

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
901 N. FIFTH STREET  
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:	)	ADMINISTRATIVE
	)	SETTLEMENT AGREEMENT AND
	)	ORDER ON CONSENT
	)	
Hastings Ground Water Contamination Site	)	U.S. EPA Region VII
Colorado Avenue Subsite	)	
Operable Unit 1	)	CERCLA-07-2007-0011
	)	
Hastings, Nebraska	)	
	)	Proceeding under Sections 104, 107 and
	)	122 of the Comprehensive Environmental
	)	Response, Compensation, and Liability Act,
	)	as amended, 42 U.S.C. §§ 9604, 9607 and
	)	9622
	)	
Dravo Corporation,	)	
Respondent	)	

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

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Dravo Corporation ("Respondent"). The Settlement Agreement concerns the preparation and performance of a limited investigation of the extent of the contaminant plume emanating from the Colorado Avenue ("Subsite") of the Hastings Ground Water Contamination Site in Hastings, Nebraska.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 27, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to the Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator of EPA Region VII to the Director of the Superfund Division by R7-14-014-C and R7-14-014-D.

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

## **II. PARTIES BOUND**

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

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

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

### **III. STATEMENT OF PURPOSE**

7. In entering into this Settlement Agreement, the objectives of EPA and Respondent are to: (a) define the extent of the Colorado Avenue Subsite contaminant plume where concentrations of contaminants of concern correspond to the  $1 \times 10^{-4}$  health-based risk level, (b) define the capture zone of Well D (Well D is depicted on the Maps, Appendix A of this Settlement Agreement), and (c) recover Future Response Costs incurred by EPA with respect to this Settlement Agreement. The Parties agree that Appendix B of this Settlement Agreement (Decision Tree and attached letters) outlines the Work that is to be performed by Respondent to achieve the objectives of (a), (b), and (c) above.

8. The Work conducted under this Settlement Agreement is subject to approval by EPA and will be consistent with CERCLA and the National Oil and Hazardous Substance Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). Respondent shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidances, policies, and procedures.

### **IV. DEFINITIONS**

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

- a. "2006 Consent Decree" shall mean the Consent Decree entered by the District Court of Nebraska, entered by the District Court of Nebraska, captioned *U.S. v. Dravo Corp. et al.*, 8:01CV500.
- b. CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
- c. "Contaminants of Concern" or "COCs" are the following contaminants found to be present in the ground water at levels that pose a risk to human health and the environment: trichloroethene (TCE), 1,1,1- trichloroethane (TCA), tetrachloroethene (PCE), 1,2-Dichloroethane (DCA), and 1,1-Dichloroethene (DCE).
- d. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next working day.

- e. "Decision Tree", and the letters attached to it, set forth in Appendix B herein, shall mean the outline of steps to be taken to meet the objectives set forth in Paragraph 7(a), (b), and (c) of this Settlement Agreement.
- f. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.
- g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- h. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that EPA incurs from the Effective Date of this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry ("ATSDR") costs, the costs incurred pursuant to Paragraph 35 (emergency response), and Paragraph 76 (Work takeover) of this Settlement Agreement. Future Response Costs shall also include all Interim Response Costs.
- i. "Geoprobe®" shall mean direct push equipment and tools designed for collection of in-situ ground water samples.
- j. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- k. "Interim Response Costs" shall mean all costs, including direct and indirect Costs, paid by the United States in connection with negotiations of this Settlement Agreement between July 15, 2006 and the Effective Date, or incurred prior to the Effective Date but paid after that date.
- l. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- m. "NDEQ" shall mean the Nebraska Department of Environmental Quality and any successor departments or agencies of the State.
- n. "OU 1" shall mean that part of the Colorado Avenue Subsite contaminant plume which extends beyond the OU 1 Area (defined below), to a boundary to be defined through performance of the Work required by this Settlement Agreement.

- o. "OU 1 Area" shall mean that part of the Colorado Avenue Subsite which is bounded on the west by Kansas Avenue, on the south by South Street, on the north by Burlington Northern Railroad and on the east by the monitoring wells associated with the Respondent's Phase III In-Well Aeration treatment system and generally depicted in Appendix A, attached hereto.
- p. "OU 1 Field and Sampling and Analysis Plan" or "OU 1 FASP" shall mean the Field and Sampling and Analysis Plan submitted by Respondent and approved by EPA pursuant to the 2006 Consent Decree, and consists of Phase II and Phase III In Well Aeration treatment systems.
- q. "OU 1 Interim Remedy" shall mean the ground water response action that is addressed in the 2006 Consent Decree, and consists of Phase II and Phase III In Well Aeration treatment systems.
- r. "OU 1 Quality Assurance Project Plan" or "OU 1 QAPP" shall mean the Quality Assurance Project Plan submitted by Respondent and approved by EPA pursuant to the 2006 Consent Decree, and consists of Phase II and Phase III In Well Aeration treatment systems.
- s. "OU 1 Work Plan" shall mean the Work Plan submitted by Respondent and approved by EPA pursuant to the 2006 Consent Decree.
- t. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.
- u. "Parties" shall mean EPA and Respondent.
- v. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.*
- w. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- x. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, all appendices attached hereto (listed in Section XXVII) and all documents incorporated by reference. EPA-approved submissions (other than daily and quarterly progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by EPA. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement shall control.

- y. "Site" shall mean the Hastings Ground Water Contamination Superfund Site, located in and around Hastings, Adams County, Nebraska and depicted generally on the map attached hereto as Appendix A.
- z. "Statement of Work" of "SOW" shall mean the statement of work for the investigation required by this Settlement Agreement to i) define the Colorado Avenue Subsite contaminant plume; ii) define the capture zone of Well D; and iii) evaluate the monitoring well coverage of the OU 1 Interim Remedy.
- aa. "Subsite" or "Colorado Avenue Subsite" shall mean the Colorado Avenue Subsite of the Hastings Ground Water Contamination Site which is located within the City of Hastings and depicted generally on the map attached as Appendix A. The Subsite includes the property located at 108 South Colorado Avenue, the soils between Kansas Avenue on the west, South Street on the south, Pine Avenue on the east and the Burlington Northern Railroad on the north, and the ground water contamination plume emanating therefrom.
- bb. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous waste" under Title 128, Chapters 2 and 3, Nebraska Department of Environmental Quality.
- cc. "Well D" shall mean the extraction and treatment well, depicted in Appendix A, attached hereto, and located east of the city of Hastings, Nebraska, approximately 2.8 miles east of the Highway 6 ByPass (Showboat Road) and immediately north of U.S. Highway 6.
- dd. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement, except those required by Section XIV (Retention of Records)

## V. FINDINGS OF FACT

10. Respondent is the former owner and operator of a manufacturing facility which had been located at 108 S. Colorado Avenue, Hastings, Nebraska. The manufacturing facility was the source of soil and ground water contamination at the Colorado Avenue Subsite.

11. EPA selected an Interim Remedy to address soil contamination ("OU 9") at the Subsite in a 1988 Record of Decision ("ROD") and selected an Interim Remedy to address the ground water contamination ("OU 1") at the Subsite in a 1991 ROD. EPA amended the ground water ROD in 1998. The goal of these RODs is to achieve a health-based risk level corresponding to  $1 \times 10^{-4}$  for the COCs.

12. Ground water at the Site flows generally in an east-southeasterly direction.

13. Respondent was performing interim remedial actions for both OU 9 and OU 1 pursuant to Unilateral Administrative Orders (“UAOs”) issued by EPA in 1990 and 1993. The 2006 Consent Decree terminates the UAOs and requires, among other thing, that this Respondent perform interim remedial actions for OU 9 and the OU 1 Area (not including Phase IV).

14. Analytical data collected from ground water wells depicted in Appendix A, attached hereto, including, but not limited to, GM-2S, GM-2D, MW-17, MW-27 (three levels), MW-28R, NP-001R and associated Geoprobe® sampling conducted in August 2002, indicate that the Colorado Avenue Subsite contaminant plume has migrated beyond the OU 1 Area.

15. The Parties lack sufficient data to determine the outermost boundary of the Colorado Avenue Subsite contaminant plume where concentrations of COCs correspond to a  $1 \times 10^{-4}$  health-based risk.

16. Analytical data collected from ground water wells I-50 and I-51, depicted in Appendix A, attached hereto, indicate the presence of the COCs downgradient of Well D.

17. The Parties lack sufficient data to determine the capture zone of Well D.

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

Based on the Findings of Fact set forth above, EPA has determined that:

18. The Subsite is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. The COCs are “hazardous substances” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

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

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

22. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for performance of response actions and response costs incurred and to be incurred at the Subsite. Respondent is a person who was an owner and operator of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

23. The actions required by this Settlement Agreement are necessary to protect the public health, welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are



consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

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

## **VII. SETTLEMENT AGREEMENT AND ORDER**

25. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Agreed and Ordered that Respondent shall comply with all the provisions of this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

## **VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS**

26. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within 30 days of the Effective Date of this Settlement Agreement, and before the Work outlined below begins, Respondent shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. Christine L. Harwood of Michael Baker Jr., Inc. shall be Respondent's Supervising Contractor. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems and Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995, or most recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or subsequently issued guidance or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. If EPA disapproves in writing of any person's technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacements within 30 days of written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct the Work, and to seek reimbursement for costs and penalties from Respondent. During the course of the performance of the Work, Respondent shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

27. Respondent designates Ms. Lisa Potts as its Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement. To the greatest extent possible, the Project Coordinator shall be present on Subsite

or readily available during the Work. Respondent shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA at least 5 working days before such a change is made, unless impracticable, and in no event, no later than the actual day the change is made. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent. Documents to be submitted to the Respondent shall be sent to its Project Coordinator as set forth in Section XXVIII (Notices and Submissions).

28. EPA has designated Darrell Sommerhauser as its Project Coordinator. EPA will notify Respondent of a change of its designated Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to EPA's Project Coordinator as set forth in Section XXVIII (Notices and Submissions).

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

## **IX. WORK TO BE PERFORMED**

30. Respondent shall conduct the activities and submit plans in accordance with the provisions of this Settlement Agreement, CERCLA, the NCP and EPA guidances listed in Attachment 4 to the SOW. The general activities and the plans, reports and other deliverables that Respondent is required to perform are identified in Appendix B to this Settlement Agreement and the SOW. All Work performed under this Settlement Agreement shall be in accordance with the schedules herein or established in Section 11 of the SOW, and in full accordance with the standards, specifications and other requirements of the approved Plans described in this Settlement Agreement and SOW. In accordance with the schedules herein or established in Section 11 of the SOW, Respondent shall submit two copies of all plans, reports and other deliverables required under this Settlement Agreement and the SOW to EPA's Project Coordinator and one copy to NDEQ. Upon request by EPA, Respondent shall submit in electronic form all portions of any plan, report or other deliverable Respondent is required to submit pursuant to provisions of this Settlement Agreement.

### **31. Plans**

a. Geoprobe® Work Plan Within 30 days after the Effective Date of this Settlement Agreement, Respondent shall submit to EPA and NDEQ a draft Geoprobe® Work Plan that is consistent with the Geoprobe® Work Plan description set forth in the SOW. Upon approval by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions) of this Settlement Agreement, the Geoprobe® Work Plan shall be incorporated into and become enforceable under this Settlement Agreement.

b. Geoprobe® Quality Assurance Project Plan/Field Sampling and Analysis Plan Within 30 days of the Effective Date of this Settlement Agreement, Respondent shall submit to EPA and NDEQ for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions), a Geoprobe® Quality Assurance Project Plan/Field Sampling and Analysis Plan/ (G-QAPP/FSAP). This plan shall be consistent with the description set forth in Attachment 2 of the SOW and guidances including, without limitation, “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” (EPA 240/B-01/003, March 2001 or subsequently issued guidance). Upon its approval by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions), the G-QAPP/FSAP shall be incorporated into and become enforceable under this Settlement Agreement.

c. Ground Water Monitoring Well Proposal Within 45 days after completion of Geoprobe® Sampling, as described in Section 7 of the SOW, Respondent shall submit to EPA and NDEQ a draft Ground Water Monitoring Well Proposal that is consistent with Section 7, Step III of the SOW. Upon approval by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions) of this Settlement Agreement, the Ground Water Monitoring Well Proposal shall be incorporated into and become enforceable under this Settlement Agreement.

d. Addenda to OU 1 Work Plan, OU 1 Quality Assurance Project Plan, and OU 1 Field Sampling and Analysis Plan Within 21 days after the final inspection by EPA of monitoring well installation, as described in Section 7 of the SOW, Respondent shall submit to EPA for review and approval, pursuant to Section X (EPA Approval of Plans and Other Submissions), addenda to the OU 1 Work Plan and the OU 1 QAPP and the OU 1 FSAP. These addenda shall conform to the requirements set forth in Section of the SOW. Upon approval by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions), these addenda shall be incorporated into and become enforceable under this Settlement Agreement.

e. Health and Safety Plan Within 30 days after the Effective Date of this Settlement Agreement, Respondent shall submit to EPA and NDEQ written notification that Respondent shall be following the Health and Safety Plan (“HSP”) that Respondent submitted to EPA in compliance with requirements of the 2006 Consent Decree, in order to ensure the protection of on-site workers and the public during performance of on-site Work. Alternatively, Respondent shall submit for review and comment a HSP consistent with the description set forth in Attachment 2 of the SOW and in accordance with EPA’s Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992 or subsequently issued guidance), and in compliance with Occupational Safety and Health Administration (“OSHA”) regulations found at 29 C.F.R. Part 1910.

32. Additional Work.

a. EPA may determine, in addition to tasks defined in the SOW, other additional Work may be necessary to accomplish the objectives of this Settlement Agreement. Respondent agrees to perform these response actions in addition to those required by the SOW, including any approved modifications, if EPA determines that such actions are necessary to achieve and maintain Performance Standards, as defined in Section 3 of the SOW.

b. Respondent shall confirm its willingness to perform any additional Work requested by EPA pursuant to subparagraph (a) in writing to EPA within 14 days of receipt of the EPA request. If Respondent objects to any modification determined by EPA to be necessary pursuant to Paragraph 32, Respondent may seek dispute resolution pursuant to Section XV, (Dispute Resolution). The Work Plan shall be modified in accordance with the final resolution of the dispute.

c. In the event that Respondent confirms its willingness to perform the additional Work requested by EPA pursuant to Paragraphs 32(a) and 32(b), Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Work Plan, a written Work Plan supplement, or other EPA approved plan. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

d. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site in accordance with applicable law.

32. Off-Site Shipment of Waste Material. Respondent shall, prior to any off-site shipment of Waste Material from the Subsite to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to EPA's Project Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

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

b. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for performing the Work. Respondent shall provide the information required by Subparagraph 33(a) and 33(c) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

33. Reports.

a. Daily Progress Reports - During well construction and performance of the Geoprobe® investigation, Respondent shall submit daily progress reports to EPA electronically or by facsimile mail. These reports shall be submitted within 24 hours of performance of Work.

b. Quarterly Progress Reports - Respondent shall provide to EPA quarterly progress reports by the 10<sup>th</sup> day of the month, beginning three months after the Effective Date. At a minimum, with respect to the preceding three months, these progress reports shall (1) describe the actions which have been taken to comply with this Settlement Agreement during the previous three months, (2) include all results of sampling and tests and all other data received by Respondent, (3) describe Work planned for the next three months with schedules relating such Work to the overall project schedule for Work completion, and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

c. Reports described in the SOW – Respondent shall provide to EPA and NDEQ the following reports, as described in the SOW.

Geoprobe® Data Evaluation Report  
Phase IV Semi-Annual Ground Water Monitoring Report  
Phase IV Well Completion Report  
Monitoring Well Coverage Evaluation Report  
Well D Capture Evaluation Report  
Eastern Investigation Data Evaluation Report  
Final Phase IV Report

35. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Subsite that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, to prevent, abate or minimize each release or endangerment caused or threatened by the release. Respondent shall also notify the EPA Project Coordinator, or in the event of his/her unavailability, the Regional Duty Officer at (913) 281-0991 of the incident or Subsite conditions within 24 hours. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs).

b. In addition, in the event of any release of a hazardous substance from the Subsite, Respondent shall notify the EPA Project Coordinator or Regional Duty Officer at (913) 281-0991 and the National Response Center at (800) 424-8802 within 24 hours. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that

occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

## **X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

36. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Settlement Agreement, in a notice to Respondent, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 15 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraphs 36(a), 36(b), and 36(c), Respondent shall proceed to take any action required by the plan, report or other deliverable, as approved or modified by EPA subject only to their right to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 36 and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

### **38. Resubmission.**

a. Upon receipt of a notice of disapproval, Respondent shall, within 15 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI, shall accrue during the 15-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 36 and 37.

b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. Respondent shall not proceed further with any subsequent activities or tasks until receiving EPA approval, approval on condition or modification. While awaiting EPA approval, approval on condition or modification of the Geoprobe® Work Plan, the G-

QAPP/FSAP or the Addenda to the OU 1 Work Plan, OU 1 QAPP, and OU 1 FSAP, Respondent shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement Agreement and Section 11 of the SOW.

d. For all remaining deliverables not listed above in Paragraph 38(c), Respondent shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the implementation of the Work.

39. If EPA disapproves a resubmitted plan, report or other deliverable, or portion thereof, EPA may again direct Respondent to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report or other deliverable consistent with the SOW. Respondent shall implement any such plan, report, or deliverable as corrected, modified or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XV (Dispute Resolution).

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

41. In the event that EPA takes over some of the tasks, Respondent shall incorporate and integrate information supplied by EPA into the Final Report as described in Section 9 of the SOW.

42. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement, subject only to Respondent's right to invoke the procedures set forth in Section XV (Dispute Resolution).

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

## **XI. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION**

44. Quality Assurance. Respondent shall use quality assurance, quality control, and chain of custody procedures for all samples collected, in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any sampling, consistent with Section IX (Work to be Performed), Respondent shall submit a G-QAPP/FSAP and addenda to the OU 1 QAPP and OU 1 FSAP to EPA and NDEQ or incorporate those documents by reference into the Geoprobe® Work Plan. If relevant to the proceeding, the Parties agree that validated sampling data for COCs generated in accordance with the G-QAPP/FSAP and addenda to the OU 1 QAPP and OU 1 FSAP, or said documents incorporated by reference into the Geoprobe® Work Plan, reviewed and approved by EPA, shall be admissible as evidence, without objection, in any proceeding under this Settlement Agreement. Respondent shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement Agreement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA for quality assurance monitoring. Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement Agreement perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis", ILM05.4 and the "Contract Lab Program Statement of Work for Organic Analysis," SOM01.1, dated May, 2005, and any amendments made thereto during the course of the implementation of this Settlement Agreement; however, upon approval by EPA, after opportunity for review and comment by the State, the Respondent may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Respondent shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement Agreement participate in an EPA or EPA-equivalent QA/QC program. Respondent shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement Agreement will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.



45. Sampling.

a. All results of sampling, tests, or other data (including raw data) generated by Respondent, or on Respondent's behalf, during the period that this Settlement Agreement is effective, shall be submitted to EPA and the State, in accordance with Section 7 and 8 of the SOW and the schedule in Section 11 of the SOW. EPA will make available to Respondent validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondent shall orally notify EPA at least 15 days prior to conducting significant field events. At EPA's oral or written request, Respondent shall allow split or duplicate samples to be collected by EPA (and its authorized representatives) of any samples collected in implementing this Settlement Agreement.

46. Access to Information.

a. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

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

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

requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

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

47. In entering into this Settlement Agreement, Respondent waives any objections to any data gathered, generated, or evaluated by EPA or the State in the performance of oversight of the Work that has been verified according to the quality assurance/quality control procedures required by the Settlement Agreement or any EPA-approved Work Plans.

## **XII. SITE ACCESS**

48. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 60 days after the Effective Date, or as otherwise specified in writing by the EPA Project Coordinator, the State and their authorized representatives. Respondent shall immediately notify EPA if, after using its best efforts, it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. If Respondent cannot obtain access agreements, EPA may either (i) obtain access for Respondent or assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate; (ii) perform those tasks or activities with EPA contractors; or (iii) terminate the Settlement Agreement. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs). If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondent shall perform all other tasks or activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such tasks or activities. Respondent shall integrate the results of any such tasks or activities undertaken by EPA into its plans, reports, and other deliverables.

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

## **XIII. COMPLIANCE WITH OTHER LAWS**

50. Respondent shall comply with all applicable local, state and federal laws and regulations when performing the Work. No state, local, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-site and requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to

obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

#### **XIV. RETENTION OF RECORDS**

51. During the pendency of this Settlement Agreement and for a minimum of 10 years after completion of the Work, Respondent shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, regardless of any corporate retention policy to the contrary. Until 10 years after completion of the Work, Respondent shall also instruct its contractors and agents to preserve all documents, records, and other information of whatever kind, nature or description relating to performance of the Work.

52. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any documents, records, or other information, and, upon request by EPA, Respondent shall deliver any such documents, records, or other information to EPA. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or other information; 2) the date of the document, record, or other information; 3) the name and title of the author of the document, record, or other information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or other information; and 6) the privilege asserted by Respondent. However, no documents, records or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

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

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

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

55. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of objection(s) within 30 days of such action, unless the objection(s) has/have been resolved

informally. If Respondent objects to the billings for Future Response Costs, Respondent shall identify the specific charge to which it objects and EPA shall identify EPA contract costs and EPA employee time and travel charged to Respondent during the billing period at issue and the amounts associated with these charges. EPA and Respondent shall have 30 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement.

56. If the Parties are unable to reach an agreement within the Negotiation Period, the Parties may appeal the dispute to the EPA Region VII Superfund Division Director, who will issue a written decision following the written submission of each Party's position. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or EPA's decision, whichever occurs, and regardless of whether Respondent agrees with the decision.

## **XVI. STIPULATED PENALTIES**

57. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 58 for failure to comply with any of the requirements of this Settlement Agreement specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the Work under this Settlement Agreement or any activities required by the SOW, in accordance with all applicable requirements of law, this Settlement Agreement, and the SOW, within the specified time schedules established by and approved under this Settlement Agreement and the SOW.

58. Stipulated Penalty Amounts.

a. The following stipulated penalties shall accrue for failure to submit any of the following deliverables in a form that meets EPA approval.

Geoprobe® Work Plan  
Geoprobe® Data Evaluation Report  
Phase IV Well Completion Report  
Monitoring Well Coverage Evaluation Report  
Well D Capture Evaluation Report  
Eastern Investigation Data Evaluation Report  
Phase IV Semi-Annual Ground Water Monitoring Report  
Final Phase IV Report

The stipulated penalties listed below also shall apply to failure by Respondent to perform Geoprobe® sampling in compliance with the EPA-approved Geoprobe® Work Plan and

G-QAPP/SAP/FSP, and installation of ground water monitoring wells and sampling of ground water monitoring wells, in compliance with the EPA-approved Ground Water Monitoring Well Location Proposal and the approved Addenda to OU 1 Work Plan, OU 1 QAPP and OU 1 FASP.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,000.00	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 1,500.00	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 3,000.00	31 <sup>st</sup> day and beyond

b. The following stipulated penalties shall accrue for failure to submit the Daily Progress Reports, the Quarterly Progress Reports or failure to meet any other notice or reporting requirement set forth in this Settlement Agreement.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 300.00	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 1,000.00	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 2,000.00	31 <sup>st</sup> day and beyond

No stipulated penalty shall be assessed if the failure to submit any deliverable, install or sample ground water monitoring wells or submit required reports is solely the result of Respondent's inability to obtain site access after using its best efforts, consistent with Paragraph 48 herein, and as determined by EPA.

59. In the event that EPA takes over the Work, as described in Paragraph 76 herein, Respondent shall pay \$570,000 as a stipulated penalty.

60. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31<sup>st</sup> day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (2) with respect to a decision by the EPA Superfund Division Director designated in Paragraph 56 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21<sup>st</sup> day after the Negotiation Period begins until the date that the EPA Superfund Division Director issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

61. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the

same and describe the noncompliance. EPA may send Respondent a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

62. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures in accordance with Section XV (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund." shall be mailed to U.S. EPA, P.O. Box 370199M, Pittsburgh, Pennsylvania, 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 07S2, the EPA CERCLA Docket Number CERCLA-07-2007-0011, and the name and address of Respondent. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s) shall be sent to Ms. Audrey Asher, Senior Assistant Regional Counsel, Ms. Alice Morrison, EPA Accountant, and Ms. Kathy Robinson, Regional Hearing Clerk, as provided in Section XXVIII (Notices and Submissions).

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

64. Penalties shall accrue as provided in Paragraph 60 during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by Settlement Agreement or by receipt of EPA's decision.

65. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 61.

66. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(I) of CERCLA, 42 U.S.C. § 9622(I), and punitive damages pursuant to Section 107(c)(3). Notwithstanding any provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

## **XVII. FORCE MAJEURE**

67. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, *force majeure* is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite

Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

68. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure*, Respondent shall notify EPA orally within 48 hours of when Respondent first knew that the event might cause a delay. Within five days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

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

### **XVIII. PAYMENT OF RESPONSE COSTS**

70. Payment of Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 72 of this Settlement Agreement. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" referencing the name and address of Respondent, EPA docket number, CERCLA-07-2007-0011, and EPA Site/Spill ID number 07S2. Respondent shall send check(s) to:

U.S. EPA  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251.

If the amount owed exceeds \$25,000, please transmit by wire transfer. Include the EPA Site/Spill ID number 07S2 and the EPA docket number CERCLA-07-2007-0011 with the transmittal, as follows:

MELLON BANK  
ABA 043000261  
Account 9109125  
EPA Region 7

b. At the time of payment, Respondent shall send notice that payment has been made to Ms. Audrey Asher and Ms. Alice Morrison, as set forth in Section XXVIII (Notices and Submissions).

c. The total amount to be paid by Respondent pursuant to Paragraph 70 shall be deposited in the Hastings Ground Water Contamination Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

71. If Respondent does not pay Future Response Costs within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance of Future Response Costs. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI. Respondent shall make all payments required by this Paragraph in the manner described in Paragraph 70.

72. Respondent may contest payment of any Future Response Costs under Paragraph 70 if it determines that EPA has made an accounting error (which would include EPA's improper characterization of costs as Future Response Costs) or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30 day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 70. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to EPA a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within 5 business days of



the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 70. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 70. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

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

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

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

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

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

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs herein;
- c. liability for performance of response action other than the Work;

- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site;
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Subsite.
- h. liability for other operable units at the Site.

76. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in the performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by EPA in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XVIII (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XXI. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS BY RESPONDENT**

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

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of the Work or arising out of the response actions for which the Future Response Costs have or will be incurred, including any claim under the United States Constitution, the Nebraska Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. § 9607 and 9613, relating to the Work or payment of Future Response Costs.

78. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 74 and 75, 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.

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

## **XXII. OTHER CLAIMS**

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

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

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

## **XXIII. CONTRIBUTION**

83.

a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(94) of CERCLA, 42 U.S.C. § 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs.

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

c. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claim, causes of action, or demands for indemnification, contribution, or cost recovery against any person not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 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).

#### **XXIV. INDEMNIFICATION**

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

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

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

#### **XXV. INSURANCE**

87. At least 60 days prior to commencing any Work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit, naming the EPA as an additional insured. Within the same period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any

contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in equal or lesser amount, then Respondent needs to provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

## **XXVI. FINANCIAL ASSURANCE**

88. Within 60 days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of \$570,000 in one or more of the following forms, in Settlement Agreement to secure the full and final completion of Work by Respondent:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of Work;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures payment and/or performance of the Work;
- e. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of Respondent, or by one or more unrelated corporations that have a substantial business relationship with Respondent; including a demonstration that any such company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or
- f. a corporate guarantee to perform the Work by Respondent, including demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

89. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 88 above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then within 30 days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

90. If Respondent seeks to ensure completion of the Work through a guarantee

pursuant to Paragraphs 88(e), 88(f) of this Settlement Agreement, Respondent shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure cost estimates and the current plugging and abandonment costs estimates," the current cost estimate of \$570,000 for the Work at the Site shall be used in relevant financial test calculations. In the event that Respondent arranges for the corporate guarantee to be provided by Respondent's parent, in addition to the above requirements, Respondent's parent shall sign before a notary a Corporate Guarantee Agreement, which shall be Appendix D to this Settlement Agreement.

91. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 88 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

92. Respondent may change the form of financial assurance under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

## **XXVII. INTEGRATION/APPENDICES**

93. This Settlement Agreement, its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans or reports that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete and exclusive Settlement Agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, Settlement Agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement.

**"Appendix A"** includes Maps of the Site, Subsite, OU 1 Area, Phase IV Investigation Area and Well D.

**"Appendix B"** is the Decision Tree and letters attached.

**"Appendix C"** is the SOW with attachments.

“**Appendix D**” is the Corporate Guarantee Agreement.

## **XXVIII. NOTICES AND SUBMISSIONS**

94. Whenever, under the terms of this Settlement Agreement, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Settlement Agreement with respect to the United States, EPA, and the Settling Defendants, respectively.

As to EPA: Ms. Audrey Asher  
Senior Assistant Regional Counsel  
U.S. EPA – Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

Mr. Darrell Sommerhauser  
EPA Project Coordinator  
U.S. EPA – Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

Ms. Alice Morrison  
EPA Accountant  
U.S. EPA – Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

Ms. Kathy Robinson  
Regional Hearing Clerk  
U.S. EPA – Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

As to Respondent:

Lawrence A. Demase, Esq.  
Reed Smith LLP  
435 Sixth Avenue  
Pittsburgh, PA 15219

Stephen C. Smith, Esq.  
Deputy General Counsel  
Environmental Director  
Carneuse Lime  
11 Stanwix Street, 11th Floor  
Pittsburgh, PA 15222

Ms. Lisa Potts  
Carmeuse North America  
11 Stanwix Street, 11<sup>th</sup> Floor  
Pittsburgh, PA 15222

### **XXIX. ADMINISTRATIVE RECORD**

95. Respondent shall submit to EPA documents developed during the course of implementing the Work upon which selection of a response action may be based. Upon request of EPA, Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Upon request of EPA, Respondent shall additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of a response action, and all communications between Respondent and state, local or other federal authorities concerning selection of a response action.

### **XXX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

96. This Settlement Agreement shall be effective on the date it is signed by the Division Director, Superfund, or his/her delegate.

97. This Settlement Agreement may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. The EPA Project Coordinator does not have the authority to sign amendments to this Settlement Agreement, except that with respect to a modification to the schedule set forth in the SOW, the EPA Project Coordinator has authority to modify the schedule by mutual agreement of the Project Coordinators. Modifications to the schedule must be in writing.

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

### **XXXI. NOTICE OF COMPLETION OF WORK**

99. When EPA determines that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to payment of Future Response Costs or record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require Respondent to modify the Geoprobe® Work Plan or submit a new Work Plan, if appropriate, in order to correct such deficiencies, in accordance with Paragraph 32 (Additional Work). Failure by Respondent to



implement the approved Work Plan shall be a violation of this Settlement Agreement, subject to Respondent's right to invoke dispute resolution pursuant to Section XV (Dispute Resolution).

Agreed this 23 day of May, 2007.

For Respondent Dravo Corporation

By: K. J. [Signature]  
Title: V.P., General Counsel

It is so ORDERED AND AGREED this 24 day of May, 2007.

BY: [Signature] DATE: 5/24/07  
Cecilia Tapia  
Director  
Superfund Division  
Region VII  
U.S. Environmental Protection Agency

[Signature] DATE: May 24, 2007  
Audrey B. Asher  
Senior Assistant Regional Counsel  
Region VII  
U.S. Environmental Protection Agency