

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region VII

901 NORTH 5<sup>th</sup> STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )

RAY AVENUE )  
SUPERFUND SITE )  
ST. LOUIS, MISSOURI )

Beazer East, Inc. )

Interstate Real Estate Company )

Interstate Supply Company )

Union Electric Company )

Respondents. )

Proceeding under Sections 104, 107, )  
and 122 of the Comprehensive )  
Environmental Response, Compensation )  
and Liability Act, as amended, )  
42 U.S.C. §§ 9604, 9607, and 9622. )

ADMINISTRATIVE  
SETTLEMENT AGREEMENT  
AND ORDER ON CONSENT  
FOR REMOVAL SITE EVALUATION

Docket No: CERCLA-07-2009-0008

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FIGURE 1- SITE MAP  
ATTACHMENT 1 - SCHEDULE

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

1. This Administrative Settlement Agreement and Order on Consent (Settlement Agreement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Beazer East, Inc.; Interstate Real Estate Company; Interstate Supply Company; and Union Electric Company d/b/a AmerenUE (Respondents). This Settlement Agreement provides for the performance of a Removal Site Evaluation (RSE), by Respondents and the reimbursement of certain response costs incurred by the United States at or in connection with the Ray Avenue Superfund Site, (the Site) which is located in Out Lots 37 and 40, Carondelet Subdivision, Common Field Addition, in Township 45 North, Range 6 East, St. Louis, Missouri. The Site is generally located in the area South of Bingham Avenue, East of the Union Pacific Railroad Right-of-Way, North of the rail branch running East from the Union Pacific Railroad Right-of-Way, and West of Gustine Avenue as depicted on Figure 1.

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

3. EPA and Respondents recognize that this Settlement Agreement is a compromise agreement that has been negotiated in good faith to settle certain claims asserted by EPA and to avoid costly litigation between EPA and Respondents. The Respondents' participation in this Settlement Agreement and the performance of actions individually or collectively undertaken by or on behalf of Respondents pursuant to this Settlement Agreement do not constitute any admission of any liability or responsibility. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the Findings of Facts and Conclusions of Law and Determinations in Sections IV and V of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

## **II. PARTIES BOUND**

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

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

6. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement.

### **III. DEFINITIONS**

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

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
- b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
- c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.
- d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- e. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs subsequent to July 17, 2008, in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraphs 50 and 51 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), and Paragraph 61 (emergency response).
- f. "Hazardous Substance" shall have the same meaning as set forth in 42 U.S.C. § 9601(14).
- g. "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<sup>st</sup> 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<sup>st</sup> of each year.

- h. "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.
- i. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.
- j. "Parties" shall mean EPA and the Respondents.
- k. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- l. "Site" shall mean the Ray Avenue Superfund Site, encompassing approximately thirteen acres, and located in Out Lots 37 and 40, Carondelet Subdivision, Common Field Addition, in Township 45 North, Range 6 East, St. Louis, Missouri. The Site is generally located in the area South of Bingham Avenue, East of the Union Pacific Railroad Right-of-Way, North of the rail branch running East from the Union Pacific Railroad Right-of-Way, and West of Gustine Avenue, as depicted on Figure 1.
- m. "State" shall mean the State of Missouri.
- n. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.
- o. "Work" shall mean all activities that Respondents are required to perform pursuant to this Settlement Agreement.

#### **IV. FINDINGS OF FACT**

8. The Site area is approximately thirteen acres located in Out Lots 37 and 40, Carondelet Subdivision, Common Field Addition, in Township 45 North, Range 6 East, St. Louis, Missouri. The Site is generally located in the area South of Bingham Avenue, East of the Union Pacific Railroad Right-of-Way, North of the rail branch running East from the Union Pacific Railroad Right-of-Way, and West of Gustine Avenue, as depicted on Figure 1. The Site was originally owned and operated by American Tar Products Company. Later, the Site was owned and operated by Koppers Company, Inc. (Koppers) and its predecessors, Koppers Company, Koppers Products Company, and Koppers Gas and Coke Company. The Site was used by American Tar Products Company and Koppers to conduct coal tar-related operations. Coal tar related operations ended in or before 1953 and the property was subdivided and sold.

9. The Site was originally three parcels of land. Parcel 1 covered approximately 11.1 acres; Parcel 2 is approximately 2.24 acres; and, Parcel 3 was approximately 1.86 acres. During the history of the Site, Parcel 1 was subdivided into 4 tracts, noted on Figure 1, as tracts 1-A to 1-D. Parcel 3 was subdivided into two tracts, referred to herein as the East and West tracts. As a result of this subdivision there are currently 7 separate tracts of property that collectively comprise the Site. Three of these tracts are currently owned by Respondent Interstate Real Estate Company. One of these tracts is owned by Union Electric Company. The properties that comprise the Site have been used for various manufacturing, industrial and other commercial purposes since tar-related operations ended in or before 1953.

#### Beazer East, Inc. Property

10. As set forth above, Respondent Beazer East, Inc. is a former owner and/or operator of the entire Site. Koppers Company, Inc., a Delaware corporation was organized in 1944, as a result of the merger of "Koppers United Company", and "Koppers Company" and other affiliated companies. The name "Koppers Company, Inc." was changed to "Beazer Materials and Services, Inc." and later to "Beazer East, Inc." as a result of a corporate acquisition in 1988.

#### Prosser's Moving & Storage Company Property

11. In 1953, Koppers Company, Inc. sold Parcel 2 to American Locomotive Company. The street address for this property is 4050 Bingham Avenue, St. Louis, Missouri. A contiguous railroad easement was also transferred from Koppers Company, Inc. to American Locomotive Company on September 23, 1953. American Locomotive Company transferred the property to New England Mutual Life Insurance Company on June 30, 1954. The property was subsequently transferred to Alco Power, Inc. (a successor to American Locomotive Company) and then on July 7, 1988, to Prosser's Moving & Storage Company (the current owner). Prosser's Moving & Storage Company is a Missouri Corporation. Prosser's Moving & Storage Company is the current owner of 4050 Bingham Avenue, St. Louis, Missouri.

#### Interstate Real Estate Company Property

12. In 1953 and 1954, Koppers Company, Inc. sold the entirety of Parcel 1 to Interstate Real Estate Company. Demolition and other site development activities were conducted on Parcel 1 after the sale to Interstate Real Estate Company. Parcel 1 was then subdivided into 4 tracts, noted on Figure 1, as 1-A to 1-D. Interstate Real Estate Company sold tract 1-B and 1-C to Union Electric Company in 1957. Interstate Real Estate Company re-purchased Tract 1-C from Union Electric Company in 1967. The street address for this property, comprised of former tracts 1-A, 1-C, and 1-D, is 4445 Gustine Avenue, St. Louis, Missouri.

13. Interstate Real Estate Company is a wholly owned subsidiary of Interstate Supply Company. Interstate Supply Company is a Missouri Corporation. Interstate Real Estate Company is a Missouri Corporation. Interstate Real Estate Company is the current owner of 4445 Gustine Avenue, St. Louis, Missouri.

### Union Electric Company Property

14. In 1957, Interstate Real Estate Company sold tracts 1-B and 1-C to Robert J. Rogers, who was acting as a straw party for Union Electric Company. In 1967, Interstate Real Estate Company re-purchased tract 1-C. Union Electric Company retained ownership of tract 1-B. Tract 1-B is located on an unmarked street called Ray Avenue, as identified on Figure 1. For this reason historically Union Electric Company has used the Bingham address for mailing and location purposes. The street address for tract 1-B is 4050 Rear Bingham Avenue, St. Louis, Missouri.

15. Union Electric Company, d/b/a Ameren UE is a public utility. Union Electric Company is a subsidiary of Ameren Corporation. Union Electric Company is a Missouri Corporation. Union Electric Company is the current owner of 4050 Rear Bingham Avenue, St. Louis, Missouri.

### Donco Realty Company Property

16. Parcel 3 was transferred from Koppers Company, Inc. to American Locomotive Company on July 23, 1954. Parcel 3 was subdivided into East and West tracts in 1965. American Locomotive Company transferred the West tract property to Alco Products, Inc. on February 3, 1965. Alco Products, Inc. transferred the West tract to White Industrial Power on February 13, 1970. The current street address for the West tract is 4400 Ray Avenue. The current owner of 4400 Ray Avenue is Donco Realty Company, which acquired the property through a tax forfeiture sale in or about 1997. Donco Realty Company is a Missouri Corporation.

### BLR Redevelopment Corporation Property

17. As described above, in 1954, Koppers Company, Inc. sold Parcel 3 to American Locomotive Company and Parcel 3 was later subdivided into East and West tracts. Brown Shoe Company, Inc. purchased the East tract from American Locomotive Company in 1965. Brown Shoe Company operated a manufacturing and warehouse facility on the property until 1981, when it sold the property to BLR Redevelopment Company. The current street address for the East tract of former Parcel 3, is 4327 Gustine Avenue. The current owner of 4327 Gustine Avenue is BLR Redevelopment Corporation. BLR Redevelopment Corporation is a Missouri Corporation. While the BLR Redevelopment Corporation property is included within the geographic definition of the Site, the BLR Redevelopment Corporation property will be addressed by the current property owner under a separate agreement with EPA. This Settlement Agreement imposes no obligations on the Respondents with respect to the BLR Redevelopment Corporation property.

### Prior Site Investigation Activities

18. Beginning in the mid-1980s and thereafter, various environmental investigation activities, including Phase 1 and Phase 2 studies, have been completed on the properties which

comprise the Site by the owners and operators of those properties. The reports regarding these activities have been provided to EPA by the Respondents and the remaining property owners, and the Respondents have provided the EPA with a technical memorandum summarizing these prior activities.

19. In 1985, an employee of Union Electric Company noticed an oily smell from a water meter located on the Union Electric Company portion of the Site. Union Electric Company reported this to the St. Louis Health Department. The Health Department conducted an investigation and found low concentrations of polycyclic aromatic hydrocarbons (PAHs).

20. In July of 1985, Union Electric Company hired Envirodyne Engineers to investigate the Union Electric Company property. Envirodyne Engineers found elevated PAHs in soils on the Union Electric Company property.

21. In 1988, EPA's contractor, Ecology and Environment conducted a limited site investigation. This investigation was conducted only on the portion of the Site owned by Union Electric Company. Sixteen subsurface (two feet or greater) and near surface (less than two feet) soil samples were collected. Total PAH concentrations ranged from 54 parts per million (ppm) to 1,636 ppm. The PAH concentrations were above the Agency for Toxic Substances and Disease Registry (ATSDR) health-based guidelines of 100 ppm for total PAHs at restricted access sites. PCBs were also detected.

22. Human and environmental exposure to the hazardous substances, pollutants and/or contaminants such as those found at the Site may result in the following toxicological effects: PAHs are harmful to human health under certain circumstances. Studies of people show that individuals exposed by breathing or skin contact for long periods to mixtures that contain PAHs and other compounds can develop cancer. As a result, certain PAH compounds, including benzo(a)pyrene (BAP) are classified as probable human carcinogens. BAP has been found in samples collected at the Site. In addition, studies in animals have shown that PAHs can cause harmful effects on skin, body fluids, and the body's system for fighting disease after both short and long-term exposures. There are more than 100 different PAHs. PAHs generally occur as complex mixtures, not as single compounds. Although the health effects of individual PAHs are not exactly alike, they are typically considered as a group rather than as individual compounds.

23. PAH is a frequent contaminant at industrial sites. PAH is the product of incomplete combustion of organic compounds. These compounds are a by-product of coal gasification and are frequently encountered at former manufactured gas sites. Coal tar is a by-product of coal gasification.

#### Site History 1914-1953

24. American Tar Products purchased Parcel 1 of the Site in 1914, and Parcels 2 and 3 in 1916. Sanborn Insurance Maps (Sanborn maps) depict a "coal tar distillery" owned by American Tar Products at the Site in 1916. The 1916 Sanborn map depicts underground and above ground tanks, a concrete and steel building which housed tar stills and an adjoining



condenser unit, pitch ponds, two warehouses and a concrete loading platform with its own rail spur.

25. The 1916 Sanborn map indicates that coal tar resulting from coal gasification and coking was brought to the Site for processing into roofing materials and for extraction and refining of other materials derived from coal tar. American Tar Products applied to conduct business in the State of Missouri for the purpose of conducting manufacturing, purchasing, and otherwise acquiring, dealing in or selling tar, tar products, color dyes, pharmaceutical products, benzol, and other hydrocarbons, sulfuric acid and other chemical products, resin, asbestos, mineral paint creosote, and preserving materials of all kinds.

26. A 1938 Sanborn map depicts many of the same features from the 1916 map, with some changes. The location of the former pitch ponds is depicted as the location of pitch coolers and chilling pans. The 1938 Sanborn Map identifies the Site as "Koppers Company Tar and Chemical Division".

27. The 1951 Sanborn map indicates that the plant was expanded sometime after 1938. The 1951 Sanborn Map lists the Site owner as "Koppers Company Tar Product Division." Depicted modifications include the addition of oil tanks, replacement of tar stills, replacement of pitch chilling pans with two 50-foot circular iron pitch basins, four additional pitch handling basins, extension of the rail spur and expansion of the tar processing area.

#### Post 1953 Site History

28. Coal tar-related activities at the Site ceased in or before 1953, and the various Site parcels were sold and subdivided, as noted above. Activities conducted on the various Site parcels by subsequent owners and operators are summarized as follows:

29. **Union Electric Company Property.** The Union Electric Company Property was subject to demolition and site preparation activities after it was sold in 1953. From 1957 and for some period of time thereafter, the Union Electric Company Property was operated as a works headquarters. Employees of Union Electric Company who were responsible for maintaining the electric distribution system in that area of St. Louis were assigned to this facility. The facility was used as a training center for electric distribution employees. Lineman and various other work groups reported to and were dispatched from this facility. In addition, training exercises in pole setting and climbing were conducted on this property. A service aisle existed for maintenance of vehicles. Certain electrical equipment storage and training activities were conducted on the Site by Union Electric Company/AmerenUE both on and off the Union Electric Property. The property is currently leased to Commerce Services for parts storage and a call center and Metro Sweeping for sweeper storage and maintenance. A 1990 Sanborn map depicts an office building in the location of the former tar processing plant.

30. **Interstate Supply Company Property.** This property was initially occupied by Interstate Supply Electronics and Radios and is currently occupied and operated by the Interstate Supply Company. Interstate Supply Company is a wholesale distribution company whose

products include various flooring products such as hardwood and laminate flooring. The property is currently used as a distribution center for flooring materials, and has been used as a storage or distribution facility since 1953. A 1990 Sanborn map shows that a single structure remains on the property from the former tar processing plant, a former roofing materials warehouse and production facility now used by Interstate Supply Company as a warehouse.

31. **Prosser's Moving & Storage Company Property.** This parcel was owned and operated by the American Locomotive Company (and/or related companies), immediately followed by Prosser's Moving & Storage Company. Historically, American Locomotive Company was one of the largest producers of steam and diesel locomotives in the United States. The company diversified into various other business ventures. For example, munitions were produced during World War II and the Korean War. The company also entered the nuclear power, oil production equipment, and heat exchanger businesses. The company was renamed Alco Products Inc., in 1955. Alco became a wholly owned subsidiary of the Worthington-Studebaker Corporation in 1967. Former divisions became independent subsidiaries in 1968. The diesel locomotive business became White Industrial Power of the White Motor Corporation in 1969. General Electric Corporation plc (GEC) of Great Britain purchased White Industrial Power in 1977, renamed the unit Alco Power, Inc. and subsequently sold the division to Fairbanks-Morse. No information is available regarding the specifics of American Locomotive Company's operations at the Ray Avenue Site. Given the existence of the rail siding at the site, it is considered likely that some form of locomotive maintenance operations were conducted during American Locomotive Company's ownership of the property. Prosser's Moving & Storage Company has conducted fleet terminal, warehousing and associated moving and storage activities on this parcel since 1988.

32. **BLR Redevelopment Corporation Property.** This property has been consecutively owned and operated by the American Locomotive Company (and/or related companies), Brown Shoe Company, Inc. and BLR Redevelopment Corporation. As with the Prosser's Moving and Storage Company Property, the nature and extent of American Locomotive Company's activities on this property are currently unknown. Brown Shoe Company is believed to have conducted shoe manufacturing and/or other industrial activities on the property from 1965 to 1981. The property has been primarily used for storage and warehousing since it was purchased in by BLR Redevelopment Corporation in 1981. In addition, some light manufacturing is currently conducted by the Miller Manufacturing Company which produces display systems for commercial and presentation purposes.

33. **Donco Realty Company.** This property was owned and/or operated by the American Locomotive Company (and/or related companies) from 1953 to approximately 1965. The nature and extent of American Locomotive Company's activities on this property are currently unknown. The property is directly adjacent to the Prosser's Moving & Storage property also formerly owned by American Locomotive Company, and was likely associated with American Locomotive Company's industrial operations in the area. The property was leased by Union Electric Company for a short period of time in the mid-1980's and was used for pole climbing, setting training exercises, and electrical equipment storage. This property is currently fenced and vacant.

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

- a. The Ray Avenue Superfund Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.
  - i. Respondents Interstate Real Estate Company; Interstate Supply Company; and, Union Electric Company, d/b/a AmerenUE, are the owners or operators of portions of the Site, and therefore are the owners and operators 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).
  - ii. Respondent Beazer East, Inc. was the owner and 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 action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, as provided in Section 300.700(c)(3)(ii) of the NCP.

## **VI. SETTLEMENT AGREEMENT AND ORDER**

35. Based upon the foregoing EPA Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, any attachments and documents incorporated by reference into this Settlement Agreement.

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

36. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 30 days of the Effective Date. Respondents 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 30 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 Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 30 days of EPA's disapproval.

37. Within 30 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, email address, street address, telephone number, 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, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, email address, street address, telephone number, and qualifications within 30 days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

38. EPA has designated Catherine Barrett of EPA Region VII, Missouri-Kansas Branch, Superfund Division, as its Remedial Project Manager (RPM) and Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to:

Ms. Catherine Barrett  
SUPR/MOKS  
EPA Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
Telephone: 913-551-7704  
Facsimile: 913-551-7063  
barrett.catherine@epa.gov

39. EPA and Respondents shall have the right, subject to Paragraph 37, to change their respective designated RPM or Project Coordinator. Respondents shall notify EPA 30 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

### **VIII. WORK TO BE PERFORMED**

40. Respondents shall perform, at a minimum, all actions necessary to implement the requirements of this Settlement Agreement. This Settlement Agreement requires Respondents to perform a Removal Site Evaluation (RSE) to determine whether a Removal is required at the Site. Respondents are required to submit the RSE to EPA. EPA will review and evaluate the RSE and make a determination as to whether a Removal is required. As noted above, the BLR Redevelopment Corporation property will be addressed by the current property owner under a separate agreement with EPA. This Settlement Agreement imposes no obligations upon the Respondents to perform Work on the BLR Redevelopment Corporation property.

#### **41. Task One: RSE Work Plan**

Respondents shall perform an RSE to characterize existing contamination at the Site and determine whether further action at the Site is warranted. Within 30 days after the Effective Date, Respondents shall submit to EPA for approval a draft Work Plan for performing the RSE for the Site. See Attachment 1, a summary Work and Deliverable Schedule. The draft Work Plan shall provide a description of, and an expeditious schedule for, the following components of an RSE:

- a. A preliminary assessment and removal site inspection to determine whether further action at the Site is warranted;
- b. A schedule to conduct the following activities:
  - i. Preliminary assessment;
  - ii. Removal site inspection;
  - iii. Interim data submittal; and
  - iv. Final RSE.

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

Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval.

42. Task Two: Preliminary Assessment and Removal Site Inspection

Following EPA approval or modification of the Work Plan, Respondent shall implement the provisions of the approved Work Plan to evaluate the Site. Respondent shall complete the preliminary assessment within 30 days of EPA approval of the Work Plan, in accordance with the schedule in the approved Work Plan. The removal site inspection and field sampling shall be designed to be completed in one phase. However, based upon analytical results from the first phase, EPA may require Respondents to conduct additional sampling to complete the Site evaluation. EPA will notify Respondents in writing in the event that EPA determines additional evaluation is required. The preliminary assessment and removal site inspection should address:

- a. Identification of the source and nature of the release or threat of release;
- b. Evaluation of the magnitude of the threat;
- c. Evaluation of the factors necessary to make the determination of whether a removal is necessary;
- d. Collection and review of data such as site management practices, photos, analysis of historical photographs, literature search and personal interviews;
- e. Identification and definition of the horizontal and vertical extent of the contamination; and,
- f. Evaluation of risk consistent of the threat to human health and the environment in accordance with current EPA guidelines.

43. Task Three: Interim Data Submittal

Respondent shall notify EPA in writing seven days following completion of field activities that sampling has been completed and provide a list of activities/findings that were inconsistent with the facility sampling plan. Respondent shall provide EPA with analytical data with supporting documentation, within 45 days of each sampling activity in a form showing location, medium, and results.

44. Task Four: Removal Site Evaluation

Respondents shall submit to EPA a detailed Report of the RSE within 45 days of submission of the Interim Data Submittal, in accordance with the schedule in the approved Work Plan.

45. Quality Assurance Project Plan

All draft Work Plans shall require preparation of a Quality Assurance Project Plan ("QAPP"). The QAPP should be prepared in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, reissued May 2006), "Guidance on Choosing a Sampling Design for Environmental Data Collection for Use in Developing a Quality Assurance Project Plan, EPA (QA/G-5S)" (EPA/240/R-02/005, December 2002), and "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/R-02/009, December 2002) and subsequent amendments to such guidance upon notification by EPA to Respondents of such amendment.

46. Health and Safety Plan

Within 30 days after the Effective Date, Respondents 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 Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). 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. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the RSE.

47. Quality Assurance and Sampling

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody identifications. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQ E-4 2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs", and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, reissued May 2006)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than 28 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

#### 48. Reporting

a. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of receipt of EPA's approval each of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondents shall submit three copies of all plans, reports or other submissions required by this Settlement Agreement, the Statement of Work, or any approved work plan. Upon request by EPA, Respondents shall submit such documents in electronic form.

c. Respondents who own or control property at the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also agree to require that their successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

### IX. SITE ACCESS

49. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of the Respondents, such Respondent shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

50. Where any action under this Settlement Agreement is to be performed in areas outside of the Site, and owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 30 days after the Effective Date, or as otherwise specified in writing by EPA's Project Coordinator. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the offering of reasonable compensation in consideration of access. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to



effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with Section XV (Payment of Response Costs).

51. Where any action under this Settlement Agreement is to be performed in areas within the Site, and owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 30 days after the Effective Date, or as otherwise specified in writing by EPA's Project Coordinator. For purposes of this Paragraph, "best efforts" does not include the offering of compensation in consideration of access. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with Section XV (Payment of Response Costs).

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

#### **X. ACCESS TO INFORMATION**

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

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

55. Respondents may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: (a) the title of the document, record, or information; (b) the date of the document,

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

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

## **XI. RECORD RETENTION**

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

58. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to this Settlement Agreement shall be withheld on the grounds that they are privileged.

59. Each of the Respondents individually certifies that to the best of their knowledge and belief, after thorough inquiry, that since their receipt of EPA's requests for Site-related information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to their potential liability regarding the Site and

that they have complied with the EPA's requests for information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

## **XII. COMPLIANCE WITH OTHER LAWS**

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

## **XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

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

62. In addition, in the event of any new, rather than ongoing and historic release of a hazardous substance, pollutant or contaminant from the Site, Respondents shall immediately notify EPA's Project Coordinator at 913-551-7704, and the National Response Center at 800-424-8802. Respondents shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

## **XIV. AUTHORITY OF EPA'S PROJECT COORDINATOR**

63. EPA's Project Coordinator shall be responsible for overseeing Respondents' implementation of this Settlement Agreement. EPA's Project Coordinator shall have the authority vested in an On-Scene Coordinator/Remedial Project Manager by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to

direct any other removal action undertaken at the Site. The absence of EPA's Project Coordinator from the Site shall not be cause for stoppage of work unless specifically directed by EPA's Project Coordinator.

#### XV. PAYMENT OF RESPONSE COSTS

##### 64. Payments for Future Response Costs.

a. Respondents shall reimburse EPA for all Future Response Costs not inconsistent with the NCP. On a yearly basis, EPA will send Respondents a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondents shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 66 of this Settlement Agreement.

b. Respondents shall make all payments required by this Paragraph by check made to order of "Hazardous Substance Response Fund" and shall be forwarded to:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
Post Office Box 97907  
St. Louis, Missouri 63197-9000

The Check shall be accompanied by a statement referencing Respondent's name and address, the Site name, Ray Avenue Superfund Site, and the Site/Spill identifier "079N", and the EPA docket number for this action CERCLA-07-2009-0008.

c. At the time of payment, Respondents shall send a copy of the check to EPA's Project Coordinator.

d. The total amount to be paid by Respondents pursuant to Paragraph 64(a) shall be deposited in the Ray Avenue Superfund Site Special Account within the EPA Hazardous Substance Superfund, and may be transferred by EPA to the EPA Hazardous Substance Superfund.

65. In the event that payments for Future Response Costs are not made within 30 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

66. Respondents may dispute all or part of a bill submitted under this Settlement Agreement, if Respondents allege that EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs to EPA as specified above on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit documentation for this escrow account to EPA's Project Coordinator. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 10 days after the dispute is resolved.

## **XVI. DISPUTE RESOLUTION**

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

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

69. An Administrative Record of any dispute under this Section will be maintained by EPA. The record shall include the written notification of such dispute, statements of position, if any, and EPA's response thereto. Respondents shall have the right to place into the Administrative Record any information they deem pertinent to the determination of the dispute.

70. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If EPA and Respondents are unable to reach an agreement within the Negotiation Period, the Director of EPA Region VII's Superfund Division will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Notwithstanding the foregoing, said incorporation shall not constitute a waiver of Respondents' right to contest, in any proceeding brought by EPA to enforce the terms of this Settlement Agreement, any alleged unlawfulness of EPA's decision or that EPA's decision is otherwise outside of the scope of the requirements of this Settlement Agreement. Unless otherwise agreed to by the EPA, Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

## **XVII. FORCE MAJEURE**

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

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

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

## **XVIII. STIPULATED PENALTIES**

74. Respondents 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 Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents

approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

75. Stipulated Penalty Amounts - Work. The following stipulated penalties shall accrue per violation per day for failure to perform any Work, including the payment of Future Response Costs, required hereunder in a timely or adequate manner, or for failure to submit to EPA any submittal required by this Settlement Agreement (except the progress reports called for in Paragraph 48(a) hereof) in a timely or adequate manner:

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

76. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit to EPA the progress reports required pursuant to Paragraph 48(a) hereof, in a timely or adequate manner:

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

77. All penalties shall begin to accrue on the day after the complete performance or payment is due or the date that notification of a violation is issued by EPA, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency following which Respondents shall have 15 days to cure any deficiency during which 15 day period stipulated penalties will not accrue; and (b) with respect to a decision by the Director of EPA Region VII's Superfund Division, pursuant to Paragraph 70 of Section XVI (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 herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

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

invoke the dispute resolution procedures under Section XVI (Dispute Resolution). Respondents shall make all payments required by this Paragraph by Electronic Funds Transfer (EFT) in accordance with then current EFT procedures to be provided to Respondents by EPA Region VII, and shall be accompanied by a statement referencing Respondent's name and address, the Site name, and the Site/Spill identifier "079N," and the EPA docket number for this action.

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

81. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

82. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 78. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

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

83. In consideration of the actions that will be performed and the payments that will be made by Respondents under this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, and Future Response Costs. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondents and does not extend to any other person. This covenant not to sue does not extend to the BLR Redevelopment Corporation property.

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

84. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual



or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

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

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

#### **XXI. COVENANT NOT TO SUE BY RESPONDENTS**

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

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

- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

87. These covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 85(b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

## **XXII. OTHER CLAIMS**

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

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

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

## **XXIII. CONTRIBUTION**

- 92.
- a. EPA and Respondents agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the: (a) Work; and (b) Future Response Costs. Nothing in this Settlement Agreement precludes the United States or Respondents

from asserting any claims, causes of action, or demands against any persons not parties to this Settlement Agreement for indemnification, contribution, or cost recovery.

- b. EPA and Respondents agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the United States for the Work, and Future Response Costs.

#### **XXIV. INDEMNIFICATION**

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

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

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

#### **XXV. INSURANCE**

96. At least 7 days prior to commencing any on-Site work under this Settlement Agreement, Respondents or the RSE contractors on behalf of the Respondents, shall secure, and shall

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

#### **XXVI. FINANCIAL ASSURANCE**

97. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security in the amount of \$400,000 for the estimated cost of performing the Work in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Respondents; or
- e. A demonstration that Respondents satisfies the requirements of 40 C.F.R. § 264.143(f).

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

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

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

### **XXVII. MODIFICATIONS**

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

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

103. No informal advice, guidance, suggestion, or comment by EPA's Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

### **XXVIII. NOTICE OF COMPLETION OF WORK**

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

### **XXIX. SEVERABILITY/INTEGRATION**

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

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

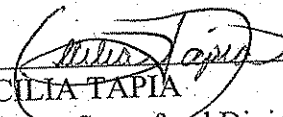
### **XXX. EFFECTIVE DATE**

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


Ray Avenue Superfund Site  
Administrative Settlement Agreement and Order on Consent  
for Removal Site Evaluation  
Beazer East, Inc.; Interstate Real Estate Company; Interstate Supply Company;  
and Union Electric Company, Respondents

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

6/25, 2009

  
\_\_\_\_\_  
CECILIA TAPIA  
Director, Superfund Division  
U.S. Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

26 June, 2009

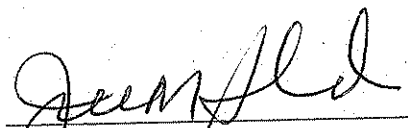
  
\_\_\_\_\_  
JULIE M. VAN HORN  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

**Ray Avenue Superfund Site  
Administrative Settlement Agreement and Order on Consent  
for Removal Site Evaluation  
Beazer East, Inc.; Interstate Real Estate Company; Interstate Supply Company;  
and Union Electric Company, Respondents**

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

**FOR BEAZER EAST, INC.**

6-17, 2009

Signature:   
Name (print): Jill M. Blunden  
Title: Vice President & General Counsel



Ray Avenue Superfund Site  
Administrative Settlement Agreement and Order on Consent  
for Removal Site Evaluation  
Beazer East, Inc.; Interstate Real Estate Company; Interstate Supply Company;  
and Union Electric Company, Respondents

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

FOR INTERSTATE REAL ESTATE COMPANY  
AND INTERSTATE SUPPLY COMPANY

June 10<sup>th</sup>, 2009

Signature: Gary K Morrow

Name (print): GARY K MORROW

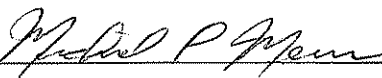
Title: CEO

**Ray Avenue Superfund Site  
Administrative Settlement Agreement and Order on Consent  
for Removal Site Evaluation  
Beazer East, Inc.; Interstate Real Estate Company; Interstate Supply Company;  
and Union Electric Company, Respondents**

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

**FOR UNION ELECTRIC COMPANY**

June 22, 2009

Signature: 

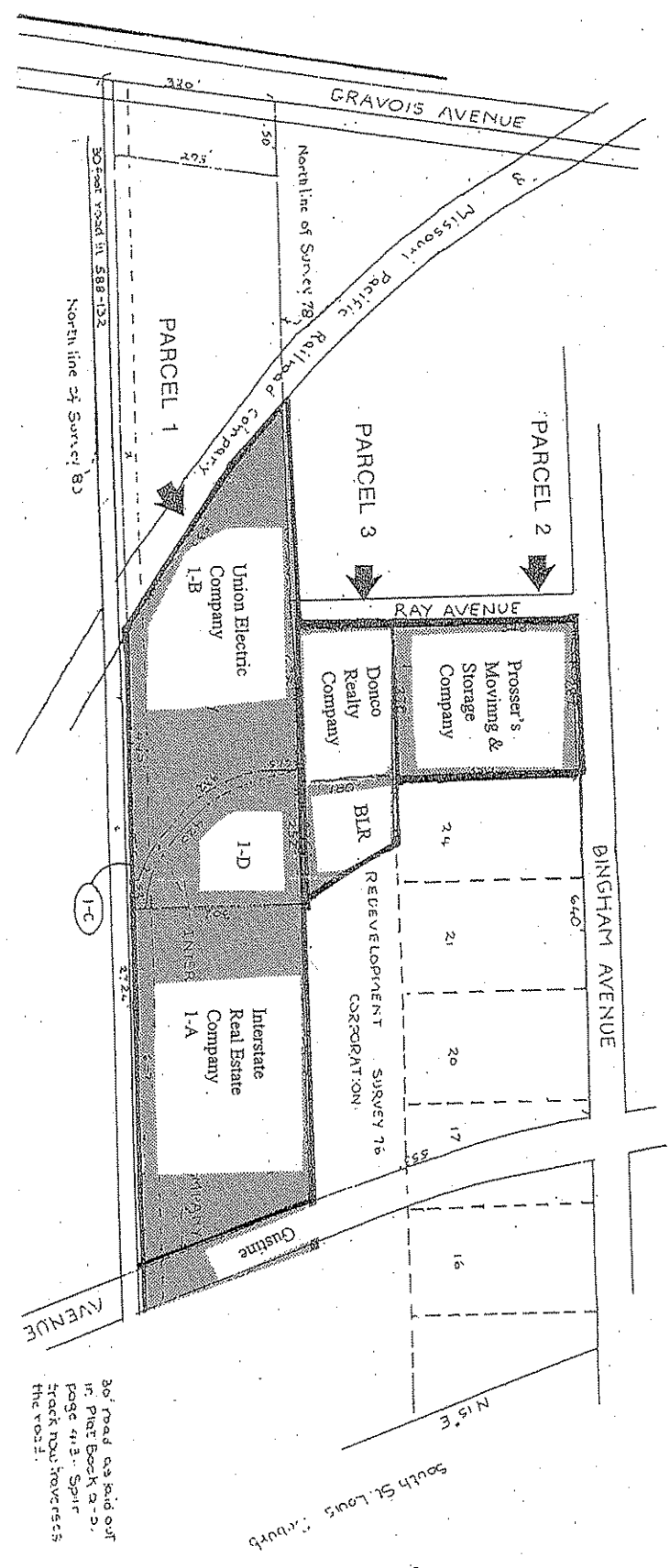
Name (print): Michael P. Menne

Title: Environmental Services

Attachment 1

<u>Deliverable/Task</u>	<u>Initial Schedule</u>	<u>Resubmittal</u>
Submit names of contractors	within 30 days of effective date	within 30 days of request
RSE Workplan	within 30 days of effective date	within 30 days of request
Preliminary Assessment and Removal Site Inspection	within 30 days of EPA approval of the work plan	
QAPP	within 30 days of the effective date	
Health and Safety Plan	within 30 days of the effective date	
Notify field work complete	within 7 days of completion	
Analytical data report	within 45 days of completion of field work	
RSE Report	in accordance with the workplan but no later than 45 days of the interim data submittal	

UNION ELECTRIC COMPANY  
 RAY AVENUE SITE  
 ST. LOUIS, MISSOURI



- KEY**
- PARCEL 1 - 12.602 acres
  - PARCEL 2
  - PARCEL 3 - 1.82 acres
  - DIVISIONS OF PARCEL 1

Course and distances shown on this drawing are taken from recorded documents. Locations of roads and rail lines were developed from various plats and are approximate. J. J. McNamee 10/91

30' road easement off in Plat Book 2-2, Page 413 - Spirit track now covers the road.

Scale  
 1" = 200'

IN THE MATTER OF Ray Avenue Superfund Site; Beazer East, Inc., Interstate Real Estate Company, Interstate Supply Company, and Union Electric Company, Respondents  
Docket No. CERCLA-07-2009-0008

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Settlement Agreement and Order on Consent for Removal Site Evaluation was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Julie M. Van Horn  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Timothy C. Wolfson  
Two Gateway Center  
Pittsburgh, Pennsylvania 15222

Lisa A. Pake  
Haar & Woods, LLP  
1010 Market Street, Suite 1620  
St. Louis, Missouri 63101

and

Bob Schultz  
Schultz & Associate, LLP  
640 Cepi Drive  
Chesterfield, Missouri 63005

Dated: 6/30/09

  
Kathy Robinson  
Hearing Clerk, Region 7