

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2009 NOV 18 PM 1:22

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF:

Highway 89 Storage Units  
Box Elder and Weber Counties, Utah

ATK Launch Systems, Inc.,

Respondent

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

U.S. EPA Region 8

Docket No. **CERCLA-08-2010-0001**

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

## Table of Contents

I.	Jurisdiction and General Provisions.....	1
II.	Parties Bound.....	2
III.	Definitions.....	2
IV.	Findings of Fact.....	4
V.	Conclusions of Law and Determinations.....	6
VI.	Settlement Agreement and Order.....	7
VII.	Designation of Contractor, Project Coordinator, and On-Scene Coordinator.....	7
VIII.	Work To Be Performed.....	8
IX.	Site Access.....	15
X.	Access to Information.....	15
XI.	Record Retention.....	17
XII.	Compliance With Other Laws.....	18
XIII.	Emergency Response and Notification of Releases.....	19
XIV.	Authority of the EPA On-Scene Coordinator.....	20
XV.	Dispute Resolution.....	20
XVI.	Force Majeure.....	21
XVII.	Stipulated Penalties.....	22
XVIII.	Covenant Not to Sue By EPA.....	27
XIX.	Reservations of Rights By EPA.....	27
XX.	Covenant Not to Sue By Respondent.....	29
XXI.	Other Claims.....	30
XXII.	Contribution.....	31
XXIII.	Indemnification.....	32

XXIV. Insurance .....	34
XXV. Financial Assurance .....	34
XXVI. Modifications .....	37
XXVII. Notice of Completion of Work .....	37
XXVIII. Integration/Appendices .....	38
XXIX. Effective Date .....	38

## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order on Consent (Settlement Agreement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and ATK Launch Systems, Inc. (Respondent). This Settlement Agreement provides for the performance of a removal action by Respondent at or in connection with the Highway 89 Storage Units Site (the Site) generally located in Box Elder and Weber Counties, Utah, at 1620 9<sup>th</sup> Street, Ogden, UT, 84401; Double D Storage, 2100 South Hwy 89, Perry UT, 84302; and EZ Access Storage, 8823 Hwy 89, Willard, UT, 84340.

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

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

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement 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 Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

## II. PARTIES BOUND

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

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

## III. DEFINITIONS

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

a. "Action Memorandum" shall mean the EPA Action Memorandum Amendment relating to the Site signed on November 9, 2009, by the Assistant Regional Administrator, Office of Ecosystems Protection & Remediation, EPA Region 8, and all attachments thereto. The Action Memorandum is attached as Appendix 1.

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

c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or

Federal holiday, the period shall run until the close of business of the next working day.

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

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

f. "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.

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

h. "Parties" shall mean EPA and Respondent.

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

j. "Respondent" shall mean ATK Launch Systems, Inc.

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

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

m. "Site" shall mean the Highway 89 Storage Units Superfund Site, encompassing approximately 2 acres, located in Box Elder and Weber Counties, Utah, at 1620 9<sup>th</sup> Street, Ogden, UT, 84401; Double D Storage, 2100 South Hwy 89, Perry UT,

84302; and EZ Access Storage, 8823 Hwy 89, Willard, UT, 84340 and depicted generally on the map attached as Appendix 2.

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

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

p. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement except those required by Section XI (Record Retention).

#### **IV. FINDINGS OF FACT**

8. The Site consists of three locations: a residence located at 1620 9<sup>th</sup> Street, Ogden, UT 84401; two storage units at Double D Storage, 2100 South Highway 89, Perry, Utah 84302; and five storage units at EZ Access Storage, 8823 Highway 89, Willard, Utah 84340.

9. A Classic Emergency Removal was initiated on October 9, 2009, after EPA Region 8 received notification from the Box Elder County, Utah, Sheriff's Office, stating that numerous drums and containers of old chemicals used to make rocket propellants were being stored in the storage units in Perry and South Willard, Utah. The EPA On-Scene Coordinator, exercising his CERCLA Emergency Response Removal authority, initiated Site assessment and stabilization actions, working closely with local authorities to implement measures to secure the Site. An initial Action Memorandum, dated October 22, 2009, (and attached to Appendix 1), documented this action.

10. Over the next four weeks, EPA contractors inventoried and categorized all drums and miscellaneous containers of chemicals found at the three sub-sites. Local bomb squads were called several times to detonate unstable materials off-Site.

11. When EPA began its response action, the storage units contained haphazardly stacked drums, and various other containers of chemicals. Other items, such as equipment, merchandise, furniture and trash/junk were scattered throughout the piled chemicals. Some of the individual storage units had strong odors of chemical vapors. The residence contained numerous, inappropriately stored and/or deteriorating containers of chemicals and associated equipment similar to those found in the storage units.

12. To date, approximately 7,000 chemical items (over 16,000 individual containers) have been inventoried and characterized at the three Site sub-locations. The inventoried items include large quantities of dangerous materials such as rocket propellant and rocket motors (explosive), water-reactive materials (magnesium and aluminum powders), and ammonium perchlorate (a highly shock-sensitive oxidizer). The inventory also includes additional, related items that were discovered after the initial Action Memorandum was finalized. Due to their sensitive location, chemicals found at the former employee's residence were removed immediately into secure storage where they await final disposal.

13. The waste material described above consists of hazardous substances that, due to their explosive and reactive nature, present a threat of release. The waste material is currently awaiting proper off-Site transportation and disposal, which is the primary focus of the Work required pursuant to this Settlement Agreement.

14. Respondent, ATK Launch Systems, Inc., is the ultimate corporate successor to Thiokol Chemical Company, the source of many of the chemicals that are the subject of the



ongoing response action that is being addressed by this Settlement Agreement.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

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

a. The Highway 89 Storage Units 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, include "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), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site. Respondent arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

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

f. The removal action required by this Settlement Agreement is necessary to protect the public health or welfare or the environment, and, if carried out in compliance

with the terms of this Settlement Agreement. will be consistent with the NCP. as provided in 40 C.F.R. § 300.700(c)(3)(ii) within the NCP.

## **VI. SETTLEMENT AGREEMENT AND ORDER**

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

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

17. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within two (2) day of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least one (1) day prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within two (2) days of EPA's disapproval.

18. Within two (2) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during Site work. EPA retains the right to

disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within one (1) day following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

19. EPA has designated Tien Nguyen of the Preparedness, Assessment and Response Program of the Office of Ecosystems Protection & Remediation, in Region 8, as its On-Scene Coordinator (OSC). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at 8EPR-SA, 1595 Wynkoop St., Denver, CO 80202-1129. Submissions shall be provided to the OSC via email and overnight mail.

20. EPA and Respondent shall have the right, subject to Paragraph 18, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA at least one (1) business day before such a change is made. The initial notification may be made orally, but shall be followed promptly by written notice and/or email.

### **VIII. WORK TO BE PERFORMED**

21. Respondent shall perform, at a minimum, all actions necessary to implement the Action Memorandum. The actions to be implemented generally include, but are not limited to, the following:

- a. EPA has provided to Respondent its hazard classification and categorization of on-site waste material which may be used for this removal action. If additional analytical information is required for segregation or disposal of waste material,

Respondent shall conduct analyses itself and/or provide for appropriate on-site hazard categorization or sampling for waste stream identification and disposal preparations.

b. Respondent shall dispose of all waste material at the Site. Respondent shall make disposal arrangements such that those materials presenting a more immediate threat are removed from the Site first to ensure the safest, most stable working conditions as possible. Such materials would include, but are not limited to, explosives, propellants, shock sensitive materials and water reactive materials.

c. Respondent shall provide for appropriate lab-packing, or over-packing of containers or drums containing hazardous wastes and/or substances.

d. Respondent shall provide for removal and packaging for disposal of contaminated soil and debris as appropriate.

e. Respondent shall provide for appropriate disposal profile sampling and analyses of wastes in accordance with all applicable Federal and State laws, including Toxicity Characteristic Leaching Procedures (TCLP), as appropriate.

f. Respondent shall provide, according to waste stream, for appropriate transportation and disposal of waste material.

## 22. Work Plan and Implementation.

a. Within two (2) days after the Effective Date, Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 21 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a

revised draft Work Plan within two (2) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 22.b.

23. Health and Safety Plan. Within two (2) business days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

24. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses

participates in a QA/QC program that complies with the appropriate EPA guidance.

Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling.

Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001; Reissued May 2006)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

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

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than five (5) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

25. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

26. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every seventh (7<sup>th</sup>) day after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit four (4) copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

c. If Respondent acquires any interest in real property at the Site, Respondent shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA of the proposed conveyance, including the name and address of the transferee. If Respondent acquires any interest in real property at the

Site, Respondent shall also require that its successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

27. Final Report. Within thirty (30) days after completion of all Work required by this Settlement Agreement, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

28. Off-Site Shipments.

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will



not exceed 10 cubic yards.

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

(2) The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 28.a and 28.b as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

## **IX. SITE ACCESS**

29. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

30. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within two (2) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Paragraph 0 of Section XVII (Stipulated Penalties).

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

## **X. ACCESS TO INFORMATION**

32. Respondent shall provide to EPA, upon request, copies of all documents and

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

Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

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

34. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent assert such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no

documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

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

## **XI. RECORD RETENTION**

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

37. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts

such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

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

## **XII. COMPLIANCE WITH OTHER LAWS.**

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

### **XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES.**

40. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC at 303-886-1637 or, in the event of his/her unavailability, the Regional Duty Officer, Preparedness, Assessment, and Response, EPA Region 8, at 303-293-1788, 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, pursuant to Paragraph 0 of Section XVII (Stipulated Penalties), for all costs of the response action not inconsistent with the NCP.

41. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at 303-886-1637, the Regional Duty Officer, Preparedness, Assessment, and Response, EPA Region 8, at 303-293-1788 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and section 304 of

the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

#### **XIV. AUTHORITY OF THE EPA ON-SCENE COORDINATOR**

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

#### **XV. DISPUTE RESOLUTION**

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

44. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, it shall notify EPA in writing of its objection(s) within four (4) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have fourteen (14) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA.

45. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the

Negotiation Period, an EPA management official at the Assistant Regional Administrator 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 Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, 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.

#### **XVI. FORCE MAJEURE**

46. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

47. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within twenty-four (24) hours of when Respondent first knew that the event might cause a delay. Within two (2) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for



implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

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

## **XVII. STIPULATED PENALTIES**

49. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 50 and 51 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVI (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work

plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

50. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 50.b:

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

b. Compliance Milestones

- (1) Designation of contractor(s) and subcontractors(s) pursuant to Paragraph 17.
- (2) Designation of Project Coordinator pursuant to Paragraphs 18 and 20.
- (3) Performing the Work pursuant to Paragraph 21.
- (4) Submitting the Work Plan pursuant to Paragraph 22.
- (5) Submitting the Health and Safety Plan pursuant to Paragraph 23.
- (6) Following the QA/QC and sampling/analyses requirements set forth in Paragraph 24.
- (7) Submitting a proposal for, and then implementing, post-removal Site control pursuant to Paragraph 25.
- (8) Providing the notice required by Paragraph 26.c.

- (9) Complying with the off-site shipment requirements set forth in Paragraph 28.
- (10) Obtaining and providing Site access pursuant to Paragraphs 29 and 30.
- (11) Providing access to information pursuant to Paragraph 32.
- (12) Retaining records pursuant to Paragraphs 36 and 37.
- (13) Undertaking emergency response pursuant to Paragraph 40 and providing notification of releases pursuant to Paragraph 41.
- (14) Obtaining and maintaining insurance pursuant to Paragraph 76.
- (15) Obtaining and maintaining financial assurance pursuant to Paragraphs 77-79.
- (16) Paying stipulated penalties as required by this Section XVII.

51. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 26.a, 26.b, and 27:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$300	1st through 14th day
\$750	15th through 30th day
\$1,500	31st day and beyond

52. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 61 of Section XIX, Respondent shall be liable for a stipulated penalty in the amount of \$250,000.

53. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of

the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Assistant Regional Administrator level or higher, under Paragraph 45 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XV (Dispute Resolution). All payments to EPA under this Section shall be paid by official bank check made payable to "EPA Hazardous Substances Superfund." shall indicate that the payment is for stipulated penalties, shall reference the EPA Region and Site/Spill ID Number 08-SK, the EPA Docket Number set forth on the first page of this Settlement Agreement, and the name and address of the party making payment, and shall be mailed to:

US Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
PO Box 979076  
St. Louis, MO 63197-9000

At the time of payment pursuant to this Section (or any other Section of this Settlement Agreement), Respondent shall send notice that payment has been made to the OSC at the address set forth in Paragraph 19 and to the EPA Cincinnati Finance Office by email to [acctreceivable.cinwd@epa.gov](mailto:acctreceivable.cinwd@epa.gov), or by mail to:

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

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

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

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

57. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 0. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to sections 106(b) and 122(l) of

CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to section 106(b) or 122(l) of CERCLA or punitive damages pursuant to section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XIX, Paragraph 61.

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

### **XVIII. COVENANT NOT TO SUE BY EPA**

58. In consideration of the actions that will be performed by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement. This covenant not to sue extends only to Respondent and does not extend to any other person.

### **XIX. RESERVATIONS OF RIGHTS BY EPA**

59. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health or welfare or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or

contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

60. The covenant not to sue set forth in Section XVIII above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for response costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

61. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its

performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered response costs that are subject to the Reservations of Rights by EPA in this Section. Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XX. COVENANT NOT TO SUE BY RESPONDENT**

62. 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, and this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Utah Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to sections 107 and 113 of



CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work.

63. Except as provided in Section XX, Paragraphs 65 (Ability to Pay Waiver), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 60.a (claims for failure to meet a requirement of the Settlement Agreement) or 60.d (criminal liability), 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.

64. 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).

65. Respondent agrees not to assert any claims and to waive all claims or causes of action, including, but not limited to, claims or causes of action under sections 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613, that it may have for all matters relating to the Site against any person that in the future enters into a final settlement based on limited ability to pay, with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against Respondent.

## **XXI. OTHER CLAIMS**

66. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of 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 Agreement.

67. Except as expressly provided in Section XX. Paragraph 65 (Ability to Pay Waiver), and Section XVIII (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

## **XXII. CONTRIBUTION**

69. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by sections 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work.

70. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work.

71. Except as provided in Section XX, Paragraph 65 (Ability to Pay Waiver) of this Settlement Agreement, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XX, Paragraph 65 (Ability to Pay Waiver) of this Settlement Agreement, 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 Agreement diminishes the right of the United States, pursuant to section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2).

72. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, 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 Agreement, notify EPA in writing within ten (10) days of service of the complaint or claim upon it. In addition, Respondent shall notify EPA within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

### **XXIII. INDEMNIFICATION**

73. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or

omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, 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 Agreement. 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 Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

74. 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.

75. Respondent waives all claims 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 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 Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

#### **XXIV. INSURANCE**

76. At least one (1) day prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of ONE MILLION DOLLARS (\$1,000,000), combined single limit, naming EPA as an additional insured. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. 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 an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

#### **XXV. FINANCIAL ASSURANCE**

77. Within five (5) days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of TWO MILLION TWO-HUNDRED THOUSAND DOLLARS (\$2,200,000) in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of

EPA, issued by financial institution(s) acceptable in all respects to EPA;

c. a trust fund administered by a trustee acceptable in all respects to EPA;

d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Respondent, or by one or more unrelated companies that have a substantial business relationship with at least one of Respondent; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. § 264.143(f); and/or

f. a demonstration of sufficient financial resources to pay for the Work made by Respondent, which shall consist of a demonstration that Respondent satisfies the requirements of 40 C.F.R. § 264.143(f).

78. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within five (5) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 77, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within five (5) days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

79. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Subparagraph 77.e or 77.f of this Settlement Agreement, Respondent shall (1) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f); and (2) resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. § 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of TWO MILLION TWO-HUNDRED THOUSAND DOLLARS (\$2,200,000) for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by Respondent or guarantor to EPA by means of passing a financial test.

80. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 77 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

81. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA

determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

## **XXVI. MODIFICATIONS**

82. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

83. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 82.

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

## **XXVII. NOTICE OF COMPLETION OF WORK**

85. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including post-removal site controls and record retention, EPA will provide written notice to Respondent. If EPA determines



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

### **XXVIII. INTEGRATION/APPENDICES**

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

- Appendix 1 - Action Memorandum
- Appendix 2 - Site Map

**XXIX. EFFECTIVE DATE**

87. This Settlement Agreement shall be effective on the day the Settlement Agreement is signed by the Regional Administrator or his/her delegatee.<sup>1</sup>

88. The undersigned representative(s) of Respondent certify(ies) that it (they) is (are) fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party(ies) it (they) represent(s) to this document.

Agreed this 16<sup>th</sup> day of November, 2009.

For ATK Launch Systems, Inc.

By: Michael L. Bell



Title: Vice President & Assistant General Counsel

---

<sup>1</sup> \*The due date for obtaining and providing the Financial Assurance contained in Article XXV, Paragraph 77, is extended to 10 business days from the date of signature above.

It is so ORDERED and Agreed this 17<sup>th</sup> day of November, 2009.

BY: Mike Zimmerman  
David Olander, Director  
Preparedness, Assessment, and Response  
Region 8  
U.S. Environmental Protection Agency

for

Action Memorandum

Site Map

