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ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:)

EXCELSIOR SPRINGS FMGP)
320 WEST EXCELSIOR STREET)
EXCELSIOR SPRINGS, MISSOURI)

UNION ELECTRIC COMPANY,)

RESPONDENT.)

Proceeding under Sections 104, 106(a),)
107, 113(f)(3)(B), and 122 of the)
Comprehensive Environmental Response,)
Compensation and Liability Act, as)
amended, 42 U.S.C. §§ 9604, 9606(a),)
9607, 9613(f)(3)(B) and 9622.)

Docket No.
CERCLA-07-2006-0023

ADMINISTRATIVE SETTLEMENT AGREEMENT
AND ORDER ON CONSENT FOR REMOVAL ACTION

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Union Electric Company d/b/a AmerenUE, a public utility organized and existing under Missouri law ("Respondent"). This Settlement Agreement provides for the protection of public health or welfare or the environment by the design and implementation of certain response actions by Respondent and the reimbursement of certain response costs incurred by EPA at or in connection with property formerly owned and operated by Respondent's predecessors as a manufactured gas plant ("MGP") from approximately 1900 until 1926, located generally in the area of 320 West Excelsior Street in Excelsior Springs, Missouri (the "Site").

2. This Settlement Agreement is issued and constitutes a settlement under the authority vested in the President of the United States by Sections 104, 106(a), 107, 113(f)(3)(B), and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607, 9613(f)(3)(B), and 9622, as amended ("CERCLA"). EPA has notified the State of Missouri of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

3. The EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent pursuant to this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the Findings of Facts and Conclusions of Law and Determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

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

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

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement the following definitions shall apply:

- a. "Action Memorandum" shall mean the EPA Enforcement Action Memorandum pertaining to the Site signed on December 22, 2005, by the Director of EPA Region VII's Superfund Division. A copy of the Action Memorandum is included in the administrative record for the Site
- b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
- c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXIX.
- d. "Engineering Evaluation/Cost Analysis" or "EE/CA" refers to Engineering Evaluation/Cost Analysis dated March 2005, prepared by Environmental Operations, Inc. on behalf of Respondent. The Engineering Evaluation/Cost Analysis is included in the administrative record for the Site
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that EPA incurs from the Effective Date of this Settlement Agreement in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 44 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 56 (emergency response), and Paragraph 84 (work takeover).
- g. "Hazardous Substance" shall have the same meaning as set forth in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- h. "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 1st 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 1st of each year.
- i. "Interim Response Costs" shall mean all costs, including direct and indirect costs, a) paid by the United States in connection with the Site from the date of the

termination of the AOC referenced in Paragraph 25 below and the Effective Date, or b) incurred prior to the Effective Date, but paid after that date.

- j. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300.
- k. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.
- l. "Parties" shall mean EPA and Respondent.
- m. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- n. "Work" shall mean all activities that Respondent is required to perform pursuant to this Settlement Agreement.

IV. FINDINGS OF FACT

7. The Site is located at 320 West Excelsior Street in Excelsior Springs, Clay County, Missouri. A portion of the Site has been occupied by the Ruey-Anna apartment building since 1966. The Ruey-Anna apartment building is a municipally operated housing complex. According to the Executive Director of the Excelsior Springs Office of Housing Authority, approximately 70 residents occupy the apartment building in 55 units.

8. The Site is bounded on the north/northwest by the Dry Fork of Fishing River, on the southwest by Excelsior Street, and on the east by the Ruey-Anna apartment building and its parking lot. The Site location and Site layout is depicted on Figures 2-1 and 2-2, respectively, of the attached EE/CA. A business/commercial area is located to the south and west and residential areas are located across the Dry Fork of Fishing Creek to the north. The Site is readily accessible from all sides. The location of the former MGP is now a grassy area between the Ruey-Anna apartment building and the Dry Fork of Fishing River, and may be partially covered by a paved area north of the apartment building. Some of the residents have maintained a community/shared garden near the Site, located southwest of the apartment building in the vicinity of the coal tar remnants discovered during a Site reconnaissance. A shuffleboard court was located in an area where a 30,000 cubic foot gas tank was located.

9. A brief history of the MGP activities at the Site was developed by Respondent's contractor, Environmental Operations, Inc., based on a review of available Sanborn Fire Insurance Maps.

- a. The 1894 Sanborn Map shows that the Site was vacant, indicating that the MGP had not yet been constructed.

- b. The 1900 Sanborn Map shows a 12,000 cubic foot gas holder (gasometer), retorts, engine room and purifying room on Site.
- c. The 1905 Sanborn Map shows that a gas holder, generators, and a purifying room were located on Site.
- d. The 1909 Sanborn Map depicts the same features as the 1905 Map as well as an oil tank located on Site.
- e. The 1913 Sanborn Map depicts the same features as the 1909 Map as well as a second, 30,000 cubic foot gas holder located on Site.
- f. The 1926 Sanborn Map depicts the same features as the 1913 Map as well as a second oil tank, a coal shed, an expanded retort room, and a pump house located on Site.
- g. The 1942 Sanborn Map shows only the coal shed and three gas tanks located on Site. None of the other MGP features are shown on the 1942 Map.

10. The Excelsior Springs MGP was constructed in 1894 by the Excelsior Springs Gas, Light & Fuel Company. The Excelsior Springs Gas, Light & Fuel Company operated the MGP at the Site for the manufacture of gas from coal and oil for heating, lighting, and cooking. In 1899, the company name changed to Excelsior Springs Gas & Light Company, and in 1904 the Excelsior Springs Gas & Light Company merged with a local water works to form the Excelsior Springs Light, Power, Heat & Water Company. In 1913, the company name changed to Excelsior Springs Water, Gas & Electric Company. In 1922, the Site was purchased by the North Missouri Power Company, and in 1924 the Site was purchased by Missouri Power & Light Company. North American Light & Power Company consolidated several local utilities under the corporate body of Missouri Utilities in 1925 and incorporated them as Missouri Power & Light Company.

11. By 1935, natural gas transported by pipeline became less expensive than manufactured gas, thus causing the plant to close. In 1950, the North American Company transferred control of Missouri Power & Light Company to Union Electric Company, with Missouri Power & Light operating as a wholly owned subsidiary of Union Electric. In the early 1960s, the Site was used as a storage yard by Missouri Power & Light Company until Site structures were demolished. In 1966, the Ruey-Anna apartment building, which currently occupies the Site, was built. In 1983, Missouri Power & Light merged into Union Electric.

12. Organic and inorganic process residuals are created during manufactured gas production. The contaminant most commonly found at former MGP sites is coal tar, which was the by-product of the manufacturing process. Coal tar residuals are often found in surface soil in or near production buildings, tar wells, and gas holder areas. Sampling efforts conducted at the Site were concentrated near such structures, as identified on the Sanborn Maps.

13. A Site-sampling event was conducted on August 8, 2000, by Missouri Department of Natural Resources' ("MDNR") Environmental Services Program personnel. During this sampling event, 7 soil borings were drilled utilizing a track-mounted hydraulic soil probe in an attempt to collect samples from the MGP structures. Twelve surface soil samples (0-6 inch depth) were collected using clean stainless steel spoons. Surface soils were collected from several areas that may have been part of the former MGP operation, including the shuffleboard court, the garden, and the creek. A location southeast of the Site was originally chosen for a background sample but analytical results showed that MGP-related contaminants were present at this location.

14. Analytical results from the August 8, 2000, sampling event revealed that 3 of the 6 soil samples collected from soil borings (sub-surface sampling; more than 6 inches deep) contained polycyclic aromatic hydrocarbons ("PAHs") at concentrations above the Missouri Department of Health's ("DOH") Any Use Soil Levels ("ASLs"). An ASL is a health-based value that represents the maximum concentration of a chemical that is acceptable in soil, regardless of future land use. A sample collected from sample point SB-3A contained the highest levels of contamination and revealed the presence of 7 of the 15 PAHs common to former MGPs. Benzo(a)pyrene ("BAP"), a carcinogen, was measured in this location at 210 mg/kg (milligrams per kilogram or parts per million). This sample was collected from 2.5 - 3.5 feet and contained a black tar-like substance. The ASL for this hazardous substance is 0.68 mg/kg. Analytical results of surface soil samples also revealed levels of PAHs above ASLs in 2 of 7 samples collected at the Site. One of 4 sediment samples collected in the Dry Fork of Fishing River was found to have levels of PAHs above the ASLs.

15. The analytical results for the sediment, surface soil, and sub-surface soil samples collected by MDNR in August 2000 were compared by the U.S. Department of Health, Public Health Service, Agency for Toxic Substances and Disease Registry ("ATSDR"), to ATSDR's Environmental Media Evaluation Guides ("EMEG") and DOH's ASLs. EMEGs are guidelines used to determine whether there is a need to further investigate exposure to chemicals for their possible health effects. Levels below an EMEG are unlikely to pose a health threat. Levels above an EMEG do not necessarily indicate that a threat exists, but indicate that additional evaluation is needed. Likely exposure pathways at the Site are incidental ingestion of contaminated soils by residents and dermal contact with soils from outdoor activities. Inhalation of volatile fumes from PAHs found below the surface could also pose a threat if activities occurred that disturbed contamination at depth.

16. Of the samples collected during MDNR's August 2000 sampling event, 1 sediment sample, 2 surface soil samples, and 3 sub-surface soil samples were found to have PAH levels above the EMEG levels.

17. Respondent collected soil and water samples at the Site during the period of October 21-30, 2002, to further analyze the impact of the MGP operations. Twenty-four surface soil samples, 21 subsurface soil samples, sediment and surface water samples from the Dry Fork of Fishing River, and samples from 2 groundwater monitoring wells were collected. Respondent compiled and analyzed the results.

18. The MDNR's Cleanup Levels for Missouri ("CALM") establishes a process for determining risk-based soil and groundwater cleanup levels at sites contaminated with hazardous substances. These cleanup levels are designed to be protective of human health and the environment. The CALM Tier 1 methodologies set the target concentrations for soil and groundwater. As part of the analysis of conditions at the Site, the analytical results from sampling were compared to the standards set forth in the CALM Tier 1 residential exposure scenario. The CALM Tier 1 levels of contaminants for this scenario are quantified by a human health factor considering the ingestion, dermal contact, and inhalation pathways ("C-idi"), and an environmental factor, measured by leaching to the groundwater ("C-leach"). The CALM levels for the hazardous substances found at the Site are:

- a. Benzene - The C-leach level is 0.05 mg/kg, and the C-idi level is 6 mg/kg.
- b. Ethylbenzene - The C-leach level is 32 mg/kg, and the C-idi level is 400 mg/kg.
- c. Toluene - The C-leach level is 3.7 mg/kg, and the C-idi level is 650 mg/kg.
- d. Total Xylene - The C-leach level is 16 mg/kg, and the C-idi level is 418 mg/kg.
- e. Polycyclic aromatic hydrocarbons ("PAHs") - The C-leach levels are; benzo(a)anthracene, 0.2 mg/kg; benzo(b)fluoranthene, 0.6 mg/kg; benzo(k)fluoranthene, 0.6 mg/kg; benzo(a)pyrene, 24 mg/kg; dibenzo(a,h)anthracene, 2 mg/kg; indeno(1,2,3-cd)pyrene, 1.8 mg/kg; chrysene, 0.2 mg/kg; and naphthalene 24 mg/kg. The C-idi levels are; benzo(a)anthracene, 1.0 mg/kg; benzo(b)fluoranthene, 0.9 mg/kg; benzo(k)fluoranthene, 8 mg/kg; benzo(a)pyrene, 0.2 mg/kg; dibenzo(a,h)anthracene, 0.2 mg/kg; indeno(1,2,3-cd)pyrene, 3 mg/kg; chrysene, 36 mg/kg; and naphthalene 120 mg/kg.
- f. Arsenic - The C-leach quantity is a cleanup level not available under the Tier 1 residential exposure scenario, the C-idi level is 11 mg/kg.
- g. Cadmium - The C-leach level is 11 mg/kg, and the C-idi level is 110 mg/kg.
- h. Lead - The C-leach level is not available; the C-idi level is 260 mg/kg.
- i. Chromium - The C-leach level is 38 mg/kg, and the C-idi level is 2,100 mg/kg.

19. Twenty-one subsurface soil samples were collected at depths greater than three feet below ground surface ("bgs"). The analytical results for these samples indicate the presence of the following hazardous substances in the subsurface soils:

- a. Benzene contamination up to 1.72 mg/kg was detected at the subsurface level, exceeding CALM levels.

- b. Ethylbenzene contamination up to 45.3 mg/kg and total xylene contamination up to 64 mg/kg were both documented at a location near where a gas holder had been located.
 - c. Thirteen samples exceeded CALM levels for PAHs. Specifically, the identified contaminants included benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, chrysene, and naphthalene.
 - d. Arsenic contamination up to 47.7 mg/kg was documented, and 16 of 21 subsurface samples exceeded arsenic CALM levels. Eight background surface soil samples were collected from an adjacent property and from public areas in the surrounding community. Arsenic was detected at concentrations in excess of its CALM level in each of the background samples analyzed. The calculated background arsenic upper tolerance limit ("UTL") is 41.5 mg/kg. Arsenic concentrations detected in Site soil samples that are less than the UTL are considered comparable to background concentrations.
 - e. The analytical results indicate the presence of cadmium, lead, and chromium at the Site at levels exceeding the CALM levels. Cadmium contamination was detected up to 51.6 mg/kg, lead contamination was detected up to 320 mg/kg, and chromium contamination was detected up to 40.8 mg/kg.
20. Twenty-four surface soil samples were collected at depths between 0-3 feet bgs. The analytical results indicate the presence of the following hazardous substances in the surface soils:
- a. Benzene, toluene, ethylbenzene, and total xylene ("BTEX") compounds were detected at levels exceeding CALM levels. Samples indicate contamination up to 112 mg/kg for benzene, 265 mg/kg for ethylbenzene, 174 mg/kg for toluene and 380 mg/kg of xylene.
 - b. PAHs exceeded CALM levels in 18 of the 24 samples analyzed. Specifically, the PAHs identified included benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, chrysene, and naphthalene.
 - c. Arsenic contamination was documented at levels to 48.5 mg/kg, and of the 24 soil samples analyzed, 19 exceeded the CALM levels for arsenic.
 - d. Cadmium contamination at levels to 43.7 mg/kg and lead contamination at levels to 928 mg/kg were both documented at the Site.
21. On-Site, below-ground MGP structures were identified through geophysical and intrusive soil sampling techniques. The analytical results for samples collected in the area of these

structures indicate concentrations of BTEX, PAHs, and RCRA metals (those metals listed at 40 C.F.R. § 261.24) at levels exceeding the CALM levels.

22. Six sediment samples from the Dry Fork of Fishing River were collected from 4-6 inches below the creek bed surface. PAHs were found in one of these samples. Specifically, benzo(a)anthracene, benzo(b)fluoranthene, benzo(a)pyrene, and chrysene were identified as contaminants in this sample at levels exceeding the CALM levels.

23. One monitoring well collecting groundwater samples measured approximately 0.6 feet of a reddish-brown immiscible material at the bottom of the well. When removed from this well, sampling equipment placed in the two monitoring wells was covered in a sheen. In February 2003, Respondent's contractor detected odors emanating from this well.

24. On November 12, 2002, MDNR collected soil samples from 3.0-3.5 feet bgs at the Site. The MDNR analytical results indicate the following contaminants exceed CALM levels:

- a. Benzene at levels to 8.73 mg/kg.
- b. The PAH naphthalene was detected at levels to 221 mg/kg.
- c. Toluene was detected at levels to 28.6 mg/kg.
- d. Xylene was detected at levels to 35.6 mg/kg.

25. In September 2003, EPA and Respondent entered into an Administrative Order on Consent ("AOC") for the performance of an engineering evaluation/cost analysis ("EE/CA") at the Site. An EE/CA is a document that identifies and evaluates feasible and cost-effective alternatives for proposed removal actions, and recommends a specific removal action. This AOC bears EPA Docket Number CERCLA-07-2003-0284 and is on file with EPA Region VII's Hearing Clerk.

26. In preparing the EE/CA, Respondent conducted three phases of Site investigation during the period of October 21, 2002, through July 8, 2004. The objectives of these investigations were to, among other things, fully characterize the Site geologic and hydrogeologic conditions, and determine whether and to what extent hazardous substances were present in soils, sediments, and water at or near the Site. Tasks completed by Respondent in accomplishing these objectives included the:

- completion of 39 probeholes;
- collection of 26 surface (0 to 3 feet bgs) soil samples for laboratory analysis from the probeholes;
- collection of 3 shallow soil samples for laboratory analysis from the probeholes;
- collection of 27 subsurface (greater than 3 feet bgs) soil samples for laboratory analysis from the probeholes;

- collection of 8 off-Site shallow surface soil samples for laboratory analysis for determining background concentrations;
- collection of 6 sediment samples for laboratory analysis from the Dry Fork of Fishing River;
- collection of 4 surface water samples for laboratory analysis from the Dry Fork of Fishing River; and
- collection of 2 air samples for laboratory analysis from the crawlspace of the Ruey-Anna apartment building located at the Site.

27. Three of the 33 surface soil samples taken as part of this investigation had levels of BTEX compounds in excess of the CALM levels. Twenty-three surface soil samples had levels of one or more PAH compounds in excess of the CALM levels. Four surface soil samples had cadmium present at levels in excess of the CALM levels. Table 2-1 of the attached EE/CA details the concentrations and sampling locations for these hazardous substances.

28. Four of the 27 subsurface soil samples taken as part of this investigation had levels of benzene in excess of the CALM levels. Fifteen of the 27 subsurface soil samples taken as part of this investigation had levels of PAHs in excess of the CALM levels. Table 2-2 of the attached EE/CA details the concentrations and sampling locations for these hazardous substances.

29. There are 11 groundwater monitoring wells located at the Site and adjacent areas which were sampled by Respondent as part of this investigation. Multiple BTEX compounds were present in 2 of these wells at levels in excess of the CALM Groundwater Target Concentrations ("GTARCs"). Five wells have indicated the presence of one or more PAH compounds at levels in excess of the CALM GTARCs. Table 2-4 of the attached EE/CA details the concentrations and sampling locations for these hazardous substances.

30. There were 6 sediment samples taken from the bed of the Dry Fork of Fishing River and analyzed for PAHs and total cyanide. These samples were collected from 4-6 inches below the creek bed surface. One sample indicated the presence of PAHs at levels in excess of the CALM Soil Target Concentrations ("STARCs"). Cyanide was not detected in these samples. Table 2-5 of the attached EE/CA compares the analytical results with the CALM STARCs.

31. Four surface water samples were collected from the Dry Fork of Fishing River and analyzed for PAHs and total cyanide. There were no detections of PAHs or total cyanides in these samples.

32. Two air samples were collected from the crawlspace of the Ruey-Anna apartment building located at the Site. These samples were analyzed for BTEX compounds and naphthalene. While benzene, toluene, and xylenes were detected in these samples, the levels of these hazardous substances were below the residential CALM Tier 1 risk-based target levels.

33. The following are the toxicological effects of exposure to the hazardous substances that have been determined to be present at the Site:

- a. PAHs are harmful to human health under certain circumstances. Studies of people show that individuals exposed by breathing or skin contact for long periods to PAHs can develop cancer. As a result, certain PAH compounds, including benzo(a)pyrene ("BAP") are classified as probable human carcinogens. BAP has been found at the Site. In addition, studies in animals have shown that PAHs can cause harmful effects to skin, body fluids, and the body's system for fighting disease after both short and long-term exposures. There are more than 100 different PAHs. PAHs generally occur as complex mixtures, not as single compounds. Although the health effects of individual PAHs are not exactly alike, they are typically considered as a group rather than as individual compounds.
- b. Lead exposures to humans can occur by inhalation, ingestion, or dermal contact. The main target for lead toxicity is the nervous system, both in adults and in children. Some studies have suggested that lead exposure can cause high blood pressure and anemia. At high levels of exposure, lead can severely damage the brain and kidneys. In pregnant women, high levels of exposure may cause miscarriage. High level exposure to men can damage the organs responsible for sperm production. Also, lead is classified as a probable human carcinogen.
- c. Toluene is a colorless, flammable liquid. Breathing large amounts of toluene for short periods of time adversely affects the human nervous system, kidneys, liver and heart. Some studies have shown that repeat exposure to large amounts of toluene during pregnancy can adversely affect a developing fetus. Toluene can contribute to the formation of photochemical smog when it reacts with other volatile organic carbon substances in air.
- d. Benzene is a known carcinogen. When exposed at low levels, benzene may cause drowsiness, dizziness, rapid heart rate, headaches, tremors, confusion, and unconsciousness. Prolonged exposure to benzene has been associated with development of one kind of leukemia.
- e. Ethylbenzene occurs naturally in coal tar and petroleum. Exposure to high levels of ethylbenzene can cause dizziness and decreased mobility. At lower exposure levels, people may experience eye and throat irritation.
- f. Xylene is a colorless, flammable liquid and is sometimes released into water and soil as a result of the use, storage, and transport of petroleum products. Short-term exposure to xylene at high levels can cause irritation of the skin, eyes, nose, and throat. Short-term and long-term exposure to xylene at high levels can cause adverse effects to the nervous system. Exposure of high levels of xylene to pregnant women may cause harmful effects to the fetus.
- g. Arsenic, if ingested through water or food sources, may irritate the stomach and intestines. At higher concentrations, swallowing arsenic may increase the risk of cancer in the liver, bladder, kidneys, prostate, and lungs.

- h. Extended exposure to cadmium at low levels may result in cadmium build-up in the kidney. Exposure to high levels of cadmium over an extended period may result in kidney disease.
- i. People can be exposed to chromium by eating food, drinking water, or breathing air that is contaminated with chromium. Certain types of chromium have been known to increase the risk of cancer in humans. Exposure to high levels of chromium through air or ingestion may cause negative health effects.

34. In June 2005, Respondent submitted a draft EE/CA to EPA for review and approval. The EE/CA evaluated alternatives for responding to the presence of certain hazardous substances in Site soils and the groundwater. As a result of comments by EPA and MDNR, the EE/CA was revised by Respondent and resubmitted to EPA and MDNR in September 2005. In accordance with the NCP, EPA began publishing notice of the availability of the EE/CA in *The Standard*, a major newspaper of general circulation in the Excelsior Springs area on October 7, 2005. EPA provided to the public a 30-day opportunity - from October 7, 2005, through November 7, 2005 - for submitting written and oral comments on the response alternatives set forth in the EE/CA. No comments were received by EPA.

35. By Enforcement Action Memorandum dated December 22, 2005, EPA selected the surface soil, subsurface soil, and groundwater removal action alternative recommended in Section 6 of the EE/CA. The actions selected involve:

- For surface soils - excavation and off-Site disposal of contaminated soils and the imposition of institutional controls.
- For subsurface soils - (a) for areas of the Site without visually impacted soil, excavation, off-Site disposal, and back-filling of the excavated area with clean fill; and (b) for areas of the Site with visually impacted soil, excavation, stabilization to meet landfill disposal requirements, off-Site disposal, and back-filling of the excavated area with clean fill. Institutional controls will also be used as part of this response.
- For groundwater - contaminated groundwater will be addressed through the imposition of institutional controls. The institutional controls to be implemented at the Site are expected to include: (a) proprietary controls in the form of a restrictive covenant, easement, or other appropriate instrument; (b) governmental controls in the form of a municipal ordinance prohibiting the use of contaminated groundwater for potable purposes; and (c) informational devices in the form of deed notices inserted into the chain of title for affected properties.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

- a. The 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 substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondent was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
- e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- f. The release and threatened release of hazardous substances at the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.
- g. The actions required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided for in Section 300.700(c)(3)(ii) of the NCP.
- h. A planning period of at least 6 months exists before on-Site removal response activities must be initiated, and a non-time-critical removal action is appropriate.

VI. WORK TO BE PERFORMED

37. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby Ordered and agreed that Respondent shall comply with all provisions of this Settlement Agreement, and perform, at a minimum, all actions necessary to implement the Action Memorandum. The actions to be implemented generally include, but are not limited to, the following.

38. Designation of Contractor and Project Coordinators.

- a. Respondent shall propose one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 10 days after this Settlement Agreement's Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) proposed to perform Work at least 30 days prior to the commencement of such Work, unless circumstances require that the Work be commenced less than 30 days after the notice is provided. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors proposed by Respondent. If EPA disapproves of a proposed contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 30 days of receipt of EPA's disapproval.

- b. Respondent has designated a Project Coordinator who shall be responsible for carrying out the Work required by this Settlement Agreement. To the greatest extent possible, Respondent's Project Coordinator shall be readily available during Site work. While EPA does not disapprove of this Project Coordinator, EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall propose to EPA a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 30 days of Respondent's receipt of EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent. Respondent's Project Coordinator is:

Steven L. Burns
Ameren Services
One Ameren Plaza
1901 Chouteau Avenue
P.O. Box 66149, MC 602
St. Louis, MO 63166-6149
Phone: 314-554-2253
Fax: 314-554-4182
slburns@ameren.com

- c. EPA has designated Paul Doherty of EPA, Region VII's Superfund Division as its On-Scene Coordinator ("OSC") and Project Coordinator with regard to the Work. Respondent shall direct 3 copies of all submissions required by this Settlement Agreement to Mr. Doherty at the following address:

Paul Doherty
Superfund Division
U.S. Environmental Protection Agency, Region VII
901 North 5th Street
Kansas City, KS 66101
Telephone 913-551-7924
Facsimile 913-551-9924
doherty.paul@epa.gov

- d. EPA and Respondent shall each have the right, subject to subparagraph 38.b. above, to change their designated Project Coordinators. To the extent practicable, Respondent shall notify EPA at least 10 days before such a change is made. The initial notification may be orally made, but it shall be promptly followed by a written notice.

39. Work to Be Performed.

- a. Removal Action Work Plan. Respondent shall conduct a removal action at the Site by performing the Work as detailed in an EPA-approved Removal Action Work Plan ("RAWP"). Within 30 days after the effective date of this Settlement Agreement, Respondent shall submit to EPA for review and approval, a RAWP prepared in accordance with this Settlement Agreement. Upon approval by EPA the draft RAWP shall become the approved RAWP and the approved RAWP shall be incorporated in its entirety herein and shall be enforceable as a part of this Settlement Agreement.
- b. Removal Action Work Plan Requirements. The RAWP shall include a detailed description of the tasks and submissions that Respondent will complete during the removal action and shall include a schedule for completing such tasks and submissions. The RAWP shall include a detailed description of the removal work to be performed including, but not limited to, the following:
- i. A schedule for all removal activities;
 - ii. A design plan for the excavation of soils at the Site, in general agreement with the conceptual excavation plan described in the EE/CA, that meets the performance standards for Site cleanup;
 - iii. Plans for Toxicity Characteristic Leaching Procedure ("TCLP") testing of contaminated soils, and plans for the treatment of any soils that fail TCLP for off-Site disposal purposes;
 - iv. Plans for conducting air monitoring for emissions during removal activities, including contingency plans in the event that emissions exceed health-based standards;

- v. Plans for procedures that will be followed when transporting any materials off-Site, including contingency plans to address any release of such materials during transport; and
- vi. Plans for complying with the Off-Site Rule, 40 C.F.R. § 300.440.

EPA may approve, disapprove, require revisions to, or modify the draft RAWP in whole or in part, consistent with the response action selected by EPA. If EPA requires revisions, Respondent shall submit a revised draft RAWP within 30 days of receipt of EPA's notification of the required revisions. Respondent shall implement the RAWP as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the RAWP, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

- c. Removal Action Implementation. Respondent shall conduct a removal action at the Site by performing the Work in accordance with the requirements, including the schedule, set forth in the EPA-approved RAWP. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the RAWP developed hereunder until receiving EPA's written approval.
- d. Health and Safety Plan. Within 30 days after the Effective Date of this Settlement Agreement, Respondent shall submit for EPA review and comment a Health and Safety Plan ("HSP") that ensures worker protection and the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. The HSP shall be prepared in accordance with EPA's *Standard Operating Safety Guide* (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the HSP shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910 and shall include, at a minimum, the following:
 - i. Assessment of chemical and physical hazards at all relevant locations;
 - ii. Identification of Site control measures and required levels of protection and safety equipment;
 - iii. Field monitoring requirements;
 - iv. Equipment and personnel decontamination and residual management;
 - v. Training and medical monitoring requirements; and

- vi. Emergency planning and emergency contacts.

If EPA determines that it is appropriate, the HSP shall also include contingency planning. Respondent shall incorporate all changes to the HSP recommended by EPA and shall implement the HSP during the pendency of the removal action.

e. Quality Assurance and Sampling.

- i. Within 30 days of the Effective Date of this Settlement Agreement, and before any sampling related to Work under this Settlement Agreement commences, Respondent shall submit to EPA for review and comment a Quality Assurance Project Plan ("QAPP") which will describe all sampling and analysis procedures to be followed to document the type and quality of data needed to satisfy the requirements of this Settlement Agreement and to provide the basis for collecting and assessing those data which are to be collected to meet the requirements of this Settlement Agreement. The QAPP shall comply with the requirements of the document entitled *EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations*, EPA QA/R-5, November 1999.
- ii. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, EPA's *Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures* (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling.
- iii. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.
- iv. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 30 days prior to any

sample collection activity, unless shorter notice is agreed to by EPA's Project Coordinator. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA will allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

40. Reporting.

- a. Progress Reports. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the Effective Date of this Settlement Agreement and continuing until termination of this Settlement Agreement, unless otherwise directed in writing by EPA's Project Coordinator. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

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

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

41. Off-Site Shipments.

- a. Respondent shall, prior to any off-Site shipment of hazardous substances, pollutants or contaminants from the Site to an out-of-state waste management facility, provide written notification of such shipment to the appropriate state environmental official in the receiving facility's state and to EPA's Project Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.
 - i. Respondent shall include in the written notification the following information: (A) the name and location of the recipient facility; (B) the type and quantity of material to be shipped; (C) the expected schedule for the shipment of the material; and (D) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the material to another facility within the same state, or to a facility in another state.
 - ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by this Paragraph as soon as practicable after the award of the contract and before the material is actually shipped.
 - iii. Before shipping any hazardous substance, pollutant, or contaminant from the Site to an off-Site location, Respondent shall verify with EPA that the proposed receiving facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and EPA's Off-Site Rule, codified at 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

VII. ACCESS/INSTITUTIONAL CONTROLS

Property Owned or Controlled by Respondent

42. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall:

- a. Commencing on the effective date of this Settlement Agreement, provide to EPA and its representatives, including contractors, access at all reasonable times to the

Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement including, but not limited to, the following:

- i. Monitoring the Work;
 - ii. Verifying any data or information submitted to EPA;
 - iii. Conducting any Site-related investigations relating to contamination at or from the Site;
 - iv. Obtaining samples;
 - v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - vi. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents;
 - vii. Assessing Respondent's compliance with this Settlement Agreement; and
 - viii. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Settlement Agreement;
- b. commencing on the effective date of this Settlement Agreement, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response action to be implemented pursuant to this Settlement Agreement; and execute and record in the Recorder's Office (or other appropriate land records office) of Clay County, Missouri, an enforceable easement, restrictive covenant, or other appropriate instrument ("instrument") that runs with the land, and ensures non-interference with and the protectiveness of the response action to be implemented pursuant to this Settlement Agreement. Respondent shall, within 90 days of EPA's approval of the RAWP, submit to EPA for review and approval with respect to such property:
- i. A draft instrument; and
 - ii. A current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the instrument to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Respondent is unable to obtain release or subordination of such prior liens or encumbrances).

Within 30 days of EPA's approval and acceptance of the instrument and title evidence, Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to adversely affect title, record the instrument with the Recorder's Office (or other appropriate land records office) of Clay County, Missouri. Within 60 days of recording the

instrument, Respondent shall provide to EPA a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded instrument showing the clerk's recording stamps.

Property Owned or Controlled by Persons Other Than Respondent

43. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Settlement Agreement, is owned or controlled by persons other than Respondent, Respondent shall use best efforts to secure from such persons:

- a. within 60 days of EPA's approval of the RAWP, an agreement to provide access to such property to EPA and the state, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Settlement Agreement including, but not limited to, those activities set forth in Paragraph 42.a. above;
- b. within 60 days of EPA's approval of the RAWP, an agreement, enforceable by Respondent and EPA, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response action to be implemented pursuant to this Settlement Agreement;
- c. within 90 days of EPA's approval of the RAWP, an enforceable easement, restrictive covenant, or other appropriate instrument ("instrument") that runs with the land, and ensures non-interference with and the protectiveness of the response action to be implemented pursuant to this Settlement Agreement. This instrument shall be recorded in the Recorder's Office (or other appropriate land records office) of Clay County, Missouri. Within 90 days of EPA's approval of the RAWP, Respondent shall submit to EPA for review and approval with respect to such property:
 - i. A draft instrument; and
 - ii. A current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the instrument to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Respondent is unable to obtain release or subordination of such prior liens or encumbrances).

Within 21 days of EPA's approval and acceptance of the instrument and title evidence, Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to adversely affect title, the instrument shall be recorded with the Recorder's Office (or other appropriate land records office) of Clay County, Missouri. Within 30 days of the recording of the instrument, Respondent shall provide to EPA a final title

insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded instrument showing the clerk's recording stamps.

44. As used in this Section, "best efforts" includes the payment of reasonable compensation in consideration of providing access, land/water use restrictions, a covenant, an easement, and/or an agreement to release or subordinate a prior lien or encumbrance. If: (a) any access, restriction, covenant, or easement required by this Section is not obtained within 60 days of Respondent's receipt of EPA's approval of the RAWP; (b) any instrument required by Paragraph 43.c. of this Settlement Agreement is not submitted to EPA in draft form within 90 days of Respondent's receipt of EPA's approval of the RAWP; or (c) Respondent is unable to obtain an agreement from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the instrument within 60 days of Respondent's receipt of EPA's approval of the RAWP, Respondent shall promptly notify EPA in writing, and shall include in that notification a summary of the steps that it has taken to attempt to comply with Paragraphs 42 or 43 of this Settlement Agreement. EPA may, as it deems appropriate, assist Respondent in obtaining access or land/water use restrictions, or in obtaining the release or subordination of a prior lien or encumbrance. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with Section XIII (Reimbursement of Response Costs).

45. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the response actions required by this Settlement Agreement, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Respondent shall cooperate with EPA's and the state's efforts to secure such governmental controls.

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

VIII. ACCESS TO INFORMATION

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

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

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

50. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to this Settlement Agreement shall be withheld on the grounds that they are privileged.

51. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information created and/or generated as part of the work required by this Settlement Agreement and evidencing conditions at or around the Site.

IX. RECORD RETENTION

52. Until 10 years after Respondent's receipt of EPA's notification, pursuant to Paragraph 102, that Respondent has fully performed its obligations under this Settlement Agreement, Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondent's receipt of EPA's notification, pursuant to Paragraph 102, that Respondent has fully performed its obligations under this Settlement Agreement, Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

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

information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to this Settlement Agreement shall be withheld on the grounds that they are privileged.

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

X. COMPLIANCE WITH OTHER LAWS

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

XI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

56. In the event of any action or occurrence during performance of the Work which causes or threatens a release of hazardous substances, pollutants or contaminants from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the HSP, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify EPA's Project Coordinator of the incident, or in the event of his unavailability, it shall report the incident to EPA's Regional Spill Line at 913-281-0991. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIII (Reimbursement of Response Costs).

57. In addition, in the event of any release of a hazardous substance, pollutant or contaminant from the Site, Respondent shall immediately notify EPA's Project Coordinator at 913-551-7924 and the National Response Center at 800-424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to,

and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, et seq.

XII. AUTHORITY OF EPA'S PROJECT COORDINATOR

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

XIII. REIMBURSEMENT OF RESPONSE COSTS

59. Respondent shall pay to EPA all Interim Response Costs and Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send to Respondent a bill requiring payment that includes a Regional cost summary (SCORPIOS Report), which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 63 of this Settlement Agreement.

60. Respondent shall make all payments required by this Section by wire transfer to EPA Region VII, c/o Mellon Bank, ABA 043000261, Account No. 9109125. The wire transmittal shall reference Respondent's name and address, the Site name, and Site/Spill identifier "A73P," and the EPA docket number for this action. At the time of payment, Respondent shall transmit a copy of the payment to EPA's Project Coordinator.

61. The total amount to be paid by Respondent pursuant to this Section shall be deposited in the Union Electric-Excelsior Springs FMGP Special Account within the EPA Hazardous Substance Superfund, and may be transferred by EPA at its discretion to the EPA Hazardous Substance Superfund.

62. In the event that any payment for Interim Response Costs or Future Response Costs is not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. Interest on Interim Response Costs or Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of 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 Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVI.

63. Respondent may dispute all or part of a bill for Interim Response Costs or Future Response Costs submitted under this Settlement Agreement, if Respondent alleges that EPA has

made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 60 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to EPA's Project Coordinator. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 10 days after the dispute is resolved.

XIV. DISPUTE RESOLUTION

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

65. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including without limitation billings for Future Response Costs, it shall notify EPA in writing of its objections within 14 days of its receipt of notice of such action, unless the objections have been resolved informally. The Parties shall have 30 days from EPA's receipt of Respondent's written objections to resolve the dispute through negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

66. An administrative record of any dispute under this Section will be maintained by EPA. The record shall include the written notification of such dispute, statements of position, if any, and EPA's response thereto.

67. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If EPA and Respondent are unable to reach an agreement within the Negotiation Period, the Director of EPA, Region VII's Superfund Division, or his/her designee, will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Notwithstanding the foregoing, said incorporation shall not constitute a waiver of Respondent's right to contest, in any proceeding brought by EPA to enforce the terms of this Settlement Agreement, any alleged unlawfulness of EPA's decision or that EPA's decision is otherwise outside of the scope of the requirements of this Settlement Agreement. The invocation of dispute resolution under this Section shall not extend, postpone or affect in any way any obligation of Respondent under this Settlement Agreement not directly in dispute, unless EPA agrees otherwise. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XV. FORCE MAJEURE

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

69. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 48 hours of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent shall provide to EPA a written explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in Respondent's opinion, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

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

XVI. STIPULATED PENALTIES

71. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth below for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law,

this Settlement Agreement, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

72. Stipulated Penalty Amounts - Work. The following stipulated penalties shall accrue per violation per day for failure to perform any Work, including the payment of Interim Response Costs or Future Response Costs, required hereunder in a timely or adequate manner, or for failure to submit to EPA any submittal required by this Settlement Agreement (except the progress reports called for in Paragraph 40(a) hereof) in a timely or adequate manner:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 st through 7 th day
\$2,000	8 th through 30 th day
\$5,000	31 st day and beyond

73. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit to EPA the progress reports required pursuant to Paragraph 40(a) hereof, in a timely or adequate manner:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 st through 7 th day
\$1,000	8 th through 30 th day
\$2,500	31 st day and beyond

74. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 84, Respondent shall be liable for a stipulated penalty in the amount of \$625,000, or the amount of the actual costs incurred by EPA in performing the Work, whichever is less.

75. All penalties shall begin to accrue on the day after the complete performance or payment is due or the date that notification of a violation is issued by EPA, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section VI (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency following which Respondent shall have 30 days to cure any deficiency during which 30-day period stipulated penalties will not accrue; and (b) with respect to a decision by the Director of EPA, Region VII's Superfund Division, pursuant to Paragraph 67 of Section XIV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that a decision on the dispute is received by Respondent. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

76. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA will give Respondent written notification of the failure and describe the noncompliance. EPA may send to Respondent a written demand for payment of the

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

77. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XIV (Dispute Resolution). Respondent shall make all payments required by this Section by wire transfer to EPA, Region VII, c/o Mellon Bank, ABA 043000261, Account No. 9109125. The wire transmittal shall reference Respondent's name and address, the Site name, and Site/Spill identifier "A73P," and the EPA docket number for this action. At the time of payment, Respondent shall transmit a copy of the payment to EPA's Project Coordinator.

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

79. Except as provided in Paragraph 75, penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

80. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 76. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA will not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement, or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 84. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVII. COVENANT NOT TO SUE BY EPA

81. In consideration of the performance of the Work and the payments that will be made by Respondent under this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the performance of the Work, and for recovery of Interim Response Costs and Future Response Costs. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, the reimbursement of Interim Response Costs and Future Response Costs

pursuant to Section XIII. This covenant not to sue extends only to Respondent and does not extend to any other person.

XVIII. RESERVATION OF RIGHTS BY EPA

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

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

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definitions of Interim Response Costs or Future Response Costs;
- c. liability for performance of response actions other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of hazardous substances outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

84. Work Takeover. In the event that EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XIV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing

the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XIII (Reimbursement of Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XIX. COVENANT NOT TO SUE BY RESPONDENT

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

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

86. These covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 83(b), (d), and (f) and (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

XX. OTHER CLAIMS

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

89. Except as expressly provided in Section XVII (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of

action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XXI. CONTRIBUTION

91. EPA and Respondent agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the performance of the Work and reimbursement of Interim Response Costs and Future Response Costs. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Settlement Agreement for indemnification, contribution, or cost recovery.

XXII. INDEMNIFICATION

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

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

94. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance

of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIII. INSURANCE

95. At least 7 days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of 3 million dollars, combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on Respondent's behalf in performing the Work. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXIV. FINANCIAL ASSURANCE

96. Within 30 days after EPA's approval of the RAWP, Respondent shall submit to EPA for review and approval a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the Work. The initial cost estimate must account for the total costs of the Work for the entire period of this Settlement Agreement, including any necessary long term costs, such as operation and maintenance costs and monitoring costs. Concurrently with Respondent's submission of the cost estimate required above, Respondent shall submit draft financial assurance instruments for EPA's review and approval. Within 60 days after EPA's approval of both the initial cost estimate and the draft financial assurance instruments, whichever date is later, Respondent shall establish financial assurance in an amount at least equal to the cost estimate approved by EPA in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of Respondents; or

- e. A demonstration that Respondent satisfies the requirements of 40 C.F.R. § 264.143(f).

97. If Respondent seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 96(d) or (e) of this Section, it shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 96 of this Section. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Settlement Agreement.

98. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount of the initial cost estimate developed pursuant to Paragraph 96, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Respondent may reduce the amount of the security in accordance with the written decision resolving the dispute.

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

XXV. MODIFICATIONS

100. EPA's Project Coordinator may make modifications to any plan or schedule in writing or by oral direction providing that such modification is consistent with the objectives of this Settlement Agreement. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the Project Coordinator's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

101. If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from EPA's Project Coordinator pursuant to Paragraph 100.

102. No informal advice, guidance, suggestion, or comment by EPA's Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other

writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVI. ADDITIONAL REMOVAL ACTION

103. If EPA determines that additional removal actions are necessary to protect public health, welfare, or the environment and that such additional removal actions are required to otherwise implement this Settlement Agreement as it relates to the Site, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit to EPA for approval a work plan for the additional removal actions. This work plan shall conform to the applicable requirements of Section VI (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the work plan Respondent shall implement the work plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the EPA's Project Coordinator's authority to make oral modifications to any plan or schedule pursuant to Section XXV (Modifications).

XXVII. NOTICE OF COMPLETION OF WORK

104. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including post-removal Site controls, payment of Interim Response Costs and Future Response Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies.

XXVIII. SEVERABILITY/INTEGRATION

105. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent has sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order


106. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding between EPA and Respondent with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

XXIX. EFFECTIVE DATE

107. This Settlement Agreement shall be effective upon signature of the Director of EPA Region VII's Superfund Division.


FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

January 18, 2006



CECILIA TAPIA
Director, Superfund Division
U.S. Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

January 17, 2006

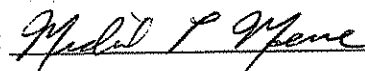


DAVID A. HOEFER
Attorney-Adviser
U.S. Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

The undersigned representative of Respondent certifies that he/she is fully authorized to enter into, and bind Respondent to this Settlement Agreement.

FOR UNION ELECTRIC COMPANY

January 10, 2006

Signature: 

Name (print): Michael L. MENNE

Title: VP Environmental Safety & Health

**Excelsior Springs FMGP
Administrative Order on Consent
Schedule of Major Deliverables**

DELIVERABLE	SCHEDULE	FOLLOW-UP
Submit Removal Action Work Plan to EPA (Section VI, Para. 39(a))	Within 30 days after effective date	Revise RAWP within 30 days of EPA notice of required revisions
Submit Health and Safety Plan (Section VI, Para. 39(d))	Within 30 days after effective date of AOC	
Submit Quality Assurance Project Plan (Section VI, Para. 39(e)(i))	Within 30 days after effective date of AOC	
Submit Progress Report (Section VI, Para. 40(a))	Every 30 th day after the effective date of the AOC and continuing until termination of the Settlement Agreement	
Submit Final Report conforming to Section 300.165 of the National Contingency Plan (Section VI, Para. 40(b))	Within 30 days after completion of all work required by AOC	
Provide written notification to the appropriate state environmental official in the receiving state of any off-site shipments to out-of-state waste management facilities (Section VI, Para. 41)	Prior to any off-site shipment of hazardous substances, pollutants or contaminants greater than 10 cubic yards in volume	