UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7

IN THE MATTER OF: Airosol Company, Inc. Site Neodesha, Kansas Airosol Co., Inc. Respondent Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622	Docket No. CERCLA-07-2017-0003 **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTIONS**

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTIONS

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Airosol Co., Inc. ("Respondent"). This Settlement provides for the performance of a time critical removal action by Respondent and the payment of certain response costs incurred by the United States at or in connection with the "Airosol Company, Inc. Site" (the "Site") generally located at 1206 Illinois Street, Neodesha, Wilson County, Kansas 66757.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-A (Determinations of Imminent and Substantial Endangerment, Nov. 1, 2001), 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). This authority was further redelegated by the Regional Administrator of EPA Region 7 to the Director, Superfund Division by Delegation Nos. R7-14-014A, R7-14-014C and R7-14-014D.

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

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

II. PARTIES BOUND

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

6. Respondent is jointly and severally liable for carrying out all activities required by this Settlement.

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

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

III. DEFINITIONS

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

"Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on [date], by the Director of the Superfund Division, EPA Region 7, or her delegate, and all attachments thereto. The "Action Memorandum" is attached as Appendix A.

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access is needed to implement the removal action, including, but not limited to, the property at 1206 Illinois Street, Neodesha, Wilson County, Kansas and all affiliated buildings and tanks.

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

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

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

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

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

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in performing work at the Site, or reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements)

(including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 88 (Work Takeover), community involvement including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site.

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

"KDHE" shall mean the Kansas Department of Health and Environment and any successor departments or agencies of the State.

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

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

"Owner Respondent" shall mean any Respondent that owns or controls any Affected Property, including Airosol, Co., Inc. The clause "Owner Respondent's Affected Property" means Affected Property owned or controlled by Owner Respondent.

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

"Parties" shall mean EPA and Respondent.

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

"Respondent" shall mean Airosol, Co., Inc.

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

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

"Site" shall mean the Airosol Co., Inc. Superfund Site, encompassing approximately 4 acres, located at 1206 Illinois Street, in Neodesha, Wilson County, Kansas, and depicted generally on the map attached as Appendix B.

"State" shall mean the State of Kansas.

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

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

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) and any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

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

IV. FINDINGS OF FACT

10. Airosol, Co., Inc., the Respondent, is a for profit company incorporated in the State of Kansas in 1949. The facility where the business is operated is located at 1206 Illinois Street, Neodesha, Wilson County, Kansas 66757.

11. Respondent's business operates as a mixer and packer of aerosol and liquid solvent and cleaning product preparations, which are sold to wholesalers and retailers in the United States and abroad, primarily within the automotive industry. Respondent receives chemicals from off-site and packages the chemicals in aerosol cans or quart containers. Respondent's business began in the 1940s manufacturing pressurized containers of insecticide.

12. Respondent has operated at this location since the 1940s. Over time the facility has expanded onto property that was previously a part of a refinery located generally to the west and northwest of the facility. The refinery has ceased operations and is itself the subject of ongoing environmental cleanup and monitoring efforts.

13. Respondent is the current owner and operator of the facility at the Site.

14. Respondent has been classified as an EPA generator based on the rates of accumulation and generation of hazardous waste at the Site. The earliest "Notification of Hazardous Waste Activity" was dated June 22, 1983 at which point EPA ID Number KSD007160906 was assigned by KDHE. Several other subsequent notifications were made by Respondent to reflect changes in hazardous wastes generated over the years including numerous D-, F- and U-listed hazardous wastes. In 2005, Respondent signed a "Hazardous Waste Verification Report" acknowledging the Site generates the following hazardous wastes as defined in 40 CFR Part 261: D001, D039, D040, F002, F003, F005, U002, U056, U080, U112,

U117, U154 and U210. Respondent has never been issued a permit to operate a hazardous waste treatment facility for the Site.

15. Based upon information gathered during an inspection of the Site conducted by KDHE in March 2007, Respondent's facility is described as consisting of three buildings with a combined total area of approximately 111,665 square feet. Manufacturing (mixing and packaging) activities are conducted within these buildings. The facility's main building houses the following areas: office, laboratory, staging materials dock, two flammable aerosol filling lines, cylinder filling line, refrigerant filling line, liquid filling line, two shipping warehouses, warehouse heated storage, flammable drums storage, mixing room, maintenance shop, quality control office, and spill equipment storage. The facility's flammable storage tank farm is located immediately north of the main building. The nonflammable storage tank farm is located west of the middle portion of the main building. The building known as the "truck shop" is located west of the non-flammable tank farm.

16. Numerous chemicals and chemical mixtures have been kept in inventory by Respondent including, but not limited to, the chlorinated solvents, tetrachloroethylene (PCE) and trichloroethylene (TCE). An earlier inventory list estimated that the quantity of PCE on hand at Respondent's facility in 1999 was 23,791 pounds with another 22,500 pounds on order. The same inventory estimated the quantity on hand of TCE was 1,623 pounds.

17. Respondent has been the subject of various hazardous waste inspections, enforcement and/or cleanup efforts dating back to 1980. Some of these efforts have resulted in the issuance by KDHE of Administrative Orders to address unacceptable environmental conditions posed by the Site. The work to be conducted under at least one of these Orders is ongoing. KDHE and the Respondent are conducting work to address the long term environmental concerns posed by various contaminants found in soils and waters at the Site. All post removal site control will be handled by KDHE as part of the ongoing work with Respondent.

18. On November 22, 2016, an explosion and fire occurred at the Site. As a result of this fire and explosion the buildings at the Site were heavily damaged. In addition, the explosion and fire and the subsequent use of water and foam suppressants to put the fire out caused chemicals at the site to be spread throughout the Site and off-site areas.

19. A significant area around the facility was evacuated and Hwy 400 was closed for a period of time following the explosion and subsequent fire. Firefighting-related runoff from the Site entered the Fall River, which drains into the Verdigris River. Runoff from the Site entered the Fall and Verdigris Rivers, which are drinking water sources for Neodesha and downstream communities including Independence, Kansas and Coffeyville, Kansas, as well as Delaware, Lenapah, and Nowata communities in Oklahoma.

20. An on-Site interview with a chemist employed by Respondent during the response to the fire lead to the compilation of 12 different contaminants of concern known to be present at the Site. The contaminants of concern are acetone, cyclohexane, dietheylene glycol monobutyl ether, ethyl acetate, ethylene glycol, heptane, hexane, methanol, PCE, toluene, vinyl acetate copolymer and xylene.

21. Samples collected on November 22, 2016 from the Fall River at the Neodesha intake indicated the presence of PCE at 2,690 micrograms per liter (µg/L), and Toluene at 2,500 µg/L. These sample results are above the Maximum Contaminant Levels (MCL) established by the Safe Drinking Water Act of 5 µg/L for PCE and 1,000 µg/L for Toluene. Water samples were collected from the Fall and Verdigris Rivers and analyzed for acetone, cyclohexane, dietheylene glycol monobutyl ether, ethyl acetate, ethylene glycol, heptane, hexane, methanol, PCE, toluene, vinyl acetate copolymer and xylene. The results of these water sampling activities show other contaminants above health-based levels of concern, including acetone, dietheylene glycol monobutyl ether, ethylene glycol, and methanol.

22. As a result of the explosion and subsequent fire, water intakes for three cities in Kansas, including Neodesha, Independence and Coffeyville, and three others in Oklahoma including Delaware, Lenapah, and Nowata, had to be closed for a few days because of the contamination released into the Fall River that migrated downstream to the Verdigris River and continued to migrate downstream.

23. As a result of the use of water to put out the fire KDHE issued a do not drink order for Wilson County Rural Water District (RWD) No. 12. KDHE issued the order because raw untreated water was pumped into the distribution system for fire suppression at the Site. Similar orders were issued for Wilson County RWDs No.4 and No. 8, the City of Neodesha, the City of Dearing, Labatte County RWD No. 6, and Montgomery County RWDs No. 1-C, No. 2C-A and No. 2C-B. These orders were issued on November 22, 2016 and remained in effect until November 28, 2016.

24. As a result of the fire and explosion, the Governor of Kansas, Sam Brownback, issued a state of disaster emergency declaration for Montgomery and Wilson counties in Kansas.

25. All of the contaminants of concern can be absorbed by ingestion and dermal contact, and all but ethylene glycol can be absorbed by inhalation. PCE, and TCE when released to the vadose zone, have been associated with vapor intrusion exposures. Methanol, toluene and acetone are considered flammable liquids.

26. Breathing high levels of PCE for a brief period may cause dizziness or drowsiness, headache, and incoordination; higher levels may cause unconsciousness and even death. Animal studies have shown adverse effects on livers and kidneys as well as changes in brain chemistry. PCE is reasonably considered to be a human carcinogen in humans by all routes of exposure. A few studies in humans have suggested that exposure to PCE increased the numbers of babies with birth defects.

27. Toluene may affect the nervous system. Exposure to low to moderate levels can cause tiredness, confusion, weakness, drunken-type actions, memory loss, nausea and loss of appetite. These symptoms usually disappear when exposure stops. Toluene is not considered carcinogenic. Adolescents who have repeatedly breathed large amounts of toluene have developed loss of muscle control, loss of memory, poor balance and decreased mental abilities. Some mothers who breathed large amounts of toluene have had children with birth defects.

28. Breathing moderate to high levels of acetone for short periods of time can cause nose, throat, lung and eye irritation; headaches; light-headedness; confusion; increased pulse rate; effects on blood; nausea; vomiting; unconsciousness and possibly coma. Swallowing very high levels of acetone can result in unconsciousness and damage to the skin in your mouth. Skin contact can result in irritation and damage to your skin. Kidney, liver, and nerve damage, increased birth defects, and lowered ability to reproduce (males only) occurred in animals exposed long-term. Acetone exposure is not associated with cancer in humans.

29. Accidental or intentional ingestion of large amounts of ethylene glycol can cause serious illness or death. When ethylene glycol breaks down in the body it forms chemicals that crystallize, and the crystals can collect in your kidneys and can affect kidney function. Ethylene glycol also forms acidic chemicals in the body, which can change the body's acid/base balance and affect your nervous system, lungs, and heart. Skeletal defects and low birth weights have occurred in newborn animals whose mothers ingested large amounts of ethylene glycol during pregnancy. Ethylene Glycol exposure is not associated with cancer.

30. Humans (and non-human primates) are uniquely sensitive to methanol poisoning and the symptoms and signs of methanol poisoning, which may not appear until after an asymptomatic period, include visual disturbances, nausea, abdominal and muscle pain, dizziness, weakness and disturbances of consciousness ranging from coma to clonic seizures.

31. All of these contaminants of concern are hazardous substances, as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and have been released from the Site and there remains a threat of additional releases.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The Airosol, Co., Inc. 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 is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

(1) Respondent Airosol is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

(2) 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 conditions described in the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). EPA determined in an Action Memorandum dated November 28, 2016, that the conditions at the Site described in Paragraphs 18-31 of the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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

VI. SETTLEMENT AGREEMENT AND ORDER

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

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

34. Respondent shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) or subcontractor(s) within 3 days after the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 3 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name and qualifications within 3 days after EPA's disapproval. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality

Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification that such persons meet minimum technical background and experience requirements.

35. Within 3 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, email address, and qualifications within 7 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent.

36. EPA has designated Todd Campbell of EPA, Region 7, as its On-Scene Coordinator (OSC). EPA and Respondent shall have the right, subject to Paragraph 35, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA 7 days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

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

VIII. WORK TO BE PERFORMED

38. Respondents shall 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:

a. Ensure that any remaining hazardous substance releases are contained on site to the extent practicable. Ensure that no runoff is allowed to enter the Fall River or its tributaries until completion of the removal action.

b. Stabilize the site to minimize hazards to on-site workers and the public.

c. Remove and properly dispose of CERCLA hazardous substances that remain on site or that may have migrated off site during fire suppression efforts.

39. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or

guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

40. Work Plan and Implementation.

a. Within 3 days after the Effective Date, in accordance with Paragraph 41 (Submission of Deliverables), Respondent shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan") generally described in Paragraph 38 above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Removal Work Plan within 24 hours after receipt of EPA's notification of the required revisions. Respondent shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

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

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

41. Submission of Deliverables.

a. General Requirements for Deliverables.

(1) Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the OSC, Todd Campbell, at 11201 Renner Boulevard, Lenexa, Kansas 66219, 913-669-5479, campbell.todd@epa.gov. Respondent shall submit all deliverables required by this Settlement or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondent shall submit all deliverables in electronic form. All other deliverables shall be submitted to EPA in the form specified by the OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondent shall also provide EPA with paper copies of such exhibits.

42. **Health and Safety Plan.** Within 3 days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OlC (Nov. 2002), available on the NSCEP database at

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

43. Final Report. Within 60 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 111 (notice of completion), Respondent shall submit for EPA review a final report summarizing the actions taken to comply with this Settlement. 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 the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Respondent or Respondent's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

44. Off-Site Shipments.

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

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above

and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

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

IX. PROPERTY REQUIREMENTS

45. Agreements Regarding Access and Non-Interference. Respondent shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondent and the EPA, providing that such Non-Settling Owner, and Owner Respondent shall, with respect to Owner Respondent's Affected Property: (i) provide the EPA, the State, Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 45.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action.

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

(1) Monitoring the Work;

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

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

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

(6) Assessing implementation of quality assurance and quality control practices as necessary;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 88 (Work Takeover);

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

(9) Assessing Respondent's compliance with the Settlement;

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

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

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

47. Owner Respondent shall not Transfer its Affected Property unless it has first secured EPA's approval of, and transferee's consent to, an agreement that: (i) is enforceable by Respondent and EPA; and (ii) requires the transferee to provide access to and refrain from using the Affected Property to the same extent as is provided under Paragraphs 45.a (Access Requirements).

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

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

X. ACCESS TO INFORMATION

50. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondent's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing,

correspondence, or other documents or information regarding the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

51. Privileged and Protected Claims.

a. Respondent may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 51.b, and except as provided in Paragraph 51.c.

b. If Respondent asserts such a privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement.

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

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

XI. RECORD RETENTION

54. Until ten (10) years after EPA provides Respondent with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of

Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the Site, provided, however, that Respondent who is potentially liable as an owner or operator of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

55. At the conclusion of the document retention period, Respondent shall notify EPA and the State at least 90 days prior to the destruction of any such Records, and, upon request by EPA or the State, and except as provided in Paragraph 51 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA or the State.

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

XII. COMPLIANCE WITH OTHER LAWS

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

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

approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

59. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at 913-281-0991 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

60. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at 913-281-0991, and the National Response Center at (800) 424-8802. 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.

61. For any event covered under this Section, Respondent shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIV. PAYMENT OF RESPONSE COSTS

62. Payment for Future Response Costs.

a. Respondent shall pay to EPA all Future Response Costs not inconsistent with the NCP. Respondent shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

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

and shall reference Site/Spill ID Number B7D5 and the EPA docket number for this action.

b. Final Bill. Within 60 days of the completion of the removal action as provided in Section XXVIII (Notice of Completion of the Work), EPA will send Respondent a bill requiring payment that includes an Itemized Cost Summary, which includes all direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice for costs beginning on November 22, 2016, and through the completion of the removal action. Respondent shall make payments within 30 days after Respondent's receipt of the bill requiring payment, except as otherwise provided in Paragraph 64 (Contesting Future Response Costs). In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 88 (Work Takeover), the bill will be provided within 60 days of when EPA completes the removal action.

c. At the time of payment, Respondent shall send notice that payment has been made to Todd Campbell, 11201 Renner Boulevard, Lenexa, Kansas 66219, and John Phillips, Regional Financial Officer, U.S. EPA, Region 7, 11201 Renner Boulevard, Lenexa, Kansas, 66219, and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

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

Such notice shall reference Site/Spill ID Number B7D5 and the EPA docket number for this action.

d. Deposit of Future Response Costs Payment. The total amount to be paid by Respondent shall be deposited by EPA in the EPA Hazardous Substance Superfund.

63. Interest. In the event that the payment for Future Response Costs is not made by the date required, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondent's 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 Paragraph 75 (Stipulated Penalties - Work).

64. Contesting Future Response Costs. Respondent may initiate the procedures of Section XV (Dispute Resolution) regarding payment of the Future Response Costs billed under

Paragraph 62.a (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondent shall submit a Notice of Dispute in writing to the OSC within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 62.a, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 62.a. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 62.a. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

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

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

67. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 30 days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within 30 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Division level or higher 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. 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.

68. Except as provided in Paragraph 64 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Except as provided in Paragraph 78, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

69. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

70. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 7, within 7 days of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 69 and whether Respondent has exercised its best efforts under

Paragraph 69, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

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

72. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 69 and 70. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

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

XVII. STIPULATED PENALTIES

74. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 75 and 76 for failure to comply with the requirements of this Settlement specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Respondent shall include completion of all activities and obligations, including payments, required under this Settlement, or any deliverable approved under this Settlement, in accordance with all applicable requirements of law, this Settlement, the attached SOW, and any deliverables approved under this Settlement and within the specified time schedules established by and approved under this Settlement.

75. Stipulated Penalty Amounts - Work (Including Payments and Excluding Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 75.b(1):

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

b. Compliance Milestones.

(1) Completion of Removal Work Plan
(2) Completion of Final Report

76. Stipulated Penalty Amounts - Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement:

Penalty Per Violation Per Day	Period of Noncompliance
$ 750	1st through 14th day
$ 1,000	15th through 30th day
$ 1,500	31st day and beyond

77. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 88 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of $ 250,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 88 (Work Takeover).

78. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 40 (Work Plan and Implementation), 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; and (b) with respect to a decision by the EPA Management Official at the Division level or higher, under Paragraph 67 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

79. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

80. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless

Respondent invokes the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 62.a (Payments for Future Response Costs).

81. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 78 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 80 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

83. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, 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 shall not seek civil penalties pursuant to Section 106(b) or Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 88 (Work Takeover).

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.

XVIII. COVENANTS BY EPA

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

XIX. RESERVATIONS OF RIGHTS BY EPA

86. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA or the United States to take, direct, or order all actions

necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

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

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

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

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

d. criminal liability;

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

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

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

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

88. Work Takeover.

a. In the event EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondent. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of 3 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 3-day notice period specified in Paragraph 88.a, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 88.b.

c. Respondent may invoke the procedures set forth in Paragraph 67 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 88.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 88.b until the earlier of (1) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 67 (Formal Dispute Resolution).

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

XX. COVENANTS BY RESPONDENT

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

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

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

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

90. Except as provided in Paragraph 93 (Waiver of Claims by Respondent), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 87.a (liability for failure to meet a requirement of the Settlement), 87.d (criminal liability), or 87.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

92. Respondent reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

93. Waiver of Claims by Respondent.

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

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

b. Exceptions to Waiver.

(1) The waiver under this Paragraph 93 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against Respondent.

(2) The waiver under Paragraph 93.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii)

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

XXI. OTHER CLAIMS

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

95. Except as expressly provided in Paragraphs 93 (Waiver of Claims by Respondent) and Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including 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.

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

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

97. Except as provided in Paragraphs 93 (Waiver of Claims by Respondent), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

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

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

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

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

XXIII. INDEMNIFICATION

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

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

104. Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between 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 any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or

arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

105. No later than 3 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability insurance with limits of $ 3 million, for any one occurrence, and automobile insurance with limits of $ 2 million, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XXV. FINANCIAL ASSURANCE

106. In order to ensure completion of the Work, the EPA understands that Respondent has insurance to cover the losses at the Site and the Work covered under this Settlement. Within 7 days of the Effective Date, Respondent shall provide to EPA copies of the insurance policies that Respondent believes will cover the Work, which EPA estimates at $576,000.

XXVI. MODIFICATION

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

108. If Respondent seeks permission to deviate from any approved work plan or schedule or the SOW, 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 the OSC pursuant to Paragraph 107.

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

XXVII. ADDITIONAL REMOVAL ACTION

110. If EPA determines that additional removal actions not included in the Removal Work Plan or other approved plan(s) are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a work plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the plan pursuant to Paragraph 40 (Work Plan and Implementation), Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modification).

XXVIII. NOTICE OF COMPLETION OF WORK

111. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including payment of Future Response Costs or record retention, EPA will provide written notice to Respondent. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Removal Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Removal Work Plan shall be a violation of this Settlement.

XXIX. INTEGRATION/APPENDICES

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

a. "Appendix A" is the Action Memorandum.

b. "Appendix B" is the map of the Site.

XXX. EFFECTIVE DATE

113. This Settlement shall be effective when it is signed by all parties.

It is so ORDERED AND AGREED this 7th day of December, 2016.

Mary P. Peterson

Mary P. Peterson
Director
Superfund Division
U.S. Environmental Protection Agency, Region 7

EFFECTIVE DATE: 12/7/2016

Signature Page for Settlement Regarding Airosol Co., Inc. Superfund Site, Neodesha, Kansas

Agreed this 6TH day of DECEMBER, 2016.

For: Airosol Co., Inc.

[Name] CARL STRATEMEIER
[Title] PRESIDENT

APPENDIX A

Action Memorandum

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 Renner Boulevard
Lenexa, Kansas 66219

DEC 0 7 2016

ENFORCEMENT ACTION MEMORANDUM

SUBJECT: Request for Approval of a Removal Action at the Airosol Co., Inc. Site, Neodesha, Wilson County, Kansas

FROM: Todd Campbell, On-Scene Coordinator
Response and Removal North Section

THRU: David Williams, Chief
Response and Removal North Section

TO: Mary P. Peterson, Director
Superfund Division

Site ID#: B7D5

I. PURPOSE

The purpose of this Action Memorandum is to request and document approval of the Potentially Responsible Party-led (PRP) removal action for the Airosol Company, Inc., site (Site) located at 1206 Illinois Street, Neodesha, Wilson County, Kansas. On November 22, 2016, an explosion occurred at this manufacturing plant where various aerosols and liquid products have been manufactured and packaged for approximately 70 years. Numerous types of chemicals are used at the plant for the manufacture of products. The cause of the explosion is under investigation. The Kansas Department of Health and Environment (KDHE) has requested the EPA's assistance with performing removal responses at the Site related to the explosion and subsequent fire.

II. SITE CONDITIONS AND BACKGROUND

CERCLIS ID#:	KSD007160906
SSID#	B7D5 (BB001)
REMOVAL CATEGORY:	Time-Critical
NATIONALLY SIGNIFICANT:	No

A. Site Description

1. Removal site evaluation

On November 22, 2016, three Region 7 EPA On-Scene Coordinators (OSCs) and Superfund Technical Assessment and Response Team (START) contractors were deployed to the incident to conduct air and water sampling. During the initial response, the EPA conducted air monitoring for particulates downwind of the smoke plume emanating from the burning plant as well as

air sampling for additional contaminants. Firefighting-related runoff from the Site entered the Fall River, which drains into the Verdigris River; both serve as drinking water sources for Neodesha and downstream communities, including Independence and Coffeyville, Kansas, as well as communities in Oklahoma. Water samples were collected from the Fall and Verdigris Rivers and analyzed for acetone, cyclohexane, dietheylene glycol monobutyl ether, ethyl acetate, ethylene glycol, heptane, hexane, methanol, tetrachloroethylene (PCE), toluene, vinyl acetate copolymer and xylene.

Samples collected on November 22, 2016, from the Fall River at the Neodesha intake indicated the presence of PCE at 2,690 micrograms per liter (µg/L), which is above the Maximum Contaminant Level (MCL) of 5 µg/L established by the Safe Drinking Water Act. Liver problems and an increased risk of cancer are potential human health effects associated with long-term exposure to PCE. Toluene was detected at 2,500 µg/L, which is above its MCL of 1,000 µg/L. Other contaminants detected during this sampling above health-based risk levels include acetone, ethylene glycol and methanol.

2. Physical location

The street address for the Site is 1206 Illinois Street, Neodesha, Wilson County, Kansas. The Site is approximately 14 miles north of Independence, Kansas. Geographic coordinates for the Site are 37.4220 degrees north latitude and 95.6900 degrees west longitude. The Site is located on the western side of town within a commercial/residential area that serves as the Neodesha Industrial Park.

3. Site Characteristics

At approximately 0620 on November 22, 2016, an explosion occurred at the Airosol plant. Three injuries were reported including one person who was flown to Wichita with burns. A significant area around the plant was evacuated, and Hwy 400 was closed for a period of time following the explosion and subsequent fire. Runoff from the Site entered the Fall and Verdigris Rivers, which are drinking water sources for Neodesha and downstream communities.

4. Release or threatened release into the environment of a hazardous substance, or pollutant, or contaminant

Hazardous substances, as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been released from the Site and there remains a threat of additional releases. An on-site interview with the facility chemist led to the compilation of 12 different chemicals of concern known to be present in the area of the facility involved in the fire.

All of the chemicals of concern can be absorbed by ingestion and dermal contact; all but ethylene glycol can be absorbed by inhalation. Tetrachloroethylene, when released to the vadose zone, has been associated with vapor intrusion issues. Methanol, toluene, and acetone are considered flammable liquids. Specific health effects for some of these are listed below:

Tetrachloroethylene (CAS 127-18-4)

Breathing high levels of tetrachloroethylene for a brief period may cause dizziness or drowsiness, headache, and incoordination; higher levels may cause unconsciousness and even death. Animal studies have shown effects on livers and kidneys as well as changes in brain chemistry. Tetrachloroethylene is reasonably considered to be a human carcinogen by all routes of exposure. A

few studies in humans have suggested that exposure to tetrachloroethylene increased the number of babies with birth defects. [ATSDR 2015]

Toluene (CAS 108-88-3)

Toluene may affect the nervous system. Exposure to low to moderate levels can cause tiredness, confusion, weakness, drunken-type actions, memory loss, nausea, and loss of appetite. These symptoms usually disappear when exposure stops. Toluene is not considered carcinogenic. Adolescents who have repeatedly breathed large amounts of toluene have developed loss of muscle control, loss of memory, poor balance, and decreased mental abilities. Some mothers who breathed large amounts of toluene have had children with birth defects. [ATSDR 2016]

Acetone (CAS 67-64-1)

Breathing moderate-to-high levels of acetone for short periods of time can cause nose, throat, lung, and eye irritation; headaches; light-headedness; confusion; increased pulse rate; effects on blood; nausea; vomiting; unconsciousness and possibly coma. Swallowing very high levels of acetone can result in unconsciousness and damage to the skin in your mouth. Skin contact can result in irritation and damage to the skin. Kidney, liver, and nerve damage, increased birth defects, and lowered ability to reproduce (males only) occurred in animals exposed long-term. Acetone exposure is not associated with cancer in humans. [ATSDR 2011]

Ethlyene Glycol (CAS 107-21-1)

Accidental or intentional ingestion of larger amounts of ethylene glycol can cause serious illness or death. When ethylene glycol breaks down in the body it forms chemicals that crystallize, and the crystals can collect in the kidneys and can affect kidney function. Ethylene glycol also forms acidic chemicals in the body, which can change the body's acid/base balance and affect the nervous system, lungs, and heart. Skeletal defects and low birth weights have occurred in newborn animals whose mothers ingested large amounts of ethylene glycol during pregnancy. Ethylene glycol exposure is not associated with cancer. [ATSDR 2010]

Methanol (CAS 67-56-1)

Humans (and non-human primates) are uniquely sensitive to methanol poisoning. The symptoms and signs of methanol poisoning, which may not appear until after an asymptomatic period, include visual disturbances, nausea, abdominal and muscle pain, dizziness, weakness and disturbances of consciousness ranging from coma to clonic seizures. [HSDB 2012]

5. National Priority List (NPL) status

The Site is not listed on, nor is it proposed for, the National Priorities List.

6. Maps, pictures and other graphic representations

A map of the location of the Site is included as Attachment 1, and the approximate facility boundaries and route of the runoff to the Fall River as Attachment 2.

B. Other Actions to Date

1. Previous actions

No known previous actions.

2. Current actions

Current actions include contaminant assessment, site characterization and stabilization to prevent additional releases of hazardous substances from the Site. The Site has suffered a series of massive explosions and a large fire. Contaminants were released to the water via fire suppression water, to the air as particulates and fire vapors, and to the soil as runoff. Efforts have been conducted by the responsible party to mitigate further migration of contaminants to the Fall River.

The Site is currently structurally unsound with large portions of the buildings partially collapsed and at risk of further degradation. There are thousands of containers of hazardous substances that were involved in the blaze, and the current status of many of these is still unknown. They are buried under layers of debris and could be partially filled or currently leaking/releasing contaminants. Dozens of bulging drums are visible and could still be under pressure and/or structurally compromised. There are several large ASTs that contain both liquid and compressed gasses which are in various states of compromised condition. Efforts will be required to stabilize and/or remove much of the structure in order to safely conduct a removal of the remaining contaminants at the site.

C. State and Local Authorities' Roles

1. State and local actions to date

State and local authorities initially responded to the incident and continue to assess, characterize and stabilize the Site to prevent further releases.

2. Potential for continued state/local response

State and local authorities continue to have a role in response at the Site.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT AND STATUTORY AND REGULATORY AUTHORITIES

A. Threats to Public Health or Welfare

The site conditions pose a significant threat to public health and welfare and the environment. The factors that meet the criteria for a response action under section 40 of the Code of Federal Register (CFR) § 300.415(b)(2) of the National Contigency Plan (NCP) that apply to this Site are:

300.415(b)(2)(i) – Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants.

PCE, toluene, acetone, methanol and ethylene glycol have been detected in runoff from firefighting water used to fight the blaze. It is suspected that these chemicals may exist on site as well as in the drainage from the Site to the Fall River.

300.415(b)(2)(ii) – Actual or potential contamination of drinking water supplies or sensitive ecosystems.

Runoff from the Site entered the Fall and Verdigris Rivers, resulting in the shutdown of six drinking water intakes (Neodesha, Coffeyville and Independence in Kansas, and Delaware, Lenapah and Nowata in Oklahoma). Samples collected on November 22, 2016, from the fire water runoff and at the Neodesha intake on the Fall River documented levels of PCE, toluene, acetone, ethylene glycol, and methanol above their MCLs and/or risk levels.

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

There are tanks, drums, and many other containers remaining on site in the plant that pose a substantial threat of further release.

300.415(b)(2)(v) – Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.

Rain may result in the further release of hazardous substances from the Site through runoff.

300.415(b)(2)(vi) – Threat of fire or explosion.

The initial cause of the release was an explosion and subsequent fire. There are many aerosol cans and other containers remaining in the plant that may present a threat of fire or explosion.

300.415(b)(2)(vii) – The availability of other appropriate federal or state response mechanisms to respond to the release.

KDHE has requested EPA assistance through a "Request for Federal Action" dated November 28, 2016..

IV. ENDANGERMENT DETERMINATION

The actual or threatened release of hazardous substances from this Site may present an imminent and substantial endangerment to public health or welfare or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed Action Description

The removal action will require the removal of the remaining structure to allow safe access to the containers, equipment, and other material that was impacted by the event. It is anticipated that the remaining structural material will be treated as demolition debris.

The uncovered material will need to be sorted to determine whether any hazardous materials are present that will require separate disposal (from the solid waste of the structure). Those containers will need to be characterized, stabilized if necessary, and properly disposed.

The remaining debris (anticipated to be ash and material not consumed by the fire) may require sampling to determine route of disposal.

It is assumed that contamination of near-surface soils occurred in the drainage pathway of the firefighting water. Those soils will need to be sampled to determine whether removal is necessary.

2. Contribution to Remedial Performance

In the event that future remedial action at the Site becomes necessary, this action is expected to be consistent with such action, to the extent practicable.

3. Applicable or Relevant and Appropriate Requirements (ARARs)

Federal ARARs

The following are federal ARARs identified for this section:

- The CERCLA Off-Site Rule – promulgated pursuant to CERCLA section 121(d)(3), 42 U.S.C. § 9621(d)(3), and formally entitled "Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Action: Final Rule," 58 Fed. Reg. 49200 (Sept. 22, 1993), codified at 40 CFR § 300.440. This rule is applicable for all off-site shipments of waste.
- 40 CFR 268: RCRA Land Disposal Restrictions.
- 40 CFR 261: RCRA Hazardous Wastes.
- 40 CFR 262: Standards Applicable to Generators of Hazardous Waste.
- 40 CFR 263: Standards Applicable to Transporters of Hazardous Waste.
- 49 USC § 5101 et seq.: Federal Hazardous Materials Transportation Law and/or 49 CFR parts 107, 171-177.
- 16 USC § 470 et seq.: National Historic Preservation Act of 1966.
- Subtitle D of RCRA, section 1008, section 4001, et seq., 42 U.S.C. §6941, et seq., State or Regional Solid Waste Plans and implementing federal and state regulations.
- 40 CFR part 63: National Emission Standards for Hazardous Air Pollutants.

State ARARs

Consultation with KDHE will determine which state regulations are applicable or relevant and appropriate.

4. Project schedule

The removal actions described in this Action Memorandum are expected to be completed within 4-8 weeks of the signing of the Action Memorandum.

B. Estimated Costs

This action is expected to be performed by the PRPs pursuant to an administrative consent order. The estimated cost of the action is approximately $576,000.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

Delayed action will increase public health risks to the adjacent and downstream population through the on-site threat and potential off-site migration.

VII. OUTSTANDING POLICY ISSUES

None.

VIII. ENFORCEMENT

The owner and operator of the Site is Airosol Company, Inc., a Kansas corporation. Airosol as the current owner and operator of the facility is a PRP for this response action under CERCLA, Section 107(a), 42 U.S.C. § 9607(a). Representatives of Airosol are cooperating with the EPA; the EPA anticipates that Airosol will perform the work identified in this Action Memorandum.

IX. RECOMMENDATION

This decision document represents the selected removal action for addressing the Airosol Company, Inc., Site located in Neodesha, Wilson County, Kansas, developed in accordance with CERCLA, as amended, and is not inconsistent with the NCP. This decision is based on the Administrative Record for the Site.

The conditions at the Site meet the criteria set forth at 40 CFR Section 300.415(b) for a removal action and I recommend your approval of the proposed responsible party-led removal action.

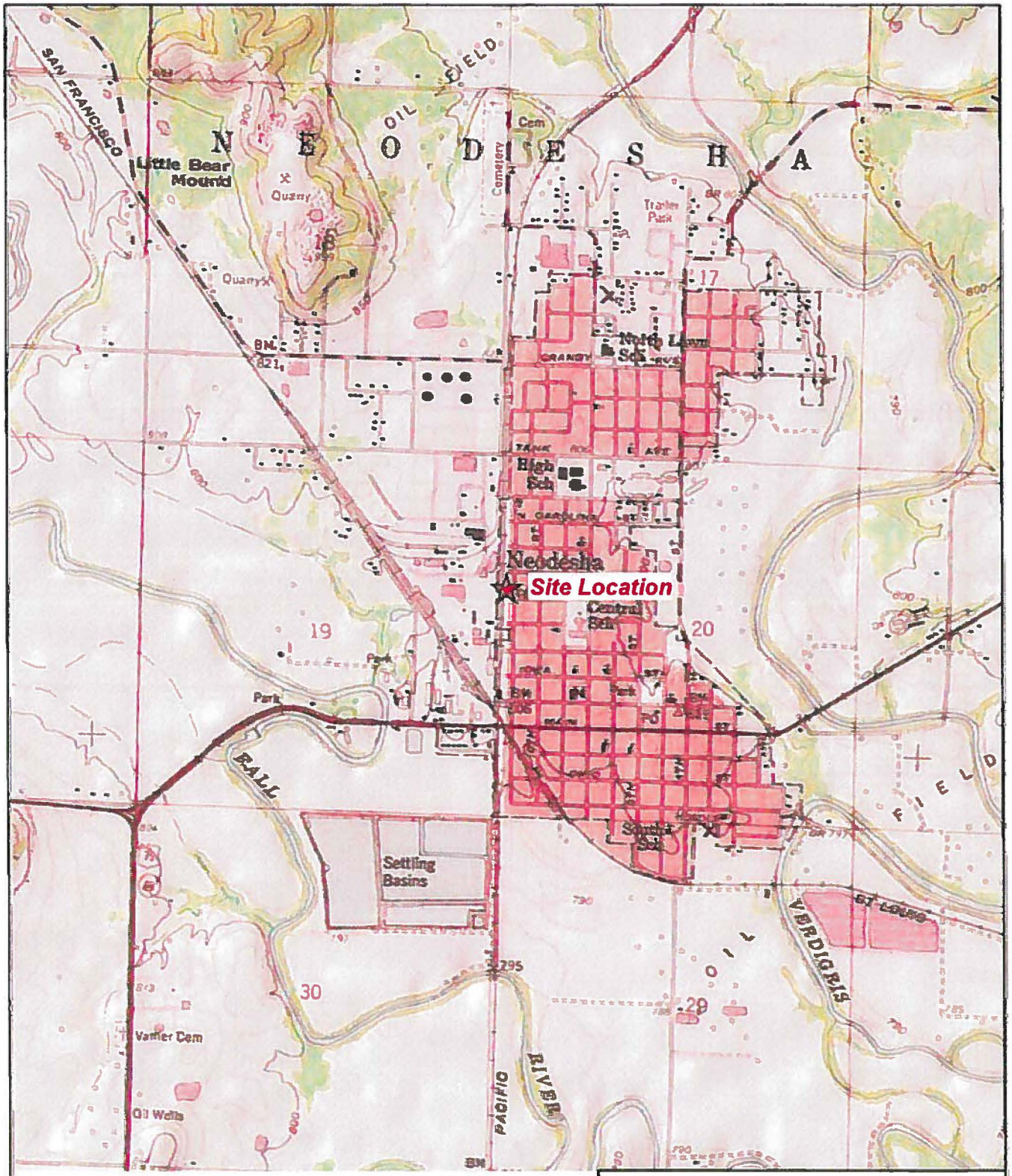
Approved:

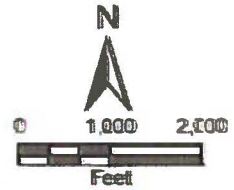
Mary P. Peterson
Mary P. Peterson, Director
Superfund Division

12/7/2016
Date

Attachments:

Attachment 1 - Site Location Map
Attachment 2 - Site Map





Source: USGS Neodesha, KS 7.5 Minute Topo Quad, 1979

Neodesha Airosol Inc. Site
Neodesha, Kansas

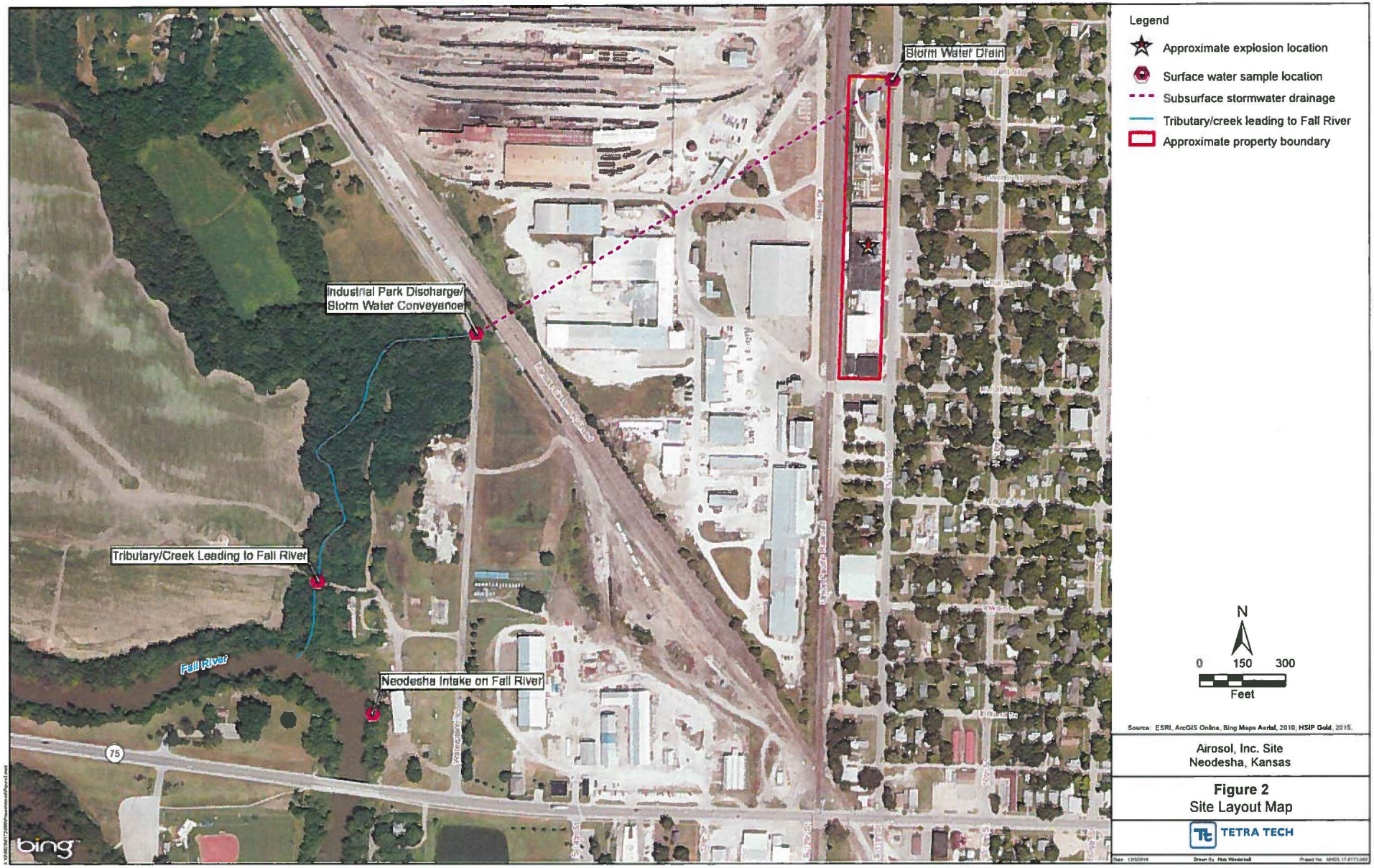
Figure 1
Site Location Map

TETRA TECH


Storm Water Drain
Industrial Park Discharge/
Storm Water Conveyance
Tributary/Creek Leading to Fall River
Neodesha Intake on Fall River
Fall River
79
Legend
Approximate explosion location
Surface water sample location
Subsurface stormwater drainage
Tributary/creek leading to Fall River
Approximate property boundary
N
0
150
300
Feet
Source: ESRI ArcGIS Online Bing Maps Aerial, 2010 USDP Gold 2015.
Neodesha Airosol Inc. Site
Neodesha, Kansas
Figure 2
Site Layout Map
TETRA TECH

APPENDIX B

Site Map


Storm Water Drain
Industrial Park Discharge/
Storm Water Conveyance
Tributary/Creek Leading to Fall River
Fall River
Neodesha Intake on Fall River
75
bing
Legend
Approximate explosion location
Surface water sample location
Subsurface stormwater drainage
Tributary/creek leading to Fall River
Approximate property boundary
N
0
150
300
Feet
Source: ESRI, ArcGIS Online, Bing Maps Aerial, 2010; HSIP Gold, 2015.
Airosol, Inc. Site
Neodesha, Kansas
Figure 2
Site Layout Map
TETRA TECH