UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3

IN THE MATTER OF: Delaware Sand & Gravel Landfill Superfund Site The Chemours Company FC, LLC Hercules LLC Waste Management of Delaware, Inc. SC Holdings, Inc. Cytec Industries, Inc. Zeneca Inc. Bayer CropScience Inc. Respondents Proceeding Under Sections 104, 107, and 122 of the Comprehensive, Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607 and 9622	Docket No. CERCLA-03-2018-0116DC U.S. EPA-REGION 3-RHC FILED-23MAY2018AM11:22 **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL DESIGN**

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL DESIGN

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency (EPA) and the above captioned and herein named Respondents ("Respondents"). This Settlement provides for the performance of a Remedial Design ("RD") by Respondents and the payment of certain response costs incurred by the United States at or in connection with the "Delaware Sand & Gravel Landfill Superfund Site", generally located in New Castle County, Delaware, approximately two miles Southwest of the City of New Castle at the western end of Grantham Lane (the "Site"), as further defined herein.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607, and 9622 (CERCLA). This authority was delegated to the EPA Administrator on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions Through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). These authorities were further redelegated by the Regional Administrator of EPA Region 3 to the Region 3 Director of the Hazardous Site Cleanup Division by EPA Region 3 Delegations 14-14-C and 14-14-D.

3. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of the Interior ("DOI")/United States Fish and Wildlife Service ("USFW") and Department of Commerce ("DOC")/National Oceanic and Atmospheric Administration ("NOAA") on April 2, 2018 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of the future remedial action anticipated for this Site.

4. EPA and Respondents recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain 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. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they 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 Respondents and their successors, and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any Respondent to implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements.

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

8. Respondents shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondents with respect to the Site or the Work, and shall condition all contracts entered into under this Settlement on performance of the Work in conformity with the terms of this Settlement. Respondents or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondents shall nonetheless be responsible for ensuring that their 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 shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the RD, including, but not limited to, portions of the following properties: property along Grantham Lane owned by Mr. Vincent J. Dell'Aversano (tax map parcel 1003500006), property between Army Creek and Grantham Lane owned by New Castle County (tax map parcels 1003500056 and 1003500057), property along Grantham Lane owned by Grantham Lane Associates (tax map parcel 1003500005), 761 Grantham Lane owned by Cirillo Bros Development Co LLC (tax map parcel 1003500007), 755 Grantham Lane owned by MBI Development LLC (tax map parcel 1003500008), property owned by Village of Llangollen Maintenance Corporation (tax map parcel 1003540101), property along Grantham Lane owned by the Delaware Department of Transportation, property northeast of and adjacent to tax map parcel 1003500006 owned by Norfolk Southern Railroad, and additional properties where piping will need to be laid to convey groundwater from extraction wells to a pump station.

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

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

"Delaware Sand & Gravel Landfill Superfund Site Special Account" shall mean the special account identified as 0345 within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"DS&G Remedial Trust" shall mean the Trust created pursuant to the March 29, 1995 Delaware Sand and Gravel Remedial Trust Agreement.

"Effective Date" shall mean the effective date of this Settlement as provided in Section XXVI.

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

"DNREC" shall mean the Delaware Department of Natural Resources and Environmental Control and any successor departments or agencies of the State.

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

"Future Response Costs" shall mean all costs after the effective date of this Settlement, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section VIII (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), ¶ 61 (Work Takeover), ¶ 15 (Emergencies and Releases), ¶ 84 (Access to Financial Assurance), ¶ 16 (Community Involvement Plan (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e))), and the costs incurred by the United States in enforcing the terms of this Settlement, including all costs incurred in connection with Dispute Resolution pursuant to Section XIII (Dispute Resolution) and all litigation costs.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

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

"Owner" shall mean any person that owns or controls any Affected Property, including, *inter alia*, Vincent J. Dell'Aversano, New Castle County, Grantham Lane

Associates LLC, Cirillo Bros Development Co LLC, MBI Development LLC, Village of Llangollen Maintenance Corporation, Delaware Department of Transportation and Norfolk Southern Railroad. The clause "Owner's Affected Property" means Affected Property owned or controlled by Owner.

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

"Parties" shall mean EPA and Respondents.

"Performance Standards" or "PS" shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in ROD Amendment No. 2.

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

"Record of Decision Amendment No. 2" or "ROD Amendment No. 2" shall mean EPA's second amendment to the April 22, 1988 Record of Decision ("ROD") relating to the Delaware Sand & Gravel Landfill Site, signed by EPA on December 12, 2017, and all attachments thereto. The ROD was previously modified by a September 30, 1993 Amendment to the ROD ("1993 ROD Amendment") and a July 2003 Explanation of Significant Differences ("ESD"). ROD Amendment No. 2 is attached as Appendix A.

"Remedial Action" or "RA" shall mean the remedial action selected in ROD Amendment No. 2.

"Remedial Design" or "RD" shall mean those activities to be undertaken by Respondents to develop the final plans and specifications for the RA as stated in the SOW.

"Respondents" shall mean Chemours Company FC, LLC; Hercules LLC; Waste Management of Delaware, Inc.; SC Holdings, Inc.; Cytec, Inc.; Zeneca Inc.; and Bayer CropScience Inc.

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

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

"Site" shall mean the Delaware Sand & Gravel Landfill Superfund Site which is located at the western end of Grantham Lane, approximately two miles southwest of the City of New Castle in New Castle County, Delaware. The Site consists of approximately 27 acres where hazardous waste disposal and storage occurred, related groundwater contamination and everywhere that contamination from the waste disposal and storage areas has come to be located and depicted generally on the map attached as Appendix C.

"State" shall mean the State of Delaware.

"Statement of Work" or "SOW" shall mean the document describing the activities Respondents must perform to implement the RD, which is attached as Appendix B.

"Supervising Contractor" shall mean the principal contractor retained by Respondents to supervise and direct the implementation of the Work under this Settlement.

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

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

"Waste Material" shall mean (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 substance under 7 Del. C., Chapter 91, as amended.

"Work" shall mean all activities and obligations Respondents are required to perform under this Settlement, except those required by Section X (Record Retention). The Settlement set forth herein does not require the Respondents to implement the Remedial Action.

IV. FINDINGS OF FACT

10. Based on available information and investigation, EPA has found:

a. The Site property is located along Grantham Lane, east of U.S. Highway 13 (DuPont Highway) and west of Delaware Route 9 (River Road) in New Castle, Delaware. It consists of approximately 27 acres in an area of residential and light-industrial land use and is bounded to the north and northeast by the Norfolk Southern Railroad tracks and to the west by Army Creek which discharges into the Delaware River less than one mile east of the Site. The Army Creek Landfill Superfund Site ("Army Creek Landfill") is located immediately west of the Site on the opposite bank of Army Creek. Artesian Water Company's ("Artesian") Llangollen well field is located approximately three quarters of a mile southwest of the Site.

b. The Site property is a former sand and gravel quarry that was later operated as a State permitted landfill from 1968 until 1976. It includes four waste disposal areas. Three of these - the Grantham South Area, the Drum Disposal Area ("DDA") and the Inert Area - were unlined gravel pits into which waste materials, including hazardous substances, were disposed. The fourth area, known as the Ridge Area, was used for temporary storage of chemical waste and was impacted by the spillage of hazardous substances. Approximately 550,000 cubic yards of industrial and municipal wastes and construction rubble were disposed of at the Site, including approximately 13,000 drums containing liquids and sludge from chemical production, manufacturing and petroleum

refining processes. Mr. Vincent J. Dell'Aversano is the owner of an approximately 28-acre parcel which encompasses most (21.7 acres) of the Site property and was the owner and operator of the Site property at the time that hazardous substances were disposed of at the Site. In 1977, New Castle County acquired, through condemnation proceedings, the title to a 65-acre parcel of land which includes a portion of the Site property. Site property owned by New Castle County includes an approximately 2.75-acre section of the Grantham South Area. A small portion of the Site property consisting of an approximately 0.2-acre section of the Grantham South Area, is owned by Grantham Lane Associates, LLC. In addition to the Site property, the Site includes areas to the south and southwest where hazardous substances have been transported in groundwater and any areas adjacent to the Site property where landfill gas may be migrating.

c. Hazardous substances, including benzene, ethylbenzene, xylenes, bis(2-chloroethyl)ether ("BCEE") and 1,4-dioxane, are present in soil at the former DDA. The maximum concentrations of these contaminants detected in soil samples collected in 2012 are 1,100 micrograms per kilogram (µg/kg), 12,000 µg/kg, 59,000 µg/kg, 330 µg/kg and 390 µg/kg (from beneath the DDA), respectively.

d. A plume of groundwater contaminants extends from under the Site through the Upper Potomac Aquifer to Artesian's Llangollen well field, nearly one mile downgradient. Groundwater contaminants of concern at the Site are benzene, ethylbenzene, xylenes, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, 1,4-dioxane, BCEE, naphthalene, N,N-dimethylaniline, arsenic, cobalt, iron and manganese. Groundwater contaminants of particular concern, due to their mobility, persistence and actual or potential impact on public water supply wells, are BCEE, 1,4-dioxane and manganese. The highest concentrations of these contaminants in groundwater are found immediately downgradient of the DDA. Groundwater samples collected from the Upper Potomac Aquifer at the Site in 2012-2013 contained BCEE at concentrations up to 690 micrograms per liter (µg/L), 1,4-dioxane at concentrations up to 2,800 µg/L and manganese at concentrations up to 12,800 µg/L.

e. Historic releases from the DDA are a source of organic groundwater contaminants in the Upper Potomac Aquifer.

f. Releases from the DDA have impacted an underlying hydrostratigraphic unit referred to at the Site as the Upper Potomac Confining Unit Transition Zone ("UPCUTZ"). Because of its hydraulic properties, the contaminated UPCUTZ has become a persistent secondary source of the groundwater contamination in the Upper Potomac Aquifer.

g. Hazardous substances at the Site have migrated from source areas at the Site through groundwater to Artesian's Llangollen well field. In 2000 and 2014, respectively, Artesian installed treatment systems needed to remove BCEE and 1,4-dioxane, respectively, from the groundwater pumped from the Llangollen well field prior to distribution to customers.

h. Groundwater monitoring data indicate that the Army Creek Landfill is a source of 1,2-dichloroethane and dissolved metals, primarily iron, manganese and

cobalt, in the Upper Potomac Aquifer. The extent to which the Army Creek Landfill is contributing to metals concentrations in areas of the Upper Potomac Aquifer, including elevated manganese concentrations in the region between the Grantham South Area and monitoring wells BW-1 and MW-26N, has not been determined.

i. In 2017, the DS&G Remedial Trust installed a landfill gas mitigation system along the perimeter of those sections of the Inert Area and the Grantham South Area that are adjacent to existing habitable structures, to prevent the migration of landfill gas toward potential receptors. Due to the documented migration of landfill gas beyond the perimeters of the Grantham South Area and the Inert Area, there is a potential for Site contaminants in landfill gas to migrate into the indoor air of any new habitable buildings constructed near those sections of the Inert Area and the Grantham South Area where the migration of landfill gas has not been mitigated.

j. Potential Site receptors include individuals who may be exposed to contaminants in soil, groundwater and indoor air. Based on the current and anticipated future remediation and use of the Site, the potential human receptors include residents and industrial/commercial workers who could potentially be exposed to contaminants in groundwater (via tap water) and indoor air (due to potential vapor intrusion) and construction/excavation workers who, additionally, could be exposed to contaminants in subsurface soil.

k. EPA's Integrated Risk Information System characterizes BCEE as a B2 probable human carcinogen and 1,4-dioxane as likely to be carcinogenic to humans. Manganese is a naturally occurring substance found in many types of rock, soil, groundwater and food. Exposure to high levels of manganese can affect the nervous system, cause changes in behavior and decrease the ability to learn and remember.

l. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (NPL), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658.

m. Respondent The Chemours Company FC, LLC ("Chemours") has represented itself as a successor in interest to E.I. du Pont de Nemours & Co., Inc., which is alleged to have arranged for the disposal of hazardous substances at the Site at certain points during the 1970's. Hazardous substances of the type associated with Respondent's waste have been found at the Site.

n. Respondent Hercules LLC ("Hercules") is a Delaware limited liability company, that is a successor in interest to Hercules Incorporated, which is alleged to have arranged for the disposal of hazardous substances at the Site at certain points during the 1960's and/or 1970's. Hazardous substances of the type associated with Respondent's waste have been found at the Site.

o. Respondents Waste Management of Delaware, Inc., a Delaware corporation, and SC Holdings, Inc., a Pennsylvania corporation, and/or their corporate predecessors, are alleged to have accepted hazardous substances from one or more of the generator defendants for transport to and disposal at the Site at certain points during the

1960's and/or 1970's. Hazardous substances of the type associated with Respondent's waste have been found at the Site.

p. Respondent Cytec Industries Inc. ("Cytec") is a Delaware Corporation that is a successor in interest to American Cyanamid Company, which is alleged to have arranged for the disposal of hazardous substances at the Site at certain points during the 1960's and/or 1970's. Hazardous substances of the type associated with Respondent's waste have been found at the Site.

q. Respondent Zeneca Inc. ("Zeneca") (formerly known as ICI Americas Inc.) is a Delaware Corporation, which is alleged to have arranged for the disposal of hazardous substances at the Site at certain points during the 1960's and/or 1970's. Hazardous substances of the type associated with Respondent's waste have been found at the Site.

r. Respondent Bayer CropScience Inc. ("Bayer") is a New York Corporation that is the corporate successor to Stauffer Chemical Company, which is alleged to have arranged for the disposal of hazardous substances at the Site at certain points during the 1960's and/or 1970's. Hazardous substances of the type associated with Respondent's waste have been found at the Site.

s. In 1988, EPA selected a remedy for the Site in a ROD. The remedy was modified by the 1993 ROD Amendment and the 2003 ESD. Among other things, the remedy included a slurry-wall containment system with *in-situ* soil treatment by soil vapor extraction and bioventing at the DDA.

t. On June 14, 1995, the United States District Court for the District of Delaware entered a Remedial Design/Remedial Action Consent Decree ("1995 RD/RA CD"), whereby settling defendants agreed to implement the remedy set forth in the 1988 ROD, as amended by the 1993 ROD Amendment.

u. EPA concluded in its third Five-Year Review Report for the Site, dated September 21, 2005, that the remedy at the DDA was not functioning as designed due to gaps in the native clay unit which forms the base of the slurry-wall containment system.

v. EPA concluded based on its fourth Five-Year Review for the Site that additional response actions were required at the DDA due to the failure of the constructed remedy to meet performance standards. EPA's September 16, 2010 Five-Year Review Report recommended that the DS&G Remedial Trust perform a feasibility study to develop a comprehensive source control and groundwater remediation strategy.

w. In April 2010, EPA notified the DS&G Remedial Trust of the need to perform additional Site characterization and a feasibility study to evaluate additional response actions for the DDA source area and the impacted Upper Potomac Aquifer, including the Llangollen well field.

x. A group of settling defendants to the 1995 RD/RA CD known as the Delaware Sand and Gravel Remediation Trust (the "Trust") completed a Supplemental Site

Characterization Report - Revision 2 ("SSCR") in January 2016, and thereafter completed a Feasibility Study - Revision 1 ("FS") in May 2016.

y. The findings of the SSCR resulted in EPA's decision to select an amended remedy for the Site, as set forth below.

z. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and the availability of its Proposed Remedial Action Plan ("Proposed Plan") on September 7, 2016, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the Proposed Plan. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator, EPA Region III, based the selection of the response action.

aa. The decision by EPA on the response action to be implemented at the Site is embodied in ROD Amendment No. 2, executed on December 12, 2017, on which the State has given its concurrence. ROD Amendment No. 2 includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The Delaware Sand & Gravel Superfund Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

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

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) as follows:

1. Respondents Chemours, Hercules, Cytec, Zeneca, and Bayer arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

2. Respondents Waste Management of Delaware, Inc. and SC Holdings, Inc. accepted hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

e. The conditions described in ¶ 10.a-l of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C.§ 9601(22).

f. The RD 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.

VI. SETTLEMENT AGREEMENT AND ORDER

12. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. PERFORMANCE OF THE WORK

13. **Coordination and Supervision**

a. **Project Coordinators.**

1. Respondents' Project Coordinator must have sufficient technical expertise to coordinate the Work. Respondents' Project Coordinator may not be an attorney representing any Respondent in this matter and may not act as the Supervising Contractor. Respondents' Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

2. EPA Designation of Project Coordinators:

Project Coordinator	Alternate Project Coordinator
Debra Rossi (3HS23) U.S. Environmental Protection Agency 1650 Arch Street Philadelphia, PA 19103 (215) 814-3228 rossi.debra@epa.gov	Charlie Root (3HS23) U.S. Environmental Protection Agency 1650 Arch Street Philadelphia, PA 19103 (215) 814-3193 root.charlie@epa.gov

EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material. EPA may change its Project Coordinator and/or Alternate Project Coordinator by providing notice to Respondents.

3. Respondents' Project Coordinator shall meet with EPA's Project Coordinator at least monthly.

b. **Supervising Contractor.** Respondents' proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance 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).

c. **Procedures for Disapproval/Notice to Proceed**

1. Respondents shall designate, and notify EPA, within 20 days after the Effective Date, of the name[s], title[s], contact information, and qualifications of Respondents' proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise) and to confirm that they do not have a conflict of interest with respect to the Work.

2. EPA shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval at any time, Respondents shall, within 20 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Respondents may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of Respondents' selection.

3. Respondents may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 13.c1 and 13.c2.

14. **Performance of Work in Accordance with SOW.** Respondents shall develop the RD in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the Settlement or SOW shall be subject to approval by EPA in accordance with ¶ 5.5 (Approval of Deliverables) of the SOW.

15. **Emergencies and Releases**. Respondents shall comply with the emergency and release response and reporting requirements under ¶ 3.7 (Emergency Response and Reporting) of the SOW. Subject to Section XVI (Covenants by EPA), nothing in this Settlement, including ¶ 3.7 of the SOW, limits any authority of EPA: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site. If, due to Respondents' failure to take appropriate response action under ¶ 3.7 of the SOW, EPA takes such action instead, Respondents shall reimburse EPA under Section XII (Payment of Response Costs) for all costs of the response action.

16. **Community Involvement**. If requested by EPA, Respondents shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section 2 (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator. Costs incurred by EPA under this Section constitute Future Response Costs to be reimbursed under Section XII (Payments for Response Costs).

17. **Modification of SOW or Related Deliverables**

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to carry out the RD, then EPA may notify Respondents of such modification. If Respondents object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Section XIII (Dispute Resolution).

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if Respondents invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Settlement, and Respondents shall implement all work required by such modification. Respondents shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Settlement.

VIII. PROPERTY REQUIREMENTS

18. **Agreements Regarding Access and Non-Interference.** Respondents shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondents and the EPA, providing that such Non-Settling Owner: (i) provide EPA and the State, Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in ¶ 18.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that interferes with or adversely affects the implementation or integrity of the RD, including the restrictions listed in ¶ 18.b (Land Use Restrictions). Respondents shall provide a copy of such access and use restriction agreement(s) to EPA.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

1. Monitoring the Work;

2. Verifying any data or information submitted to the United States or the State;

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

4. Obtaining samples;

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

6. Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as provided in the SOW;

7. Implementing the Work pursuant to the conditions set forth in ¶ 61 (Work Takeover);

8. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section IX (Access to Information);

9. Assessing Respondents' compliance with the Settlement;

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

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

b. **Land Use Restrictions**. The following is a list of land use restrictions applicable to the Affected Property:

1. Prohibiting activities which could interfere with the RD, including the pre-design investigations; and

2. Ensuring that any new habitable structures on the Affected Property where the migration of landfill gas may be occurring will be constructed with a foundation vapor barrier and subsurface piping for a Sub-Slab Depressurization System ("SSDS") and, if necessary, operation of an SSDS.

19. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access [and/or use restriction agreements], as required by this Section. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XII (Payment of Response Costs).

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

21. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligations to secure access and ensure compliance with land use restrictions listed in ¶ 18.b.

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

IX. ACCESS TO INFORMATION

23. Respondents 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 their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents 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, subject to any privilege recognized under federal law.

24. **Privileged and Protected Claims**

a. Respondents may assert all or part of a Record requested by EPA is privileged or protected from disclosure as provided under federal law, in lieu of providing the Record, provided Respondents comply with ¶ 24.b, and except as provided in ¶ 24.c.

b. If Respondents assert such a privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim 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 Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeological, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the

portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

25. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA under this Section or Section X (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA or if EPA has notified Respondents 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 Respondents.

26. 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.

X. RECORD RETENTION

27. Until 10 years after EPA provides notice pursuant to ¶ 3.9 of the SOW (Notice of Work Completion), that all Work has been fully performed in accordance with this Settlement, Respondents shall preserve and retain all non-identical copies of 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 their liability under CERCLA with respect to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in 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 each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

28. At the conclusion of the document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA, and except as provided for in ¶ 24 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA.

29. Each Respondent 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 (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to

Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XI. COMPLIANCE WITH OTHER LAWS

30. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in ROD Amendment No. 2 and the SOW. The activities conducted pursuant to this Settlement, if approved by EPA, shall be considered consistent with the NCP.

31. **Permits**. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(c)(3) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e. within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal, state, or local permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

32. Respondents may seek relief under the provisions of Section XIV (Force Majeure) for any delay in performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 31 (Permits) and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XII. PAYMENT OF RESPONSE COSTS

33. **Future Response Costs**. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills**. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a cost summary which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondents shall make all payments within 30 days after Respondents' receipt of each bill requiring payment, except as otherwise provided in ¶ 35 (Contesting Future Response Costs). Respondent shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street

New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number 0345 and the EPA docket number for this action.

For ACH payment:

Respondents shall make payment by Automated Clearinghouse (ACH) to:

5700 Rivertech Court
Riverdale, Maryland 20737
Contact – John Schmid 202-874-7026 or REX, 1-866-234-5681
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number 0345 and the EPA docket number for this action.

For online payment:

Respondents shall make payment at https://www.pay.gov to the U.S. EPA account in accordance with instructions to be provided to Respondents by EPA.

NOTE: If Respondents have difficulty making EFT, ACH, or online payments, you may substitute the following: Respondents shall make payment by official bank check made payable to "EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, Site/Spill ID Number 0345, and the EPA docket number for this action, and shall be sent to:

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

b. At the time of payment, Respondents shall send notice that payment has been made to EPA's Project Coordinator and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

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

Such notice shall reference Site/Spill ID Number 0345 and the EPA docket number for this action.

c. **Deposit of Future Response Costs Payments**. The total amount to be paid by Respondents pursuant to ¶ 33.a (Periodic Bills) shall be deposited by EPA in the Delaware Sand & Gravel Landfill 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 may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Delaware Sand & Gravel Landfill 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 for this reason shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.

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

35. **Contesting Future Response Costs**. Respondents may initiate the procedures of Section XIII (Dispute Resolution) regarding payment of any Future Response Costs billed under ¶ 33 (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the EPA Project Coordinator within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in ¶ 33, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in ¶ 33. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA

in the manner described in ¶ 33. Respondents 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 XIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

36. Disbursement of Special Account Funds. EPA agrees to disburse to the Respondents who are in compliance with this Settlement the sum of one million dollars ($1,000,000) from one or more of EPA's Site Special Accounts if the following conditions are met: 1) Respondent(s) have completed the RD as set forth in the attached SOW and have received a Notice of Work Completion from EPA pursuant to paragraph 3.9(a) of the SOW; and 2) Respondent(s) have executed an RA Consent Decree for the Site which has been entered by the United States District Court for Delaware.

XIII. DISPUTE RESOLUTION

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

38. **Informal Dispute Resolution**. If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within 7 days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 20 days from EPA's receipt of Respondents' 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.

39. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 10 days after the end of the Negotiation Period, submit a statement of position to EPA. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, the Associate Director of the Office of Superfund Site Remediation within the Region 3 Hazardous Site Cleanup Division or his/her delegate will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

40. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement, except as provided by ¶ 35 (Contesting Future Response Costs), as agreed by EPA.

41. Except as provided in ¶ 51, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute.

Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Stipulated Penalties).

XIV. FORCE MAJEURE

42. "Force Majeure" for purposes of this Settlement is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "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.

43. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify the EPA as follows:

a. Oral Notification: Within 48 hours of the time Respondents knew or should have known that the event might cause a delay, Respondents shall notify the EPA Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Site Cleanup Division.

b. Written Notification: Within 5 days of the time Respondents knew or should have known that the event might cause a delay, Respondents shall notify the EPA Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Site Cleanup Division.

Within 5 days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents 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 ¶ 42 and whether Respondents have exercised their best efforts under ¶ 42, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

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

45. If Respondents elect to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of ¶¶ 42 and 43. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

46. 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 Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XV. STIPULATED PENALTIES

47. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in ¶¶ 48.a and 49 for failure to comply with the obligations specified in ¶¶ 48.a and 49, unless excused under Section XIV (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement. If (i) an initially submitted or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under ¶ 5.5(a)(2) of the SOW; or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

48. Stipulated Penalty Amounts: Major Violations:

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with any obligation identified in ¶ 48.b:

Penalty Per Violation Per Day	Period of Noncompliance
$ 1,000	1st through 14th day
$ 2,000	15th through 30th day
$ 3,000	31st day and beyond

b. **Obligations**

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

2. Timely submission of the following deliverables in accordance with the schedules and requirements in the SOW, including resubmission following disapproval by EPA:

i. RD Work plan;

ii. Pre-Design Investigation Work Plan;

iii. Pre-Design Investigation Evaluation Report;

iv. Preliminary (30%) Remedial Design;

v. Pre-Final (95%) Remedial Design; and

vi. Final (100%) Remedial Design;

3. Timely implementation of actions in accordance with schedules set forth in EPA-approved deliverables for the RD described in subparagraph 2, above.

49. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement, other than those specified in ¶ 48.b, including but not limited to the following deliverables:

a. Establishment and maintenance of financial assurance in accordance with Section XXIII (Financial Assurance).

b. Establishment of an escrow account to hold any disputed Future Response Costs under ¶ 35 (Contesting Future Response Costs).

c. Timely designation of a Project Coordinator and Supervising Contractor, including replacements thereof, under Paragraph 13;

d. Emergency and release response and reporting requirements under Paragraph 15;

e. Community involvement activities required under Paragraph 16;

f. Requirements regarding access and non-interference under Paragraph 18;

g. Providing requested information and documents under Paragraph 23;

h. Record retention and notice requirements under Section X;

i. Insurance requirements under Section XXII; and

j. Progress Reports; and Supporting Deliverables.

Penalty Per Violation Per Day	**Period of Noncompliance**
$ 500	1st through 14th day
$ 1,000	15th through 30th day
$ 2,000	31st day and beyond

50. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 61 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of $100,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under ¶¶ 61 (Work Takeover) and 84 (Access to Financial Assurance).

51. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ 5.5 (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the Associate Director of the Office of Superfund Site Remediation within the Region 3 Hazardous Site Cleanup Division or his/her delegate under Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that such official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

52. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the

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

53. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 33 (Payments for Future Response Costs).

54. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 51 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 53 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

56. 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 Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that EPA shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, 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 ¶ 61 (Work Takeover).

57. 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.

XVI. COVENANTS BY EPA

58. Except as provided in Section XVII (Reservation of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondents 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 Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XVII. RESERVATIONS OF RIGHTS BY EPA

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

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

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

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

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

d. criminal liability;

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

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

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

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

61. **Work Takeover**

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are 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 Respondents. Any Work Takeover Notices issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was

issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in ¶ 61.a Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 61.b. Funding of Work Takeover costs is addressed under ¶ 84 (Access to Financial Assurance).]

c. Respondents may invoke the procedures set forth in ¶ 39 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under ¶ 61.b. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 61.b until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with ¶ 39 (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.

XVIII. COVENANTS BY RESPONDENTS

62. Respondents covenant not to sue and agree 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, but not limited to:

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

b. any claim under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to 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 Delaware Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

63. Except as expressly provided in ¶ 66 (Waiver of Claims by Respondents), 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 XVII (Reservations of Rights by EPA), other than in ¶ 60.a (liability for failure to meet a requirement of the

Settlement), 60.d (criminal liability), or 60.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

64. Nothing in this 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).

65. Respondents reserve, 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 Respondents' deliverables or activities.

66. **Waiver of Claims by Respondents**

a. Respondents agree 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 they may have:

1. **De Micromis Waiver**. For all matters relating to the Site against any person where the person's liability to Respondents 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; and

2. ***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 CERCLA § 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to the Site.

b. **Exceptions to Waivers**

1. The waivers under this ¶ 66 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against such Respondent.

2. The waivers under this ¶ 66 shall not apply to Respondent [**insert name**]'s contractual indemnification claim against [**insert name**].]

3. The waiver under ¶ 66.a.1 (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver, if EPA determines that: (i) that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any EPA requests for information or administrative subpoenas 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 this waiver would apply and that conviction has not been vitiated on appeal or otherwise.

XIX. OTHER CLAIMS

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

68. Except as expressly provided in ¶ 66 (Waiver of Claims by Respondents) and Section XVI (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

69. 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).

XX. EFFECT OF SETTLEMENT/CONTRIBUTION

70. Except as provided in ¶ 66 (Waiver of Claims by Respondents), 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 XVIII (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action 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).

71. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each 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.

72. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which each 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).

73. Each 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 such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

74. 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, Respondents 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 XVI (Covenants by EPA).

XXI. INDEMNIFICATION

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

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

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

XXII. INSURANCE

78. No later than 15 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Work Completion pursuant to ¶ 3.9 of the SOW, commercial general liability insurance with limits of liability of $1 million per occurrence, and automobile 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 Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents 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, Respondents 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 Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the Delaware Sand & Gravel Superfund Site, New Castle, Delaware and the EPA docket number for this action.

XXIII. FINANCIAL ASSURANCE

79. In order to ensure the completion of the Work, Respondents shall secure financial assurance, initially in the amount of $1,500,000 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, and/or trust funds.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. a trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A demonstration by a Respondent that it meets the financial test criteria of ¶ 81, accompanied by a standby funding commitment, which obligates the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover]; or

e. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of ¶ 81.

80. Respondents shall, within 30 days of the Effective Date, obtain EPA's approval of the form of Respondents' financial assurance. Within 30 days of such approval, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the following person:

Karen Melvin, Director (3HS00)
Hazardous Site Cleanup Division
EPA Region 3
1650 Arch Street
Philadelphia, PA 19103

81. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 79.d or 79.e, must, within 30 days of the Effective Date:

a. Demonstrate that:

1. The affected Respondent or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

2. The affected Respondent or guarantor has:

i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee.

b. Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for

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

82. Respondents providing financial assurance by means of a demonstration or guarantee under ¶ 79.d or 79.e must also:

a. Annually resubmit the documents described in ¶ 81 within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

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

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 81; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

83. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures of ¶ 85 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

84. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 61.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 84.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected Respondent fails to provide an

alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 84.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 61.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism [and/or related standby funding commitment], whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 79.d or 79.e, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within 14 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 84 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Delaware Sand & Gravel Landfill Superfund Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 84 must be reimbursed as Future Response Costs under Section XII (Payments for Response Costs).

85. **Modification of Amount, Form, or Terms of Financial Assurance.** Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 80, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XIII (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 80.

86. **Release, Cancellation, or Discontinuation of Financial Assurance.** Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Work Completion under ¶ 3.9 of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIII (Dispute Resolution).

XXIV. INTEGRATION/APPENDICES

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

a. Appendix A is ROD Amendment No. 2 signed by EPA on December 12, 2017.

b. Appendix B is the SOW.

c. Appendix C is the description and/or map of the Site.

XXV. MODIFICATION

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

89. If Respondents seek permission to deviate from any approved work plan, schedule, or SOW, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the EPA Project Coordinator pursuant to ¶ 88.

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

XXVI. EFFECTIVE DATE AND TERMINATION

91. This Settlement shall be effective 5 days after transmittal of a fully executed copy of this Settlement to counsel representing the Respondents.

IT IS SO ORDERED AND AGREED.

MAY 22 2018

KAREN MELVIN
Director, Hazardous Site Cleanup Division
U.S. Environmental Protection Agency
Region 3

Date

FOR RESPONDENT: The Chemours Company FC, LLC

Sheryl A Telford
[Signature]

5/18/18
Date

Please Type the Following:

Name: Sheryl A Telford

Title: VP, EHS & S

Address: 1007 Market St
Wilmington, DE 19899

[NOTE: A separate signature page is required for each RESPONDENT]

FOR RESPONDENT: Hercules LLC

Michael S Roe
[Signature]

May 21, 2018
Date

Please Type the Following:

Name: Michael S. Roe

Title: President, Hercules LLC

Address: 8145 Blazer Drive, Wilmington, DE 19808

[NOTE: A separate signature page is required for each RESPONDENT.]

In the Matter of: Delaware Sand & Gravel Landfill

Administrative Settlement Agreement and Order on Consent for Remedial Design

EPA Docket No. CERCLA-03-2018-0116DC

FOR RESPONDENT: Waste Management of Delaware, Inc.

[Signature] Date: 5/17/18

Please Type the Following:

Name: David Moreira

Title: Area Director - ELMG

Address: c/o Waste Management
4 Liberty Lane
Hampton, NH 03842

[NOTE: A Separate signature page is required for each RESPONDENT]

In the Matter of: Delaware Sand & Gravel Landfill

Administrative Settlement Agreement and Order on Consent for Remedial Design

EPA Docket No. CERCLA-03-2018-0116DC

FOR RESPONDENT: SC Holdings, Inc.

[Signature] Date 5/17/18

Please Type the Following:

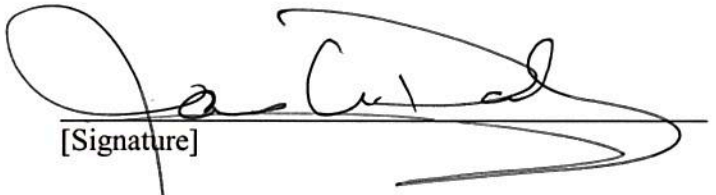
Name: David Moreira

Title: Area Director -ELMG

Address: c/o Waste Management
4 Liberty Lane
Hampton, NH 03842

[NOTE: A Separate signature page is required for each RESPONDENT]

FOR RESPONDENT: Cytec Industries, Inc.



[Signature]

5/21/18
Date

Please Type the Following:

Name: James Daly

Title: Vice President

Address: 504 Carnegie Center
Princeton, NJ 08540

[NOTE: A separate signature page is required for each RESPONDENT]

In the Matter of: Delaware Sand & Gravel Landfill

Administrative Settlement Agreement and Order on Consent for Remedial Design

EPA Docket No. CERCLA-03-2018-0116DC

FOR RESPONDENT: ZENECA, Inc.

[Signature] Date 5/16/18

Please Type the Following:

Name: Charles Elmendorf

Title: Senior Director Environmental Remediation

Address: 1800 Concord Pike Wilmington DE 19850

[NOTE: A separate signature page is required for each RESPONDENT]

In the Matter of: Delaware Sand & Gravel Landfill

Administrative Settlement Agreement and Order on Consent for Remedial Design

EPA Docket No. CERCLA-03-2018-0116DC

FOR RESPONDENT:

Bayer CropScience Inc. by Stauffer Management Company LLC, as Litigation Agent

[Signature] 5/16/18 Date

Please Type the Following:

Name: Charles Elmendorf

Title: President SMC LLC

Address: 1800 Concord Pike Wilmington, DE 19850

[NOTE: A separate signature page is required for each RESPONDENT]