

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

US EPA RECORDS CENTER REGION 5



494945

IN THE MATTER OF:
Cedar Creek Superfund Alternative Site
Cedar Creek OU2A-Cedar Creek Ponds
Cedarburg, Ozaukee County, Wisconsin

Mercury Marine,
Division of Brunswick Corporation,

Respondent.

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

EPA Region 5

CERCLA Docket No.

V-W-16-C-010

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive Environmental
Response, Compensation and Liability Act, as
amended, 42 U.S. §§ 9604, 9606(a), 9607 and
9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Mercury Marine, Division of Brunswick Corporation ("Respondent"). This Settlement Agreement provides for the performance of a removal action by Respondent at or in connection with the Cedar Creek Superfund Alternative Site (the "Site") generally located in Cedarburg, Wisconsin.

2. This Settlement Agreement 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, as amended ("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, U.S. EPA, Region 5 to the Director, Superfund Division, U.S. EPA, Region 5 by U.S. EPA Delegation Nos. 14-14-C and 14-14-D on May 2, 1996.

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

II. PARTIES BOUND

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

6. 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.

7. 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 any 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 their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

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

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site, signed by the Regional Administrator, EPA Region 5 or her delegate and all attachments thereto. The Action Memorandum is attached as Appendix A.

b. "Affected Property" shall mean all real property for Operable Unit 2A of the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the removal action.

c. "Cedar Creek Ponds" shall mean that portion of the Cedar Creek Superfund Alternative Site from the Ruck Pond Dam to the Wire and Nail Pond Dam, including but not limited to Columbia Pond, Wire and Nail Pond and the Ruck Pond Dam Raceway.

d. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

e. The term "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.

f. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXIX.

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

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

i. "Future Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work or otherwise implementing, overseeing or enforcing this Settlement Agreement, including but not limited to payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph (costs and attorney fees and any monies paid to secure access, including the amount of just compensation), 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 Paragraph 41 (Emergency Response) and Paragraph 68 (Work Takeover).

j. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually 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.

k. "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.

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

m. "PCBs" shall mean polychlorinated biphenyls.

n. "Parties" shall mean EPA and Respondent.

o. "Post-Removal Site Control" shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Settlement consistent with Sections 300.415(l) and 300.5 of the NCP and "Policy on Management of Post-Removal Site Control" (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

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

q. "Respondent" shall mean Mercury Marine, Division of Brunswick Corporation.

r. "RI" shall mean the remedial investigation associated with the Operable Unit 2A performed under the Operable Unit 2A AOC.

s. "Operable Unit 2A" or "OU2A" shall mean that portion of the Site that includes the Cedar Creek Ponds. OU2A includes the Cedar Creek Ponds.

t. "Operable Unit 2A AOC" shall mean the Administrative Settlement Agreement and Order on Consent for Remedial Investigations and Feasibility Studies between Respondent and EPA effective on August 21, 2014 ("AOC No. 14-C-013).

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

v. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached thereto (listed in Section XXVIII).

In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

w. "Site" shall mean the Cedar Creek Superfund Alternative Site, encompassing Respondent's Plant 2, the former storm sewer to Cedar Creek and that segment of Cedar Creek from below the Ruck Pond Dam to the point where it meets the Milwaukee River in Cedarburg, Wisconsin and adjacent portions of Cedar Creek as depicted generally on the map attached as Appendix B.

x. "State" shall mean the State of Wisconsin.

y. "Waste Material" shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33), (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and (iv) any "hazardous substance" under Wis. Stat. §§ 292.01(5), 299.01(6) or Wis. Admin. Code § NR 700.03(25).

z. "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.

aa. "WDNR" shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the state.

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

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

dd. "Cedarville Dams Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3)

IV. FINDINGS OF FACT

9. Based on available information, including the Administrative Record in this matter, EPA hereby finds, and for purposes of enforceability of this Settlement Agreement, Respondent stipulates, that the factual statutory prerequisites under CERCLA necessary for issuance of this Settlement Agreement have been met. EPA's and Respondent's stipulation include the following.

a. The Site is located in Ozaukee County, just north of Milwaukee, Wisconsin. In order to facilitate remedial work at the Site, it was divided into two principal operable units (Plant 2 Operable Unit and the Creek Operable Unit). With the completion of work at the Plant 2 Operable Unit, the Creek Operable Unit was divided into two subparts to expedite work at the Site.

b. The portion of the Site previously identified as the Cedar Creek Operable Unit was divided into two separate operable units, identified as the Cedar Creek OU2A – Cedar

Creek Ponds and Cedar Creek OU2B – Creek. OU2A consists of Cedar Creek, its impoundments, raceways, free flowing reaches, sediment and floodplain soils starting after the Ruck Pond Dam and continuing downstream 1.3 miles through and including Wire and Nail Pond and Dam. Cedar Creek OU2B consists of Cedar Creek, its impoundments, raceways, free flowing reaches, sediment and floodplain soils starting after Wire and Nail Pond and continuing to Cedar Creek's confluence with the Milwaukee River.

c. Ruck Pond, located just upstream of the Site, was remediated by Respondent under an environmental repair agreement with WDNR that was signed in 1994. Thus, Ruck Pond does not constitute a part of the Site. The Ruck Pond work is documented in the Construction Documentation Report-Ruck Pond Sediment Removal Action, 1995.

d. In addition to performing work in Ruck Pond, Respondent has performed the following Site activities:

- (1) aerial photographs of the Site were taken in 1997, and base maps were developed with one-foot contour intervals;
- (2) a sediment sampling program was performed during the spring and summer of 1998, and the data was presented in the Cedar Creek Sediment Characterization Report dated December 1998;
- (3) soil sampling was performed along the banks of the former Hamilton Pond in accordance with the Former Hamilton Pond Soil Characterization Program Work Plan dated March 1999;
- (4) a removal plan was developed for addressing soils along the former Hamilton Pond, entitled Removal Action Work Plan-Former Hamilton Pond dated March 2000;
- (5) soils along the former Hamilton Pond were removed as documented in the Former Hamilton Pond Removal Action Program Documentation Report dated 2001;
- (6) a remedial investigation was completed in 2003, which further characterized floodplain soils and sediment in OU2A and Cedar Creek OU2B, and the Remedial Investigation Report was accepted by EPA in May 2012;
- (7) the Plant 2 building was demolished and removed under EPA's Toxic Substances Control Act program;
- (8) the Plant 2 Operable Unit at the Site was remediated in 2012 and 2013; and
- (9) an Engineering Evaluation/Cost Analysis was completed for OU2A in June 2015.

e. In 1997, 1998 and 2003, Respondent sampled Cedar Creek sediment for PCBs. The higher concentrations of PCBs are located in the two impoundments constituting OU2A. The PCBs may also move downstream to Cedar Creek OU2B, contaminating more of the Cedar Creek system. However, lower concentrations of PCBs are found in Cedar Creek OU2B with concentrations decreasing downstream.

f. WDNR and/or Respondent collected fish PCB data from Cedar Creek and its impoundments over the course of several years, including 1986, 1997, 2003, 2004, 2005 (caged fish only), 2010 and 2014. PCB levels from fish tissue samples taken on-site vary depending on species. Results from the 2003 and 2004 data sets show sport fish range in PCB concentrations from 0.22 to 8.4 milligrams per kilogram ("mg/kg") and forage fish range in PCB concentrations from 1.9 to 12 mg/kg in Columbia Pond and Wire and Nail Pond. Fish consumption is the primary human exposure pathway potentially associated with carcinogenic risks and/or non-carcinogenic hazards above EPA targets (*i.e.*, cancer risk of 1×10^{-4} and hazard index of 1). Potential ecological risks for mink were highest at OU2A. This result is directly related to the higher forage fish (and sediment) PCB concentrations observed in OU2A (based on the 2003-2004 data set).

g. The Site is not proposed to the National Priorities List. Respondent voluntarily requested that EPA negotiate a Superfund Alternative ("SA") agreement for the Site. As an SA site, it must go through the Superfund cleanup process as described in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended ("NCP").

h. Respondent designated Craig Dousharm as its project coordinator. Mr. Dousharm can be reached via email at craig.dousharm@mercmarine.com, via telephone at 920-929-5955 and via mail at W6250 West Pioneer Road, Fond du Lac, Wisconsin 54936-1939. EPA designated Scott Hansen of the Remedial Response Branch as the On-Scene Coordinator/Remedial Project Manager. Mr. Hansen can be reached via email at Hansen.scott@epa.gov, via telephone at 312-886-1999 and via mail at 77 West Jackson Boulevard (SR-6J), Chicago, Illinois 60604-3507.

V. CONCLUSIONS OF LAW AND DETERMINATION

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

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

b. There are "hazardous substances" at the Site as defined in 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). Respondent was the "owner" and/or "operator" of the Site at the time of disposal of hazardous substances at the Site, as defined by 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), and/or a person

who arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances at the Site, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3) and/or a person who accepts or accepted hazardous substances for transport to the Site, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

e. The presence of hazardous substances at the Site, or the past, present or potential migration of hazardous substances currently located at or emanating from the Site, constitute an actual or threatened “release” of a hazardous substance from the Site into the “environment” as defined by Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. §§ 9601(22) and 9601(8), respectively.

f. The conditions present at the Site constitute a threat to public health, welfare or the environment based upon the factors set forth in Section 300.415(b)(2) of the NCP, 40 C.F.R. § 300.415(b)(2). These factors include but are not limited to the following.

- (1) Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances, pollutants or contaminants – this factor is present at the Site due to the existence of elevated concentrations of PCBs in creek sediment. The maximum concentration from Cedar Creek sediment samples from 1997 to 2003 is 345 mg/kg collected from Columbia Pond.
- (2) Actual or potential contamination of sensitive ecosystems – this factor is present at the Site due to the existence of elevated concentrations of PCBs in creek sediment and resident fish. Results from the 2003 and 2004 data sets show sport fish range in PCB concentrations from 0.22 to 8.4 mg/kg and forage fish range in PCB concentrations from 1.9 to 12 mg/kg in Columbia Pond and Wire and Nail Pond. As a direct result of PCB discharges, Cedar Creek is included in the State of Wisconsin’s Fish and Wildlife Consumption Advisory. The affected reaches of Cedar Creek are in the most restrictive category – “Do Not Eat” any species, regardless of size.
- (3) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released – this factor is present at the Site due to the existence of elevated concentrations of PCBs that may migrate. Cedarburg, Wisconsin is in the temporal zone that experiences significant winter precipitation that later results in significant spring thaw events that can lead to flooding conditions. There is also the potential for flooding due to other precipitation events.

g. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

h. The removal 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 consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP. To accelerate the schedule, no scope of work is being required and the Respondent will submit design documents to implement the response selected in the Action Memorandum.

VI. SETTLEMENT AGREEMENT AND ORDER

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

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

12. Respondent 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 10 days of the Effective Date unless otherwise directed by EPA. 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 10 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, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 20 days of EPA's disapproval. With respect to any proposed primary or lead 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.

13. Respondent designated Craig Dousharm as its Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement. The designated Project Coordinator's name, address and telephone number are set forth in Paragraph 9.h. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during Site Work. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

14. EPA has designated Scott Hansen of EPA Region 5 as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at EPA Region 5, 77 West Jackson

Boulevard, Mail Code SR-6J, Chicago, IL 60604-3507. 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.

15. EPA and Respondent shall have the right, subject to EPA approval, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA 10 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

16. Respondent shall perform, at a minimum, the actions necessary to implement the response selected in the Action Memorandum. Report deliverables, including the design, may include documentation or discussions of additional voluntary sediment removal beyond the requirements of the chosen removal action described in the Action Memorandum. The actions to be implemented generally include, but are not limited to, the following:

- a. Conduct pre-removal field investigations, if necessary, to delineate the final footprints of the removal areas for the design.
- b. Develop temporary staging areas and access to the Site to meet project requirements. Such areas may include, but are not limited to, equipment decontamination, dewatering, mobilization and demobilization, worker access, and exclusion zones.
- c. Design a response action that, at a minimum, meets the requirements below. As mentioned above, the design may include additional voluntary sediment removal activities that are not required by the Action Memorandum or the Settlement Agreement. Upon approval of the design, implement the response actions in accordance with the approved schedule.
 - (1) For the Ruck Pond raceway, (i) dredge or excavate all in-water sediment to the extent practicable, (ii) excavate any remaining sediment near the shoreline exceeding 2.5 mg/kg at all depths and (iii) excavate soils to achieve the PCB soil PRG of 1.0 mg/kg, and (iv) dispose of it at an approved location.
 - (2) Dredge or excavate sediments with PCB concentrations exceeding 2.5 mg/kg at all depths in Columbia Pond and Wire and Nail Pond and dispose of it at an approved location.
 - (3) Achieve a post-dredge sediment surface weighted average concentration (SWAC) of 0.5 mg/kg and long-term SWAC of 0.25 mg/kg in a reasonable timeframe.
 - (4) Remove 98% of the mass of PCBs in the ponds sediment.

- (5) Excavate soils to achieve the PCB soil PRG of 1.0 mg/kg. The specific method used for implementing the soil PRG will be based on site-specific data and will be determined in the design.
- (6) Backfill sediment removal areas with 6 inches of cover material as necessary to accelerate or enhance the natural recovery processes.
- (7) Produce a plan and then implement that plan to periodically monitor to ensure the long-term SWAC goal is achieved.

d. Dispose of materials removed from the Site at approved locations. Transport, dewater as necessary and dispose of all sediment removed from the Site. Collect and treat water removed from the sediment in accordance with the approved design.

e. Conduct monitoring during the construction phase.

f. Remove and restore the temporary access, mobilization and staging areas.

g. In areas where contaminants remain after implementing the approved activities (including any supplemental voluntary removal activities) and where EPA determines that institutional controls are needed to ensure that exposure to unacceptable risk from residual contamination does not occur, and in accordance with the Institutional Control Implementation and Assurance Plan ("ICIAP"), implement institutional controls that may include, but not limited to, proprietary controls, site-specific restrictions imposed under Wisconsin continuing obligations law (Wis. Stat. § 292.12) and any other applicable state or local laws, regulations, ordinances, zoning restrictions or other governmental controls or notices that (i) limit land, water and/or resource use to minimize the potential for human exposure to contamination at or in connection with the Site, (ii) limit land, water and/or resource use to implement, ensure non-interference with or ensure the protectiveness of the response action and/or (iii) provide information intended to modify or guide human behavior at or in connection with the Site.

h. If EPA determines in a decision document prepared in accordance with the NCP that these work elements are superseded or no longer required, the Respondent can submit a Final Report pursuant to Paragraph 24.

17. For any EPA or other federal guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment or replacement of such guidance. Such modifications, amendments or replacements apply to the Work only after Respondent receives notification from EPA of the modification, amendment or replacement.

18. Design and Implementation.

a. Within 30 calendar days after the Effective Date, Respondent shall submit to EPA for approval a draft design for performing the removal action generally described in Paragraph 16, above. The draft design may include additional voluntary sediment removal beyond that set forth in the Action Memorandum. The design shall provide a description of, and an expeditious schedule for, the actions to be undertaken. The design shall include a description of

the project tasks, procedures to accomplish them, quality assurance/quality control systems, project documentation, and project schedule.

b. EPA may approve, disapprove, require revisions to, or modify the draft design in whole or in part, which design may include supplemental voluntary removal activities. To the extent practicable, and only to the extent consistent with the NCP, EPA shall first provide Respondent one request for modification and an opportunity to submit the requested modification(s) within 21 calendar days before EPA modifies the draft design. If EPA requires revisions, Respondent shall submit a revised draft Design within 21 calendar days of receipt of EPA's notification of the required revisions. Respondent shall implement the design as approved in writing by EPA, which may include supplemental voluntary removal activities not required by the Action Memorandum or this Settlement Agreement, in accordance with the schedule(s) approved by EPA. Once approved, or approved with modifications, the design, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement; provided, however, that if the design includes supplemental voluntary removal activities only that portion of the design that directly implements the response action set forth above shall be considered fully enforceable under this Settlement Agreement.

c. Upon approval or approval with modifications of the design, Respondent shall commence implementation of the Work (and any supplemental voluntary removal activities) in accordance with the schedule included therein. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement nor shall Respondent undertake any supplemental voluntary activities without EPA approval. Respondent is not restricted from seeking to secure rights of access to property in advance of EPA approval of the design and, upon EPA approval, may provide affected property with a draft copy of the design.

d. Unless otherwise provided in this Settlement Agreement, any additional deliverables that require EPA approval shall be reviewed and approved by EPA in accordance with this paragraph.

19. Submission of Deliverables.

a. General Requirements for Deliverables.

- (1) Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement to the RPM/OSC, Scott Hansen at EPA, Mail Code SR-6J, 77 West Jackson Boulevard, Chicago, IL 60604; (312) 886-1999; *hansen.scott@epa.gov*. Respondent shall submit all deliverables required by this Settlement Agreement to EPA in accordance with the schedule set forth in such plan.
- (2) Respondent shall submit all deliverables in electronic form and, upon request by EPA, in paper copy form, as well. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 19.b. 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, unless otherwise specified by the RPM/OSC. Respondent shall submit electronic and paper copies of all plans, reports or other submissions required by this Settlement Agreement directly to the WDNR project coordinator. Where paper copies are required, Respondent is encouraged to make its submission on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

b. Technical Specifications for Deliverables.

- (1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable ("EDD") format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- (2) Spatial data, including spatially-referenced data and geospatial data, should be submitted (i) in the ESRI File Geodatabase format and (ii) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 ("NAD83") or World Geospatial System 1984 ("WGS84") as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee ("FGDC") Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor ("EME"), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
- (3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <http://www.epa.gov/geospatial/policies.html> for any further available guidance on attribute identification and naming. Spatial data submitted by the Respondent does not, and is not intended to, define the boundaries of the Site.

20. Health and Safety Plan. Unless otherwise directed by EPA, within 20 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 Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration 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 any activities conducted pursuant to this Settlement Agreement.

21. Quality Assurance, Sampling, and Data Analysis.

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 procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall ensure that EPA and State personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. Respondent 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. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001, 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. Within 30 days after the Effective Date, Respondent shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the, the NCP and, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), "EPA Requirement for Quality Assurance Project Plans (QA/R-5)" EPA 240/B-01/003 (March 2001, reissued May 2006), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 7 days in advance of any sample collection activities, 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 Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

d. Respondent shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Settlement.

e. Respondent waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved

Work Plans or Sampling and Analysis Plans. If Respondent object to any other data relating to the Work, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

f. Within 30 days of a request by EPA, Respondent shall provide EPA with a Technical Assistance Plan ("TAP") for providing and administering up to \$50,000 of Respondent's funds to be used by a qualified community group to hire independent technical advisers during the Work conducted pursuant to this Order. The TAP shall state that Respondent will provide and administer any additional amounts needed if EPA, in its discretion, determines that the selected community group has demonstrated such a need prior to EPA's issuance of the ROD contemplated by this Order. Upon its approval by EPA, the TAP shall be incorporated into and become enforceable under this Order.

22. Post-Removal Site Control. In accordance with the approved design schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

23. Reporting.

a. Respondent shall submit a monthly written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement. The monthly progress report shall be submitted by the 15th day of the month following the month after approval of this Settlement Agreement until its termination, 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. Respondent shall submit two copies of all plans, reports or other submissions required by this Settlement Agreement, the design or any approved plans. Upon request by EPA, Respondent shall submit such documents in electronic form.

c. Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Site of which Respondent is aware, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondent also agrees to require that its successors comply with the immediately preceding sentence and Sections IX (Property Requirements) and X (Access to Information).

24. Final Report. Unless otherwise directed by EPA, within 30 days after completion of the activities conducted under the approved design, Respondent shall submit for EPA review and approval a final report summarizing the actions at the Site. 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 Work Plan, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

25. Off-site Shipments.

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

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

c. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraphs 25.a. and b. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

IX. PROPERTY REQUIREMENTS

26. Agreements Regarding Access and Non-Interference. Respondent shall, with respect to any downstream owner's Affected Property, use best efforts to secure from such downstream owner an agreement, enforceable by Respondent and the EPA, providing that such downstream owner: (i) provide the EPA, the State of Wisconsin, 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 26.a (Access Requirements); and (ii) not interfere with or adversely affect the implementation, or, if applicable, the integrity, or protectiveness of the removal action use, including the restrictions listed in Paragraph 27.b (Land, Water, or Other Resource Use Restrictions).

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

- (1) Implementing the Work;
- (2) Monitoring the Work;
- (3) Verifying any data or information submitted to the United States;
- (4) Conducting investigations regarding contamination at or near the Site;
- (5) Obtaining samples;
- (6) Assessing the need for, planning, implementing, or monitoring response actions;
- (7) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan;
- (8) Implementing the Work pursuant to the conditions set forth in Paragraph 68 (Work Takeover);
- (9) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section X (Access to Information);
- (10) Assessing Respondent's compliance with the Settlement;
- (11) 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

- (12) Implementing, monitoring, maintaining, reporting on, and enforcing, if applicable, any land, water, or other resource use restrictions regarding the downstream Affected Property.

b. Land, Water, or Other Resource Use Restrictions. The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

- (1) Prohibiting the following activities which could interfere with the implementation of the removal action: dredging of contaminated sediments by riparian owners; installation of piers, docks or shoreline structures; or placement of riprap or other erosion control along the shoreline;
- (2) Prohibiting the following activities, prior to and during the removal action which could result in exposure to contaminants in subsurface soils and groundwater: drilling, excavating, filling or planting of large foliage in or near the water.

27. 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, as required by this Section. If Respondent are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist 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).

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

29. In the event of any Transfer of the Affected Property that impacts access for implementation of the Work, unless EPA otherwise consents in writing, Respondent shall continue to comply with their obligations under the Settlement, including their obligation to secure access.

30. 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

31. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including but not limited to

sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering or testimony, its employees, agents or representatives with knowledge of relevant facts concerning the performance of the Work.

32. 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 32.b, and except as provided in Paragraph 32.c.

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

33. Respondent may assert that certain documents, records and other information are privileged under the attorney/client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: (i) the title of the document, record or information; (ii) the date of the document, record or information; (iii) the name and title of the author of the document, record or information; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the document, record or information; and (vi) the privilege asserted by the Respondent. However, no document, record or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that it is privileged or confidential.

34. No claim of privilege or confidentiality shall be made with respect to any data, including but not limited to all sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, or any other documents or information evidencing conditions at or around the Site or the portion of any Record that Respondent are required to create or generate pursuant to this Settlement.

35. 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

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

37. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records or other information are privileged under the attorney/client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with (i) the title of the document, record or information; (ii) the date of the document, record or information; (iii) the name and title of the author of the document, record or information; (iv) the name and title of each addressee and recipient; (v) a description of the subject of the document, record or information; and (vi) the privilege asserted by Respondent. However, no document, record or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that it is privileged or confidential.

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

XII. COMPLIANCE WITH OTHER LAWS

39. 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.

40. 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.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

41. 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 312-353-2000 of the incident or Site conditions. In the event that Respondent fail 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).

42. Release Reporting. Upon the occurrence of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at 312-886-1999 and the National Response Center at 800-424-8802. Respondent shall submit a written report to EPA within seven days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11004.

43. 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

44. Payments for Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP.

b. Periodic Bills. On a periodic basis, EPA will send Respondent a bill requiring payment that includes an itemized cost summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice.

Respondent shall make all payments within 30 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 43 (Contesting Future Response Costs), and in accordance with

c. Respondent shall make all payments required by this paragraph 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"

d. At the time of payment, Respondent shall send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov and to:

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

Such notice shall reference Spill/Site ID Number WIN000510058 and the EPA docket number _____ for this action.

e. The total amount to be paid by Respondent pursuant to Paragraph 41.b. shall be deposited by EPA in the Cedarburg Dams Special Account with the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site or to be transferred by EPA to the EPA Hazardous Substance Superfund.

f. Unused Amount. After EPA issues the Notice of Completion of Work pursuant to Paragraph 97 and a final accounting of the Cedarville Dams Special Account Future Response Costs bill by the unused amount paid by Respondent, EPA will apply any unused amount to any other unreimbursed response costs or response actions remaining at the Site or to be transferred by EPA to the EPA Hazardous Substance Superfund. Any decision by EPA to apply unused amounts to unreimbursed response costs or response actions remaining at the Site shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum. EPA may deposit a Future Response Cost payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Cedarville Dams Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Cost payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

45. Interest. In the event that the payments for Future Response Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The 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 Respondent's failure to make timely payments under this section, including but not limited to payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

46. Contesting Future Response Costs. Respondent may contest payment of any Future Response Costs billed under Paragraph 44 if it determines that EPA has made a mathematical error or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall, within the 30-day period, pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 44. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally insured bank duly chartered in the State of Wisconsin 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. Simultaneously with establishment of the escrow account, Respondent shall initiate the dispute resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued Interest) to EPA in the manner described in Paragraph 44. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued Interest) for which it did not prevail to EPA in the manner described in Paragraph 44. 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 mechanism for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

47. 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.

48. 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 20 days after such action. EPA and Respondent shall have 20 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.

49. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Division Director 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.

50. Except as provided in Paragraph 48 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 56, 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 do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

51. "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, increased cost of performance or a failure to attain performance standards set forth in the Action Memorandum.

52. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intend 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 5, within 5 days of when Respondent first knew that the event might cause a delay. Within 10 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 51 and whether Respondent has exercised its best efforts under Paragraph 51, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

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

54. If Respondent elect 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 51 and 52. 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.

55. 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

56. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 57 and 58 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any Work Plan or other 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.

57. Stipulated Penalty Amounts – Work (including Payments).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 57.b.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,000	1st through 14th day
\$ 2,000	15th through 30th day
\$ 4,000	31st day and beyond

b. Compliance Milestones. The stipulated penalties described in Paragraph 57.a. shall accrue for any noncompliance with required Work, including, but not limited to, failure to meet due dates for payments of Future Response Costs, failure to establish escrow accounts in the event of disputes and/or failure to timely, failure to initiate Work pursuant to the approved schedule, or adequately implement the approved Design and any other approved removal action planning documents and schedules.

58. Stipulated Penalty Amounts – Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Sections VIII (Work to Be Performed) and X (Access to Information).

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,000	1st through 14th day
\$ 2,000	15th through 30th day
\$ 4,000	31st day and beyond

59. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 64 of Section XIX (Reservations of Rights by EPA), Respondent shall be liable for a stipulated penalty in the amount of \$100,000.

60. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue (i) 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 Respondent of any deficiency and (ii) with respect to a decision by the EPA management official at Region 5 Division Director level or higher, under Paragraph 47 of Section XV (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. 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 45 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 65 until the date of payment. If Respondent fail to pay stipulated penalties and Interest when due, the United States

may institute proceedings to collect the penalties and Interest. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

61. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the 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. All penalties accruing under this section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XV (Dispute Resolution). All payments to EPA under this section shall be paid 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 indicate that the payment is for stipulated penalties and shall reference EPA Region V and Site/Spill Identification No. WIN000510058, EPA Docket No. _____ and the name and address of the party making the payment. Notice shall be sent to EPA as provided in Paragraph 44.

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

63. 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.

64. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 61. Nothing in this Settlement Agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including but not limited to penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3); provided, however, that EPA 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 in this section, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XIX (Reservations of

Rights by EPA), Paragraph 68. 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.

XVIII. COVENANT NOT TO SUE BY EPA

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

XIX. RESERVATION OF RIGHTS BY EPA

66. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement 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 Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

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

- (a) claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- (b) liability for costs not included within the definition of Future Response Costs;
- (c) liability for performance of response action other than the Work;
- (d) criminal liability;
- (e) liability for damages for injury to, destruction of or loss of natural resources and for the costs of any natural resource damage assessments;

- (f) liability arising from the past, present or future disposal, release or threat of release of Waste Materials outside of the Site;
- (g) liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site; and
- (h) liability for violations of federal or state law that occur during or after implementation of the Work.

68. 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 their 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 68.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.

c. Respondent may invoke the procedures set forth in Section XV (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 68.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 68.b until the earlier of (1) the date that Respondent remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 68.a.

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

XX. COVENANTS BY RESPONDENT

69. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, 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 Work or Future Response Costs.
- (d) any direct or indirect claim for return of unused amounts from the Cedarville Dams Special Account, except for unused amounts that EPA determines shall be returned to Respondent in accordance with Paragraph 44.f (Unused Amount).

70. 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).

71. Except as provided in Paragraph 69, 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 67.a (liability for failure to meet a requirement of the Settlement), 67.d (criminal liability), or 67.h (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.

72. 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.

73. Respondent agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XXI. OTHER CLAIMS

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

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

76. 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).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

77. Except as provided in Paragraphs 67 and 69, 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).

78. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which the 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.

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

80. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters

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

81. 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.

82. Effective upon signature of this Settlement Agreement by Respondent, Respondent agrees that the time period after the date of its signature shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 78 and that, in any action brought by the United States related to the "matters addressed," Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time after its signature of this Settlement Agreement. If EPA gives notice to Respondent that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XXIII. INDEMNIFICATION

83. 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 their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

84. 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.

85. Respondent covenants not to sue and agrees 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 any one or more of 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

86. At least 10 days prior to commencing any on-site Work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of Two Million Dollars (\$2,000,000), combined single limit, naming EPA as an additional insured. Within the same time period, Respondent shall provide EPA with certificates of such insurance and, upon request, a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy or shall ensure that its contractors or subcontractors satisfy all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor.

XXV. FINANCIAL ASSURANCE

87. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of \$25,000,000 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondent may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

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

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

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

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by one or more Respondent that each such Respondent meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

f. A guarantee to fund or perform the Work executed in favor of EPA by one of the following: (1) a direct or indirect parent company of a Respondent; or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; provided, however, that any company providing such a guarantee must demonstrate to EPA's satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee.

88. Respondent has selected, and EPA has found satisfactory, as an initial financial assurance, a guarantee in accordance with Paragraph 87. Within 30 days after the Effective Date, or 30 days after EPA's approval of the form and substance of Respondent's financial assurance, whichever is later, Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance.

89. If Respondent provides financial assurance by means of a demonstration or guarantee under Paragraph 87.e or 87.f, the affected Respondent shall also comply and shall ensure that their guarantors comply with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including, but not limited to: (a) the initial submission to EPA of required documents from the affected entity's chief financial officer and independent certified public accountant no later than 30 days after the Effective Date; (b) the annual resubmission of such documents within 90 days after the close of each such entity's fiscal year; and (c) the notification of EPA no later than 30 days, in accordance with Paragraph 88, after any such entity determines that it no longer satisfies the relevant financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). Respondents agree that EPA may also, based on a belief that an affected entity may no longer meet the financial test requirements of Paragraph 87.e or 87.f, require reports of financial condition at any time from such entity in addition to those specified in this Paragraph. For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (2) the phrase "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" includes the sum of all environmental obligations (including obligations under

CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work under this Settlement; (3) the terms “owner” and “operator” include each Respondent making a demonstration or obtaining a guarantee under Paragraph 87.e or 87.f; and (4) the terms “facility” and “hazardous waste management facility” include the Site.

90. Respondent shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondent shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondent shall follow the procedures of Paragraph 88 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent’s inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Settlement, including, without limitation, the obligation of Respondent to complete the Work in accordance with the terms of this Settlement.

91. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 68.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 91.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 91.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 64, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is provided under Paragraph 87.e or 87.f, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondent shall, within 90 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 91 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Cedarville Dams Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 91 must be reimbursed as Future Response Costs under Section XIV (Payments for Response Costs).

92. Modification of Amount, Form or Terms of Financial Assurance. Respondent may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 83, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondent of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondent may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondent shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 87.

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

XXVI. MODIFICATIONS

94. The OSC may make modifications to any plan or schedule 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 Agreement may be modified in writing by mutual agreement of the Parties.

95. If Respondent seeks permission to deviate from any approved Work Plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receipt of oral or written approval from the OSC pursuant to Paragraph 94.

96. No information, advice, guidance, suggestion or comments by the OSC or other EPA representatives regarding reports, plans, specifications, schedules or any writing submitted by Respondent shall relieve Respondent of its obligations 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.

XXVII. NOTICE OF COMPLETION OF WORK

97. When EPA determines, after EPA's review of the final report, that activities conducted by Respondent satisfy the Action Memorandum and otherwise complied with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including payment of Future Response Costs and record retention, EPA will provide written notice to Respondent. If EPA determines the requirements of the Action Memorandum were not completed, EPA will notify Respondent, provide a list of the deficiencies and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified final report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXVIII. INTEGRATION/APPENDICES

98. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties 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. The following appendices are attached to and incorporated into this Settlement Agreements:

- (a) Appendix A – Action Memorandum
- (b) Appendix B – Site Map

XXIX. EFFECTIVE DATE

99. This Settlement Agreement shall be effective five (5) days after the Settlement Agreement is signed by the Regional Administrator or his/her delegate.

[Signature Pages Follow]

The undersigned representative of Respondent certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind it to this document.

IN THE MATTER OF:

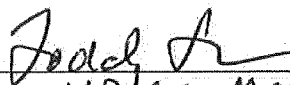
Cedar Creek Superfund Alternative Site
Cedar Creek OU2A-Cedar Creek Ponds
Cedarburg, Ozaukee County, Wisconsin

AGREED this 25 day of May, 2016.

MERCURY MARINE,
DIVISION OF BRUNSWICK CORPORATION

By

Its


VP/CC Mercury Marine

IN THE MATTER OF:

Cedar Creek Superfund Alternative Site
Cedar Creek OU2A-Cedar Creek Ponds
Cedarburg, Ozaukee County, Wisconsin

It is so **ORDERED AND AGREED** this 31 day of MAY, 2016.

By

A handwritten signature in dark ink, appearing to read "Richard C. Karl", is written over a horizontal line.

Richard C. Karl, Director
Superfund Division