UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VII

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| IN THE MATTER OF:<br><br>SYNTEX FACILITY SUPERFUND SITE<br>Verona, Missouri<br><br>Syntex Agribusiness, Inc.<br><br>Respondent<br><br>Proceeding Under Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604, 9607, and 9622, the Missouri Hazardous Waste Management Law, § 260.350 to § 260.433, RSMo., Sections 3008(h) and 3013 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6928(h) and 6934, § 260.440 to § 260.470, RSMo., and § 260.500 to § 260.550, RSMo. | CERCLA-07-2016-0008<br><br>**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR INVESTIGATION** |

# ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR INVESTIGATION

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## I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the State of Missouri ("Missouri"), and Syntex Agribusiness, Inc. ("Respondent"). The Settlement Agreement concerns the investigation of environmental contamination at the Syntex Facility Superfund Site ("Site"), located in Verona, Lawrence County, Missouri and the payment of Past Response Costs and Future Response Costs incurred by EPA and Missouri in connection with this Settlement Agreement.

2. This Settlement Agreement 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, 42 U.S.C. §§ 9604, 9607, and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). These CERCLA authorities were further re-delegated by the Regional Administrator of EPA Region VII to the Superfund Division Director by Regional Delegation Nos. R7-14-014-C and R7-14-014-D, dated January 1, 1995 and May 16, 1988, respectively. This Settlement Agreement also is issued under the authority vested in the EPA Administrator by the Resource Conservation and Recovery Act ("RCRA"), also known as the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992, including, without limitation, RCRA §§ 3008(h) and 3013, 42 U.S.C. §§ 6928(h) and 6934. This authority was delegated to the Regional Administrators by EPA Delegation Nos. 8-20 (Monitoring, Testing, Analysis and Reporting, May 11, 1994) and 8-32 (Administrative Enforcement-Corrective Action Authority; Issuance of Orders and Signing of Consent Agreements). These RCRA authorities were further re-delegated by the Regional Administrator of EPA Region VII to the Air and Waste Management Division Director by Regional Delegation Nos. R7-8-020, dated January 1, 1995 and R7-8-032, dated January 26, 1986, respectively.

3. The State of Missouri enters into this Settlement Agreement by and through the office of the Missouri Attorney General pursuant to the authority contained in the Missouri Hazardous Waste Management Law, §§ 260.350 to 260.433, and its implementing regulations and pursuant to the authority of § 27.060 Revised Statutes of Missouri ("RSMo"). Pursuant to the Missouri Hazardous Waste Management Law, pursuant to §§ 260.440 to 260.470, RSMo, pursuant to §§ 260.500 to 260.550, RSMo, and pursuant to implementing regulations, the Missouri Department of Natural Resources ("MDNR") is authorized to administer the requirements of this Settlement Agreement as they relate to the State of Missouri and to address certain hazardous waste sites. Pursuant to §§ 260.445.5 and 260.391.1(2), RSMo, the Missouri Department of Health and Senior Services ("MDHSS") assesses effects on human health from certain hazardous waste sites and releases of hazardous substances and advises MDNR. Pursuant to § 192.011, MDHSS monitors health effects of the environment, prepares risk assessments of environmental hazards, and makes recommendations to MDNR. Effective December 26, 2012, EPA granted final authorization to the State of Missouri pursuant to RCRA § 3006, 42 U.S.C. §

9626, to authorize the State to operate its hazardous waste management program in lieu of the federal program. *See* 77 Fed. Reg. 65314 (October 26, 2012).

4. EPA, Missouri, 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 fact in Section V and the conclusions of law and determinations in Section VI of this Settlement Agreement. Respondent specifically reserves the right in subsequent proceedings to assert and rely upon any applicable release from liability identified in paragraph 48 of the Consent Agreement and Order captioned *In the Matter of Syntex Agribusiness, Inc.,* Docket No. 83-H-008 (Sept. 6, 1983) ("the 1983 Consent Agreement and Order"). This Settlement Agreement does not amend the 1983 Consent Agreement and Order, and this Settlement Agreement does not abrogate any rights or responsibilities any Party has pursuant to the 1983 Consent Agreement and Order. 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.

5. It is the expectation of the Parties that any Response Costs incurred by Missouri in connection with this Settlement Agreement will be funded under a cooperative agreement with EPA.

## II. PARTIES BOUND

6. This Settlement Agreement applies to and is binding upon EPA, Missouri, and 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 Agreement.

7. 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 by its contractors, subcontractors, and representatives.

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

## III. STATEMENT OF PURPOSE

9. In entering into this Settlement Agreement, the objectives of EPA, Missouri, and Respondent are: (a) to determine whether the remedies implemented at the Site, as a result of a release(s) or threatened release(s) of hazardous substances at or from the Site, continue to be protective of public health, welfare, and the environment, by conducting the investigations specifically set forth in Appendices B through J to this Settlement Agreement; (b) to reimburse

EPA all unpaid Past Response Costs; and (c) to reimburse EPA Future Response Costs incurred by EPA with respect to this Settlement Agreement.

10. The Work conducted under this Settlement Agreement is subject to approval by EPA, in consultation with the MDNR, and is designed to provide all appropriate and necessary supplemental information to assess Site conditions and to conduct a protectiveness review of current Site conditions to determine whether the remedies implemented at the Site continue to be protective of human health, welfare, and the environment, consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"), and the corrective action standards of Section 3008(h) of RCRA. Respondent shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidance, policy, and procedures. The Work performed under this Settlement Agreement shall be deemed to comply with the corrective action standards of RCRA. It is the expectation of the Parties that the Work performed under this Settlement Agreement shall be sufficient to conduct the assessment of groundwater required pursuant to paragraph 30.A of the July 1997 Administrative Order on Consent captioned *In the Matter of Syntex Facility Site, Syntex Agribusiness, Inc., Respondent,* Docket No. VII-97-F-0016 (July 15, 1997) ("the 1997 AOC").

## IV. DEFINITIONS

11. 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 its appendices, the following definitions shall apply:

"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 Agreement, 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 Agreement as provided in Section XXIX.

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

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

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the EPA or Missouri incurs on and after the Effective Date in reviewing or developing plans, reports, and other deliverables submitted pursuant to this

Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XIII (Site Access) (including, but not limited to, the cost of attorney time and any monies paid to secure access, including, but not limited to, the amount of just compensation), Paragraph 57 (Emergency Response and Notification of Releases), and the costs incurred by the United States in enforcing the terms of this Settlement Agreement, including all costs incurred in connection with Section XVI (Dispute Resolution), and all litigation costs. Future Response Costs shall also include all Interim Response Costs.

"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.

"Interim Response Costs" shall mean all costs, including but not limited to direct and indirect costs, (a) paid by the EPA or Missouri or incurred and paid by either in connection with the Site between January 1, 2016 and the Effective Date, or (b) incurred by the EPA or Missouri prior to the Effective Date, but paid after that date.

"MDHSS" shall mean the Missouri Department of Health and Senior Services and any successor departments or agencies of the State of Missouri.

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

"Missouri" shall mean the State of Missouri and its departments and agencies, including, but not limited to, MDNR and MDHSS.

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

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

"Parties" shall mean EPA, Missouri, and Respondent.

"Past Response Costs" shall mean all unreimbursed costs, including, but not limited to, direct and indirect costs, that the EPA or Missouri paid at or in connection with the Site through December 31, 2015, plus any Interest on all such costs that may have accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"QAPP" shall mean the Quality Assurance Project Plan.

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

"Respondent" shall mean Syntex Agribusiness, Inc.

"Response Costs" shall mean Past Response Costs, Interim Response Costs, and Future Response Costs.

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

"Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, all appendices attached hereto (listed in Section XXVIII) and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by EPA. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

"Site" shall mean the Syntex Facility Superfund Site, encompassing approximately 180 acres, located on Extension Street in Verona, Lawrence County, Missouri and depicted generally on the map attached as Appendix A.

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

"State" shall mean the State of Missouri.

"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); and (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities Respondent is required to perform under this Settlement Agreement, except those required by Section XV (Retention of Records).

## V. FINDINGS OF FACT

12. Respondent is a Delaware corporation authorized to do business in the state of Missouri.

13. The Site covers approximately 180 acres and is located on Extension Street, Verona, Lawrence County, Missouri. The Site is currently divided into two areas, the East Area and the West Area, which are divided by the Spring River. The East Area covers approximately 100 acres and contains the manufacturing plant and surrounding property in the 100-year flood plain of the Spring River. The plant is surrounded by a flood berm topped with a fence. The West Area covers approximately 80 acres upland of the Spring River and contains a 1.3-acre subarea known as the Trench Area where manufacturing wastes from the East Area, including some wastes containing 2,3,7,8-tetrachlorodibenzo-p-dioxin ("TCDD"), were historically disposed.

14. Hoffman-Taff, Inc. ("Hoffman-Taff") owned the Site in the 1960s and produced 2,4,5-trichlorophenoxy-acetic acid at the East Area plant for the U.S. Department of Defense as part of the production of the defoliant commonly known as Agent Orange. In 1969, Hoffman-Taff leased a portion of a building at the plant to Northeastern Pharmaceutical and Chemical Company ("NEPACCO") for the production of hexachlorophene. The manufacturing processes of Hoffman-Taff and NEPACCO generated TCDD as a byproduct.

15. The production of hexachlorophene involved the intermediate production of 2,4,5-trichlorophenol ("TCP") and the formation of TCDD. In the course of purifying the hexachlorophene, still bottom wastes were created, which would have contained the majority of the TCDD. These still bottoms from the hexachlorophene process were managed in a storage tank located at the Site.

16. Respondent acquired the Site in 1969. NEPACCO continued to operate at the Site through 1972.

17. Respondent submitted Part A of a RCRA hazardous waste permit application for the manufacturing portion of the facility on November 19, 1980. In response to comments by EPA, Respondent submitted to EPA a revised Part A permit application on May 20, 1981. Respondent operated a drum storage area under RCRA interim status until Respondent ceased storing wastes in the drum storage area in August 1996.

18. Respondent submitted a RCRA Interim Status Drum Storage Area ("DSA") Closure Plan to MDNR in March 1995. Respondent completed closure of the DSA based on risk-based standards approved by MDNR. On November 15, 1997, Respondent submitted a final DSA Closure Report certifying closure in accordance with the "Revised Closure Plan for Interim Status Container Storage Area, dated April 29, 1996 and Approved Modifications."

19. The Site was added to the National Priorities List on September 8, 1983.

20. As a result of the historical manufacturing activities at the Site, Respondent began investigating the Site in 1982, and subsequently performed work under administrative consent orders entered in 1982, 1983 and 1997, the latter to implement response action decisions selected in Records of Decisions ("RODs") issued in 1988 (Operable Unit #1 [OU1] ROD) and 1993 (Operable Unit #2 [OU2] ROD). Investigative and remedial activities were conducted in

accordance with the regulatory framework established in these documents, work plans approved by EPA, and other EPA approvals and oversight.

21. RCRA corrective action activities at the facility were administratively deferred to requirements under CERCLA in 1989. The facility is described annually on a tracking report between MDNR and EPA RCRA corrective action programs as deferred to CERCLA.

22. Remedial actions for soils at the East Area, in accordance with EPA-approved procedures at the time of the implementation of the remedial actions, included the excavation of soils contaminated with TCDD above an action level established pursuant to EPA-approved methodologies, decontamination and disposal of dioxin-contaminated equipment, off-Site thermal treatment of excavated soils and cleaning solutions, establishment and maintenance of asphalt caps or vegetative covers over areas exceeding threshold levels of dioxin established in EPA-approved work plans, and installation of cable fences and signage to restrict access to certain areas.

23. Remedial actions for soils in the Trench Area included backfilling of low areas, installation of a clay and topsoil cap and an up-gradient interceptor trench, establishment of vegetative cover, and installation of cables and signage.

24. In September 1998, EPA issued a Remedial Action Report, which was prepared to document the completion of the remedial action for OU1 at the Syntex Facility-Verona. This Report included the remedial actions for soils described in Paragraphs 22 and 23 of this Settlement Agreement. Paragraph 48 of the 1983 Consent Agreement and Order states, in part, that, "Upon completion of the activities required by Paragraphs 35 through 40 of this Order, EPA shall release Syntex from any and all liability respecting TCDD, TCP, TCB and HEX located at the Facility and the Adjoining Property which is the subject to this Order."

25. With respect to groundwater, Respondent established monitoring networks for the East Area and the West Area. In 1992, EPA conducted a Baseline Risk Assessment based on the sampling results of the groundwater monitoring. For purposes of the Risk Assessment, EPA assumed a completed reasonable maximum exposure ("RME") pathway that has never been established for the Site, and concluded that risks from the Site groundwater were within an acceptable range for the hypothetical RME. Accordingly, the OU2 ROD established a remedy of no further action for groundwater and two additional years of groundwater monitoring. At the end of the two-year monitoring period, contaminants in groundwater had not increased.

26. Groundwater monitoring continued through 2012.

27. Historical laboratory analyses of groundwater samples have indicated that groundwater at the Site has contained levels of certain constituents that have exceeded maximum contaminant levels established by the EPA for drinking water, although groundwater at the Site has not and is not being used for drinking water purposes.

28. In 1996, Respondent recorded a perpetual covenant restricting the land use of the East Area to industrial purposes in the Office of Recorder of Deeds for Lawrence County,

Missouri. Respondent sold the East Area to DuCoa, L.P. that same year. In 2001, DuCoa, L.P. sold the East Area to BCP Ingredients, Inc. ("BCP"), which is the current owner of the East Area and operator of the manufacturing plant.

29. Beginning in the fall of 2014, BCP undertook a facility expansion that involved extensive excavation and movement of soils immediately south of the then-existing manufacturing plant.

30. Respondent continues to own the West Area. With the exception of the Trench Area, the West Area is underdeveloped.

31. EPA conducted Five Year Reviews of the Site in 1997, 2002, 2007, and 2012. The 2012 Five Year Review recommended additional sampling at the Site to determine whether the remedies implemented at the Site continue to be protective in light of the revised non-cancer reference dose ("RfD") for TCDD which EPA released in 2012.

32. The 2012 Five Year Review had originally mistakenly concluded that Respondent had not fulfilled the requirements of the OU1 ROD in several respects. In 2013, after meeting with EPA, Respondent submitted comments to EPA on the 2012 Five Year Review that included the identification of this and other issues in the 2012 Five Year Review. By letter dated June 9, 2014, EPA distributed an April 22, 2014, memorandum identifying and correcting certain errors in the 2012 Five Year Review and stating that "[t]he remedy implemented for OU1 at the Site was consistent with the ROD for OU1 ...".

## VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth in Section V, EPA has determined that:

33. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

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

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

37. Respondent is a responsible party under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622. Respondent was an "owner and/or operator of the facility at the time of disposal of certain 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).

38. The actions required by this Settlement Agreement 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 response action and minimize litigation, 42 U.S.C. § 9622(a).

39. EPA has determined that Respondent is qualified to conduct the Work required by this Settlement Agreement 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 Agreement.

## VII. SETTLEMENT AGREEMENT AND ORDER

40. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all Work Plans attached to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

## VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

41. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within thirty (30) days after the Effective Date, and before the Work outlined in the attached Work Plans begins, Respondent shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995, or most recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001; 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 that such persons meet minimum technical background and experience requirements. This Settlement Agreement is contingent on Respondent's demonstration to EPA's satisfaction that Respondent's contractors, subcontractors, consultants and laboratories are qualified to perform properly and promptly the actions set forth in this Settlement Agreement. If EPA disapproves in writing of any person's/entity's technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacement within thirty (30) days after receipt of the written notice. During the course of the investigation, Respondent shall notify EPA in writing of any changes or additions in the supervisory personnel used to carry out such Work, providing their names, titles,

and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

42. Respondent has designated Bob Kick of Foth Infrastructure & Environment, LLC as its Project Coordinator who shall be the initial contact person for communications with EPA and MDNR regarding the implementation of the Work. To the greatest extent possible, Respondent's Project Coordinator or his delegate shall be present on Site or readily available during Site Work. EPA retains the right to disapprove of any different designated Respondent Project Coordinator. If EPA disapproves of the designated Respondent Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within seven (7) days following written receipt of EPA's disapproval. Respondent shall have the right to change its Project Coordinator, subject to EPA's right of disapproval. Respondent shall notify EPA fourteen (14) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Receipt by Respondent's Project Coordinator of any notice or communication from EPA or MDNR relating to the implementation of the Work shall constitute receipt by Respondent.

43. EPA has designated Steve Kemp of the Superfund Division, Special Emphasis Branch, Region VII, as its Remedial Project Manager ("RPM"). EPA, MDNR, and Respondent shall have the right, subject to Paragraph 42, to change their respective Project Managers/Coordinator. Respondent shall notify EPA and MDNR fourteen (14) days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions to EPA as required by this Settlement Agreement to:

Steve Kemp
Remedial Project Manager
SUPR/SPEB
U.S. Environmental Protection Agency, Region VII
11201 Renner Boulevard
Lenexa, Kansas 66219

Notices to EPA may be made via email to kemp.steve@epa.gov. Submissions shall be made electronically or by mail.

44. EPA's RPM shall have the authority lawfully vested in a remedial project manager and/or On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's RPM shall have the authority, consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA RPM from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

45. MDNR has designated Candice McGhee of the Hazardous Waste Program as the State Project Manager. MDNR shall have the right to change its Project Manager by providing

notice to the other Parties prior to the change. Respondent shall direct all submissions as required by this Settlement Agreement to go to MDNR to:

Candice McGhee
Project Manager
Missouri Department of Natural Resources
Hazardous Waste Program
P.O. Box 176
Jefferson City, Missouri 65102-0176

Delivery Address:
1730 East Elm Street
Jefferson City, Missouri 65101

Notices to MDNR may be made via email to candice.mcghee@dnr.mo.gov. Submissions shall be made electronically or by mail.

46. EPA may arrange for a qualified EPA contractor to assist in EPA's oversight and review of the conduct of the Work. Such contractor shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the Work Plans.

## IX. NOTICE

47. All submissions shall be directed to Respondent's Project Coordinator, EPA's Remedial Project Manager, and MDNR's Project Manager as specified elsewhere in the text of this Settlement Agreement. If not otherwise specified in the text of this Agreement, any communication related to this Settlement Agreement and approved Work Plans shall be made electronically or by mail to the following persons:

a. For Respondent:

Matthew Shaps
Syntex Agribusiness, Inc.
1 DNA Way (MS-49)
South San Francisco, California 94080
shaps.matthew@gene.com

b. For EPA:

J. Scott Pemberton
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Mail Code: CNSL/SPFD
Lenexa, Kansas 66219
pemberton.scott@epa.gov

c. For Missouri:

Elliott Usher
Assistant Attorney General
Office of the Missouri Attorney General
Agriculture & Environment Division
P.O. Box 899
Jefferson City, Missouri 65102
Elliott.usher@ago.mo.gov

Don Willoh
Assistant General Counsel
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102
don.willoh@dnr.mo.gov

## X. WORK TO BE PERFORMED

48. Respondent shall conduct the Work identified in the approved Work Plans, identified below and in Section XXVIII, in accordance with the provisions of this Settlement Agreement, CERCLA, the NCP, and applicable EPA guidance. The following Work Plans, which have been reviewed by EPA and Missouri and have been approved, are:

a. East Area Well Installation Work Plan, dated July 8, 2016 (Appendix B);

b. Trench Area Well Installation and Geotechnical Investigation Work Plan, dated July 8, 2016 (Appendix C);

c. East Area Groundwater Sampling and Analysis Plan, dated July 8, 2016 (Appendix D);

d. Trench Area Groundwater Sampling and Analysis Plan, dated August 18, 2016 (Appendix E);

e. East Area Shallow Soil Sampling and Analysis Plan, dated July 8, 2016 (Appendix F);

f. Pathways Analysis Report Plan for Protectiveness Evaluation, dated July 8, 2016 (Appendix G);

g. Spring River Sediment Sampling and Analysis Plan, dated July 8, 2016 (Appendix H);

h. Spring River Screening-Level Ecological Risk Assessment Plan, dated April 15, 2016 (Appendix I); and

i. Quality Assurance Project Plan, dated August 18, 2016 (Appendix J).

49. Within thirty (30) days following the Effective Date of this Settlement Agreement, Respondent shall submit a schedule for completing the Work specified in the Work Plans identified in Paragraph 48, above. At a minimum, that schedule shall provide that (subject to the availability of qualified well drillers and weather permitting) the collection of the first round of groundwater samples in the East Area in accordance with the Work Plan identified in Paragraph 48.c shall occur no later than 200 days after the Effective Date. That schedule shall also propose suggested dates for installing wells and collecting samples pursuant to the Work Plans in Paragraphs 48.b and 48.d, taking into account additional characterization that may be required in the West Area to prepare that portion of the Site before installing the wells. Following the collection of the initial groundwater samples, Respondent shall collect, each calendar quarter, groundwater samples pursuant to the Work Plans in Paragraphs 48.c and 48.d from all groundwater monitoring wells until a total of six quarters of groundwater samples from each of the wells in the East Area and each of the wells in the West Area in accordance with the Work Plans in Paragraph 48 have been collected and analyzed.

50. The Work to be performed shall consist of the Work identified in the approved Work Plans identified in Paragraph 48 of this Settlement Agreement. The objective of the Work is to collect and analyze data to enable EPA to determine whether or not the remedies previously implemented at the Site continue to be protective of human health and the environment. Respondent shall submit all deliverables to EPA in electronic form and, if requested by EPA, in paper form. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondent shall also provide EPA with paper copies of such exhibits. The following list of tasks is intended to summarize the tasks contained in the approved Work Plans identified in Paragraph 48 and is not intended to expand the scope of the Work Plans or the definition of Work under this Settlement Agreement:

a. installation of additional groundwater monitoring wells on the north side of the East Area;

b. installation of new and replacement groundwater monitoring wells in the West Area;

c. evaluation of geotechnical properties of soil and bedrock in the West Area;

d. collection of groundwater samples in the East Area and the West Area for six quarters;

e. analyses of groundwater and water samples for volatile organic compounds, semi-volatile compounds, TCDD and dioxin-like compounds, and 1,4-dioxane as specified in the Work Plans;

f. collection and analyses of shallow soil samples across the East Area for TCDD and dioxin-like compounds as specified in the Work Plans;

g. performance of a human-health risk assessment of TCDD and dioxin-like compounds as specified in the Work Plans in East Area soils by comparing the exposure point concentrations obtained from the shallow soil samples with the Site-specific risk-based concentrations calculated using the exposure parameters set forth in the Pathways Analysis Report Plan;

h. collection and analyses of sediment samples from the Spring River for TCDD and dioxin-like compounds as specified in the Work Plans; and

i. performance of a screening-level ecological risk assessment of the Spring River in accordance with the Screening-Level Ecological Risk Assessment Plan.

51. Health and Safety Plan. Respondent has submitted a Health and Safety Plan ("HSP") to EPA, MDNR and MDHSS for review and comment. The HSP is designed to ensure the protection of the public health and safety during the performance of Work under this Settlement Agreement. HSPs are required to be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the HSP must comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. EPA and MDHSS have confirmed that they do not have any comments on the HSP. MDNR has recommended changes to the HSP which Respondent has addressed. Respondent shall address future changes, if any, to the HSP recommended by EPA, MDNR, or MDHSS. Respondent shall implement the HSP when conducting Work under this Settlement Agreement.

52. Technical Specifications for Deliverables. Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed as technology changes.

53. Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) Missouri State Plane West Coordinate System North American Datum 1983 (NAD83). If applicable, submissions should include 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 (https://www.fgdc.gov/metadata/geospatial-metadata-standards). Consult *EPA Geospatial /Non-Geospatial Metadata Style Guide* (version 1.1, May 4, 2015) for guidance on metadata.

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

55. Modification of the Work Plans.

a. If at any time during conducting the Work, Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the need for additional data to the EPA Remedial Project Manager and the MDNR Project Manager thirty (30) days after the identification. EPA, in its discretion and in consultation with MDNR, will determine whether the additional data will be collected by Respondent and whether it will be incorporated into plans, reports, and other deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the EPA Remedial Project Manager and MDNR Project Manager by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines, in consultation with MDNR, that the unanticipated or changed circumstances warrant changes in any of the Work Plans attached to this Settlement Agreement, because the changed circumstances affect EPA's ability to determine whether the remedies previously conducted at the Site continue to be protective of human health and the environment, Respondent shall modify or amend, and submit for EPA approval the appropriate Work Plans as directed by EPA, following consultation with MDNR. Respondent shall perform the approved Work as modified or amended.

c. EPA may determine, in consultation with MDNR, that in addition to tasks defined in the Work Plans, referenced in Paragraph 48 of this Settlement Agreement and attached hereto, additional response actions may be necessary to accomplish the objectives of this Settlement Agreement. Respondent agrees to perform the additional actions, provided that: (i) such actions are necessary to determine whether the remedies previously implemented at the Site continue to be protective of human health and the environment; and (ii) the additional actions do not materially expand the scope of the Work set forth in the Work Plans attached to this Settlement Agreement.

d. Respondent shall confirm its willingness to perform the additional actions (Work) in writing to EPA and MDNR within seven (7) days after receipt of the EPA request. If Respondent objects to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondent may seek dispute resolution pursuant to Section XVI (Dispute Resolution). The Work Plan(s) shall be modified in accordance with the final resolution of the dispute.

e. Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in any written modification to the Work Plans. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA's or MDNR's authority to require performance of further response actions at the Site, nor shall this Paragraph be construed to limit Respondent's right to dispute whether Respondent is responsible to perform such further response actions.

56. Progress Reports. In addition to the plans, reports, and other deliverables set forth in this Settlement Agreement, Respondent shall provide to EPA and MDNR periodic (initially monthly) progress reports by the 10th day following the end of the reporting period. At a minimum, with respect to the reporting period, these progress reports shall: (a) describe the actions that have been taken to comply with this Settlement Agreement during that month; (b) include all results of sampling and tests and all other data as specified in Paragraph 67.a received by Respondent; (c) describe Work planned for the next two months with a schedule relating such Work to the overall project schedule for completion; and (d) describe all problems encountered, any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

57. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence, arising from, or relating to performance of the Work that 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 to address the release or threat of release. 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 EPA Remedial Project Manager and MDNR Project Manager or, in the event of the EPA Remedial Project Manager unavailability, the EPA 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 all costs of the response action not inconsistent with the NCP pursuant to Section XIX (Payment of Response Costs).

b. In addition, in the event of any unpermitted release of a hazardous substance in excess of a reportable quantity from the Site arising from or relating to the performance of the Work, Respondent shall immediately notify the EPA Remedial Project Manager or Regional Duty Officer at 913-281-0991, MDNR's Environmental Services Program's Emergency Response Hotline at 573-634-2436, and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA and MDNR 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.*

## XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

58. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement, in a written notice to Respondent, EPA shall, following consultation with MDNR: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within thirty (30) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

59. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 58(a), 58(b), or 58(c), Respondent shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XVI (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submission or portion thereof, Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 58.c and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVII (Stipulated Penalties).

60. Resubmission.

a. Upon receipt of a notice of disapproval, Respondent shall, within twenty (20) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVII, shall accrue during the twenty-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 58.

b. 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. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XVII (Stipulated Penalties).

c. Respondent shall not proceed with any activity or task dependent on the submitted deliverables until receiving EPA approval, approval on condition, or modification of such deliverables.

61. If EPA disapproves a resubmitted plan, report, or other deliverable, or portion thereof, EPA may again direct Respondent to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report, or other deliverable. Respondent shall implement

any such plan, report, or deliverable as corrected, modified, or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XVI (Dispute Resolution).

62. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately unless Respondent invokes the dispute resolution procedures in accordance with Section XVI (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XVI (Dispute Resolution) and Section XVII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified, or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XVI, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVII.

63. In the event that EPA takes over some of the tasks, Respondent shall incorporate and integrate information supplied by EPA into the final reports.

64. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

65. Neither the 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. Whether or not EPA gives express approval for Respondent's deliverables, Respondent is responsible for preparing deliverables acceptable to EPA.

## XII. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

66. Quality Assurance. Respondent shall assure that Work performed, samples taken, and analyses conducted conform to the requirements of the QAPP and guidance identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures. Respondent shall only use laboratories that have a documented quality system that complies with "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.

67. Sampling.

a. All results of sampling, tests, modeling, or other validated data, which shall include supporting documentation (including unvalidated data), generated by Respondent, or on Respondent's behalf, during the period that this Settlement Agreement is effective, shall be

submitted to EPA and MDNR in the monthly progress report following the date of receipt by Respondent, as described in Paragraph 56. EPA will make available to Respondent validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondent shall orally notify EPA and MDNR at least fourteen (14) days prior to conducting significant field events as described in the attached Work Plans or otherwise conducted pursuant to this Settlement Agreement. At EPA's or MDNR's oral or written request, or the request of EPA's oversight assistant, Respondent shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) or MDNR of any samples collected in implementing this Settlement Agreement. All split samples of Respondent shall be analyzed by the methods identified in the QAPP. Split samples collected by EPA or MDNR will be analyzed using their respective QAPP.

68. Access to Information.

a. If requested by EPA or MDNR, Respondent shall provide to EPA or MDNR copies of all non-privileged, non-attorney work product records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents required as part of the Work 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 and MDNR, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of non-privileged, non-attorney work product relevant facts concerning the performance of the Work.

b. Respondent may assert business confidentiality claims covering part or all of the Records 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). Records 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 Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent. Respondent shall segregate and clearly identify all Records submitted under this Settlement Agreement for which Respondent asserts business confidentiality claims.

c. Respondent may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing Records, Respondent shall provide EPA and MDNR with the following: (i) the title of the Record; (ii) the date of the Record; (iii) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the Record; and (vi) the privilege asserted by Respondent. Respondent will not withhold on the grounds of privilege or

confidentiality any Record Respondent is (i) required to generate pursuant to the requirements of this Settlement Agreement, (ii) required to be submitted to EPA, and (iii) which fall under the categories enumerated at 42 U.S.C. §9604(e)(7)(F).

d. No claim of confidentiality shall be made with respect to any data required as part of the Work, including, but not limited to, all sampling, analytical, monitoring, hydro-geologic, scientific, chemical, or engineering data, or any other non-privileged, non-attorney work product Record required as part of the Work evidencing conditions at or around the Site.

e. Records subject to claims of confidentiality pursuant to subparagraphs b or c of this Paragraph shall also be subject to confidentiality pursuant to § 260.430, RSMo.

69. In entering into this Settlement Agreement, 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 Agreement or any EPA-approved Work Plan. If Respondent objects to any other data relating to the Work, Respondent shall submit to EPA and MDNR 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 and MDNR within twenty (20) days after the monthly progress report containing the data.

## XIII. SITE ACCESS

70. 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 MDNR, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property that Respondent owns or controls, for the purpose of conducting any activity related to this Settlement Agreement. Such access shall be consistent with Respondent's easement rights pursuant to the August 30, 1996 Ingress and Egress Easement Agreement and with Respondent's Access Agreement with BCP, dated August 5, 2014 (collectively, "the Access Agreements").

71. All access requirements for on-Site Work shall be consistent with the Access Agreements. With respect to Work that will take place off-Site, Respondent shall use its best efforts to obtain the necessary access agreements at least thirty (30) days in advance of the expected commencement of that portion of the Work. Respondent shall immediately notify EPA and MDNR if after using its best efforts Respondent 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. If Respondent cannot obtain access agreements, EPA may either: (a) obtain access for Respondent or 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; (b) perform those tasks or activities with EPA contractors; or (c) terminate the Settlement Agreement. Respondent shall reimburse EPA for all costs and attorney's fees incurred by EPA in obtaining such access, in accordance with the procedures in Section XIX (Payment of

Response Costs). If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondent shall perform all other tasks or activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such tasks or activities. Respondent shall integrate the results of any such tasks or activities undertaken by EPA into its plans, reports, and other deliverables.

72. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## XIV. COMPLIANCE WITH OTHER LAWS

73. Respondent shall comply with all applicable state and federal laws and regulations when performing the Work pursuant to this Settlement Agreement. No local, state, or federal permit shall be required for any portion of any action conducted entirely "on-Site" [as defined in the NCP, 40 C.F.R. § 300.400(e)], 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 is to be conducted off-Site and 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. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

## XV. RETENTION OF RECORDS

74. Upon the Effective Date of this Settlement Agreement and for a minimum of ten (10) years after completion of Work at the Site pursuant to this Settlement Agreement, Respondent shall preserve and retain all non-identical copies of the Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate to the performance of the Work, regardless of any corporate retention policy to the contrary. Respondent shall also instruct its contractors and agents to preserve all Records of whatever kind, nature, or description relating to performance of the Work for the same ten-year time period. The obligations in this Section shall not apply to earlier drafts or versions of documents once a superseding draft or version is completed, provided that any documents submitted to EPA or the State pursuant to this Settlement Agreement shall be retained. For Records generated on or after September 30, 2012 (the date of the 2012 Five Year Review), the document preservation, retention, or access requirements under the 1997 AOC, including but not limited to such provisions in paragraphs 31 and 32 of the 1997 AOC, do not apply.

75. At the conclusion of this document retention period, Respondent shall notify EPA and MDNR at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA or MDNR, Respondent shall deliver any such Records to EPA or MDNR. Respondent may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, Respondent shall provide EPA/MDNR with the following: (a) the title of the Record; (b) the date of the Record; (c) the name and title of the author of the Record; (d) the name and title of

each addressee and recipient; (d) a description of the subject of the Record; and (f) the privilege asserted by Respondent.

## XVI. DISPUTE RESOLUTION

76. 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.

77. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, Respondent shall notify EPA in writing of its objection(s) within ten (10) days after such action, unless the objection(s) has/have been resolved informally. EPA, in consultation with MDNR, and Respondent shall have thirty (30) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted orally but must be confirmed in writing.

78. 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 Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. The invocation by Respondent of dispute resolution under this Section shall not toll any obligation not in dispute. 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, and regardless of whether Respondent agrees with the decision.

## XVII. STIPULATED PENALTIES

79. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 80 and 81 for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XVIII (Force Majeure). "Compliance" by Respondent shall include completion of the Work under this Settlement Agreement or any activities contemplated under any Work Plan or other plan approved under this Settlement Agreement, in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, 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.

80. Stipulated Penalty Amounts - Work (Including Payments).

a. The following stipulated penalties shall accrue per day for any noncompliance identified in Paragraph 80.b:

| Penalty Per Violation Per Day | Period of Noncompliance |
|---|---|
| $ 200 | 1st through 14th day |
| $ 400 | 15th through 30th day |
| $ 1,000 | 31st day and beyond |

b. Compliance Milestones.

i. Failure to meet any of the approved Work schedules developed pursuant to Paragraph 49 of this Settlement Agreement for the Work Plans identified in Paragraph 48 of this Settlement Agreement.

ii. Failure to obtain commercial general liability insurance meeting the requirements of Paragraph 116 prior to commencing any on-Site Work under this Settlement Agreement.

iii. Failure to obtain financial assurance meeting the requirements of Paragraph 117 within thirty (30) days after the Effective Date.

81. Stipulated Penalty Amounts - Reports.

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other plans or deliverables pursuant to this Settlement Agreement:

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

82. 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: (a) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the thirty-first (31$^{st}$) 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 designated in Paragraph 78 of Section XVI (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.

83. 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 same 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.

84. 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 XVI (Dispute Resolution). Respondent shall make all payments required by this Paragraph to EPA by Fedwire Electronic Funds Transfer to:

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

and shall reference stipulated penalties, Site/Spill ID Number 0751, and the EPA docket number for this action. At the time of payment, Respondent shall send notice that payment has been made to the EPA Remedial Project Manager.

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

86. Penalties shall continue to accrue as provided in Paragraph 82 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.

87. 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 83.

88. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA or MDNR 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 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 neither EPA nor Missouri shall seek civil penalties pursuant to 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 Agreement, except in the case of willful violation of this Settlement Agreement. 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. FORCE MAJEURE

89. 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, *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.

90. 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 and MDNR orally within seven (7) days of when Respondent first knew that the event might cause a delay. Within ten (10) days thereafter, Respondent shall provide to EPA and MDNR 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.

91. 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.

## XIX. PAYMENT OF RESPONSE COSTS

92. Payment of Past Response Costs.

a. Within sixty (60) days after the Effective Date, Respondent shall pay to EPA $88,314.56 for Past Response Costs. Payment shall be made to EPA by Fedwire Electronic Funds Transfer ("EFT") to:

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

and shall reference Site/Spill ID Number 0751 and the EPA docket number for this action.

b. At EPA's discretion, the total amount to be paid by Respondent pursuant to Paragraph 92.a shall be deposited by EPA in the EPA Hazardous Substance Superfund or shall be deposited by EPA in the Syntex-Verona Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site.

93. Payments of Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes an Itemized Cost Summary Report, which will identify the direct and indirect costs incurred by EPA. Respondent shall make all payments within sixty (60) days after receipt of each bill requiring payment, except as otherwise provided in Paragraph 95 of this Settlement Agreement. Payments shall be made to EPA by Fedwire Electronic Funds Transfer ("EFT") to:

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

and shall reference Site/Spill ID Number 0751 and the EPA docket number for this action.

b. At EPA's discretion, the total amount to be paid by Respondent pursuant to Paragraph 93.a shall be deposited by EPA in the EPA Hazardous Substance Superfund or shall be deposited by EPA in the Syntex-Verona Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site.

94. Interest. If Respondent does not pay Past Response Costs within sixty (60) days after the Effective Date or does not pay Future Response Costs within sixty (60) days after Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on unpaid Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA

receives a partial payment, Interest shall accrue on any unpaid balance. 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, payments of stipulated penalties pursuant to Section XVII. Respondent shall make all payments required by this Paragraph in the manner described in Paragraph 93.

95. Respondent may contest payment of any Future Response Costs billed under Paragraph 93 if Respondent 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 Respondent 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. Such objection shall be made in writing within thirty (30) days after receipt of the bill and must be sent to the EPA Remedial Project Manager. Any such objection shall specifically identify the contested Future Response Costs and the basis for the objection. In the event of an objection, Respondent shall within the thirty (30) day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 93. Simultaneously, Respondent shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation, and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA Remedial Project Manager a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). 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 93. 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 93. 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 XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

## XX. COVENANT NOT TO SUE BY EPA AND MISSOURI

96. In consideration of the actions that will be performed and the payments that will be made 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), and/or Sections 3008(h) and 3013 of RCRA, 42 U.S.C. §§ 6928(h) and 6934, for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to

Paragraph 93 (Payment of Future Response Costs). This covenant not to sue extends only to Respondent and does not extend to any other person.

97. 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, Missouri 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), or Sections 3008(h) and 3013 of RCRA, 42 U.S.C. §§ 6928(h) and 6934, or the Missouri Hazardous Waste Management Law, §§ 260.350 to 260.430, RSMo, and/or §§ 260.440 to 260.470, RSMo, or §§ 260.500 to 260.550, RSMo, or implementing regulations, for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement. This covenant not to sue extends only to Respondent and does not extend to any other person.

## XXI. RESERVATIONS OF RIGHTS BY EPA AND MISSOURI

98. Except as specifically provided in this Settlement Agreement, including Paragraph 4 as it relates to the 1983 Consent Agreement and Order, nothing in this Settlement Agreement shall limit the power and authority of EPA, the United States, or Missouri 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 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.

99. The covenant not to sue set forth in Section XX 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. liability for failure by Respondent to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definitions of Past Response Costs or 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 Agreement.

## XXII. COVENANT NOT TO SUE BY RESPONDENT

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

a. any direct or indirect claim for reimbursement from the EPA 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 the Work or arising out of the response actions for which the Past Response Costs or Future Response Costs have or will be incurred, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Work or payment of Past Response Costs or Future Response Costs.

101. These covenants not to sue shall not apply in the event the United States or Missouri bring a cause of action or issues an order pursuant to the reservations set forth in Section XXI (Reservations of Rights by EPA and Missouri), other than in Paragraph 99.a (liability for failure to meet a requirement of the Settlement Agreement) or 99.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 or Missouri are seeking pursuant to the applicable reservation.

102. Respondent reserves, and this Settlement Agreement 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 plans, reports, other deliverables, or activities.

103. 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).

## XXIII. OTHER CLAIMS

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

105. Except as expressly provided in Section XX (Covenant Not to Sue by EPA and Missouri), 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.

106. 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).

## XXIV. EFFECT OF SETTLEMENT/CONTRIBUTION

107. 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 XXII (Covenant Not to Sue 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 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) and (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).

108. The Parties agree that this Settlement Agreement 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 Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Response Costs, and

Future Response Costs. Nothing in this Settlement Agreement shall be construed to preclude the existence of protection for Respondent, under other sources of law or other orders, from contribution actions or claims under CERCLA or other sources of law related to other environmental response actions Respondent has conducted at the Site to date.

109. The Parties further agree that this Settlement Agreement 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).

110. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA and Missouri 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 after service of the complaint or claim upon it. In addition, Respondent shall notify EPA and Missouri 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 Agreement.

111. In any subsequent administrative or judicial proceeding initiated by EPA or Missouri, or by the United States on behalf of EPA, or the State on behalf of MDNR, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties 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 covenants by EPA and Missouri set forth in Section XX.

112. Effective upon signature of this Settlement Agreement by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Respondent the payment(s) required by Section XIX (Payment of Response Costs) and, if any, Section XVII (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 108 and that, in any action brought by the United States related to the "matters addressed," Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period.

## XXV. INDEMNIFICATION

113. Respondent shall indemnify, save and hold harmless the United States, the State, their officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondent, their officers, directors, employees, agents, contractors, subcontractors, and representatives in carrying out actions pursuant to this Settlement

Agreement. In addition, Respondent agrees to pay the United States/State all costs incurred by the United States/State, including but not limited to attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States/State based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor of Respondent shall be considered an agent of the United States or the State.

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

115. Respondent waives all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site. In addition, Respondent shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site.

## XXVI. INSURANCE

116. Prior to commencing any on-Site Work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, commercial general liability ("CGL") insurance with limits of one million dollars, for any one occurrence. The CGL insurance shall name 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 Agreement. Within the same period, Respondent shall provide EPA with certificates of such insurance and a copy of the CGL insurance policy. Respondent shall submit such certificates and a copy of the CGL insurance policy each year on the anniversary of the Effective Date. Respondent shall require any contractor or subcontractor operating an automobile on the Site in connection with performance of the Work to maintain automobile insurance with limits of one million dollars, and the contractor or subcontractor shall provide EPA with certificates of such insurance. 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 demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent needs provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor. The

requirements of this Paragraph shall replace and be in lieu of any insurance requirements contained in paragraphs 78 and 79 of the 1997 AOC.

## XXVII. FINANCIAL ASSURANCE

117. Within thirty (30) days after the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of $750,000 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 equaling the total estimated cost of the Work;

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 or affiliate companies of Respondent, or by one or more unrelated companies that have a substantial business relationship with Respondent, including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Section 264.143(f); and/or

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

118. 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 thirty (30) days after 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 117, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within thirty (30) days after 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.

119. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Paragraph 117.e or 117.f, Respondent shall (a) demonstrate to EPA's satisfaction that

the guarantor satisfies the requirements of 40 C.F.R. Section 264.143(f); and (b) resubmit sworn statements conveying the information required by 40 C.F.R. Section 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. Section 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 $750,000 for the Work at the Site plus any other RCRA, CERCLA or other federal environmental obligations financially assured by Respondent or guarantor to EPA by means of passing a financial test.

120. 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 117 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 XVI (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

121. 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.

## XXVIII. INTEGRATION/APPENDICES

122. This Settlement Agreement and its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement 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 A" is the map of the Site.

"Appendix B" is the East Area Well Installation Work Plan, dated July 8, 2016;

"Appendix C" is the Trench Area Well Installation and Geotechnical Investigation Work Plan, dated July 8, 2016;

"Appendix D" is the East Area Groundwater Sampling and Analysis Plan, dated July 8, 2016;

"Appendix E" is the Trench Area Groundwater Sampling and Analysis Plan, dated August 18, 2016;

"Appendix F" is the East Area Shallow Soil Sampling and Analysis Plan, dated July 8, 2016;

"Appendix G" is the Pathways Analysis Report Plan for Protectiveness Evaluation, dated July 8, 2016;

"Appendix H" is the Spring River Sediment Sampling and Analysis Plan, dated July 8, 2016;

"Appendix I" is the Spring River Screening-Level Ecological Risk Assessment Plan, dated April 15, 2016; and

"Appendix J" is the Quality Assurance Project Plan, dated August 18, 2016.

## XXIX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

123. This Settlement Agreement shall be effective upon Respondent's receipt of a fully executed copy of this Settlement Agreement. Receipt may be by email (without appendices).

124. This Settlement Agreement may be amended by mutual agreement of EPA, in consultation with Missouri, and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. EPA Remedial Project Managers do not have the authority to sign amendments to the Settlement Agreement.

125. No informal advice, guidance, suggestion, or comment by the EPA Remedial Project Manager, MDNR Project Manager, 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.

## XXX. NOTICE OF COMPLETION OF WORK

126. When Respondent completes the Work (with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to record retention), Respondent shall so certify to EPA. If EPA, in consultation with MDNR, determines that all such Work has been fully performed in accordance with this Settlement Agreement, EPA will provide written notice to Respondent. If EPA, in consultation with MDNR, determines that any 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 a Work Plan, if appropriate, in order to correct such deficiencies, in accordance with Paragraph 55. EPA will use its best efforts to respond to Respondent's certification of completion as expeditiously as possible.

AGREED this 29 day of August, 2016.

**FOR RESPONDENT SYNTEX AGRIBUSINESS, INC.**

BY: _____ DATE: 8/29/16, 2016

Frederick C. Kentz, III
Vice President and Assistant Secretary
Syntex Agribusiness, Inc.

It is so ORDERED AND AGREED this 2nd day of September, 2016

**FOR U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION VII**

BY: Mary P. Peterson DATE: 9/1, 2016

Mary Peterson, Director
Superfund Division
Region VII
U.S. Environmental Protection Agency

BY: John J Smith DATE: 9/2, 2016

for Becky Weber, Director
Air and Waste Management Division
Region VII
U.S. Environmental Protection Agency

BY: J. Scott Pemberton DATE: Sept. 1, 2016

J. Scott Pemberton
Senior Assistant Regional Counsel
Office of Regional Counsel
Region VII
U.S. Environmental Protection Agency

It is so ORDERED AND AGREED this 26 day of AUGUST, 2016

**FOR THE STATE OF MISSOURI**

BY: _____ DATE: August 26, 2016

Elliott J. Usher
Assistant Attorney General
Office of the Attorney General
Agriculture & Environment Division
P.O. Box 899
Jefferson City, Missouri 65102

**FOR MISSOURI DEPARTMENT OF NATURAL RESOURCES**

BY: _____ DATE: 8/26, 2016

Leanne Tippett Mosby
Director, Division of Environmental Quality
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102