UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF: **Desha Road Superfund Site, Tappahannock, Virginia** **FDP Virginia, Inc. ,** **Respondent**	**EPA Docket No. CERCLA-03-2022-0043DC**
Proceeding Under Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622	**Administrative Settlement Agreement and Order on Consent for Removal Response Action**

Administrative Settlement Agreement and Order on Consent for Removal Response Action

I. Jurisdiction and General Provisions

1. This Administrative Settlement Agreement and Order on Consent for Removal Action ("Settlement") is entered into voluntarily by the U.S. Environmental Protection Agency ("EPA") and FDP Virginia, Inc. ("Respondent" a/k/a "FDP Brakes"). This Settlement provides for the performance of a removal action by Respondent and the payment of certain response costs incurred by the United States at or in connection with the Desha Road Site (the "Site"), which is located near the intersection of Carver Lane and Desha Road in Tappahannock, Essex County, Virginia. In entering into this Settlement, the mutual objectives of EPA and Respondent are to conduct a removal action, as defined in Section 101(23) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601(23), to abate, mitigate, or eliminate the release or threat of release of hazardous substances, pollutants, or contaminants at the Site (as hereinafter described) by, among other things: sampling the contents of any drums or other receptacles found buried at the Site; post-excavation sampling of soil in areas of the Site where any drums or other receptacles were disposed of; proper offsite disposal of any drums or other receptacles disposed of at the Site, as well as the contents of these drums and receptacles, and any hazardous substances, pollutants, or contaminants found at the Site; asbestos abatement and offsite disposal; monitoring of groundwater and residential drinking water wells at the Site; and provision of treatment systems

for any drinking water wells at the Site that have been impacted by hazardous substances, pollutants, or contaminants from the Site.

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

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

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

II. Parties Bound

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

6. [Reserved.]

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

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

III. Definitions

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

"Affected Property" means all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the removal action, as well as any nearby areas where hazardous substances from the Site have come to be located.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

"Commonwealth" means the Commonwealth of Virginia.

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

"DEQ" means the Commonwealth of Virginia Department of Environmental Quality and any successor departments or agencies of the Commonwealth.

"Effective Date" means the effective date of this Settlement as provided in Section XXX.

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

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

"Future Response Costs" means all costs, including, but not limited to, direct and indirect costs, that (i) the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, as defined herein, or otherwise implementing, overseeing, or enforcing this Settlement; (ii) all payroll costs, contractor costs, travel costs, and laboratory costs incurred by the United States; (iii) the costs incurred pursuant to Section IX (Property Requirements), including cost of attorney time, any monies paid to secure or enforce access or ensure long-term compliance with land-, water-, or other resource-use restrictions, implementation of institutional controls, and the amount of just compensation; (iv) the costs incurred pursuant to Section XIII (Emergency Response and Notification of Releases), Section XIV (Payment of Response Costs), Paragraph 71 (Work Takeover), including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XV (Dispute Resolution), and all litigation costs. Future Response Costs will also include costs

incurred by the Agency for Toxic Substances and Disease Registry ("ATSDR") regarding the Site.

"In writing" or "written", as used in this Settlement, includes email and other electronically submitted communication.

"Interest" means 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 will be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

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

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

"Non-Settling Owner" means any person, other than Respondent, that owns or controls any Affected Property. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.

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

"Parties" means EPA and Respondent.

"Post-Removal Site Control" means an action(s) necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Settlement, and consistent with Sections 300.415(l) and 300.5 of the NCP, 40 C.F.R. §§ 300.415(l) and 300.5, and *Policy on Management of Post-Removal Site Control* (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

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

"Respondent" means FDP Virginia, Inc.. (a/k/a "FDP Brakes").

"Section" means a portion of this Settlement identified by a Roman numeral.

"Settlement" means this Administrative Settlement Agreement and Order on Consent for Removal Action and all appendixes attached hereto and listed in Section XXIX (Integration/Appendixes). In the event of conflict between this Settlement and any appendix, this Settlement will control.

"Site" means the Desha Road Superfund Site, encompassing approximately six acres, located near the intersection of Carver Lane and Desha Road in Tappahannock, Essex County, Virginia, as depicted generally on the map attached as Appendix A and any area where hazardous substances attributable to the Site have come to be located.

"Special Account" means the Desha Road Site special account within the EPA Hazardous Substance Superfund, that will be established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

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

"Tribe" or "tribal" refers to the Rappahannock Tribe.

"United States" means the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" means (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (iv) any "hazardous material" under § 10.1-1400 of the Code of Virginia.

"Work" means all activities and obligations Respondent is required to perform under this Settlement, except those required by Section XI (Record Retention).

IV. FINDINGS OF FACT

10. EPA makes the following findings of fact which Respondent neither admits nor denies:

a. Respondent is a corporation organized in January 2001 under the laws of the State of Delaware and authorized to transact business in the Commonwealth of Virginia ("Commonwealth"). Respondent is an affiliate of FDP Friction Science (a/k/a "FDP Brakes"), which is "a global supplier of disc pads and brake shoes with nearly 400 employees, some of whom started in FDP's facility in Trenton, New Jersey, more than 40 years ago." *See* http://www.fdpbrakes.com/about.php FDP Friction Science has a research and development facility in Morrisville, Bucks County, Pennsylvania, and its manufacturing facility and corporate headquarters are located in Tappahannock, Virginia.

b. Respondent manufactures disc brakes and drum brakes for motor vehicles at two locations in Tappahannock, Essex County, Virginia. One of these locations is at 1076 Airport Road. The other location is at 1290 Mount Landing Road.

c. In its operations, Respondent has used raw materials containing hazardous substances, including, among others, tert-Butyl-acetate, n-Butyl acetate, Ethylene glycol, volatile organic compounds ("VOCs"), and semi-volatile organic compounds ("SVOCs"). Respondent has also utilized Chrysotile asbestos in its operations for purposes of asbestos identification and laboratory analysis.

d. Respondent's operations generate hazardous and solid waste regulated under federal and Virginia law.

e. Waste generated during Respondent's operations has contained hazardous substances, including, among others, tert-Butyl-acetate, n-Butyl acetate, Ethylene glycol, VOCs, and SVOCs.

f. Waste generated during Respondent's operations is stored in drums and other containers for transport and off-site disposal at permitted facilities in accordance with federal and Virginia law.

g. On January 30, 2019, during an unannounced compliance-evaluation inspection of Respondent's facility located at 1076 Airport Road in Tappahannock, Essex County, Virginia ("the Airport Road facility"), DEQ inspectors observed and noted the presence of approximately 32 drums labeled *Hazardous Waste*.

h. On or around May 7, 2019, DEQ issued Respondent a Notice of Violation ("NOV") stemming from the January 30, 2019 inspection, during which DEQ had noticed multiple violations of the Virginia Waste Management Act ("VWMA") and regulations promulgated under the VWMA.

i. DEQ has informed EPA that, during later discussions between Respondent and DEQ about the May 7, 2019 NOV, Respondent informed DEQ that all but two of the 32 drums and their contents had been re-used in Respondent's manufacturing operations.

j. In or around January 2021, EPA received an anonymous tip that drums containing Respondent's hazardous waste had been disposed of on real property owned by Benjamin C. Gathercole, an employee of Respondent. Mr. Gathercole is a maintenance manager at Respondent's facility, and his official duties have included tasks related to Respondent's hazardous waste.

k. On or around November 8-10, 2021, officers from the Virginia State Police, in coordination with federal agents of EPA's Criminal Investigation Division, Virginia's Office of the Attorney General, and DEQ (collectively, "the search-warrant team"), executed a search warrant at the Site.

l. During its investigation, the search-warrant team determined that drums and other items were buried in two pits at the Site.

m. The search-warrant team requested that an On-Scene Coordinator ("OSC") from EPA's Office of Preparedness and Response conduct a removal site evaluation under Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), and Section 300.410 of the National Contingency Plan ("NCP"), 40 C.F.R. § 300.410.

n. The OSC conducted a removal site evaluation, including excavation at the Site. The OSC discovered buried drums, some of which were leaking. Other drums appeared to have been previously crushed, and their contents appeared to have spilled or leaked into the pits.

o. At least one of the drums that was buried at the Site and removed by EPA is labeled *FDP Brakes, 1076 Airport Rd, Tappahannock, VA 22560 – N. Butyl Acetate*. This drum was leaking a clear liquid. Field samples obtained by EPA from the contents of this drum showed that it contained tert-Butyl acetate, a hazardous substance, as defined by CERCLA. Respondent had previously identified n-Butyl acetate and tert-Butyl acetate as the contents of certain drums the DEQ inspectors observed during their January 30, 2019 inspection of Respondent's Airport Road facility.

p. Another buried drum EPA excavated at the Site was labeled *Ethylene glycol*, which is a hazardous substance, as defined by CERCLA. Respondent had previously identified Ethylene glycol as the contents of at least one drum that was observed by DEQ inspectors during their January 30, 2019 inspection of Respondent's Airport Road facility.

q. A limited number of soil samples were also collected during the removal site evaluation. VOCs detected in soil samples included acetone at a concentration of 47 parts per million ("ppm") and xylene at 200 ppm. Phenol, an SVOC, was detected in the resin pit at a concentration of 200 milligrams/kilogram ("mg/kg"). Acetone, xylene, and phenol are all hazardous substances under 40 C.F.R. § 302.4.

r. Based on conditions at the Site, the OSC initiated a removal action under CERCLA and the NCP. To date, the removal action has included, among other things, excavation, staging, and overpacking of buried drums and other containers or materials.

s. During EPA's removal site evaluation, one 50-Kilogram bag labeled *Chrysotile* was also found during the excavation of one of the on-Site pits. The bag was torn and its contents had partially spilled into the pit. Other similarly damaged bags of Chrysotile were also observed in the excavation pit. Chrysotile is a form of asbestos, a hazardous substance, as defined by CERCLA, 42 U.S.C. § 9601(14), and its handling and disposal are regulated under federal and Virginia law. Chrysotile asbestos has been used by Respondent at its manufacturing facility in Tappahannock, Virginia.

t. Persons living at and within a quarter-mile of the Site use private and community drinking water well(s).

u. On or around November 10 and 11, 2021, during a subsequent inspection of Respondent's Airport Road facility, DEQ inspectors confirmed that the approximately 32 drums labeled *Hazardous Waste* that DEQ observed during the January 30, 2019 inspection were no longer present at the facility.

v. Mr. Gathercole has stated that the drums buried at the Site are the same drums shown in photographs taken by DEQ inspectors during their January 30, 2019 inspection of the Airport Road facility.

w. Mr. Gathercole has stated that he disposed of the drums, their contents, and the asbestos at the direction of Respondent's plant manager, James Terrell. Mr. Gathercole has stated he used Respondent's own equipment, including a forklift, truck, and backhoe, to dispose of the drums, their contents, and the asbestos at the Site.

V. EPA's CONCLUSIONS OF LAW AND DETERMINATIONS

11. Based on the Findings of Fact set forth above, and the administrative record supporting selection of the response action required to be performed under this Settlement, EPA has determined that:

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

b. N-Butyl acetate, tert-Butyl-acetate, Ethylene glycol, VOCs, SVOCs, and asbestos found at the Site, as described in Section IV (Findings of Fact), are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and are designated as hazardous substances at 40 C.F.R. § 302.4 (Table 302.4 – List of Hazardous Substances and Reportable Quantities).

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

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Specifically, Respondent is a person who, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by the Respondent, at the Site, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

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

f. EPA has determined in an Action Memorandum dated January 21, 2022, that the conditions at the Site described in Section IV (Findings of Fact) may constitute an imminent and substantial endangerment to the public health or welfare or the environment

because of an actual or threatened release of a hazardous substance from the Site within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

g. The removal action required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP 40 C.F.R. § 300.700(c)(3)(ii).

VI. SETTLEMENT AGREEMENT AND ORDER

12. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record supporting selection of the response action required to be performed under this Settlement, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement, including all appendixes to this Settlement and all documents incorporated by reference into this Settlement.

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

13. Respondent shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of these contractors or subcontractors within **15 days** after the Effective Date. Respondent shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least **15 days** prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors or subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within **ten (10) days** after EPA's disapproval. With respect to any proposed contractor, Respondent must demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014, "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP must be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

14. Respondent has designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondents required by this Settlement: Catherine Warner, P.E., Principal, GHD, 121 North 20th Street, Richmond, Virginia 23223. Phone: (804) 237-0290 Email: catherine.warner@ghd.com. Respondent's Project Coordinator shall be a technical and

managerial representative of the Respondent and may be a contractor or consultant; provided, however, the Respondent's Project Coordinator must not be its legal representative(s) in this matter. To the greatest extent possible, the Project Coordinator shall be present on-Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to the Respondent.

15. EPA has designated the following person as its OSC:

Raj Sharma
U.S. Environmental Protection Agency – Region 3
1650 Arch Street (3SD32)
Philadelphia, PA 19103
sharma.raj@epa.gov
(215) 514-8620

Mailing address after May 2, 2022, will be:

U.S. Environmental Protection Agency – Region 3
Four Penn Center
1600 John F. Kennedy Boulevard (3SD32)
Philadelphia, PA 19103-2852

EPA and Respondent have the right, subject to Paragraph 14, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA **15 days** before changing Respondent's Project Coordinator. The initial notification by Respondent may be made verbally, but must be promptly followed by a written notice.

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

VIII. WORK TO BE PERFORMED

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

a. Prepare pre-disposal staging areas, including stormwater controls, for all excavated drums and overpack drums.

b. Where necessary to make a waste determination, sample contents of previously excavated drums and overpack drums to determine proper offsite disposal.

c. Prepare and follow a Site-specific abatement plan for removal of all asbestos, all bags or other packages contaminated with asbestos, and soil containing asbestos. Utilize appropriate controls during excavation and removal of asbestos to prevent airborne releases of asbestos. Perform post-removal sampling of the burial pit floors to confirm concentrations of asbestos are less than 1%.

d. Excavate all areas where drums or other containers are buried. Remove all additional drums, bags, or other items suspected to contain hazardous substances, pollutants, or contaminants. Stage these items in the pre-disposal staging area established under Paragraph a above.

e. Utilize appropriate controls during excavation activities to prevent airborne releases of hazardous substances and dust.

f. Sample all excavated soil, additional drums, bags, or other containers to determine proper offsite disposal.

g. Perform post-excavation sampling of the floors and side walls of all excavated burial pits at the Site to determine remaining extent of contamination.

h. Excavate and remove soils with concentrations of hazardous substances, pollutants, or contaminants exceeding EPA's residential soil screening values for target hazard quotient ("THQ") 1.0 and target cancer risk ("TR") of 1E-6 (Refer to EPA's Regional Screening Levels or "RSLs").

i. Properly dispose of offsite all drums and other receptacles and all hazardous substances, pollutants, or contaminants recovered at the Site in accordance with Paragraph 27 of this Settlement and with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440.

j. Backfill all excavated areas with fill that contains concentrations of hazardous substances, pollutants, or contaminants that do not exceed EPA's residential soil screening values for THQ=1, TR=1E-6 (Refer to EPA's RSL).

k. Install groundwater monitoring wells in the surficial aquifer at the Site to delineate the extent of groundwater contamination by any Site-related hazardous substances, pollutants, or contaminants.

l. Conduct at least two monitoring events, which are timed to account for seasonal fluctuations, of groundwater at the Site to determine if hazardous substances, pollutants, or contaminants have migrated at or from the disposal areas at the Site. When EPA determines that no further monitoring of groundwater is required at the Site, abandon all monitoring wells in accordance with any applicable Commonwealth criteria or consistent with any Commonwealth or local guidance.

m. Conduct sampling of any private or community residential drinking water wells at or within a quarter-mile radius of the Site to determine if they have been contaminated by hazardous substances, pollutants, or contaminants from the Site.

n. If sampling conducted under Paragraph 17.m indicates that a residential or community drinking water well has concentrations of a Site-related hazardous substance, pollutant, or contaminant exceeding federal Maximum Contaminant Levels ("MCLs") or more stringent drinking water standards promulgated under Virginia law, provide and maintain an activated carbon filtration treatment system on that well.

o. Coordinate with Commonwealth, tribal, and local authorities for performance of any required post-removal site control activities.

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

19. Work Plan and Implementation.

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

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

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

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

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

20. Submission of Deliverables.

a. General Requirements for Deliverables.

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

ii. Respondent shall submit all deliverables in electronic form via email to the OSC identified on page 10 of this Settlement. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 20.b. All other deliverables shall be submitted to EPA in the form specified by the OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches in their native format, Respondent shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Deliverables.

i. Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable ("EDD") format, MS Excel. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

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

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

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

21. Health and Safety Plan. Within **20 days** after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site Work under this Settlement. This plan must be prepared in accordance with *OSWER Integrated Health and Safety Program Operating Practices for*

OSWER Field Activities, Pub. 9285.0-OlC (Nov. 2002), available on the NSCEP database at https://www.epa.gov/nscep, and *EPA's Emergency Responder Health and Safety Manual*, OSWER Directive 9285.3-12 (July 2005 and updates), available at https://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the plan must comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan must also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

22. Quality Assurance, Sampling, and Data Analysis.

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

b. Sampling and Analysis Plan. Within **20 days** after the Effective Date, Respondent shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan ("FSP") and a Quality Assurance Project Plan ("QAPP") that are consistent with the Removal Work Plan, the NCP, and applicable guidance documents, including, *Guidance for Quality Assurance Project Plans (QA/G-5)*, EPA/240/R-02/009 (December 2002), *EPA Requirements for Quality Assurance Project Plans (QA/R-5)*, EPA 240/B-01/003 (March 2001, reissued May 2006), and *Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3*, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Respondent shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. Respondent shall ensure that such laboratories analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP, and that sampling and field activities are conducted in accordance with the Agency's *EPA QA Field Activities Procedure*, CIO 2105-P-02.1 (9/23/2014), which is available at http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures. Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's *Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions*, which is available at https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements, and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/clp), *SW 846 Test Methods for*

Evaluating Solid Waste, Physical/Chemical Methods (https://www.epa.gov/hw-sw846), *Standard Methods for the Examination of Water and Wastewate*r (http://www.standardmethods.org/), 40 C.F.R. Part 136, *Air Toxics - Monitoring Methods* (http://www3.epa.gov/ttnamti1/airtox.html).

d. However, upon approval by EPA, Respondent may use other appropriate analytical method(s), as long as: (i) quality assurance/quality control ("QA/QC") criteria are contained in the method(s), and the method(s) are included in the QAPP; (ii) the analytical method(s) are at least as stringent as the methods listed above; and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods (*e.g.,* EPA, ASTM, NIOSH, OSHA, etc.). Respondent shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 *Quality Management Systems for Environmental Information and Technology Programs - Requirements with Guidance for Use* (American Society for Quality, February 2014), and *EPA Requirements for Quality Management Plans (QA/R-2)*, EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network ("ERLN") laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP"), or laboratories that meet International Standardization Organization ("ISO 17025") standards, or other nationally recognized programs, as meeting the Quality System requirements of this Settlement. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

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

f. Respondent shall submit to EPA the results of all sampling, tests, or other data obtained or generated by or on behalf of Respondent with respect to the Site and the implementation of this Settlement.

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

23. [Reserved.]

24. Post-Removal Site Control. In accordance with the Removal Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for Post-Removal Site Control ("PRSC") that will include, among other things, maintenance of carbon filtration treatment systems on residential drinking water wells, if needed. Upon EPA approval, Respondent shall either conduct PRSC activities or obtain a written commitment from another party for conduct of PRSC activities, until such time as EPA determines that no further PRSC is necessary. Respondent shall provide EPA with documentation of all PRSC commitments.

25. Progress Reports.

a. Respondent shall submit via email a written progress report to EPA, the Commonwealth, and the Tribe concerning actions undertaken pursuant to Paragraph 17 of this Settlement on a **weekly** basis from the date of receipt of EPA's approval of the Removal Work Plan until completion of all actions required under Paragraphs 17.a through 17.j, inclusive, unless otherwise directed in writing by the OSC.

b. Following completion of all actions required under Paragraphs 17.a through 17.j, inclusive, Respondent shall submit via email a written progress report to EPA, the Commonwealth, and the Tribe on a **bi-weekly** basis until issuance of Notice of Completion of Work pursuant to Section XXVIII, unless otherwise directed in writing by the OSC.

c. The progress reports submitted under this Paragraph 25 shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

26. Final Report. Within **30 days** after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 104 (Notice of Completion), Respondent shall submit for EPA review and approval a Final Report summarizing the actions taken to implement the actions identified in Paragraph 17 of this Settlement. At a minimum, the Final Report shall conform with the requirements set forth in 40 C.F.R. § 300.165 (OSC Reports). The Final Report shall include a good-faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a responsible corporate official of a Respondent:

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

27. Off-Site Shipments.

a. Respondent may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility, but only in compliance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, Respondent provides written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This written notice requirement will not apply to any off-Site shipments when the total quantity of the off-Site shipments will not exceed ten cubic yards. The written notice shall include the following information, if available: (i) the name and location of the receiving facility; (ii) the type and quantity of Waste Material to be shipped; (iii) the schedule for the shipment; and (iv) the method of transportation. Respondent shall also notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

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

IX. PROPERTY REQUIREMENTS

28. Agreements Regarding Access and Non-Interference. Respondent shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from the Non-Settling Owner an agreement, enforceable by Respondent and the EPA, providing that the Non-Settling Owner: (i) grant EPA, the Commonwealth, Respondent, and their authorized representatives, contractors, and subcontractors with access at reasonable times to Non-Settling

Owner's Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 28.a (Access Requirements); and (ii) refrain from using Non-Settling Owner's Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or the environment due to exposure to Waste Material, or that would interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action. Respondent shall provide a copy of all access agreement(s) to EPA and the Commonwealth.

a. Access Requirements. The following is a non-exclusive list of activities for which access is required by EPA regarding the Affected Property:

i. Monitoring the Work;

ii. Verifying any data or information submitted to EPA;

iii. Conducting investigations regarding contamination at or near the Site;

iv. Obtaining samples;

v. Assessing the need for, planning, implementing, or monitoring response actions;

vi. Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;

vii. Implementing the Work pursuant to the conditions set forth in Paragraph 71 (Work Takeover);

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

ix. Assessing Respondent's compliance with the Settlement;

x. Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted; and

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

b. [Reserved.]

29. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable

sums of money to secure access and use-restriction agreements, as required by this Section. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, Respondent shall notify EPA and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, to obtain access or use restrictions, and all costs incurred by the United States in providing assistance or taking independent action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIV (Payment of Response Costs).

30. [Reserved.]

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

32. [Reserved.]

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

X. ACCESS TO INFORMATION

34. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondent's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement, including sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work, as defined in Section III of this Settlement. Respondent shall also make available to EPA, for purposes of investigation, information-gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work, as defined in Section III of this Settlement.

35. Privileged and Protected Claims.

a. Respondent may assert that all or part of a Record requested by EPA is privileged or protected, as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 35.b, and except as provided in Paragraph 35.c.

b. If Respondent asserts a privilege or protection concerning all or part of a Record, Respondent shall provide EPA with the following information regarding the Record: (i) its title; (ii) its date; (iii) the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; (iv) a description of the Record's contents; and (v) the privilege or protection asserted. If a claim of privilege or protection applies only to a

portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim, and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding: (i) any data regarding the Site, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (ii) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement.

36. Business Confidential Claims. Respondent may assert that all or part of a Record provided to EPA under this Section or Section XI (Record Retention) is *confidential business information* to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records, or parts thereof, submitted under this Settlement for which Respondent asserts business confidentiality claims. Records that Respondent claims to be confidential business information shall 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.

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

XI. RECORD RETENTION

38. Until **ten (10)** years after EPA provides Respondent with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to Respondent's potential liability under CERCLA with regard to the Site. Respondent shall also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all, non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work; provided, however, that Respondent (and its contractors and agents) shall retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record-retention requirements shall apply regardless of any corporate retention policy to the contrary.

39. At the conclusion of the document-retention period, Respondent shall notify EPA at least **90 days** prior to the destruction of any Records, and, upon request by EPA, and except as

provided in Paragraph 35 (Privileged and Protected Claims), Respondent shall deliver any Records to EPA.

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

XII. COMPLIANCE WITH OTHER LAWS

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

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

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

43. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including the Health and Safety Plan. Respondent shall also immediately notify the OSC or, in the event of the OSC's

unavailability, Respondent must notify the National Response Center ((800) 424-8802) of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes a response action instead, Respondent shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

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

45. For any event covered under this Section, Respondent shall submit a written report to EPA within **seven (7) days** after the onset of such event, describing in detail: (i) the action or event that occurred, (ii) the measures taken and to be taken to mitigate any release, threat of release, or endangerment caused or threatened by the release, and (iii) the measures taken and to be taken to prevent the reoccurrence of the release or threat of release.

XIV. PAYMENT OF RESPONSE COSTS

46. [Reserved.]

47. Payments for Future Response Costs.

a. Periodic Bills. Respondent shall pay to EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, but no more often than annually after the Effective Date under Section XXX of this Settlement, EPA will send Respondent a bill requiring payment that includes a summary of costs, including direct and indirect costs incurred by EPA, its contractors, subcontractors, and the U.S. Department of Justice. Respondent shall make all payments within **30 days** after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 47.f (Contesting Future Response Costs), and in accordance with Paragraphs 47.b and 47.c.

b. For all payments subject to this Paragraph 47, Respondent shall submit payment at https://www.pay.gov in accordance with instructions that will be provided by EPA with each bill. Each payment shall include references to: (i) the Desha Road Site, (ii) Site Spill ID # B3BA, and (iii) EPA Docket No. CERCLA-03-2022-0043DC.

c. At the time of payment, Respondent shall send notice by email that payment has been made to the EPA Cincinnati Finance Office at cinwd_acctsreceivable@epa.gov. This required notice must reference: (i) the Desha Road Site, (ii) Site Spill ID # B3BA, and (iii) EPA Docket No. CERCLA-03-2022-0043DC.

d. Deposit of Future Response Costs Payments. The total amount to be paid by Respondent pursuant to Paragraph 47.a (Periodic Bills) shall be deposited by EPA in the ***Desha Road Superfund Site Special Account*** to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund; provided, however, that EPA, at its sole discretion, may deposit a payment of Future Response Costs directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Desha Road Superfund Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund is not subject to challenge by Respondent under the dispute-resolution provisions of this Settlement or in any other forum.

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

f. Contesting Future Response Costs. Respondent may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 47 (Payments for Future Response Costs) 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. To initiate a dispute concerning payment of Future Response Costs, Respondent shall submit a Notice of Dispute by email to the OSC within **30 days** after receipt of the bill. Any Notice of Dispute must specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall, within the 30-day period, also as a requirement for initiating the dispute, (i) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 47, and (ii) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC") and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the OSC by email 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 information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within **five (5) days** after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 47. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay to EPA in the manner described in Paragraph 47 that portion of the costs (plus associated accrued interest) for which Respondent did not prevail. Respondent will be disbursed any balance of the escrow

account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes of Respondent's obligation to reimburse EPA for its Future Response Costs under this Settlement.

XV. DISPUTE RESOLUTION

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

49. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within **30 days** after such action. EPA and Respondent will have **20 days** from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

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

51. Except as provided in Paragraph 47.f (Contesting Future Response Costs) or as agreed to by EPA, invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Except as provided in Paragraph 61, stipulated penalties with respect to the disputed matter will continue to accrue, but payment will be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties will accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

52. *Force Majeure*, for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this

Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring, and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

53. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends, or may intend, to assert a claim of force majeure, Respondent shall notify EPA's OSC verbally or, in the OSC's absence, the OSC's Section Chief or, in the event both of EPA's designated representatives are unavailable, the Chief of the Region III Preparedness and Response Branch within the Superfund & Emergency Management Division, within **three (3) days** of when Respondent first knew that the event might cause a delay. Within **seven (7) days** thereafter, Respondent shall provide in writing to EPA: (i) an explanation and description of the reasons for the delay; (ii) the anticipated duration of the delay; (iii) all actions taken, or to be taken, to prevent or minimize the delay; (iv) a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; (v) Respondent's rationale for attributing such delay to a force majeure; and (vi) a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting Respondent's claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event; provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 52 and whether Respondent has exercised its best efforts under Paragraph 52, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

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

55. If Respondent elects to invoke the dispute-resolution procedures set forth in Section XV (Dispute Resolution), Respondent shall do so no later than **15 days** after receipt of EPA's notice. In any dispute proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence (i) that the delay or anticipated delay has been or will be caused

by a force majeure; (ii) that the duration of the delay or the extension sought was or will be warranted under the circumstances; (iii) that best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) that Respondent complied with the requirements of Paragraphs 52 and 53. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

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

XVII. STIPULATED PENALTIES

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

58. Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 58.b:

Penalty Per Violation Per Day	Period of Noncompliance
$2,000.00	1st through 14th day
$3,000.00	15th through 30th day
$5,000.00	31st day and beyond

b. Obligations

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

ii. (Reserved.)

iii. Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 47.f (Contesting Future Response Costs).

iv. All requirements of Paragraphs 13 (including, but not limited to, the identification of contractors and subcontractors); 14 (including, but not limited to, the designation of a Project Coordinator); 19 (including, but not limited to, the submission of a Removal Work Plan for EPA approval); 20 (including, but not limited to, following the general and technical requirements for submission of deliverables to EPA); 21 (including, but not limited to, the submission of a Health and Safety Plan to EPA); 22 (including, but not limited to, use of

approved Quality Assurance and Quality Control procedures); 24 (including, but not limited to, the submission of a proposal for, and performance of, Post-Removal Site Controls); 25 (including, but not limited to, submission of Progress Reports); 26 (including, but limited to, submission of a Final Report); 27 (including, but not limited to, requirements for off-Site shipment of wastes); 28-29 (including, but not limited to, obtaining access and providing access to EPA); 43-45 (including, but not limited to, providing notice, and responding to, emergencies); 65 (including, but not limited to, payment of stipulated penalties); Section XXIV (including, but not limited to, obtaining insurance); and Section XXVII (including, but not limited to, performing additional removal actions).

59. Stipulated Penalty Amounts – Other Requirements.

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

Penalty Per Violation Per Day	Period of Noncompliance
$1,000.00	1st through 14th day
$2,000.00	15th through 30th day
$3,500.00	31st day and beyond

b. Obligations. All requirements of Paragraph 34 (including, but not limited to, providing information and documents following a request from EPA); and Section XI (including, but not limited to, retaining records).

60. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 71 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of $250,000.00. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 71 (Work Takeover).

61. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and will continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties will continue to accrue during any dispute-resolution period, and shall be paid within **15 days** after the agreement or the receipt of EPA's decision or order. However, stipulated penalties will not accrue: (a) with respect to a deficient submission under Paragraph 19 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of the deficient submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the Chief of the EPA Region III Preparedness and Response Branch ("Branch Chief") under Paragraph 50 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the Branch Chief issues a final decision regarding the dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

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

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

b. Via email to: R3_Hearing_Clerk@epa.gov

63. Payment/Dispute of Demanded Penalties. All penalties accruing under this Section shall be due and payable to EPA within **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 XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section must indicate that the payment is for stipulated penalties and must be made in accordance with Paragraph 47.b. Notice of payment must also be sent to the following:

a. Via email to: CINWD_AcctsReceivable@epa.gov;

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

c. Via email to: hasson.robert@epa.gov.

The payment and each notice required hereunder must contain the paying party's name, street or P.O. Box address, email address, and telephone number; the EPA Docket Number of this Settlement (CERCLA-03-2022-0043DC); and the amount of the payment. If Respondent disputes all or a portion of the demand for stipulated penalties under Section XV (Dispute Resolution) of this Settlement, a copy of the Notice of Dispute must be sent to 63.a-63.c, above.

64. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution, and the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest will accrue from the date stipulated penalties are due pursuant to Paragraph 61 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest will accrue from the date of demand under Paragraph 63 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

66. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting, the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including penalties under Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3); provided, however, that EPA will not seek civil penalties pursuant to Section 106(b) or Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is collected in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 71 (Work Takeover).

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

XVIII. COVENANTS BY EPA

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

XIX. RESERVATIONS OF RIGHTS BY EPA

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

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

a. liability for failure by Respondent to meet a requirement of this Settlement;

b. liability for costs not included within the definition of Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

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

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

h. liability for costs incurred or to be incurred by ATSDR related to the Site and not paid as Future Response Costs under this Settlement.

71. Work Takeover.

a. In the event EPA determines that Respondent: (i) has ceased implementation of any portion of the Work; (ii) is seriously or repeatedly deficient or late in its performance of the Work; or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondent. Any Work Takeover Notice issued by EPA shall specify the grounds upon which the Work Takeover Notice was issued and will provide Respondent a period of **30 days** within which to remedy the circumstances giving rise to EPA's issuance of the Work Takeover Notice.

b. If, after expiration of the 30-day notice period specified in Paragraph 71.a, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may, at any time thereafter, assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Respondent in writing if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 71.b.

c. Respondent may invoke the procedures set forth in Paragraph 50 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 71.b. Such process will be commenced by Respondent's submission to EPA, no later than **20 days** after Respondent's receipt of a notice from EPA pursuant to Paragraph 71.b, of a Notice of Dispute and a statement of position. The dispute shall then be resolved in accordance with the second through fifth sentences in Paragraph 50. However, notwithstanding Respondent's invocation of Paragraph 50's dispute resolution procedures, and during the pendency of any dispute, EPA may, in its sole discretion, commence and continue a Work Takeover under Paragraph 71.b until the earlier of (i) the date that Respondent remedies, to EPA's satisfaction,

the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (ii) the date that a written decision terminating the Work Takeover is rendered in accordance with Paragraph 50 (Formal Dispute Resolution).

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

XX. COVENANTS BY RESPONDENT

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

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

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

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

73. Except as provided in Paragraph 77 (Waiver of Claims by Respondent), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 70.a (liability for failure to meet a requirement of the Settlement), 70.d (criminal liability), or 70.e (violations of federal or state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

75. Respondent reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United

States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

76. [Reserved.]

77. Waiver of Claims by Respondent.

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

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

2. [Reserved.]

3. *De Minimis*/Ability to Pay Waiver. For response costs relating to the Site against any person that has entered or in the future enters into a final Section 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with the United States with respect to the Site.

b. Exceptions to Waivers.

1. The waiver[s] under this Paragraph 77 do not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by these waivers if the person asserts a claim or cause of action relating to the Site against Respondent.

2. [Reserved.]

3. The waiver under Paragraph 77. a.1 (De Micromis Waiver) does not apply to any claim or cause of action against any person otherwise covered by this waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii)

such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

4. [Reserved.]

XXI. OTHER CLAIMS

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

79. Except as expressly provided in Paragraphs 77 (Waiver of Claims by Respondent) and Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including 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.

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

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

81. Except as provided in Paragraphs 77 (Waiver of Claims by Respondent), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, those pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence, relating in any way to the Site, against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

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

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

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

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

86. [Reserved.]

XXIII. INDEMNIFICATION

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

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

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

XXIV. INSURANCE

90. No later than **20 days** before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondent shall satisfy, or shall ensure, that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Desha Road Superfund, Tappahannock, Virginia, and the EPA docket number for this action – CERCLA-03-2022-0043DC.

XXV. [RESERVED.]

91. [Reserved.]

92. [Reserved.]

93. [Reserved.]

94. [Reserved.]

95. [Reserved.]

96. [Reserved.]

97. [Reserved.]

XXVI. MODIFICATION

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

99. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval, outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving verbal or written approval from the OSC pursuant to Paragraph 99.

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

XXVII. ADDITIONAL REMOVAL ACTION

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

102. If EPA determines that additional removal action not identified in Paragraph 17 is necessary to protect public health, welfare, or the environment, EPA shall notify Respondent of that determination and request that Respondent perform the additional action. If Respondent

agrees to perform the additional action, this Settlement Agreement shall be modified to incorporate this work and Respondent shall submit, for approval by EPA, a work plan for the additional work. The work plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the work plan pursuant to Paragraph 18 (Work Plan and Implementation), Respondent shall implement the plan for additional removal action in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make verbal modifications to any plan or schedule pursuant to Section XXVI (Modification).

XXVIII. NOTICE OF COMPLETION OF WORK

103. When EPA determines, after its review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including, among others, access, land-, water-, or other resource-use restrictions, payment of Future Response Costs, and record retention, EPA shall provide written notice to Respondent. If EPA determines that the Work has not been completed in accordance with this Settlement, EPA shall notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Removal Work Plan, if appropriate, to correct such deficiencies. Respondent shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Removal Work Plan shall be a violation of this Settlement.

XXIX. INTEGRATION/APPENDIXES

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

a. "Appendix A" is the description or map of the Site.

b. "Appendix B" is the Action Memorandum.

XXX. EFFECTIVE DATE

105. This Settlement shall be effective **three (3) days** after EPA's transmittal by email of a fully executed copy of this Settlement to counsel representing the Respondent.

Signature Page for Settlement Regarding the Desha Road Superfund Site

FDP Virginia, Inc., Respondent — 3/4/2022 Date

JOHN J. CARNE PRESIDENT

Print: Name and Title

Address, Phone #, Email Address:

IT IS SO ORDERED AND AGREED.

PAUL LEONARD Digitally signed by PAUL LEONARD
Date: 2022.03.09 08:20:14 -05'00'

(*Electronic Signature and Date*)
PAUL LEONARD
Director, Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region III

[redacted] Desha Road Parcel Map

11/23/2021, 12:39:08 PM

Driveways

Site Address Points

Tax Parcels

County Boundaries

1:2,257

0 0.01 0.03 0.06 mi

0 0.02 0.04 0.09 km

Maxar, Microsoft

Essex County, Virginia

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103

SUBJECT: Request for Ceiling Increase and Change in Scope of Work for a Removal Action at the Desha Road Site, Tappahannock, Essex County, Virginia

FROM: Christine Wagner, On-Scene Coordinator
Western Response Section (3SD32)

CHRISTINE WAGNER
Digitally signed by CHRISTINE WAGNER
Date: 2022.01.20 08:36:25 -05'00'

THRU: Michael Towle, Chief
Preparedness and Response Branch (3SD30)

Michael Towle
Digitally signed by Michael Towle
Date: 2022.01.21 08:38:54 -05'00'

TO: Paul Leonard, Director
Superfund and Emergency Management Division (3SD00)

SITE ID #: B3BA

I. PURPOSE

This Action Memorandum ("Action Memo") is to request and document approval of additional funding and a change of scope for a time-critical removal action at the Desha Road Site in Tappahannock, Essex County, Virginia ("Site").

In November 2021, EPA responded to a report of buried drums at the Site. Under the authority of 40 C.F.R. § 300.410, the On-Scene Coordinator ("OSC") performed a removal site evaluation that confirmed the presence of buried drums at the Site and the release or threat of release of a hazardous substance, pollutant, or contaminant. Due to the observed release of hazardous substances which posed emergency conditions, the OSC activated emergency funds of $250,000 under Delegation 14-2 to excavate and stabilize the drums, as well as open bags asbestos found buried at the Site. Additional funds are necessary to mitigate the imminent and substantial threat posed by the release of hazardous substances, pollutants, or contaminants into the environment. A ceiling increase of $660,000 is requested, bringing the total Site ceiling to $910,000.

This Action Memo will also change the scope of this time-critical removal action to include, among other things, offsite disposal of the buried drums and asbestos found in two burial pits at the Site; post-excavation sampling of the walls and floors of the burial pits; and excavation, removal, and offsite disposal of any contaminated soil or asbestos found in the burial pits.

II. SITE DESCRIPTION AND BACKGROUND

A. Site Description

1. Removal Site Evaluation

In October 2021, EPA's Criminal Investigative Division ("EPA CID") notified the OSC of an anonymous tip alleging the illegal disposal of hazardous waste on a private property located in Tappahannock, Essex County, Virginia. An independent investigation performed by EPA CID led to credible information regarding these allegations.

EPA CID spoke with the property owner on or about November 8, 2021. At that time, the owner admitted to EPA CID that he buried drums from his place of employment, FDP Virginia, Inc., ("FDP Brakes") on his property. The property owner identified two drum burial areas on his property to the EPA CID Special Agent.

On or about November 9, 2021, the OSC responded to the Site. The OSC obtained the property owner's written permission to enter the Site to perform a removal site evaluation to determine if hazardous substances, pollutants, or contaminants are being released to the environment. Representatives from EPA CID and the Virginia Department of Environmental Quality ("VDEQ"), among other state and local authorities, were also present during the removal site evaluation.

EPA's contractors performed excavation in the areas of the Site identified by the property owner. For the purposes of documentation, these areas are referred to as the "primary excavation area" and "resin excavation area". The primary excavation area is located in a wooded area, approximately 200 yards north of the residential home. The resin excavation area is located northwest of the home. Broken bags of resin were on the ground adjacent to the resin excavation area.

During excavation activities, EPA performed continuous air monitoring, using a field instrument (i.e., combination photoionization detector and single element sensors), which measures the air for concentrations of oxygen, percentage of lower explosive limits of flammable substances, carbon monoxide, hydrogen sulfide, and volatile organic compounds ("VOCs"). No carbon monoxide or hydrogen sulfide readings were detected above background.

VOCs were detected at the ground surface where the excavator was located. VOC readings remained relatively steady during excavation at concentrations of 5-30 parts per million ("ppm") with occasional spikes up to 100 ppm. The instrument that was used on-Site does not identify specific chemicals.

Most of the drums in the primary excavation area were severely damaged. One drum began to leak immediately after being extricated and placed in a staging area. Many damaged drums immediately leaked upon being moved.

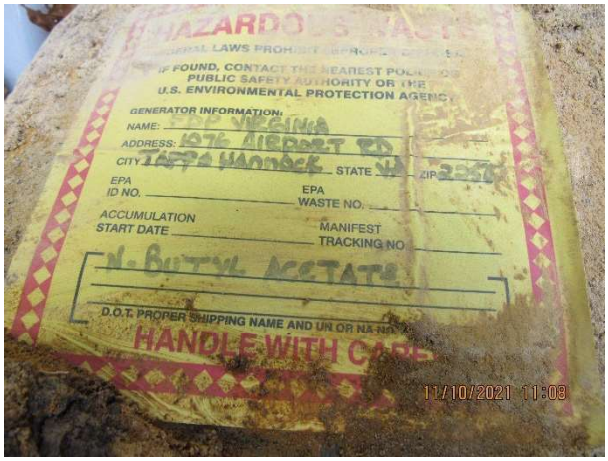
EPA was able to collect a sample from the leaking drum described above that was placed in a staging area. The sample was hand-delivered to the Virginia Division of Consolidated Laboratory Services ("DCLS", also known as the "Virginia State Lab"). The sample was identified as tert-butyl acetate. The same substance was confirmed by the OSC using a field instrument on the drum's contents. Tert-butyl-acetate is a hazardous substance listed in 40 C.F.R. § 302.4.

The OSC contacted a Hazardous Materials Officer with the Virginia Department of Emergency Management ("VDEM") to request containment materials to control the release. Essex County Emergency Management representatives delivered booms and pads to the Site. The OSC, with the assistance of EPA CID, placed booms and pads around the leaking drum.

The OSC determined that emergency actions were needed to contain and control the release of hazardous substances, pollutants, or contaminants being excavated from the disposal areas. The OSC and a representative from EPA CID spoke with the property owner and advised him that emergency spill-containment measures were needed. The owner stated that he did not have the funds to hire a cleanup contractor at that time. The OSC informed the owner that EPA would hire a contractor to contain and stabilize the drums being excavated from the pit. The owner verbally consented to EPA's continued access to the Site to perform these activities.

On November 9, 2021, the OSC determined that an immediate threat to public health, welfare, or the environment was present at the Site due to the release or threatened release of hazardous substances, pollutants, or contaminants. In accordance with 40 C.F.R. § 300.415 and under Delegation of Authority 14-2 of CERCLA, the OSC initiated a removal action and authorized funds of up to $250,000 to begin response actions at the Site to mitigate the threat to public health, welfare, or the environment.

EPA's contractors continued excavation of the two areas described above. A total of 20 drums or drum carcasses were recovered. Two of the drums exhibited "HAZARDOUS WASTE" labels.



1 **Hazardous Waste label found on drum**

Drums that were in stable conditions were overpacked and staged on-Site. Other crushed or damaged drums were staged and covered with poly.


2 Crushed drums pulled from primary excavation pit

During excavation activities, a broken 50-kilogram bag of material marked “Chrysotile” was found near the drums. Chrysotile is a form of asbestos. Other broken bags similar to the bag shown in the photo below could be observed from the top of one of the excavation pits. However, due to additional safety requirements necessary for handling asbestos, the remaining suspected asbestos was not removed during the removal site evaluation.

3"Chrysotile" marking

2. Physical Location

The Site is a residential property located on Desha Road in Tappahannock, Essex County, Virginia. The immediate surrounding area is residential. The Site is located approximately 4.7 miles west of the Rappahannock River. The town of Tappahannock is the county seat of Essex County. The historic district of Tappahannock is listed in the Federal Register of Historic Places. Captain John Smith, one of the first English settlers, visited Tappahannock in 1608.

Today between 2,000-3,000 persons reside in the town of Tappahannock. The Site is several miles west of the historic area and includes a private residence. Several farm animals and pets also reside on the property. Local residents use private groundwater wells for drinking water and other household uses. The residential property at the Site shares a community well with several other properties.

3. Quantities and Types of Substances Present

Twenty 55-gallon drums have been excavated from two areas of the Site. Based on information obtained from VDEQ, up to 32 drums may have been buried at the Site. Most of the drums excavated during the removal site evaluation were severely damaged or leaking. One leaking drum was confirmed to contain tert-butyl acetate. "N-butyl acetate" was written on a hazardous waste label found on another drum at the Site. N-butyl acetate and tert-butyl acetate have the same chemical formula, but their molecular structures are different. The generic term "butyl acetate" is usually applied to n-butyl acetate. Both n-butyl acetate and tert-butyl acetate are flammable and are listed hazardous substances under 40 C.F.R. § 302.4.

During excavation activities, air monitoring performed at ground level indicated VOCs were present.

A limited number of soil samples were collected during the removal site evaluation. VOCs detected in soil samples include acetone (47 (milligrams/kilogram ("mg/kg")) and xylene (190 mg/kg). Phenol, a semi-volatile organic compound ("SVOC"), was detected in the resin pit at a concentration of 2100 mg/kg. Acetone, xylene, and phenol are all hazardous substances under 40 C.F.R. § 302.4.

In addition to the drums found at the Site, at least one torn 50-kilogram bag of Chrysotile asbestos was also discovered in the primary excavation area. Known as "white asbestos", chrysotile exhibits different types of fiber than other forms of asbestos. Chrysotile was historically used in brake manufacturing. Since the chrysotile at the Site was found in broken bags, it can become airborne. Asbestos, if friable, is a listed hazardous substance under 40 C.F.R. § 302.4.

4. Release or Threatened Release of Hazardous Substance, Pollutant, or Contaminant into the Environment

EPA observed buried leaking drums of hazardous substances, pollutants, or contaminants and buried open bags spilling asbestos at the Site. The hazardous substances, which include n-butyl-acetate, tert-butyl acetate, acetone, xylene, phenol, and asbestos, have already been released into the environment, as defined by Section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").[1]

5. National Priority List ("NPL") Status

The Site is not currently listed on the NPL. The OSC will coordinate with the EPA Site Assessment Manager about all activities performed under this removal action.

[1] 42 U.S.C. § 9601(22).

B. Other Actions To Date

1. Previous Actions

As discussed in Section A.1 of this Action Memorandum, EPA conducted a removal site evaluation at the Site on or around November 9, 2021. On the basis of the removal site evaluation, the OSC activated her response authorities under Delegation 14-2 to initiate an emergency removal action.

2. Current Actions

EPA has initiated emergency funds to mitigate the release of hazardous substances, pollutants, or contaminants. To date, EPA has overpacked several drums recovered at the Site, placed saturated soil in two drums, and overpacked one bag of asbestos removed from the primary excavation area. EPA has also staged the remaining drums and drum carcasses on poly and covered them.

EPA will continue to conduct removal site evaluation at the Site to monitor groundwater and any private or community residential drinking water wells that draw groundwater at or near the Site.

C. State, Tribal, and Local Authorities

1. VDEQ

VDEQ was present during EPA's removal site evaluation. The OSC has also briefed the Virginia Department of Emergency Management. As discussed immediately below, VDEQ has shared with EPA information that may be relevant to the disposal of hazardous substances at the Site.

On January 30, 2019, VDEQ conducted an unannounced Compliance Evaluation Inspection at the FDP Brakes facility at 1075 Airport Road in Tappahannock, Virginia ("FDP facility" or "facility"). FDP Brakes has been identified under the Resource Conservation and Recovery Act[2] as a Small-Quantity Generator of hazardous waste – i.e., a person generating between 100 kg. and 1,000 kg. (or between 220 and 2,200 pounds) of non-acute hazardous waste per calendar month. During the January 30, 2019 inspection, VDEQ inspectors observed, among other things, that FDP Brakes had not made an accurate waste determination on 32 55-gallon drums of hazardous waste stored in a shed at the FDP facility. An inventory of these drums is included in a VDEQ Notice of Violation issued to FDP Brakes on May 7, 2019. This inventory is based on information submitted by FDP Brakes to VDEQ. The owner of the Site is a managerial employee of FDP Brakes.

Hazardous substances contained in the drums observed by VDEQ inspectors on January

[2] 42 U.S.C. §§ 6901 et seq.

30, 2019, included some of the same hazardous substances found by EPA during the removal site evaluation and initial removal activities described above, including tert-butyl acetate, n-butyl acetate, acetone, and phenol. VDEP performed another inspection of the FDP facility on November 10 and 11, 2021, during the same week as EPA's removal site evaluation. According to information provided to EPA by VDEQ, the drums identified at the FDP facility during the 2019 inspection were no longer present at the facility during the November 2021 inspection. FDP Brakes has not provided VDEQ with a manifest or other documentation evidencing proper disposal of the drums observed during the January 30, 2019 inspection.

Old Truck Shed Storage Area

January 30, 2019 - Hazardous Waste Inspection

Date on Container	Material denoted on Hazardous Waste Label	Ad
No date	Phenolic Resin	Container labeled w
No date	UN1866 Resin	Container labeled w
No date	Ethylene Glycol	Container labeled w
No date	Black Shoe Dip Mix	Container labeled w
No date	Black Shoe Dip	Container labeled w
No date	Cashew Dip	Container labeled w
No date	Amber Dip	Container labeled w
No date	Polyethylene glycol	Container labeled
No date	Dubios 103	Container labeled
No date	N-Butyl Acetate	Container labeled
No date	Tert-Butyl Acetate	Container labeled
4/17/18	Tert-Butyl Acetate	Container labeled
No date	Acetone and Black Shoe Dip	Container labeled
No date	Black Friction Dip	Container labeled
No date	Hydraulic Oil and Water	Container labeled
No date	Oil Water Mix	Container labeled
No date	Coolant and Water Mix	Container labeled
4/17/2018	Palmer Resin	Container labeled
No date	Black Friction Dip	Hazardous Waste dented in. Small container.
No date	Glycol Ether EB	Container labeled
4/17/2018	Phenolic Resin	Container labeled
No date	Phenolic Resin	Container labeled
4/23/2018	Black Friction Dip Sawdust	Container labeled

Partial list of drums in shed identified in VDEQ 2019 report

2. The Rappahannock Tribe

The Rappahannock Tribe is located less than 10 miles from the Site. On December 30, 2021, the OSC sent a letter to the Rappahannock Tribe requesting Site coordination and consultation. The OSC will consult further with the Rappahannock Tribe prior to starting any additional on-Site work.

The OSC will work in a unified command with tribal, state, and local authorities.

III. Threats to Public Health, Welfare, or the Environment

Section 300.415(b) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP")[3] lists factors to be considered in determining the appropriateness of a removal action. As discussed immediately below, subparagraphs (b)(2)(i), (ii), (iii), (v), (vi), (vii), and (viii) directly apply to the conditions as they exist at the Site.

A. Actual or potential exposure to nearby human populations animals, or the food chain from hazardous substances or pollutants or contaminants. 40 C.F.R. § 300.415(b)(2)(i).

Buried drums were discovered at a depth of at least ten feet at the Site. During EPA's excavation actions, real-time air monitoring indicated airborne levels of VOCs in concentrations high enough to require workers to wear respiratory protection. Most of the drums were already leaking or crushed. During EPA's initial removal action, these drums were removed from the pits and staged for disposal.

Soil sampling performed during the initial action revealed the presence of hazardous substances, including acetone, xylene, and phenol.

A broken, open 50-Kg. bag of chrysotile asbestos was also discovered at the Site. Asbestos has not been mined or otherwise produced in the U.S. since 2002. Although there are 50 known types of asbestos, the only form of asbestos known to be currently imported, processed, or distributed for use in the United States is chrysotile asbestos, which is used in brake manufacturing. In EPA's *Risk Evaluation for Asbestos Part 1: Chrysotile Asbestos* (EPA Document #EPA-740-RI-8012), EPA identified cancer risks from inhalation exposure of chrysotile asbestos. The chrysotile found on-Site was released from the bags buried in the primary excavation area. EPA did not complete excavation in the primary pit because of this discovery. Persons without specialized training and proper personal protective equipment should not spend time in areas where asbestos may become airborne.

Residents, farm animals, and pets live on the property where the drums are staged and asbestos was found. The Site is in a rural area where deer and other animal habitats are likely present. Additional removal actions are needed to prevent exposure to human populations, animals, or the food chain.

B. Actual or potential contamination of drinking water supplies or sensitive ecosystems. 40 C.F.R. § 300.415(b)(2)(ii).

Residents in the area rely on well water for drinking and household uses. The drums containing hazardous substances were buried at the Site and released their contents to the

[3] 40 C.F.R. § 300.415(b).

environment, including, potentially, the groundwater. Removal actions are necessary to mitigate the potential migration of these hazardous substances to drinking water supplies.

C. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release. 40 C.F.R. § 300.415(b)(2)(iii).

On-Site sampling confirmed the presence of tert-butyl acetate in one of the leaking drums. The OSC observed other drums leaking in the pits. Many of the drums were so damaged and twisted they could not be properly overpacked. Additional actions are needed to empty these containers and properly dispose of their contents.

Additionally, a broken bag of asbestos was discovered in the primary excavation pit. This asbestos has already released into the environment. Workers with specialized asbestos training are needed to remove and contain the asbestos.

D. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released. 40 C.F.R. § 300.415(b)(2)(v).

The crushed drums are staged on-Site and covered in plastic as a temporary containment measure. Weather will deteriorate or destroy these temporary covers. Additional removal actions are needed to properly dispose of the drums and any materials used to contain the hazardous substances, pollutants, or contaminants.

E. Threat of fire or explosion. 40 C.F.R. § 300.415(b)(2)(vi).

Several of the hazardous substances found on-Site, including acetone, tert-butyl acetate, and xylene, are highly flammable. These substances each has a flash point of less than 100° F. An ignition source as simple as a discarded lit cigarette could cause a fire that could easily spread to other flammable substances on-Site.

F. The availability of other appropriate federal or state response mechanisms to respond to the releases. 40 C.F.R. § 300.415(b)(2)(vii).

VDEQ and EPA CID have requested the OSC's assistance in responding to the releases at the Site.

G. Other situations or factors that may pose threats to public health or welfare of the United States or the environment. 40 C.F.R. § 300.415(b)(2)(viii).

The Site is located on a residential property, which is home to persons, pets, and farm animals. The surrounding area is residential. Additional removal actions are necessary to control the releases of hazardous substances, pollutants, or contaminants.

IV. Endangerment Determination

Based on the removal site evaluation performed by the OSC at the Site, the OSC has determined that conditions at the Site pose an imminent and substantial threat to public health, welfare, and the environment due to the release and potential additional release of hazardous substances, pollutants, or contaminants.

V. Proposed Actions and Estimated Costs

The overall objectives of the removal action are to remove the source(s) of hazardous substances, pollutants, or contaminants and to take actions necessary to protect drinking water.

A. Proposed Action Description

The response actions described in this memorandum directly address actual or potential releases of hazardous substances on-Site that may pose an imminent and substantial endangerment to public health, or welfare, or the environment. The overall objectives of the removal action are to remove the sources of contamination, protect residential drinking water wells, and remove and dispose of drums, asbestos, contaminated soil, debris, and other items contaminated with hazardous substances, pollutants, or contaminants from the Site.

Removal activities at the Site will include:

1. Prepare pre-disposal staging areas, including stormwater controls, for all excavated drums and overpack drums.

2. Sample contents of previously excavated drums and overpack drums to determine proper offsite disposal.

3. Prepare and follow a Site-specific abatement plan for removal of all asbestos, all bags or other packages contaminated with asbestos, and soil containing asbestos. Utilize appropriate controls during excavation and removal of asbestos to prevent airborne releases of asbestos. Perform post-excavation sampling of the burial pit floors to confirm concentrations of asbestos are less than 1%.

4. Excavate all areas where drums or other containers are buried. Remove all additional drums, bags, or other items suspected to contain hazardous substances, pollutants, or contaminants. Stage these items in the pre-disposal staging area established under Paragraph 1 above.

5. Utilize appropriate controls during excavation activities to prevent airborne releases of hazardous substances and dust.

6. Sample all excavated soil, additional drums, bags, or other containers to determine proper offsite disposal.

7. Perform post-excavation sampling of the floors and side walls of all burial pits at the Site to determine remaining extent of contamination.

8. Excavate soils with concentrations of hazardous substances, pollutants, or contaminants exceeding EPA's residential soil screening values for Hazard Index <1. (Refer to EPA's Regional Screening Levels or "RSLs").

9. Properly dispose of offsite all hazardous substances, pollutants, or contaminants recovered at the Site above in accordance with 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440.

10. Backfill all excavated areas with fill that contains concentrations of hazardous substances, pollutants, or contaminants that do not exceed EPA's residential soil screening values for Hazard Index <1. (Refer to EPA's Regional Screening Levels or "RSLs").

11. Provide activated carbon filtration treatment systems on residential or community wells with concentrations of any Site-related hazardous substance, pollutant, or contaminant exceeding federal Maximum Contaminant Levels ("MCLs")[4], Regional Screening Levels ("RSLs") for Hazard Index < 1, or more stringent drinking water standards under Virginia law.

12. Coordinate with Commonwealth, tribal, and local authorities for performance of any post-removal site control activities.

The extent of any migration of the hazardous substances from the Site, as well as the groundwater conditions at the Site, are currently unknown. Accordingly, in addition to the removal activities described above, the OSC will continue to perform removal site evaluation to determine the extent of any groundwater contamination related to releases at the Site. This removal site evaluation will include installation of groundwater monitoring wells to determine the environmental fate and transport of Site-related hazardous substances, pollutants, or contaminants over time. Residential drinking water wells at or near the Site will also be monitored as part of the continued removal site evaluation.

[4] *See* 40 C.F.R. § 141.61.

B. Contribution to Remedial Performance

The Site is not currently on the NPL. All actions performed as described would be consistent with any long-term remedial actions that may be necessary.

C. Applicable or Relevant and Appropriate Requirements (ARARs)

The proposed removal action will attain Federal and State applicable or relevant and appropriate requirements ("ARARs") to the extent practicable considering the exigencies of the situation.[5] The OSC coordinates frequently with the Commonwealth of Virginia and sent a letter requesting Virginia ARARs to VDEQ on January 6, 2022. Other federal and state advisories, criteria, or guidance may also be considered in the implementation of the removal action.

D. Estimated Costs

Estimated Costs	Previous Action	This Action	Total
Extramural Costs:	$107,000	$550,000	$657,000
Unallocated Costs:	$143,000		$143,000
Extramural Costs Contingency (20% of Subtotal, Extramural Costs)		$110,000	$110,000
Total Removal Action Project Ceiling	$250,000	$660,000	$910,000

VII. Expected Change in the Situation Should Action be Delayed or Not Taken

If the actions described in this Action Memorandum are delayed or not conducted, the release or threat of release of hazardous substances or pollutants or contaminants will continue to exist at the Site. Without immediate actions to mitigate the release and potential release of hazardous substances or pollutants or contaminants at the Site, potential threats posed to human and ecological receptors may increase.

[5] 40 C.F.R. § 300.415(j).

VIII. Outstanding Policy Issues

There are no outstanding policy issues pertaining to the Site.

IX. Enforcement Status

EPA has identified one or more potentially responsible parties for the Site. The OSC is coordinating with the EPA Cost Recovery Branch and the Office of Regional Counsel to pursue all enforcement actions pertaining to the Site. See the attached Confidential Enforcement Addendum, which is predecisional and not for public release.

The total cumulative EPA costs for this removal action, based on full cost accounting practices, that will be eligible for cost recovery are estimated below as:

Direct Extramural Cost:	$	910,000
Direct Intramural Costs:	$	32,000
Subtotal	$	942,000
Indirect Costs (66.79% of above)	$	629,162
Estimated EPA Costs for the Removal Action:	$	1,571,162

The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be $ 1,571,162.[6]

X. RECOMMENDATION

This decision document represents the selected Removal Action for the Desha Road Site, located in Tappahannock, Essex County, Virginia, developed in accordance with CERCLA and is not inconsistent with the NCP. This decision is based on the Administrative Record for the Removal Action at the Site.

By signing this Action Memorandum, you are also hereby establishing the documents listed below as the Administrative Record supporting the issuance of this Action Memorandum, pursuant to Section 113(k) of CERCLA and EPA Delegation No. 14-22.

1. VDEQ Notice of Violation (May 7, 2019)
2. POLREPS #1 and #2
3. EPA Regional Screening Levels
4. CAMEO Datasheet -Tert Butyl Acetate

[6] Direct Costs include direct extramural and direct intramural costs. Indirect Costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any. rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual costs from this estimate will affect the United States' right to cost recovery

5. CAMEO Datasheet -Acetone
6. CAMEO Datasheet – o-xylene
7. CAMEO Datasheet – m-xylene
8. CAMEO Datasheet – p-xylene
9. Removal Site Evaluation - Analytical Results Table (Nov. 2021)
10. *Risk Evaluation for Asbestos Part 1: Chrysotile Asbestos* (EPA-740-RI-8012)
11. OSWER Directive 93454-05 – "Clarifying Cleanup Goals and Identification of New Assessment tools for Evaluating Asbestos at Superfund Cleanups"
12. EPA 2018 Edition of the Drinking Water Standards and Health Advisories Tables
13. OSC Letter (1/6/22) to VDEQ requesting Virginia ARARs specific to the Site
14. Email containing information identifying sample as tert-butyl acetate
15. Photos

Because conditions at the Desha Road Site meet the removal action requirements of the NCP, I recommend your approval of the proposed Removal Action. The total Removal Action Project Ceiling, if approved, will be $ 910,000.

Action by the Approving Official:

I have reviewed the above-stated facts and based upon those facts and the information compiled in the documents described above. I hereby determine that the release or threatened release of hazardous substances at and/or from the Site presents or may present an imminent and substantial endangerment to the public health or welfare or to the environment. I concur with the recommended Removal Action as outlined.

APPROVED: PAUL LEONARD Digitally signed by PAUL LEONARD Date: 2022.01.21 13:54:59 -05'00' **DATE:** _____

Paul Leonard, Director
Superfund and Emergency Management Division
EPA Region III

DISAPPROVED: _____ **DATE:** _____

Paul Leonard, Director
Superfund and Emergency Management Division
EPA Region III

Attachments:

Confidential Enforcement Memo