

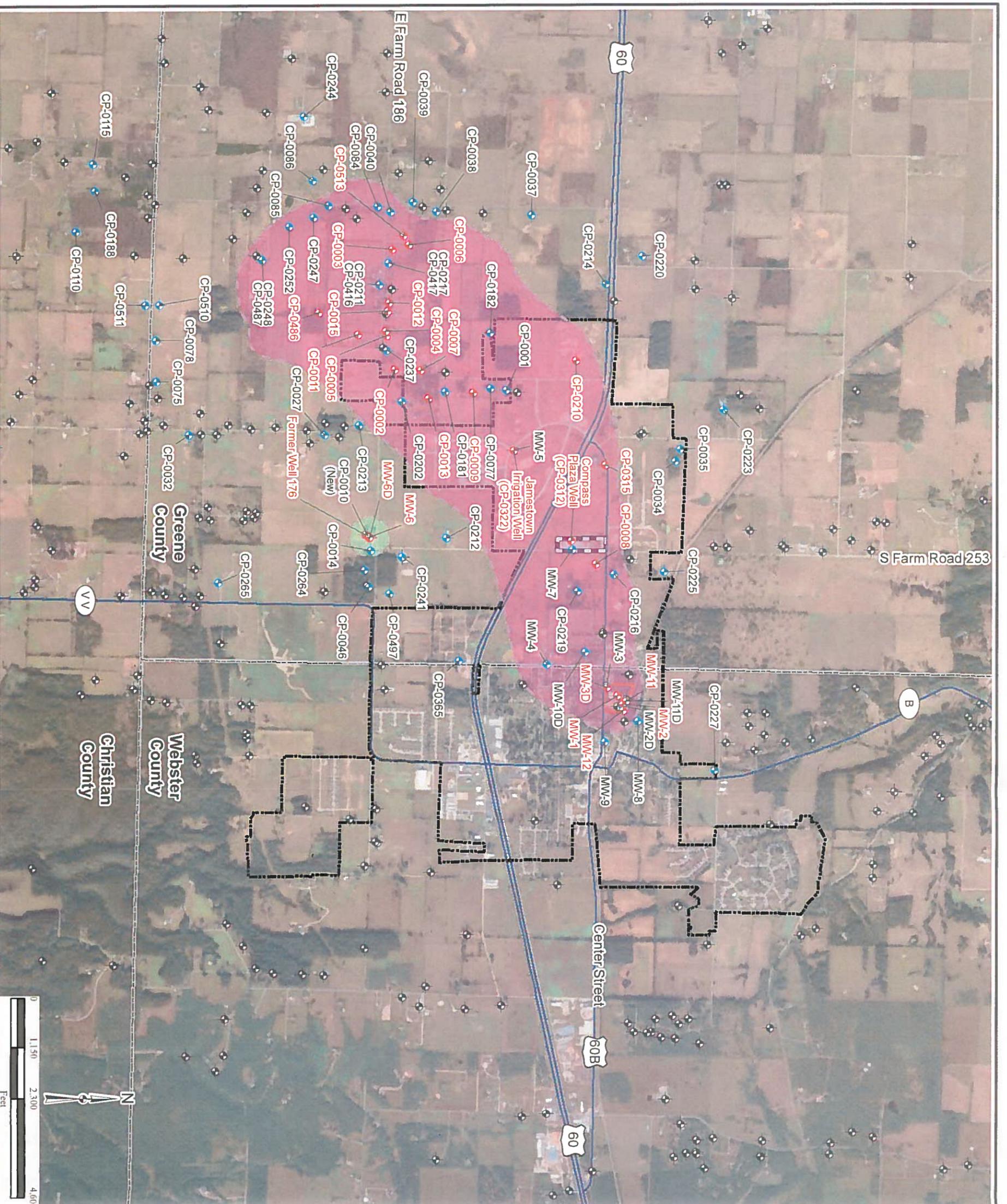
— Estimated Boundary of OU2

— Former Postitronic Property

— Compass Plaza Boundary

— Rogersville City Limits

Notes:
 OU=operable unit
 TCE=trichloroethylene



gls-rs-01 HGLGIS Compass Plaza MSW Field Maps
 (2-02/01) Well Network.mxd
 9/12/2019 JG
 Source: HGL, Scribble Database
 ArcGIS Online Imagery, (Terra)

APPENDIX A

**STATEMENT OF WORK FOR FEASIBILITY STUDY
(FS)**

**Compass Plaza Well TCE Site,
Operable Unit No. 1
Rogersville, Greene County, Missouri
September 16, 2019**

I. BACKGROUND INFORMATION

Groundwater contamination consisting predominantly of trichloroethylene (TCE) has impacted private drinking water wells within the Southwestern area of Rogersville, Missouri. An EPA removal action consisted of collecting groundwater samples from approximately 457 drinking water wells. TCE was detected in 12 of the private drinking water wells with five exceeding the TCE maximum contaminant level or MCL. EPA installed whole house filtration systems at the five residences with TCE concentrations above the MCL.

A remedial investigation or RI was started in 2013 consisting of the private drinking water well sampling, shallow and deep monitoring well installation and a vapor intrusion investigation. Concentrations of TCE have been detected in the on-site monitoring wells at the former Positronic property. TCE has also been detected in the indoor air and sub-slab soil gas samples at the former Positronic building. The TCE in the indoor air exceeded the Removal Action Level or RAL of 6 micrograms per cubic meter or $\mu\text{g}/\text{m}^3$ for an industrial/ commercial scenario with an 8-hour workday as set by EPA Region 7. A Vapor Intrusion or VI mitigation system was installed in the building in March of 2017.

II. OBJECTIVE AND SCOPE

The purpose of this Statement of Work (SOW) is to set forth the requirements for completing the Feasibility Study (FS) to support a Record of Decision (ROD) for the Compass Plaza Well TCE Site (Site). The purpose of the FS is to develop and evaluate remedial alternatives, as appropriate. The Respondent shall furnish all necessary personnel, materials and services needed for, or incidental to, developing the FS, except as otherwise specified herein. The Respondent will conduct the FS in accordance with the Guidance for Conducting Feasibility Studies under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (U.S. EPA, October 1988). As specified in CERCLA Section 104(a)(1), as amended, EPA, with assistance from the Missouri Department of Natural Resources or MDNR, will provide oversight of Respondent's activities throughout the FS work.

The goal of this FS is to develop data necessary to support the selection of an approach for Site remediation and to use this data to result in a well-supported ROD.

The specific FS activities to be conducted at the Compass Plaza Well TCE Site are listed below.

- Remedial Alternatives Development and Screening

information, the baseline human health and ecological risk assessments, Respondent shall provide site-specific remedial action objectives for each chemicals of concern or COCs in each medium in a Remedial Action Objectives Technical Memorandum. The remedial action objectives shall specify the contaminant(s) and media of concern, the exposure route(s) and receptor(s) and an acceptable contaminant level or range of levels for each exposure route (i.e., preliminary remediation goals). Preliminary remediation goals should be established based on readily available information (e.g., Reference Dose or Rfds) or chemical-specific Applicable or Relevant and Appropriate Requirements or ARARs (e.g., MCLs). The remedial action objectives shall be developed by considering the factors set forth in 40 C.F.R. § 300.430(e)(2)(i). Respondent shall incorporate EPA's comments on the Remedial Action Objectives Technical Memorandum in the Alternatives Screening Technical Memorandum.

Alternatives Screening Technical Memorandum

Respondent shall submit a paper copy and an electronic copy of the Alternatives Screening Technical Memorandum to EPA and MDNR, for review and approval by EPA. The Alternatives Screening Technical Memorandum shall summarize the work performed and the results of each of the above tasks and shall include an alternatives array summary. If required by EPA, Respondent shall modify the alternatives array to assure that the array identifies a complete and appropriate range of viable alternatives to be considered in the detailed analysis. The Alternatives Screening Technical Memorandum shall document the methods, the rationale and the results of the alternatives screening process.

Respondent shall incorporate EPA's comments on the Alternatives Screening Technical Memorandum in the Individual and Comparative Analysis of Alternatives Technical Memorandum.

Develop General Response Actions

In the Alternatives Screening Technical Memorandum, Respondent shall develop general response actions including containment, treatment, excavation, pumping, or other actions, singly or in combination, to satisfy the EPA-approved remedial action objectives.

Identify Areas or Volumes of Media

In the Alternatives Screening Technical Memorandum, Respondent shall identify areas or volumes of media to which the general response actions may apply, taking into account requirements for protectiveness as identified in the remedial action objectives. Respondent shall also take into account the chemical and physical characterization of the Site.

Identify, Screen and Document Remedial Technologies

In the Alternatives Screening Technical Memorandum, Respondent shall identify and evaluate technologies applicable to each response action to eliminate those that cannot be implemented. Respondent shall refine applicable general response actions to specify remedial technology types. Respondent shall identify technology process options for each of the technology types concurrently

the Site. Upon receipt of EPA approval of the Work Plan, Respondent shall implement the work and submit a Supplemental FS Investigation Report to EPA.

Apply Nine Criteria and Document Analysis

Respondent shall apply the nine evaluation criteria to each of the assembled remedial alternatives to ensure that the selected remedial alternative will protect human health and the environment and meet remedial action objectives; will comply with or include a waiver of ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria shall include:

- Overall protection of human health and the environment
- Compliance with ARARs
- Long-term effectiveness and permanence
- Reduction in toxicity, mobility or volume through treatment
- Short-term effectiveness
- Implementability - technical and administrative
- Cost
- State acceptance
- Community acceptance

Individual and Comparative Analysis of Alternatives Technical Memorandum

Respondent shall perform a comparative analysis between the remedial alternatives. That is, Respondent shall compare each alternative against the other alternatives using the evaluation criteria as a basis of comparison. EPA will identify and select the preferred alternative. Respondent shall prepare an Individual and Comparative Analysis of Alternatives Technical Memorandum which summarizes the results of the analyses and fully and satisfactorily addresses and incorporates EPA's comments on the Alternatives Screening Technical Memorandum. Respondent shall incorporate EPA's comments on the Individual and Comparative Analysis of Alternatives Technical Memorandum in the draft FS Report.

Alternative Analysis for Institutional Controls and Screening

For any alternative that relies on ICs, Respondent shall include in the Alternatives Screening Technical Memorandum, Individual and Comparative Analysis of Alternatives Technical Memorandum and Feasibility Study an evaluation of the following: (1) the restrictions needed on land, water, or other resources and their relationship to the remedial action objectives; (2) determine the specific types of Institutional Controls that can be used to address and implement the land, water, or other resource use restrictions; (3) investigate when the Institutional Controls need to be implemented and how long they must remain in place; (4) research, discuss, and document any agreement or other arrangements with the proper entities (e.g., state, local government, local landowners, conservation organizations, Respondents) on exactly who will be responsible for implementing, maintaining and enforcing the Institutional Controls. The Alternative Analysis for

V. SCHEDULE OF DELIVERABLES/MILESTONES

DELIVERABLES	DUE DATE
Draft FS Supplemental Investigation Work Plan and Sampling Analysis Plan (SAP), and Health and Safety Plan (HASP)	Within 90 days of the ASAOC Effective Date, as defined in the ASAOC, or within 90 days of the date of issuance of the Final Remedial Investigation Report, whichever is later.
Notice of FS Supplemental Investigation Commencement	Within 30 days of receipt of EPA's comments on the FS Supplemental Investigation Work Plan
Draft FS Supplemental Investigation Report	Within 60 days after collection of last field sample required by the approved SAP, unless an alternative schedule is agreed to in the approved SAP
Remedial Action Objectives Technical Memorandum	Within 30 days of receipt of the EPA's comments on the FS Supplemental Investigation Report.
Alternatives Screening Technical Memorandum	Within 30 days of receipt of EPA's comments on the Remedial Action Objectives Technical Memorandum
Individual and Comparative Analysis of Alternatives Technical Memorandum	Within 30 days of receipt of EPA's comments on the Alternative Screening Technical Memorandum, or within 30 days of receipt of EPA's comments on the Draft FS Supplemental Investigation Report, whichever is later.
Alternative Analysis for Institutional Controls and Screening	As an appendix to the Draft FS Report
Draft FS Report	Within 60 days of receipt of EPA's comments on the Individual and Comparative Analysis of Alternatives Technical Memorandum
Final FS Report	Within 30 days of receipt of EPA's comments or such other time as specified by EPA
Written notice to EPA that payment of bill for Future Response Costs has been made	At the time of payment
Written Evidence of Financial Assurance	Within 30 days of the Effective Date

The Respondents deliverables will be inspected by the government for acceptability. Unacceptable deliverables will be returned to the Respondent with comments and directions for necessary corrections or rework which may be applicable, consistent with the terms of the ASAOC.