

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

United States of America,)

Plaintiff,)

v.)

ACS Industries, Inc.; Alcoa Inc.; Avnet, Inc.; Clean Harbors, Inc.;)
Costa Inc.; Cumberland Engineering Corporation; CVS Pharmacy,)
Inc.; General Cable Industries, Inc.; Hindley Manufacturing Co.,)
Inc.; Hollingsworth & Vose Co.; International Paper Company;)
KIK Custom Products, Inc.; Philips Electronics North America)
Corp.; Sears Roebuck & Co.; Shawmut Corporation; Supervalu)
Holdings, Inc.; Teknor Apex Company; Texas Instruments)
Incorporated; The Narragansett Electric Company; The Stop &)
Shop Supermarket Company LLC; Waste Management of)
Massachusetts, Inc.; Waste Management Disposal Services of)
Massachusetts, Inc.; Waste Management of Rhode Island, Inc.;)
Wyman-Gordon Company; *et al.*,)

Defendants.)

State of Rhode Island,)

Plaintiff,)

v.)

ACS Industries, Inc.; Alcoa Inc.; Avnet, Inc.; Clean Harbors, Inc.;)
Costa Inc.; Cumberland Engineering Corporation; CVS Pharmacy,)
Inc.; General Cable Industries, Inc.; Hindley Manufacturing Co.,)
Inc.; Hollingsworth & Vose Co.; International Paper Company;)
KIK Custom Products, Inc.; Philips Electronics North America)
Corp.; Sears Roebuck & Co.; Shawmut Corporation; Supervalu)
Holdings, Inc.; Teknor Apex Company; Texas Instruments)
Incorporated; The Narragansett Electric Company; The Stop &)
Shop Supermarket Company LLC; Waste Management of)
Massachusetts, Inc.; Waste Management Disposal Services of)
Massachusetts, Inc.; Waste Management of Rhode Island, Inc.;)
Wyman-Gordon Company; *et al.*,)

Defendants.)

Civil Action No.

Civil Action No.

REMEDIAL DESIGN/REMEDIAL ACTION (RD/RA) CONSENT DECREE
PETERSON/PURITAN, INC. SUPERFUND SITE

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred or to be incurred by EPA and the Department of Justice (“DOJ”) for response actions at the Second Operable Unit (“OU2”) of the Peterson/Puritan, Inc. Superfund Site (“Site”) in Cumberland and Lincoln, Rhode Island, together with accrued Interest; and (2) performance of response actions by the defendants at OU2 consistent with the National Contingency Plan, 40 C.F.R. Part 300 (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Rhode Island (the “State”) on October 19, 2015, of negotiations with potentially responsible parties (“PRPs”) regarding the implementation of the remedial design and remedial action (“RD/RA”) for OU2, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree (“CD”).

D. The State has also filed a complaint against the defendants and the United States in this Court alleging that the defendants and Settling *De Minimis* Federal Agencies (“SFAs”) are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and various State statutory and common law theories with respect to OU2.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior and the U.S. Department of Commerce on October 19, 2015, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustees to participate in the negotiation of this CD.

F. The defendants that have entered into this CD (“Settling Defendants” or “SDs”) do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from OU2 constitutes an imminent and substantial endangerment to the public health or welfare or the environment. SFAs do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the SDs or any claim by the State.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. Part 300, by publication in the Federal Register on September 9, 1983, 48 Fed. Reg. 175.

H. In response to a release or a substantial threat of a release of hazardous substances at or from OU2, certain Settling Defendants commenced in November, 2000, a Remedial Investigation and Feasibility Study (“RI/FS”) for OU2 pursuant to 40 C.F.R. § 300.430.

I. Certain Settling Defendants completed a Remedial Investigation (“RI”) Report in August 2012, and certain Settling Defendants prepared a Feasibility Study (“FS”) Report in March 2013, which EPA revised and published in July 2014.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on August 7, 2014, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator or Regional Delegatee, EPA Region 1, based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at OU2 is embodied in a final Record of Decision (“ROD”), executed on September 8, 2015, on which the State has given its concurrence. The ROD includes EPA’s explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

L. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by Settling Performing Defendants (“SPDs”) if conducted in accordance with this CD and its appendices.

M. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the Work to be performed by SPDs shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

N. The Parties recognize, and the Court by entering this CD finds, that this CD has been negotiated by the Parties in good faith and implementation of this CD will expedite the cleanup of OU2 and will avoid prolonged and complicated litigation between the Parties, and that this CD is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367 and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over SDs. Solely for the purposes of this CD and the underlying complaint, SDs waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. SDs shall not challenge the terms of this CD or this Court’s jurisdiction to enter and enforce this CD.

III. PARTIES BOUND

2. This CD is binding upon the United States, the State, and upon SDs and their heirs, successors, and assigns. Any change in ownership or corporate or other legal status of a SD

including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such SD's responsibilities under this CD.

3. SPDs shall provide a copy of this CD to each contractor hired to perform the Work and to each person representing any SPD with respect to OU2 or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this CD. SPDs or their contractors shall provide written notice of the CD to all subcontractors hired to perform any portion of the Work. SPDs shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this CD. With regard to the activities undertaken pursuant to this CD, each contractor and subcontractor shall be deemed to be in a contractual relationship with SPDs within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this CD, terms used in this CD 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 CD or its appendices, the following definitions shall apply solely for purposes of this CD:

“Affected Property” shall mean all real property at OU2 and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Action, including, but not limited to, the following properties: the J. M. Mills Landfill (Plat 34, Lot 249 and Plat 14, Lot 23); the Nunes Parcel (Plat 12, Lot 21 and Plat 12, Lot 18); an island between these two areas located in the Blackstone River called the “Unnamed Island” (Plat 12, Lot 12); property owned or controlled by the Providence and Worcester Railroad running through OU2; and any additional properties located within the Groundwater Restriction Zone or the Groundwater Buffer Zone.

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

“Consent Decree” or “CD” shall mean this consent decree and all appendices attached hereto (listed in Section XXIII). In the event of conflict between this CD and any appendix, this CD shall control.

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

“*De Minimis* Trust” shall mean the Peterson/Puritan, Inc. Superfund Site *De Minimis* Settlement Trust. The Peterson/Puritan, Inc. Superfund Site Settlement *De Minimis* Settlement Trust Agreement is attached hereto at Appendix E.

“DOJ” shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this CD is recorded on the Court’s docket.

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

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

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this CD, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this CD, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to ¶ 11 (Emergencies and Releases), ¶ 12 (Community Involvement) (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), ¶ 31 (Access to Financial Assurance), Section VII (Remedy Review), Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including the amount of just compensation), and Section XIV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include all Interim Response Costs, and all Interest on Interim Response Costs that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from September 30, 2015 to the Effective Date.

“Groundwater Buffer Zone” shall mean the 400-foot groundwater buffer zone as generally depicted on the map attached as Appendix F or any revised buffer zone (either narrower or wider than the 400-foot buffer) as determined to be necessary pursuant to the provisions of the Statement of Work (“SOW”).

“Groundwater Restriction Zone” shall mean the area located within the Groundwater Compliance Boundary as shown on the map attached as Appendix F.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with OU2; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the RA; and/or (c) provide information intended to modify or guide human behavior at or in connection with OU2.

“Interim Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with OU2 between September 30, 2015 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date. Interim Response Costs shall not include costs paid by the United States on or prior to September 30, 2015.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the

interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

“Interest Earned” shall mean interest earned on amounts in the Peterson/Puritan OU2 Disbursement Special Account, which shall be computed monthly at a rate based on the annual return on investments of the EPA Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time the interest accrues.

“J. M. Mills Landfill” shall mean Plat 34, Lot 249 and Plat 14, Lot 23, as generally depicted on the map attached as Appendix G.

“Municipal Solid Waste” or “MSW” shall mean waste material: (a) generated by a household (including a single or multifamily residence); or (b) generated by a commercial, industrial, or institutional entity, to the extent that the waste material (1) is essentially the same as waste normally generated by a household; (2) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (3) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

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

“Non-Settling Owner” shall mean any person, other than a SD, that owns or controls any Affected Property. The clause “Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by Non-Settling Owner.

“Nunes Parcel” shall mean Plat 12, Lot 21 and Plat 12, Lot 18, as generally depicted on the map attached as Appendix G.

“Operable Unit Two” or “OU2” shall mean the J. M. Mills Landfill, the Nunes Parcel, and an unnamed island (“Unnamed Island”), which were owned and operated by Joseph and Linda Marszalkowski, through their business J. M. Mills, Inc., as a single landfill facility. OU2 also includes property owned by the Providence and Worcester Railroad Company. OU2 is generally depicted on the map attached as Appendix G.

“Operation and Maintenance” or “O&M” shall mean all activities required to operate, maintain, and monitor the effectiveness of the RA as specified in the SOW or any EPA-approved O&M Plan.

“Owner SD” shall mean any SD that owns or controls any Affected Property. The clause “Owner SD’s Affected Property” means Affected Property owned or controlled by an Owner SD.

“Owner” shall mean any party that owns or controls any Affected Property, including the Providence and Worcester Railroad Company, Seaconke Wampanoag Tribe-Wampanoag Nation, Inc., Michael John Realty, Third Mega, LLC, and J. M. Mills, Inc. The clause “Affected Property Owner” means Affected Property owned or controlled by one of these Owners.

“Paragraph” or “¶” shall mean a portion of this CD identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States, the State of Rhode Island, SPDs and Settling *De Minimis* Defendants.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and/or the State paid at or in connection with OU2 through September 30, 2015, including Interest on all such costs.

“Performance Standards” shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the ROD.

“Peterson/Puritan 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).

“Peterson/Puritan OU2 Disbursement Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for OU2 by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and ¶ 41 (Creation of Peterson/Puritan OU2 Disbursement Special Account).

“Plaintiffs” shall mean the United States and the State of Rhode Island.

“Providence and Worcester Railroad Company Parcel” shall mean the right of way of the Providence and Worcester Railroad Company (Plat 13, Lot 28; Plat 15, Lot 91; Plat 34, Lot 222; and Plat 14, Lot 6) to the extent located within the Groundwater Restriction Zone.

“Pond A” shall mean the pond located on the Unnamed Island, as generally depicted on the map attached as Appendix H.

“Pond D” shall mean the pond located on the Unnamed Island, as generally depicted on the map attached as Appendix H.

“Pond E” shall mean the pond located on the Unnamed Island, as generally depicted in the map attached as Appendix H.

“Proprietary Controls” shall mean easements running with the land that limit land, water, or other resource use and/or provide access rights and that conform to the model restrictive easement attached as Appendix I.

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

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to Operable Unit 2 signed on September 8, 2015, by the Regional Administrator, EPA Region 1, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix J.

“Remedial Action” or “RA” shall mean the remedial action selected in the ROD.

“Remedial Design” or “RD” shall mean those activities to be undertaken by Settling Performing Defendants to develop final plans and specifications for the RA as stated in the SOW.

“RIDEM” shall mean the Rhode Island Department of Environmental Management and any successor departments or agencies of the State.

“Section” shall mean a portion of this CD identified by a Roman numeral.

“Settling Defendants” or “SDs” shall mean the parties identified in Appendix A.

“Settling *De Minimis* Defendants” shall mean the parties identified in Appendix C.

“Settling *De Minimis* Federal Agencies” or “SFAs” shall mean the settling federal agencies and their successor departments, agencies, or instrumentalities, identified in Appendix D.

“Settling *De Minimis* Parties” shall mean the Settling *De Minimis* Defendants and the Settling *De Minimis* Federal Agencies.

“Settling Performing Defendants” or “SPDs” shall mean those entities identified in Appendix B.

“Site” shall mean the Peterson/Puritan, Inc. Superfund Site, encompassing approximately 500 acres, located in a mixed industrial/commercial and residential/recreational community along the Blackstone River, which also includes a portion of the Blackstone River Valley National Historical Park between the Ashton Dam to the north and the Pratt Dam to the south in the towns of Cumberland and Lincoln, Rhode Island. The Site also includes the 26-acre Lincoln Quinville Wellfield and the Cumberland Lenox Street municipal water supply.

“State” shall mean the State of Rhode Island.

“State Future Response Costs” shall mean all costs, including but not limited to direct and indirect costs that the State incurs and pays at or in connection with this Consent Decree after the date of lodging, but State Future Response Costs do not include amounts paid or reimbursed to the State by EPA.

“Statement of Work” or “SOW” shall mean the document describing the activities SPDs must perform to implement the RD, the RA, and O&M for OU2, which is attached as Appendix K.

“Supervising Contractor” shall mean the principal contractor retained by SPDs to supervise and direct the implementation of the Work under this CD.

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

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

“Unnamed Island” shall mean Plat 12, Lot 12, as generally depicted on the map attached as Appendix G.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any PCB-contaminated material under TSCA and regulations promulgated under it (15 U.S.C. 2601 *et seq.*; 40 C.F.R. Part 761); and (5) any “hazardous materials”, “hazardous substances”, and “hazardous wastes” as defined under Rhode Island General Laws § 23-19.14-3, and the Rhode Island Rules and Regulations for Hazardous Wastes Management.

“Work” shall mean all activities and obligations SPDs are required to perform under this CD, except the activities required under Section XX (Retention of Records).

V. GENERAL PROVISIONS

5. **Objectives of the Parties.** The objectives of the Parties in entering into this CD are to protect public health or welfare and the environment by the design and implementation of the RD/RA at OU2 by SPDs, to pay the United States’ Interim Response Costs and Future Response Costs, and State Future Response Costs, to resolve the claims of Plaintiffs against SDs with regard to OU2, to resolve the claims of the State and SDs that have been or could have been asserted against the United States with regard to OU2, to resolve all claims that have been or could have been asserted between the SDs with regard to OU2 prior to the Effective Date and to provide the SDs with contribution protections with regard to OU2, all as provided in this CD. With respect to each Settling *De Minimis* Party, the mutual objectives of the Parties are also:

a. to reach a final settlement among the Parties with respect to OU2 pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows each Settling *De Minimis* Party to make a cash payment, including a premium, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, Section 7003 of RCRA, 42 U.S.C. § 6973, and Rhode Island General Laws §§ 23-18.9-1 *et seq.*, and 23-19.1-1 *et seq.*, for injunctive relief with regard to OU2 and for response costs incurred and to be incurred at or in connection with OU2, thereby reducing litigation relating to OU2;

b. to simplify any remaining administrative and judicial enforcement activities concerning OU2 by resolving liability of Settling *De Minimis* Parties and relieving those parties of the administrative burden associated with continued involvement at OU2;

c. to obtain settlement with each Settling *De Minimis* Party for its fair share of response costs incurred and to be incurred at or in connection with OU2 by the EPA Hazardous Substance Superfund, by RIDEM, Settling Defendants, and by other persons by payments to the *De Minimis* Trust to fund, in part, the design and implementation of the RD and RA at OU2 by the SPDs; and

d. to provide for contribution protection with respect to “matters addressed” in this CD as provided in ¶ 100.

6. Commitments by Settling Performing Defendants, Settling *De Minimis* Defendants, and Settling *De Minimis* Federal Agencies.

a. SPDs shall finance and perform the Work in accordance with this CD and all deliverables developed by SPDs and approved or modified by EPA pursuant to this CD. SPDs shall pay the United States for its Interim Response Costs and Future Response Costs, and the State for its Future Response Costs, as provided in this CD. SFAs shall pay SPDs for their response costs, as provided in this CD. In no event shall any SFA or Settling *De Minimis* Defendant have any liabilities or responsibilities regarding the Work for which the SPDs are responsible pursuant to Section VI (Performance of the Work by SPDs).

b. SPDs' obligations to finance and perform the Work, including obligations to pay amounts due under this CD, are joint and several. In the event of the insolvency of any SPD or the failure by any SPD to implement any requirement of this CD, the remaining SPDs shall complete all such requirements.

c. Each Settling *De Minimis* Party shall pay or cause to be paid to the *De Minimis* Trust or the Peterson/Puritan OU2 Disbursement Special Account the amount specified for that Settling *De Minimis* Party in Appendix C or D to the this CD, as provided in this CD.

7. Compliance with Applicable Law. Nothing in this CD limits SPDs' obligations to comply with the requirements of all applicable federal and state laws and regulations. SPDs must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this CD, if approved by EPA, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

8. Permits.

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

b. SPDs may seek relief under the provisions of Section XIII (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 referenced in ¶ 8.a and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. This CD is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK BY SETTLING PERFORMING DEFENDANTS

9. Coordination and Supervision.

a. Project Coordinators/Managers.

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

(2) EPA shall designate and notify the SPDs of EPA's Remedial Project Manager and Alternate Remedial Project Manager. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Remedial Project Manager/Alternate Remedial Project Manager will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at OU2 constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) The State shall designate and notify EPA and the SPDs of its Project Coordinator and Alternate Project Coordinator. The State may designate other representatives, including its employees, contractors and/or consultants to oversee the Work. For any meetings and inspections in which EPA's Remedial Project Manager participates, the State's Project Coordinator also may participate. SPDs shall provide the State with reasonable notice in advance of any such meetings or inspections such that the State can meaningfully participate.

(4) SPDs' Project Coordinators shall meet with EPA's and the State's Project Managers/Coordinators at least monthly.

b. **Supervising Contractor.** SPDs' proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard).

c. Procedures for Disapproval/Notice to Proceed.

(1) SPDs shall designate, and notify EPA, within 10 days after the Effective Date, of the names, contact information, and qualifications of the SPDs' proposed Project Coordinator and Supervising Contractor.

(2) EPA, after a reasonable opportunity for review and comment by the State, shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA

issues a notice of disapproval, SPDs shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA, after a reasonable opportunity for review and comment by the State, shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. SPDs may select any coordinator/contractor covered by an authorization to proceed and shall, within 14 days, notify EPA and the State of SPDs' selection.

(3) SPDs may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 9.c(1) and 9.c(2).

10. **Performance of Work in Accordance with SOW.** SPDs shall: (a) develop the RD; (b) perform the RA; and (c) operate, maintain, and monitor the effectiveness of the RA; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the CD or SOW shall be subject to approval by EPA in accordance with ¶ 6.5 (Approval of Deliverables) of the SOW.

11. **Emergencies and Releases.** SPDs shall comply with the emergency and release response and reporting requirements under ¶ 4.4 (Emergency Response and Reporting) of the SOW. Subject to Section XVI (Covenants by Plaintiffs), nothing in this CD, including ¶ 4.4 of the SOW, limits any authority of Plaintiffs: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from OU2, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from OU2. If, due to SPDs' failure to take appropriate response action under ¶ 4.4 of the SOW, EPA or, as appropriate, the State takes such action instead, SPDs shall reimburse EPA and the State under Section X (Payments for Response Costs) for all costs of the response action.

12. **Community Involvement.** If requested by EPA or the State, SPDs shall conduct community involvement activities under EPA's or the State's oversight as provided for in, and in accordance with, Section 2 (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator and implementation of a technical assistance plan. Costs incurred by the United States and/or the State under this Section constitute Future Response Costs and/or State Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

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

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy set forth in ¶ 1.3 of the SOW, then EPA may notify SPDs of such modification. If SPDs object to the modification on the ground that it is not needed to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, or that it is not consistent with the Scope of the Remedy set forth in

¶ 1.3 of the SOW, they may, within 30 days after EPA's notification, seek dispute resolution under Section XIV.

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

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

14. Nothing in this CD, the SOW, or any deliverable required under the SOW constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards.

VII. REMEDY REVIEW

15. **Periodic Review.** SPDs shall conduct, in accordance with ¶ 6.6(h) (Periodic Review Support Plan) of the SOW, studies and investigations to support EPA's reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the RA is protective of human health and the environment.

16. **EPA Selection of Further Response Actions.** If EPA determines, at any time, that the RA is not protective of human health and the environment, EPA may in consultation with the State, select further response actions for OU2 in accordance with the requirements of CERCLA and the NCP.

17. **Opportunity to Comment.** SPDs, the State, and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

18. **Settling Performing Defendants' Obligation to Perform Further Response Actions.** If EPA selects further response actions relating to OU2, EPA may require SPDs to perform such further response actions, but only to the extent that the reopener conditions in ¶ 78 or 79 (United States' Pre- and Post-Certification Reservations) are satisfied. SPDs may invoke the procedures set forth in Section XIV (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of ¶ 78 or 79 are satisfied, (b) EPA's determination that the RA is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes regarding EPA's determination that the RA is not protective or EPA's selection of further response actions shall be resolved pursuant to ¶ 59 (Record Review).

19. **Submission of Plans.** If SPDs are required to perform further response actions pursuant to ¶ 18, they shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work by SPDs). SPDs shall implement the approved plan in accordance with this CD.

VIII. PROPERTY REQUIREMENTS

20. **Proprietary Controls.** SPDs shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure Non-Settling Owner's cooperation in executing and recording; and Owner SD shall, with respect to Owner SD's Affected Property, execute and record, in accordance with the procedures of this ¶ 20, Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the CD, including those activities listed in ¶ 20.a (Access Requirements); and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in ¶ 20.b (Land, Water, or Other Resource Use Restrictions).

a. **Access Requirements.** The following is a non-exclusive 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 or the State;
- (4) Conducting investigations regarding contamination at or near OU2;
- (5) Obtaining samples;
- (6) Assessing the need for, planning, or implementing additional response actions at or near OU2;
- (7) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
- (8) Implementing the Work pursuant to the conditions set forth in ¶ 88 (Work Takeover);
- (9) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by SPDs or their agents, consistent with Section XIX (Access to Information);
- (10) Assessing SPDs' compliance with the CD;
- (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 CD;
- (12) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls; and
- (13) With respect to the Nunes Parcel, an access easement to the Pratt Dam for emergency vehicles.

b. **Land, Water, or Other Resource Use Restrictions.** The following is a non-exclusive list of land, water, or other resource use restrictions applicable to certain areas located within the Affected Property:

- (1) With respect to the Groundwater Restriction Zone:
 1. Prohibiting the extraction, pumping, or use of groundwater for any purpose; and
 2. Prohibiting any other use or activity that would interfere with, adversely affect or otherwise disturb the implementation, integrity, protectiveness or operation of the Remedial Action or other response actions taken at OU2 with the approval of EPA or the State.
- (2) With respect to the Groundwater Buffer Zone, if such a zone is established as a part of the remedial design or at any later point in time:
 1. Prohibiting the extraction, pumping, or use of groundwater for any purpose; except for the private drinking water wells in use as of the Effective Date of this CD, provided that (a) the SPDs perform annual monitoring of these wells and EPA determines, based on this sampling data, that continued use of the wells for drinking water is appropriate and (b) EPA does not make a determination that use of these wells is causing the migration of contamination from the Groundwater Restriction Zone to areas outside the Groundwater Restriction Zone at levels that exceed groundwater performance standards; and
 2. Prohibiting any other use or activity that would interfere with, adversely affect or otherwise disturb the implementation, integrity, protectiveness or operation of the Remedial Action or other response actions taken at OU2 with the approval of EPA or the State.
- (3) With respect to the J. M. Mills Landfill and the Nunes Parcel:
 1. All restrictions applicable to the Groundwater Restriction Zone;
 2. Prohibiting excavation;
 3. Prohibiting residential development;
 4. Prohibiting commercial development unless there is an adequate vapor intrusion/mitigation evaluation and implementation of any mitigation measures required by EPA;
 5. Prohibiting the construction of any buildings with basements or pilings;

6. Prohibiting recreational access to some or all areas within the J. M. Mills Landfill and/or the Nunes Parcel if (a) EPA determines, based on landfill gas analysis and monitoring, as well as other landfill closure considerations, that recreational use of the area covered by the protective cap represents an unacceptable risk to human health or (b) EPA determines that recreational access to areas of restored riparian habitat along the Blackstone River represents an unacceptable risk to human health; and
7. Prohibiting any other use or activity that would interfere with, adversely affect or otherwise disturb the implementation, integrity, protectiveness or operation of the Remedial Action or other response actions taken at OU2 with the approval of EPA or the State.

(4) With respect to the Unnamed Island:

1. All restrictions applicable to the Groundwater Restriction Zone; and
2. Prohibiting any other use or activity that would interfere with, adversely affect or otherwise disturb the implementation, integrity, protectiveness or operation of the Remedial Action or other response actions taken at OU2 with the approval of EPA or the State.

(5) With respect to the Pond A, Pond D and Pond E if, after completion of the Remedial Action, any contamination is left in the sediment in any of the ponds at levels above the applicable remediation goals:

1. All restrictions applicable to the Groundwater Restriction Zone;
2. Prohibiting any disturbance of the subaqueous cover located in any areas where the sediment below the cover is contaminated at levels above the applicable remediation goals; and
3. Prohibiting any other use or activity that would interfere with, adversely affect or otherwise disturb the implementation, integrity, protectiveness or operation of the Remedial Action or other response actions taken at OU2 with the approval of EPA or the State.

Parcel: (6) With respect to the Providence and Worcester Railroad Company

1. All restrictions applicable to the Groundwater Restriction Zone;
2. All restrictions applicable to the J. M. Mills Landfill and the Nunes Parcel with respect to all areas where the cap is constructed; and

3. Prohibiting any other use or activity that would interfere with, adversely affect or otherwise disturb the implementation, integrity, protectiveness or operation of the Remedial Action or other response actions taken at OU2 with the approval of EPA or the State.

c. **Non-Emergency Excavation.**

(1) Prior to the recording of an Easement with respect to any portion of the Affected Property, as required by this Paragraph, excavation of soil shall be permitted notwithstanding the restrictions on activity and use set forth above, subject to the following conditions:

1. The property owner shall submit to EPA a proposed plan for conducting the activity and shall obtain EPA's prior written approval before conducting the activities described in the proposed plan; and
2. The property owner shall conduct the excavation and associated activities in accordance with any conditions EPA may deem necessary to protect human health or to prevent any interference or adverse effect in the implementation, integrity, protectiveness or operation of the Remedial Action performed and/or to be performed at OU2.

(2) After the recording of an Easement with respect to any portion of the Affected Property, as required by this Paragraph, excavation of soil shall be permitted notwithstanding the restrictions on activity and use set forth above in accordance with the terms of the Easement.

d. **Emergency Excavation.**

(1) Prior to the recording of an Easement with respect to the property, as required by this Paragraph, in the event that it becomes necessary to excavate a portion of the property subject to a restriction on excavation as part of a response to an emergency (e.g., emergency repair of utility lines or responding to fire or flood), the activity and use restrictions set forth above shall be temporarily suspended with respect to such excavation for the duration of such response, provided that the party seeking to implement the emergency excavation:

1. Notifies EPA and RIDEM of such emergency as soon as possible but no more than two (2) hours after learning of such emergency;
2. Limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency;

3. Implements all measures necessary to limit actual or potential risk to the public health and environment arising from the emergency and the response thereto;
4. Undertakes precautions to minimize exposure to on-site workers and neighboring individuals and residents of the Site to the hazardous material;
5. Repairs any damage caused to the Remedial Action including, without limitation, any damage to monitoring wells or the cap;
6. Engages an appropriately trained and licensed professional to oversee the implementation of the excavation and associated activities in accordance with the terms of this ¶ 20.d (Emergency Excavation) and to prepare and oversee the implementation of a written plan which, in said professional's opinion, will restore the property to its condition prior to the emergency; said plan to be promptly prepared and implemented; a copy of said plan to be submitted to EPA and RIDEM within 10 days of its implementation, with a statement from said professional that the property has been restored to said condition; further provided that in cases where only minimal excavation has occurred such that there has been no significant impact on the protectiveness of the Remedial Action or where there otherwise has been no significant impact on the Remedial Action, the party seeking to implement the emergency excavation may request EPA to allow it to prepare and submit the plan and statement, without engaging the services of the otherwise required professional; and
7. After the recording of an Easement with respect to the property, as required by this Paragraph, emergency excavation of soil shall be permitted notwithstanding the restrictions on activity and use set forth above in accordance with the terms of the Easement.

e. Response actions, undertaken or approved by EPA or the State including, without limitation, the Remedial Action, shall not be subject to the restrictions set forth above.

f. Once an Easement has been approved and recorded in accordance with this Paragraph, if the restrictions established by the Easement are modified pursuant to its terms, such modifications shall be considered modifications of the restrictions set forth above.

g. **Grantees.** The Proprietary Controls shall be granted to the State, which the State has agreed to accept. EPA shall be granted the right of access and the right to enforce the covenants as a third-party beneficiary, thereby allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

h. **Initial Title Evidence.** With respect to each of the six restricted areas set forth in ¶ 20.b ((Land, Water, or Other Resource Use Restrictions) above, as well as any other

area within the Affected Property, SPDs shall, within 60 days after EPA requests that the SPDs begin the process of obtaining the Proprietary Control for such area:

(1) **Record Title Evidence.** Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the State and the SPDs as the parties to be insured; (ii) covers the particular area of the Affected Property that is to be encumbered; (iii) demonstrates that the person or entity that will execute and record the Proprietary Controls is the owner of such Affected Property; (iv) identifies all record matters that affect title to the particular area of the Affected Property, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, “Prior Encumbrances”); and (v) includes complete, legible copies of such Prior Encumbrances; and

(2) **Non-Record Title Evidence.** Submit to EPA a report of the results of an investigation, including a physical inspection of the particular area of the Affected Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

i. **Release or Subordination of Prior Liens, Claims, and Encumbrances.**

(1) SPDs shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the particular area of the Affected Property revealed by the title evidence or otherwise known to any SPD, unless EPA waives this requirement as provided under ¶¶ 20.i(2)-(4).

(2) SPDs may, by the deadline under ¶ 20.h (Initial Title Evidence), submit an initial request for waiver of the requirements of ¶ 20.i(1) regarding one or more Prior Encumbrances, on the ground that such Prior Encumbrance cannot defeat or adversely affect the rights to be granted by the Proprietary Controls and cannot interfere with the remedy or result in unacceptable exposure to Waste Material.

(3) SPDs may, within 90 days after the Effective Date, or if an initial waiver request has been filed, within 60 days after EPA’s determination on the initial waiver request, submit a final request for a waiver of the requirements of ¶ 20.i(1) regarding any particular Prior Encumbrance on the grounds that SPDs could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

(4) The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.

(5) SPDs shall complete their obligations under ¶ 20.i(1) regarding all Prior Encumbrances: within 180 days after the Effective Date; or if an initial waiver request has been filed, within 135 days after EPA’s determination on the initial waiver request; or if a final waiver request has been filed, within 90 days after EPA’s determination on the final waiver request.

j. **Update to Title Evidence and Recording of Proprietary Controls.**

(1) SPDs shall submit to EPA for review and approval, by the deadline specified in ¶ 20.i(5), all draft Proprietary Controls and draft instruments addressing Prior Encumbrances.

(2) Upon EPA's approval of the proposed Proprietary Control and instrument addressing Prior Encumbrances, SPDs shall, within 15 days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under ¶ 20.h. (Initial Title Evidence). If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), SPDs shall secure the immediate recordation of the Proprietary Controls and instruments addressing Prior Encumbrances in the appropriate land records. Otherwise, SPDs shall secure the release, subordination, modification, or relocation under ¶ 20.i(1), or the waiver under ¶¶ 20.i(2)-(4), regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Proprietary Controls and instruments addressing Prior Encumbrances.

(3) If SPDs submitted a title insurance commitment under ¶ 20.h(1) (Record Title Evidence), then upon the recording of the Proprietary Control and instruments addressing Prior Encumbrances, SPDs shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for \$100,000 or other amount approved by EPA; (iii) is issued to the State and the SPDs; and (iv) is issued on a current American Land Title Association (ALTA) form or other form approved by EPA.

(4) SPDs shall, within 30 days after recording the Proprietary Control and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide to the United States and to all grantees of the Proprietary Controls: (i) certified copies of the recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk's recording stamps; and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording of the Proprietary Controls and instruments.

k. SPDs shall monitor, maintain, enforce, and annually report on the status of all Proprietary Controls required under this CD and compliance with those Proprietary Controls.

21. Agreements Regarding Access and Non-Interference.

a. SPDs shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure, on or before 90 days from the Effective Date, from such Non-Settling Owner an agreement, enforceable by SPDs and by Plaintiffs, providing that such Non-Settling Owner, and Owner SD shall, with respect to Owner SD's Affected Property:

(1) Provide Plaintiffs and the SPDs, and their representatives, contractors, and subcontractors, with access at all reasonable times to such Affected Property to conduct any activity regarding the CD, including those listed in ¶ 20.a (Access Requirements); and

(2) Refrain from using such Affected Property in any manner that EPA determines will: (i) pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The restrictions include those listed in ¶ 20.b (Land, Water, or Other Resource Use Restrictions).

22. **Best Efforts.** As used in this Section, “best efforts” means the efforts that a reasonable person in the position of SPDs would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If SPDs are unable to accomplish what is required through “best efforts” in a timely manner, they shall notify the United States and include a description of the steps taken to comply with the requirements. If the United States deems it appropriate, it may assist SPDs or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. 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 X (Payments for Response Costs).

23. 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, SPDs shall cooperate with EPA’s and the State’s efforts to secure and ensure compliance with such Institutional Controls.

24. **Transfer and Notice to Successors-in-Title.**

a. Owner SD shall, within 21 days after the Effective Date, submit for EPA approval a notice to be filed regarding Owner SD’s Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, OU2; (ii) that EPA has selected a remedy for OU2; and (iii) that potentially responsible parties have entered into a CD requiring implementation of such remedy; and (3) identify the U.S. District Court in which the CD was filed, the name and civil action number of this case, and the date the CD was entered by the Court. Owner SD shall record the notice within 14 days after EPA’s approval of the notice and submit to EPA, within 14 days thereafter, a certified copy of the recorded notice.

b. Owner SD shall not Transfer its Affected Property unless it has: (a) first secured EPA’s approval of, and transferee’s consent to, an agreement that: (i) is enforceable by SPDs and Plaintiffs; and (ii) requires the transferee to provide access to and to refrain from using the Affected Property to the same extent as is provided under ¶ 20.a. (Access Requirements) and ¶ 20.b (Land, Water, or Other Resource Use Restrictions); and (b) executed and recorded all Proprietary Controls and instruments addressing Prior Encumbrances regarding such Affected Property in accordance with ¶ 21 (Proprietary Controls).

c. Owner SD shall, prior to entering into a contract to Transfer Owner SD's Affected Property, or 60 days prior to Transferring Owner SD's Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a remedy regarding OU2, that potentially responsible parties have entered into a Consent Decree requiring implementation of such remedy, and that the United States District Court has entered the CD (identifying the name and civil action number of this case and the date the CD was entered by the Court); and

(2) Notify EPA and the State of the name and address of the proposed transferee and provide EPA and the State with a copy of the notice that it provided to the proposed transferee.

25. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, SPDs shall continue to comply with their obligations under the CD, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property and to implement, maintain, monitor, and report on Institutional Controls.

26. Notwithstanding any provision of the CD, Plaintiffs retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions and Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

IX. FINANCIAL ASSURANCE

27. In order to ensure completion of the Work, SPDs shall secure financial assurance, initially in the amount of \$32 million, which is approximately equal to the \$40.3 million estimated remedy cost in the ROD minus the approximately \$8.3 million to be placed in the Peterson/Puritan OU2 Disbursement Special Account ("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 <http://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. SPDs may use multiple mechanisms only 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 or a trust fund in the form attached at Appendix E;

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 SPDs that each such SPD 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 SPD; or (2) a company that has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a SPD; 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.

28. Within 30 days after the Effective Date, or 30 days after EPA’s approval of the form and substance of SPDs’ financial assurance, whichever is later, SPDs shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Financial Management Officer, to the United States, and to EPA and the State as specified in Section XXI (Notices and Submissions). SPDs have selected, and EPA has found satisfactory, the following financial assurance mechanisms: the Peterson/Puritan, Inc. Superfund Site *De Minimis* Settlement Trust Agreement, letter(s) of credit and/or surety payment bond(s) totaling \$32 million. The financial assurance mechanisms shall be in the form as set forth in Appendix E and prepared in accordance with ¶ 27.

29. If SPDs provide financial assurance by means of a demonstration or guarantee under ¶ 27.e or 27.f, the affected SPDs 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 ¶ 30, 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). SPDs agree that EPA may also, based on a belief that an affected entity may no longer meet the financial test requirements of ¶ 27.e or 27.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” mean 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” means 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 CD; (3) the terms “owner” and “operator” mean each SPD making a demonstration or obtaining a guarantee under ¶ 27.e or 27.f; and (4) the terms “facility” and “hazardous waste management facility” mean OU2.

30. SPDs shall diligently monitor the adequacy of the financial assurance. If any SPD 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 SPD shall notify EPA of such information within 14 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 SPD of such determination. SPDs 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 SPD, 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. SPDs shall follow the procedures of ¶ 32 (Modification of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. SPDs’ 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 CD, including, without limitation, the obligation of SPDs to complete the Work in accordance with the terms of this CD.

31. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 89.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 ¶ 31.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected SPD 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 ¶ 31.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 89.b, 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 ¶ 27.e or 27.f, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. SPDs shall, within 21 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 31 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 Peterson/Puritan OU2 Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with OU2, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 31 must be reimbursed as Future Response Costs under Section X (Payments for Response Costs).

32. **Modification of Amount, Form, or Terms of Financial Assurance.** SPDs 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 ¶ 28, 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 SPDs of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. SPDs 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, final administrative decision, or final judicial decision resolving such dispute under Section XIV (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 SPDs pursuant to the dispute resolution provisions of this CD 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, SPDs shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 28.

33. **Release, Cancellation, or Discontinuation of Financial Assurance.** SPDs may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ 4.7 (Certification of Work Completion) of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIV (Dispute Resolution).

X. PAYMENTS FOR RESPONSE COSTS

34. **Settling *De Minimis* Parties.** EPA has determined based, in part, on the information provided by certain SPDs to EPA that is described in ¶ 119, the following:

a. prompt settlement with each Settling *De Minimis* Party is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

b. the payment to be made by each Settling *De Minimis* Party under this CD involves only a minor portion of the response costs at OU2 within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1); and

c. the amount of hazardous substances contributed to OU2 by each Settling *De Minimis* Party and the toxic or other hazardous effects of the hazardous substances contributed to OU2 by each Settling *De Minimis* Party are minimal in comparison to other hazardous substances at OU2 within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). Each Settling *De Minimis* Party contributed wastes in amounts not exceeding 2% of the approximate 2,217,000 cubic yard total volume of waste material identified by the ROD as having been disposed of at OU2, and the hazardous substances contributed by each Settling *De Minimis* Party to OU2 are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at OU2.

35. Payments by Settling *De Minimis* Defendants. Within 30 days of the Effective Date, each Settling *De Minimis* Defendant shall pay or cause to be paid to the *De Minimis* Trust the amount specified for that Settling *De Minimis* Defendant in Appendix C, except for the payments to be made by Microfibres, Inc. (“Microfibres”) and Kmart Corporation (“Kmart”), which shall be made as set forth in ¶¶ 35.a and 35.b below. Each Settling *De Minimis* Defendant’s full settlement amount shall be deposited into the *De Minimis* Trust by Electronic Funds Transfer in accordance with instructions provided by the SPDs after the Effective Date. At the time of payment into the *De Minimis* Trust, each Settling *De Minimis* Defendant shall send or cause to be sent, to the United States and the State, and a designated representative of the SPDs, notice evidencing that payment has been made in accordance with Section XXI (Notices and Submissions). In the event that any payment by any Settling *De Minimis* Defendant is not made within 30 days of the Effective Date, Settling *De Minimis* Defendants shall pay Interest on the unpaid balance which shall begin to accrue on the Effective Date. The funds contributed to the *De Minimis* Trust by the Settling *De Minimis* Defendants pursuant to this Paragraph shall be used by the SPDs to fund the Work, and shall be disbursed by the SPDs in accordance with the terms of the *De Minimis* Trust Agreement.

a. **Microfibres Payment.** On January 29, 2016, Microfibres filed a petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Rhode Island, which has been assigned case number 1:16-bk-10154. The United States Trustee has appointed Joseph M. DiOrio to act as the Chapter 7 trustee (“Trustee”). The SPDs expect to file a proof of claim in the bankruptcy proceeding with respect to the liability of Microfibres at OU2 and to enter into a settlement with the Trustee whereby the SPDs will have an allowed general unsecured claim in the bankruptcy in the amount of \$750,000 with respect to such liability. After approval of that settlement by the bankruptcy court, the Trustee shall pay the distribution amount with respect to such allowed claim to the *De Minimis* Trust in accordance with ¶ 35. Such payment to the *De Minimis* Trust shall be made on the later of (a) the distribution date in the bankruptcy proceeding or (b) 30 days after the Effective Date.

b. **Kmart Payment.** Within 30 days of the Effective Date, Kmart shall make a payment to EPA in the amount specified in Appendix C, in accordance with a Settlement Agreement approved on July 15, 2003 by the United States Bankruptcy Court for the Northern District of Illinois in In re Kmart Corporation, No. 02-02474. The total amount of the payment

shall be deposited by EPA in the Peterson/Puritan OU2 Disbursement Special Account. The Financial Litigation Unit (FLU) of the United States Attorney's Office for the District of Rhode Island shall provide instructions regarding making this payment to DOJ on behalf of EPA. The instructions must include a Consolidated Debt Collection System (CDCS) number to identify that the payment is being made under this CD. The payment shall be made by Fedwire Electronic Funds Transfer (EFT) to the U.S. DOJ account and include references to the CDCS Number, Site/Spill ID Number 0140, and DJ Number 90-11-3-1233/9. Kmart shall send a notice with respect to the payment, including references to the CDCS, Site/Spill ID, and DJ numbers, to the United States, EPA, and the EPA Cincinnati Finance Center.

36. Payments by Settling *De Minimis* Federal Agencies.

a. Payment to SPDs. As soon as reasonably practicable after the Effective Date, the United States Postal Service, on its own behalf, shall pay \$520,000, and the United States, on behalf of the remaining SFAs, shall pay \$455,000 to the *De Minimis* Trust. The SFAs' settlement amounts shall be deposited into the *De Minimis* Trust by Electronic Funds Transfer in accordance with instructions to be provided by the SPDs after the Effective Date.

b. Interest. In the event that any payment required by ¶ 36.a is not made within 120 days after the United States receives payment instructions from the SPDs in accordance with ¶ 36.a or 120 days after the Effective Date, whichever is later, the United States Postal Service, on its own behalf, and the United States, on behalf of remaining SFAs, shall pay Interest on the unpaid balance, with such Interest commencing on the 121st day after the United States receives the payment instructions or the 121st day after the Effective Date, whichever is later, and accruing through the date of the payment.

c. The Parties to this CD recognize and acknowledge that the payment obligations of the SFAs under this CD (with the exception of the obligations of the United States Postal Service) can only be paid from appropriated funds legally available for such purpose. Nothing in this CD shall be interpreted or construed as a commitment or requirement that any SFA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

37. Payments by SPDs for Future Response Costs. SPDs shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. Periodic Bills. On a periodic basis, EPA will send SPDs a bill requiring payment that includes a Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. SPDs shall make all payments within 30 days after SPDs' receipt of each bill requiring payment, except as otherwise provided in ¶ 39, in accordance with ¶ 38 (instructions for Future Response Cost payments).

b. Deposit of Future Response Costs Payments. The total amount to be paid by SPDs pursuant to ¶ 37.a (Periodic Bills) shall be deposited by EPA in the Peterson/Puritan OU2 Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Peterson/Puritan OU2 Special Account balance is sufficient to address

currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by SPDs pursuant to the dispute resolution provisions of this CD or in any other forum.

c. **Payments by SPDs to State.** SPDs shall pay to the State all State Future Response Costs not inconsistent with the NCP. The State will send SPDs a bill requiring payment that includes a State-prepared cost summary, which includes direct and indirect costs incurred by the State and its contractors and subcontractors on a periodic basis. SPDs shall make all payments within 30 days after SPDs' receipt of each bill requiring payment, except as otherwise provided in ¶ 39 (Contesting Future Response Costs). SPDs shall make all payments to the State required by this Paragraph in accordance with one of the following payment methods:

(1) For payment by Automated Clearinghouse (ACH), payment shall be made as follows:

Bank of America
Government Service Center
175 Addison Road
Windsor, CT 06095
Routing Number 01150001
Check Digit 0
Account Title: State of Rhode Island General Fund

(2) For all payment by official bank check, payment shall be payable to and delivered as follows:

“General Treasurer” (for deposit in the Environmental Response Fund)
Rhode Island Department of Environmental Management
235 Promenade Street
Providence, RI 02908

38. Instructions for Payments to the United States of Future Response Costs and Stipulated Penalties.

Choose one of the four options below for payment by EFT, by ACH, online, or by check.

(1) For all payments subject to this ¶ 38, SPDs shall make such payment by Fedwire EFT, referencing the Site/Spill ID and DJ numbers. The Fedwire EFT payment must be sent as follows:

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”

(2) For all payments subject to this ¶ 38, SPDs shall make such payment by Automated Clearinghouse (ACH) payment as follows:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact: Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

(3) For all payments subject to this ¶ 38, SPDs shall make such payment at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to SPDs by EPA following lodging of the CD.

(4) For all payments subject to this ¶ 38, SPDs shall make such payment by official bank check(s) made payable to “EPA Hazardous Substance Superfund,” referencing the name and address of the party making the payment. SPDs shall send the check(s) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

(5) For all payments made under this ¶ 38, SPDs must include references to the Site/Spill ID and DJ numbers. At the time of any payment required to be made in accordance with ¶ 38, SPDs shall send notices that payment has been made to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 114. All notices must include references to the Site/Spill ID and DJ numbers.

39. Contesting Future Response Costs. SPDs may submit a Notice of Dispute, initiating the procedures of Section XIV (Dispute Resolution), regarding any Future Response Costs or any State Future Response Costs billed under ¶ 34 (Payments by SPDs for Future Response Costs) if they determine that EPA or the State has made a mathematical error or included a cost item that is not within the definition of Future Response Costs or State Future Response Costs, or if they believe EPA or the State incurred excess costs as a direct result of an EPA or State action that was inconsistent with a specific provision or provisions of the NCP.

Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXI (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs or State Future Response Costs and the basis for objection. If SPDs submit a Notice of Dispute, SPDs shall pay all uncontested Future Response Costs to the United States and all uncontested State Future Response Costs to the State within 30 days after SPDs' receipt of the bill requiring payment. Simultaneously, SPDs shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs or State Future Response Costs. SPDs shall send to the United States or the State, as appropriate, as provided in Section XXI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs or State Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If the United States or the State prevails in the dispute, SPDs shall pay the sums due (with accrued Interest) to the United States or the State, if State costs are disputed, within 7 days after the resolution of the dispute. If SPDs prevail concerning any aspect of the contested costs, SPDs shall pay that portion of the costs (plus associated accrued Interest) for which they did not prevail to the United States or the State, if State costs are disputed, within 14 days after the resolution of the dispute. SPDs shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with ¶ 38 (instructions for future response cost payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding SPDs' obligation to reimburse the United States and the State for their respective Future Response Costs.

40. **Interest.** In the event that any payment for Future Response Costs or State Future Response Costs required under this Section is not made by the date required, SPDs shall pay Interest on the unpaid balance. The Interest on Future Response Costs and State Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of SPDs' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of SPDs' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to ¶ 63 (Stipulated Penalty Amounts – Work).

XI. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

41. **Creation of Peterson/Puritan OU2 Disbursement Special Account and Agreement to Disburse Funds to Settling Performing Defendants.**

a. Within 45 days after the Effective Date, EPA shall establish the Peterson/Puritan OU2 Disbursement Special Account and shall transfer \$8,360,465.00 from the Peterson/Puritan OU2 Special Account to the Peterson/Puritan OU2 Disbursement Special Account.

b. On February 4, 2016, the United States Bankruptcy Court for the District of Delaware approved a settlement agreement entered into by the United States and debtor Reichhold Holdings US, Inc., in In re Reichhold Holdings US, Inc., No. 14-12238-MFW. Under that settlement agreement, the United States has an allowed general unsecured claim in the amount of \$205,211.00 with respect to OU2. Within 45 days of receiving any distribution with respect to that allowed claim, EPA shall transfer such funds to the Peterson/Puritan OU2 Disbursement Special Account.

c. The payment to be made by Kmart pursuant to ¶ 35.b shall also be placed in the Peterson/Puritan OU2 Disbursement Special Account.

d. Subject to the terms and conditions set forth in this Section, EPA agrees to make the funds in the Peterson/Puritan OU2 Disbursement Special Account, including Interest Earned on the funds in the Peterson/Puritan OU2 Disbursement Special Account, available for disbursement to SPDs as partial reimbursement for performance of the Work. EPA shall disburse funds from the Peterson/Puritan OU2 Disbursement Special Account to SPDs in accordance with the procedures and milestones for phased disbursement set forth in this Section.

42. Timing, Amount, and Method of Disbursing Funds From the Peterson/Puritan OU2 Disbursement Special Account. Within 45 days after EPA’s receipt of each Cost Summary and Certification required by ¶ 43 to be submitted upon the completion of each milestone of the Work as defined below, or if EPA has requested additional information under ¶ 43.b or a revised Cost Summary and Certification under ¶ 43.b, within 45 days after receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Section, EPA shall disburse funds from the Peterson/Puritan OU2 Disbursement Special Account in the amounts set forth below. However, in no event shall EPA be required to disburse funds in an amount, considering all prior disbursements, greater than the total costs previously incurred and paid for the Work, excluding costs not eligible for disbursement under ¶ 44 (Costs Excluded From Disbursement).

Milestone	Disbursement of Funds
EPA Approval of the PDI Report	\$750,000
EPA Approval of the Final (100%) RD	\$750,000
2 years of Work Implementation after RA mobilization	\$2 million
3 years of Work implementation after RA mobilization	\$3 million
EPA Certification of RA Completion	Remainder of funds in the Peterson/Puritan OU2 Disbursement Special Account

EPA shall disburse the funds from the Peterson/Puritan OU2 Disbursement Special Account to SPDs in the following manner:

If paying by check:

J.M. Mills NPL Site Escrow Account
c/o de maximis, inc.
450 Montbrook Lane
Knoxville, TN 37919

If paying by wire transfers or ACH:

Pinnacle National Bank
211 Commerce Street
Nashville, TN 37201
ABA: 064008637
A/C: 5528590

43. **Requests for Disbursement of Special Account Funds.**

a. Within 45 days after issuance of EPA’s written confirmation that a milestone of the Work, as defined in ¶ 42 (Timing, Amount, and Method of Disbursing Funds), has been satisfactorily completed, SPDs shall submit to EPA a Cost Summary and Certification, as defined in ¶ 43.b, covering the Work performed up to the date of the completion of that milestone. SPDs shall not include in any submission costs included in a previous Cost Summary and Certification.

b. Each Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid by SPDs for the Work covered by the particular submission, excluding costs not eligible for disbursement under ¶ 44 (Costs Excluded from Disbursement). Each Cost Summary and Certification shall contain the following statement signed by the Chief Financial Officer of a SPD or a designated representative of the SPDs or an Independent Certified Public Accountant (the “Designated Representative”):

To the best of my knowledge, after thorough investigation and review of SPDs’ documentation of costs incurred and paid for Work performed pursuant to this CD [insert, as appropriate: “up to the date of completion of milestone 1,” “between the date of completion of milestone 1 and the date of completion of milestone 2,” or “between the date of completion of milestone 2 and the date of completion of the milestone 3,”] I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.

The Designated Representative shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, SPDs shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.

c. If EPA finds that a Cost Summary and Certification includes a mathematical error, costs excluded under ¶ 44 (Costs Excluded from Disbursement), costs that are inadequately documented, or costs submitted in a prior Cost Summary and Certification, it will notify SPDs and provide them an opportunity to cure the deficiency by submitting a revised

Cost Summary and Certification. If SPDs fail to cure the deficiency within 45 days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate SPDs' costs eligible for disbursement. SPDs may dispute EPA's recalculation under this Paragraph pursuant to Section XIV (Dispute Resolution). In no event shall SPDs be disbursed funds from the Peterson/Puritan OU2 Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

44. **Costs Excluded from Disbursement.** The following costs are excluded from, and shall not be sought by SPDs for, disbursement from the Peterson/Puritan OU2 Disbursement Special Account: (a) response costs paid pursuant to Section X (Payments for Future Response Costs); (b) any other payments made by SPDs to the United States or the State pursuant to this CD, including, but not limited to, any Interest or stipulated penalties paid pursuant to Section X (Payments for Future Response Costs) or XV (Stipulated Penalties); (c) attorneys' fees and costs, except for reasonable attorneys' fees and costs necessarily related to obtaining access or institutional controls as required by Section VIII (Property Requirements); (d) costs of any response activities SPDs perform that are not required under, or approved by EPA pursuant to, this CD; (e) costs related to SPDs' litigation, settlement, development of potential contribution claims, or identification of defendants; (f) internal costs of SPDs, including but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of SPDs directly performing the Work; (g) any costs incurred by SPDs prior to the Effective Date; or (h) any costs incurred by SPDs pursuant to Section XIV (Dispute Resolution).

45. **Termination of Disbursements from the Special Account.** EPA's obligation to disburse funds from the Peterson/Puritan OU2 Disbursement Special Account under this CD shall terminate upon EPA's determination that SPDs: (a) have knowingly submitted a materially false or misleading Cost Summary and Certification; (b) have submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within 45 days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification as required by ¶ 43 (Requests for Disbursement of Special Account Funds) 45 days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Section because of SPDs' failure to submit the Cost Summary and Certification as required by ¶ 43 (Requests for Disbursement of Special Account Funds). EPA's obligation to disburse funds from the Peterson/Puritan OU2 Disbursement Special Account under this CD shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to ¶ 89 (Work Takeover), when such assumption of performance of the Work is not challenged by SPDs or, if challenged, is upheld under Section XIV (Dispute Resolution). SPDs may dispute EPA's termination of special account disbursements under Section XIV.

46. **Recapture of Special Account Disbursements.** Upon termination of disbursements from the Peterson/Puritan OU2 Disbursement Special Account under ¶ 45 (Termination of Disbursements from the Special Account), if EPA has previously disbursed funds from the Peterson/Puritan OU2 Disbursement Special Account for activities specifically related to the reason for termination, *e.g.*, discovery of a materially false or misleading submission after disbursement of funds based on that submission, EPA shall submit a bill to SPDs for those amounts already disbursed from the Peterson/Puritan OU2 Disbursement Special

Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by SPDs. Within 14 days after receipt of EPA's bill, SPDs shall reimburse the EPA Hazardous Substance Superfund for the total amount billed. Payment shall be made in accordance with ¶ 38 (instructions for future response cost payments). Upon receipt of payment, EPA may deposit all or any portion thereof in the Peterson/Puritan OU2 Special Account, the Peterson/Puritan OU2 Disbursement Special Account, or the EPA Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by SPDs pursuant to the dispute resolution provisions of this CD or in any other forum. SPDs may dispute EPA's determination as to recapture of funds pursuant to Section XIV (Dispute Resolution).

47. **Balance of Special Account Funds.** After EPA's completion of all disbursements to SPDs in accordance with this Section, if any funds remain in the Peterson/Puritan OU2 Disbursement Special Account, EPA may transfer such funds to the Peterson/Puritan OU2 Special Account or to the EPA Hazardous Substance Superfund. Any transfer of funds to the Peterson/Puritan OU2 Special Account or the EPA Hazardous Substance Superfund shall not be subject to challenge by SPDs pursuant to the dispute resolution provisions of this CD or in any other forum.

XII. INDEMNIFICATION AND INSURANCE

48. **Settling Performing Defendants' Indemnification of the United States and the State.**

a. The United States and the State do not assume any liability by entering into this CD or by virtue of any designation of SPDs as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). SPDs shall indemnify, save, and hold harmless the United States and the State and their 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 SPDs, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on SPDs' behalf or under their control, in carrying out activities pursuant to this CD, including, but not limited to, any claims arising from any designation of SPDs as EPA's authorized representatives under Section 104(e) of CERCLA. Further, SPDs agree to pay the United States and the State all costs they incur 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 and the State based on negligent or other wrongful acts or omissions of SPDs, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this CD. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of SPDs in carrying out activities pursuant to this CD. Neither SPDs nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State, respectively, shall give SPDs notice of any claim for which the United States or the State plans to seek indemnification pursuant to this ¶ 48, and shall consult with SPDs prior to settling such claim.

49. SPDs covenant not to sue and agree not to assert any claims or causes of action against the United States and the State, respectively, for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of SPDs and any person for performance of Work on or relating to OU2, including, but not limited to, claims on account of construction delays. In addition, SPDs shall indemnify, save and hold harmless the United States and the State 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 SPDs and any person for performance of Work on or relating to OU2, including, but not limited to, claims on account of construction delays.

50. **Insurance.** No later than 15 days before commencing any on-site Work, SPDs shall secure, and shall maintain until the first anniversary after issuance of EPA's Certification of RA Completion pursuant to ¶ 4.6 (Certification of RA Completion) of the SOW, commercial general liability insurance with limits of \$10 million, for any one occurrence, and automobile liability insurance with limits of \$10 million, combined single limit, naming the United States and the State as additional insured with respect to all liability arising out of the activities performed by or on behalf of SPDs pursuant to this CD. In addition, for the duration of this CD, SPDs shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of SPDs in furtherance of this CD. Prior to commencement of the Work, SPDs shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. SPDs shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If SPDs demonstrate by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, SPDs need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XIII. FORCE MAJEURE

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

52. If any event occurs or has occurred that may delay the performance of any obligation under this CD for which SPDs intend or may intend to assert a claim of force majeure, SPDs shall notify EPA's Remedial Project Manager orally or, in his or her absence, EPA's Alternate Remedial Project Manager or, in the event both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region 1, and the State, within 24 hours of when SPDs first knew that the event might cause a delay.

Within 5 days thereafter, SPDs shall provide in writing to EPA and the State 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; SPDs' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of SPDs, such event may cause or contribute to an endangerment to public health or welfare, or the environment. SPDs shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. SPDs shall be deemed to know of any circumstance of which SPDs, any entity controlled by SPDs, or SPDs' contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude SPDs 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 ¶ 51 and whether SPDs have exercised their best efforts under ¶ 51, EPA may, in its unreviewable discretion, excuse in writing SPDs' failure to submit timely or complete notices under this Paragraph.

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

54. If SPDs elect to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution) regarding EPA's decision, they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, SPDs 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 SPDs complied with the requirements of ¶¶ 51 and 52. If SPDs carry this burden, the delay at issue shall be deemed not to be a violation by SPDs of the affected obligation of this CD identified to EPA and the Court.

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

XIV. DISPUTE RESOLUTION

56. Unless otherwise expressly provided for in this CD, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this CD. However, the procedures set forth in this Section shall not apply to actions by the United

States and the State to enforce obligations of SPDs that have not been disputed in accordance with this Section.

57. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Any dispute regarding this CD shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 21 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

58. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA or the State, as appropriate, shall be considered binding unless, within 7 days after the conclusion of the informal negotiation period, SPDs invoke the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by SPDs. The Statement of Position shall specify SPDs' position as to whether formal dispute resolution should proceed under ¶ 59 (Record Review) or 60.

b. Within 14 days after receipt of SPDs' Statement of Position, EPA or the State, as appropriate, will serve on SPDs its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA or the State. EPA's or the State's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under ¶ 59 (Record Review) or 60. Within 14 days after receipt of EPA's or the State's Statement of Position, SPDs may submit a Reply.

c. If there is disagreement between EPA or the State and SPDs as to whether dispute resolution should proceed under ¶ 59 (Record Review) or 60, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA or the State to be applicable. However, if SPDs ultimately appeal to the Court to resolve the dispute, the Court shall determine which ¶ is applicable in accordance with the standards of applicability set forth in ¶¶ 59 and 60.

59. **Record Review.** Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this CD, and the adequacy of the performance of response actions taken pursuant to this CD. Nothing in this CD shall be construed to allow any dispute by SPDs regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant

to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Office of Site Remediation and Restoration, EPA Region 1, will issue a final administrative decision resolving the dispute based on the administrative record described in ¶ 59.a. This decision shall be binding upon SPDs, subject only to the right to seek judicial review pursuant to ¶¶ 59.c and 59.d.

c. Any administrative decision made by EPA pursuant to ¶ 59.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by SPDs with the Court and served on all Parties within 10 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this CD. The United States and the State may file a response to SPDs' motion.

d. In proceedings on any dispute governed by this Paragraph, SPDs shall have the burden of demonstrating that the decision of the Office of Site Remediation and Restoration Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to ¶ 59.a.

60. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. The Director of the Office of Site Remediation and Restoration, EPA Region 1, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under ¶ 58. The Office of Site Remediation and Restoration Director's decision shall be binding on SPDs unless, within 10 days after receipt of the decision, SPDs file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the CD. The United States and the State may file a response to SPDs' motion.

b. Notwithstanding ¶ M (CERCLA § 113(j) record review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

61. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of SPDs under this CD, except as provided in ¶ 39 (Contesting Future Response Costs), as agreed by EPA, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in ¶ 70. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CD. In the event that SPDs do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Stipulated Penalties).

XV. STIPULATED PENALTIES

62. SPDs shall be liable for stipulated penalties in the amounts set forth in ¶¶ 63 and 64 for failure to comply with the requirements of this CD specified below, unless excused under Section XIII (Force Majeure). The SPDs shall pay 90% of such stipulated penalties to the United States and shall pay 10% of such stipulated penalties to the State in accordance with the requirements in this Section. “Compliance” by SPDs shall include completion of all activities and obligations, including payments, required under this CD, or any deliverable approved under this CD, in accordance with all applicable requirements of law, this CD, the SOW, and any deliverables approved under this CD and within the specified time schedules established by and approved under this CD, unless such specified time schedules are extended, in writing, by EPA.

63. Stipulated Penalty Amounts – Settling Performing Defendants’ Work (Including Payments and Excluding Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance of SPDs except those identified in ¶ 64:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$2,500
15th through 30th day	\$5,000
31st day and beyond	\$10,000

64. Stipulated Penalty Amounts - Deliverables.

a. **Material Defects.** If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under ¶ 6.5(a) (Initial Submissions) or 6.5(b) (Resubmissions) of the SOW due to such material defect, then the material defect shall constitute a lack of compliance for purposes of ¶ 62. The provisions of Section XIV (Dispute Resolution) and Section XV (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding SPDs’ submissions under this CD.

b. The following stipulated penalties shall accrue per violation per day for failure of SPDs to submit timely or adequate deliverables pursuant to the CD:

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

65. If any amounts due to the *De Minimis* Trust or the Peterson/Puritan OU2 Disbursement Special Account from any Settling *De Minimis* Defendant under Section X (Payment for Response Costs) are not paid by the required date, Settling *De Minimis* Defendant shall be in violation of this CD and shall pay, as a stipulated penalty, in addition to the Interest required, \$500.00 per violation per day that such payment is late. The Settling *De Minimis* Defendants shall pay 90% of such stipulated penalties to the United States and shall pay 10% of such stipulated penalties to the State in accordance with the requirements in this Section.

66. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 89 (Work Takeover), SPDs shall be liable for a stipulated penalty in the amount of \$1,000,000. Stipulated penalties under this Paragraph are in addition to the remedies available under ¶¶ 31 (Access to Financial Assurance) and 88 (Work Takeover).

67. 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: (a) with respect to a deficient submission under ¶ 6.5 (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies SPDs of any deficiency; (b) with respect to a decision by the Director of the Office of Site Remediation and Restoration, EPA Region 1, under ¶ 59.b or 60.a of Section XIV (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that SPDs' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIV (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this CD shall prevent the simultaneous accrual of separate penalties for separate violations of this CD.

68. Following EPA's determination that SPDs have failed to comply with a requirement of this CD, EPA may give SPDs written notification of the same and describe the noncompliance. EPA and the State may send SPDs a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified SPDs of a violation. Following EPA's determination that a particular Settling *De Minimis* Defendant has failed to make a payment as required by this CD, EPA may give such Settling *De Minimis* Defendant written notification of the same. EPA and the State may send such Settling *De Minimis* Defendant a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA and/or the State has notified the respective Settling *De Minimis* Defendant of such non-payment.

69. All penalties accruing under this Section shall be due and payable to the United States and the State, as appropriate within 30 days after SPDs', or the respective Settling *De Minimis* Defendant's, as applicable, receipt from EPA of a demand for payment of the penalties, unless SPDs, or the respective Settling *De Minimis* Defendant, as applicable, invoke the Dispute Resolution procedures under Section XIV (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 38 (instructions for future response cost payments). All payments to the State under this Section shall be made payable to the "General Treasurer" (for deposit in the Environmental Response Fund), and shall be sent to the Office of the Director, RIDEM, 235 Promenade Street, Providence, Rhode Island 02908. Copies of payments pursuant to this Section, and any accompanying transmittal letter(s) shall be sent to the United States and to the State as provided in Section XXI ("Notices and Submissions").

70. Penalties shall continue to accrue as provided in ¶ 67 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA and the State within 15 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, SPDs, or the respective Settling *De Minimis* Defendant, as applicable, shall pay all accrued penalties determined by the Court to be owed to EPA and the State within 60 days after receipt of the Court's decision or order, except as provided in ¶ 70.c; or

c. If the District Court's decision is appealed by any Party, SPDs, or the respective Settling *De Minimis* Defendant, as applicable, shall pay all accrued penalties determined by the District Court to be owed to the United States and the State into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and the State or to SPDs, or the respective Settling *De Minimis* Defendant, as applicable, to the extent that they prevail.

71. If SPDs, or the respective Settling *De Minimis* Defendant, as applicable, fail to pay stipulated penalties when due, SPDs, or the respective Settling *De Minimis* Defendant, as applicable, shall pay Interest on the unpaid stipulated penalties as follows: (a) if SPDs, or the respective Settling *De Minimis* Defendant, as applicable, have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 70 until the date of payment; and (b) if SPDs, or the respective Settling *De Minimis* Defendant, as applicable, fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 69 until the date of payment. If SPDs, or the respective Settling *De Minimis* Defendant, as applicable, fail to pay stipulated penalties and Interest when due, the United States or the State may institute proceedings to collect the penalties and Interest.

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

73. Nothing in this CD shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of SPDs', or the respective Settling *De Minimis* Defendant's, as applicable, violation of this CD or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this CD, except in the case of a willful violation of this CD.

74. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CD.

XVI. COVENANTS BY PLAINTIFFS

75. **Covenants for Settling Performing Defendants by United States.** Except as provided in ¶¶ 78, 79 (United States' Pre- and Post-Certification Reservations), and 87 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against SPDs pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to OU2 (including Past Response Costs). Except with respect to future liability, these covenants shall take effect upon the Effective Date. With respect to future liability, these covenants shall take effect upon Certification of RA Completion by EPA pursuant to ¶ 4.6 (Certification of RA Completion) of the SOW. These covenants are conditioned upon the satisfactory performance by SPDs of their obligations under this CD. These covenants not to sue (and all reservations thereto in this CD) and the contribution protection provisions of ¶ 100 shall also apply to SPDs' officers, directors, employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of SPDs, and not to the extent that the alleged liability arose independently of the alleged liability of SPDs. Except as provided above, these covenants extend only to SPDs and do not extend to any other person.

76. **Covenants for Settling *De Minimis* Parties by United States.** In consideration of the payments that shall be made by each Settling *De Minimis* Party under the terms of this CD, and except as specifically provided by Paragraph 77 (United States' Reservations as to Settling *De Minimis* Parties) and 88 (General Reservations of Rights Against Settling *De Minimis* Parties), the United States covenants not to sue or to take administrative action against the Settling *De Minimis* Defendants, and EPA covenants not to take administrative action against SFAs, pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607 and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to OU2 (including Past Response Costs). With respect to present and future liability, this covenant not to sue shall take effect for each Settling *De Minimis* Party upon the later of the Effective Date or that Settling *De Minimis* Party's full payment pursuant to Paragraph 35 (Payment by Settling *De Minimis* Defendants) or Paragraph 36 (Payments by Settling *De Minimis* Federal Agencies), including any Interest or stipulated penalties thereon that may be applicable. These covenants not to sue (and all reservations thereto in this CD) and the contribution protection provisions of ¶ 100 shall also apply to each Settling *De Minimis* Party's officers, directors, employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of such Settling *De Minimis* Defendant, and not to the extent that the alleged liability arose independently of the alleged liability of such Settling *De Minimis* Party. Except as provided above, these covenants extend only to Settling *De Minimis* Parties and do not extend to any other person.

77. **United States' Reservations as to Settling *De Minimis* Parties.** Notwithstanding any other provision in this CD, the United States reserves with respect to the Settling *De Minimis* Defendants, and EPA reserves with respect to the Settling *De Minimis* Federal Agencies, and this CD is without prejudice to, the right to institute proceedings against any individual Settling *De Minimis* Party in this action or in a new action, and/or to issue an administrative order to any individual Settling *De Minimis* Party seeking to compel that Settling *De Minimis* Party to

perform future response actions relating to OU2, and/or to reimburse the United States or EPA for additional costs of response, if information is discovered which indicates that such Settling *De Minimis* Party contributed hazardous substances to OU2 in such greater amount or of such greater toxic or other hazardous effects that such Settling *De Minimis* Party no longer qualifies as a *de minimis* party at OU2 because that Settling *De Minimis* Party contributed greater than 2% of the approximate 2,217,000 cubic yard total volume of waste material identified by the ROD as having been disposed of at OU2, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at OU2.

78. **United States' Pre-Certification Reservations.** Notwithstanding any other provision of this CD, the United States reserves, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel SPDs to perform further response actions relating to OU2 and/or to pay the United States for additional costs of response if, (a) prior to Certification of RA Completion, (1) conditions at OU2, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part; and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the RA is not protective of human health or the environment.

79. **United States' Post-Certification Reservations.** Notwithstanding any other provision of this CD, the United States reserves, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel SPDs, to perform further response actions relating to OU2 and/or to pay the United States for additional costs of response if, (a) subsequent to Certification of RA Completion, (1) conditions at OU2, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part; and (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the RA is not protective of human health or the environment.

80. For purposes of ¶ 78 (United States' Pre-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the ROD and the administrative record supporting the ROD. For purposes of ¶ 79 (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of RA Completion and set forth in the ROD, the administrative record supporting the ROD, the post-ROD administrative record, or any information received by EPA pursuant to the requirements of this CD prior to Certification of RA Completion.

81. **Covenants for SPDs by State.** Except as provided in ¶¶ 84, 85 (State's Pre- and Post-Certification Reservations), and 87 (General Reservations of Rights), the State covenants not to sue or to take administrative action against the SPDs pursuant to Section 107(a) of CERCLA and Rhode Island General Laws §§ 23-18.9-1 *et seq.*, and 23-19.1-1 *et seq.* relating to OU2 (including Past Response Costs). These covenants are conditioned upon the satisfactory performance by SPDs of their obligations under this CD. These covenants not to sue (and all reservations thereto in this CD) and the contribution protection provisions of ¶ 100 shall also

apply to SPDs' officers, directors, employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of SPDs, and not to the extent that the alleged liability arose independently of the alleged liability of SPDs. Except as provided above, these covenants extend only to SPDs and do not extend to any other person.

82. **Covenants for Settling *De Minimis* Parties by State.** In consideration of the payments that shall be made by each Settling *De Minimis* Party under the terms of this CD, and except as specifically provided by Paragraph 83 (*De Minimis* Reservation) and 88 (General Reservations of Rights Against Settling *De Minimis* Parties), the State covenants not to sue or to take administrative action against the Settling *De Minimis* Parties pursuant to Section 107(a) of CERCLA and Rhode Island General Laws §§ 23-18.9-1 *et seq.*, and 23-19.1-1 *et seq.* relating to OU2 (including Past Response Costs). With respect to present and future liability, this covenant not to sue shall take effect for each Settling *De Minimis* Party upon the later of the Effective Date or that Settling *De Minimis* Party's full payment pursuant to Paragraph 35 (Payment by Settling *De Minimis* Defendants) or 36 (Payment by Settling *De Minimis* Federal Agencies), including any Interest or stipulated penalties thereon that may become applicable. These covenants not to sue (and all reservations thereto in this CD) and the contribution protection provisions of ¶ 100 shall also apply to each Settling *De Minimis* Party's officers, directors, employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of such Settling *De Minimis* Party, and not to the extent that the alleged liability arose independently of the alleged liability of such Settling *De Minimis* Party. Except as provided above, these covenants extend only to Settling *De Minimis* Parties and do not extend to any other person.

83. **State's Reservations as to Settling *De Minimis* Parties.** Notwithstanding any other provision in this CD, the State reserves, and this CD is without prejudice to, the right to institute proceedings against any individual Settling *De Minimis* Party in this action or in a new action, and/or to issue an administrative order to any individual Settling *De Minimis* Party seeking to compel that Settling *De Minimis* Party to perform future response actions relating to OU2, and/or to reimburse the State for additional costs of response, if information is discovered which indicates that such Settling *De Minimis* Party contributed hazardous substances to OU2 in such greater amount or of such greater toxic or other hazardous effects that such Settling *De Minimis* Party no longer qualifies as a *de minimis* party at OU2 because that Settling *De Minimis* Party contributed greater than 2% of the approximate 2,217,000 cubic yard total volume of waste material identified by the ROD as having been disposed of at OU2, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at OU2.

84. **State's Pre-Certification Reservations.** Notwithstanding any other provision of this CD, the State reserves, on behalf of RIDEM, and this CD is without prejudice to, the right jointly with, or separately from, the United States to institute proceedings in this action or in a new action, seeking to compel SPDs to perform further response actions relating to OU2 and/or to pay the State for additional costs of response if, (a) prior to Certification of RA Completion, (1) conditions at OU2, previously unknown to the State, are discovered, or (2) information, previously unknown to the State, is received, in whole or in part; and (b) the State determines

that these previously unknown conditions or information together with any other relevant information indicate that the RA is not protective of human health or the environment. The United States reserves all rights it may have under applicable law to oppose any determinations made or any action taken, ordered or proposed by the State pursuant to this Paragraph.

85. **State's Post-Certification Reservations.** Notwithstanding any other provision of this CD, the State reserves, on behalf of RIDEM, and this CD is without prejudice to, the right jointly with, or separately from, the United States, to institute proceedings in this action or in a new action, seeking to compel SPDs, to perform further response actions relating to OU2 and/or to pay the State for additional costs of response if, (a) subsequent to Certification of RA Completion, (1) conditions at OU2, previously unknown to the State, are discovered, or (2) information, previously unknown to the State, is received, in whole or in part; and (b) the State determines that these previously unknown conditions or this information together with other relevant information indicate that the RA is not protective of human health or the environment. The United State reserves all rights it may have under applicable law to oppose any determinations made or any action taken, ordered or proposed by the State pursuant to this Paragraph.

86. For purposes of ¶ 84 (State's Pre-Certification Reservations), the information and conditions known to the State shall include only that information and those conditions known to the State as of the date the ROD was signed and set forth in the ROD or the administrative record supporting the ROD. For purposes of ¶ 85 (State's Post-Certification Reservations), the information and the conditions known to the State shall include only that information and those conditions known to the State as of the date of Certification of RA Completion and set forth in the ROD, the administrative record supporting the ROD, the post-ROD administrative record, or any information received by the State pursuant to the requirements of this CD prior to Certification of RA Completion.

87. **General Reservations of Rights Against Settling Performing Defendants.** The United States and the State reserve, and this CD is without prejudice to, all rights against SPDs, with respect to all matters not expressly included within Plaintiffs' covenants. Notwithstanding any other provision of this CD, the United States and the State reserve and this CD is without prejudice to, all rights against SPDs with respect to:

- a. liability for failure by SPDs to meet a requirement of this CD;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of OU2;
- c. liability based on the ownership of OU2 by SPDs when such ownership commences after signature of this CD by SPDs;
- d. liability based on the operation of OU2 by SPDs when such operation commences after signature of this CD by SPDs and does not arise solely from SPDs' performance of the Work;
- e. liability based on SPDs transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in

connection with OU2, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this CD by SPDs;

- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. criminal liability;
- h. liability for violations of federal or state law that occur during or after implementation of the Work; and
- i. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to ¶ 13 (Modification of SOW or Related Deliverables).

88. **General Reservation of Rights Against Settling *De Minimis* Parties.** The United States and the State reserve, and this CD is without prejudice to, all rights against Settling *De Minimis* Defendants, and EPA, the State, and the federal natural resource trustees reserve, and this CD is without prejudice to, all rights against SFAs, with respect to all matters not expressly included within Plaintiffs' covenants. Notwithstanding any other provision of this CD, the United States and the State reserve, and this CD is without prejudice to, all rights against the Settling *De Minimis* Defendants, and EPA, the State, and the federal natural resource trustees reserve, and this CD is without prejudice to, all rights against SFAs, with respect to:

- a. liability of a Settling *De Minimis* Party for failure to pay a settlement amount required from it under this CD (and any applicable Interest or stipulated penalty thereon);
- b. liability based on the ownership or operation of OU2, or upon the transportation, treatment, storage or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or solid waste at or in connection with OU2, after the signature of this CD by that Settling *De Minimis* Party;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- d. criminal liability.

89. **Work Takeover.**

a. In the event EPA determines that SPDs: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to SPDs. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide SPDs a period of 14 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 14-day notice period specified in ¶ 89.a, SPDs have not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify SPDs in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 89.b. Funding of Work Takeover costs is addressed under ¶ 31 (Access to Financial Assurance).

c. SPDs may invoke the procedures set forth in ¶ 59 (Record Review), to dispute EPA’s implementation of a Work Takeover under ¶ 89.b. However, notwithstanding SPDs’ 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 ¶ 89.b until the earlier of (1) the date that SPDs 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 final decision is rendered in accordance with ¶ 59 (Record Review) requiring EPA to terminate such Work Takeover.

90. Notwithstanding any other provision of this CD, the United States and the State retains all authority and reserves all rights to take any and all response actions authorized by law.

XVII. COVENANTS BY SETTLING PERFORMING DEFENDANTS, SETTLING *DE MINIMIS* DEFENDANTS, AND SETTLING *DE MINIMIS* FEDERAL AGENCIES

91. **Covenants by Settling Performing Defendants and Settling *De Minimis* Defendants.** Subject to the reservations in ¶ 94, SPDs and Settling *De Minimis* Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to OU2, and this CD, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding OU2 and this CD;

c. any claims arising out of response actions at or in connection with OU2, including, but not limited to, any claim under the United States Constitution, the Rhode Island Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

d. any direct or indirect claim for disbursement from the Peterson/Puritan OU2 Special Account or Peterson/Puritan OU2 Disbursement Special Account, except as provided in Section XI (Disbursement of Special Account Funds).

92. **Covenant by Settling *De Minimis* Federal Agencies.** SFAs agree not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112, or 113, or any other provision of law with respect to OU2 and this CD.

93. Except as provided in ¶¶ 96 (Waiver of Claims by SDs) and 104 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section XVI (Covenants by Plaintiffs), other than in ¶¶ 87.a and 88.a (claims for failure to meet a requirement of the CD), 87.g and 88.d (criminal liability), and 87.h (violations of federal/state law during or after implementation of the Work) but only to the extent that SDs' claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

94. SPDs reserve, and this CD 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 SPDs' deliverables or activities.

95. Nothing in this CD 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).

96. **Waiver of Claims by SDs.**

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

(1) **De Micromis Waiver.** For all matters relating to OU2 against any person where the person's liability to SDs with respect to OU2 is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at OU2, or having accepted for transport for disposal or treatment of hazardous substances at OU2, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to OU2 was less than 110 gallons of liquid materials or 200 pounds of solid materials; and

(2) **MSW Waiver.** For all matters relating to OU2 against any person where the person's liability to SDs with respect to OU2 is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of MSW at OU2, if the volume of MSW disposed, treated, or transported by such person to OU2 did not exceed 0.2% of the approximate 2,217,000 cubic yard total volume of waste material identified by the ROD as having been disposed of at OU2.

(3) **De Minimis/Ability to Pay Waiver.** For response costs relating to OU2 against any person that, as of the Effective Date of this CD, has entered into a final

CERCLA § 122(g) *de minimis* settlement or a final settlement based on limited ability to pay with EPA with respect to OU2 including, without limitation, the Settling *De Minimis* Parties.

b. **Exceptions to Waivers.**

(1) The waivers under this ¶ 96 shall not apply with respect to any defense, claim, or cause of action that a SD may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to OU2 against such SD.

(2) The waiver under ¶ 96.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to OU2 by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at OU2; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to OU2; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

(3) The waiver under ¶ 96.a(2) (MSW Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing MSW contributed to OU2 by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at OU2; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to OU2.

97. **Settling *De Minimis* Defendants Waiver.** Settling *De Minimis* Defendants agree not to assert any claims or causes of action (including not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA or Rhode Island General Laws §§ 23-18.9-1 et seq., and 23-19.1-1 et seq.) that they may have for all matters relating to OU2 against each other or any other person who is a potentially responsible party under CERCLA or Rhode Island General Laws at OU2. This waiver shall not apply with respect to (a) any obligation of any person under this CD or other agreements related to this CD, (b) any defense, claim, or cause of action that a Settling *De Minimis* Defendant may have against any person if such person asserts or has asserted a claim or cause of action relating to OU2 against such Settling *De Minimis* Defendant, or (c) any defense, claim, or cause of action that a Settling *De Minimis* Defendant may have against any other person in the event that the United States or the State exercise their reservations under ¶¶ 77 or 83.

98. **Settling Defendants’ Covenants Not to Sue, Waivers and Releases With Respect to Each Other.** Each of the Settling Defendants covenants not to sue and agrees not to assert, and hereby releases, each of the other Settling Defendants with respect to any claims or causes of action related to the matters addressed in this CD, as defined in ¶ 100 (including, but not limited to, claims arising out of performance of the Remedial Investigation (RI) or Feasibility Study (FS) for OU2 and/or relating to the costs incurred by the Settling Defendants prior to the Effective Date to identify and develop evidence concerning Potentially Responsible Parties at OU2 (“PRPs”) and to develop an allocation of responsibility among the PRPs. This covenant, waiver and release shall not apply with respect to (a) any obligation of the Settling Defendants under this CD or other agreements related to this CD, and (b) any defense, claim, or cause of action that a Settling Defendant may have against any other Settling Defendant if such other Settling Defendant asserts or has asserted a claim or cause of action relating to OU2 against the Settling Defendant.

XVIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

99. Except as provided in ¶ 96 (Waiver of Claims by SDs), nothing in this CD shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this CD. Except as provided in Section XVII (Covenants by Settling Performing Defendants, Settling *De Minimis* Defendants, and Settling *De Minimis* Federal Agencies), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to OU2 against any person not a Party hereto. Nothing in this CD 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) of CERCLA.

100. The Parties agree, and by entering this CD this Court finds, that this CD constitutes a judicially-approved settlement for purposes of Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. § 9613(f)(2) and 9622(g)(5), and that each Settling Performing Defendant is entitled, as of the Effective Date, and each Settling *De Minimis* Party is entitled on the later of the Effective Date or the date on which it makes or causes to be made its full payment pursuant to Paragraph 35 or Paragraph 36, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, and for Settling *De Minimis* Parties, Section 122(g)(5) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this CD. The “matters addressed” in this CD are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with OU2, by the United States or any other person; provided, however, that if the United States exercises rights against SDs or if EPA or the federal natural resource trustee or the State assert rights against SFAs under the reservations in Section XVI (Covenants by Plaintiffs), other than in ¶¶ 87.a and 88.a (claims for failure to meet a requirement of the CD), 87.g and 88.d (criminal liability), or 87.h (violations of federal/state law during or after implementation of the Work), the “matters addressed” in this CD will no longer include those response costs or response actions that are within the scope of the exercised reservation.

101. The Parties further agree, and by entering this CD this Court finds, that the complaints filed by the United States and the State in this action are civil actions within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this CD constitutes a judicially-approved settlement pursuant to which each SD and each SFA, has, as of the Effective Date, resolved liability to the United States and the State within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

102. Each SD shall, with respect to any suit or claim brought by it for matters related to this CD, notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

103. Each SD shall, with respect to any suit or claim brought against it for matters related to this CD, notify in writing the United States and the State within 20 days after service of the complaint on such SD. In addition, each SD shall notify the United States and the State 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.

104. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, SPDs, and Settling *De Minimis* Defendants, and, with respect to a State action, SFAs, 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 by the United States or the State 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 covenants not to sue set forth in Section XVI (Covenants by Plaintiffs).

XIX. ACCESS TO INFORMATION

105. SPDs shall provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within SPDs’ possession or control or that of their contractors or agents relating to activities at OU2 or to the implementation of this CD, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. SPDs shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

106. Privileged and Protected Claims.

a. SPDs may assert that all or part of a Record requested by Plaintiffs is privileged or protected as provided under federal law, in lieu of providing the Record, provided SDs comply with ¶ 106.b, and except as provided in ¶ 106.c.

b. If SPDs assert a claim of privilege or protection, they shall provide Plaintiffs 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, SPDs shall provide the Record to Plaintiffs in redacted form to mask the privileged or protected portion only. SPDs shall retain all Records that they claim to be privileged or protected until Plaintiffs have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the SPDs' favor.

c. SPDs may make no claim of privilege or protection regarding: (1) any data regarding OU2, 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 OU2; or (2) the portion of any Record that SPDs are required to create or generate pursuant to this CD.

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

108. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this CD.

109. Notwithstanding any provision of this CD, Plaintiffs retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XX. RETENTION OF RECORDS

110. Until 10 years after EPA's Certification of Work Completion under ¶ 4.7 (Certification of Work Completion) of the SOW, each SPD shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to OU2, provided, however, that SPDs who are potentially liable as owners or operators of OU2 must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to OU2. Such Records may either be preserved in their original form or in electronic form. Each SPD must also instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, along with copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

The SPDs shall also create a Document Repository (which may be in electronic form) containing a single set of all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in the possession or control of any of them (or that come into the possession or control of any of them), that relate in any manner to the performance of the Work, including copies of all data generated during the performance of the Work and not contained in the aforementioned Records, and shall preserve such documents in the Document Repository until 10 years after EPA's Certification of Work Completion.

111. The United States acknowledges that each SFA (a) is subject to all applicable federal record retention laws, regulations, and policies; and (b) has certified that it has fully complied with any and all EPA and State requests for information regarding OU2 pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

112. At the conclusion of this record retention period, SPDs shall notify the United States and the State at least 90 days prior to the destruction of any such Records, and, upon request by the United States or the State, and except as provided in ¶ 106 (Privileged and Protected Claims), SPDs shall deliver any such Records to EPA or the State.

113. Each SD certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding OU2 since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding OU2 pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XXI. NOTICES AND SUBMISSIONS

114. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this CD must be in writing unless otherwise specified. Whenever, under this CD, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the addresses specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to EPA, and not to the United States, should not be sent to the DOJ. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the CD regarding such Party.

As to the United States:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
eescdcopy.enrd@usdoj.gov
Re: DJ # 90-11-3-1233/9

and: Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
Washington, D.C. 20044-7611
Re: DJ # 90-11-6-20798

As to EPA: Bryan Olson
Director, Office of Site Remediation and Restoration
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Olson.bryan@epa.gov

and: Don McElroy
EPA Remedial Project Manager
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912
mcelroy.don@epa.gov
617-918-1326

**As to the Regional Financial
Management Officer:** Shannon Schoffield
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100 (OARM16-1)
Boston, MA 02109-3912
schoffield.shannon@epa.gov

**At to EPA Cincinnati Finance
Center:** EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

As to the State: Nicholas Noons
RIDEM Project Manager
235 Promenade Street
Providence, RI 02908
nicholas.noons@dem.ri.gov
401-222-4700 ext. 7517

As to SDs:

David B. Graham, Esq.
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Williamsburg, VA 23188
dbgraham@kaufcan.com
757-259-3855

Roy R. Giarrusso, Esq.
Giarrusso Norton Cooley & McGlone, PC
308 Victory Road
Quincy, MA 02171
rgiarrusso@gncm.net
617-770-2900

XXII. RETENTION OF JURISDICTION

115. This Court retains jurisdiction over both the subject matter of this CD and SDs for the duration of the performance of the terms and provisions of this CD for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this CD, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIV (Dispute Resolution).

XXIII. APPENDICES

116. The following appendices are attached to and incorporated into this CD:

“Appendix A” is the list of Settling Defendants.

“Appendix B” is the list of Settling Performing Defendants.

“Appendix C” is the list of Settling *De Minimis* Defendants and their settlement amounts.

“Appendix D” is the list of Settling *De Minimis* Federal Agencies.

“Appendix E” are the draft forms of the financial assurance: 1) The Peterson/Puritan, Inc. Superfund Site *De Minimis* Settlement Trust Agreement; and 2) Surety Payment Bond and/or Letter of Credit.

“Appendix F” is the “Affected Property” map.

“Appendix G” is the map of OU2.

“Appendix H” is the map of specific areas located within OU2.

“Appendix I” is the draft form of Proprietary Controls.

“Appendix J” is the ROD.

“Appendix K” is the SOW.

XXIV. MODIFICATION

117. Except as provided in ¶ 13 (Modification of SOW or Related Deliverables), material modifications to this CD, including the SOW, shall be in writing, signed by the United States and SPDs, and shall be effective upon approval by the Court, unless such modifications affect provisions of this CD concerning obligations of the Settling *De Minimis* Defendants, in which event such modification shall also be signed by the Settling *De Minimis* Defendants. Except as provided in ¶ 13, non-material modifications to this CD, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and SPDs. All modifications to the CD, other than the SOW, also shall be signed by the State, or a duly authorized representative of the State, as appropriate. A modification to the SOW shall be considered material if it implements a ROD Amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

118. Any modification that does not affect the obligations of or the protections afforded to the Settling *De Minimis* Defendants may be executed without the signatures of the Settling *De Minimis* Defendants.

XXV. CERTIFICATIONS RELATING TO SETTLING *DE MINIMIS* PARTIES

119. By Signing this CD, the Settling Performing Defendants certify that:

- a. certain of the SPDs conducted an investigation into the generation, treatment, transportation, storage or disposal of wastes which may have contained hazardous substances at or in connection with OU2;
- b. the SPDs have provided EPA with a summary of the Settling *De Minimis* Parties volumetric database which certain of the SPDs developed in connection with the investigation they conducted into the generation, treatment, transportation, storage or disposal of wastes which may have contained hazardous substances at or in connection with OU2, and which they relied upon in connection with their allocation among Settling *De Minimis* Parties who are participating in this CD; and
- c. based upon the records and information developed in that investigation, certain of the SPDs determined that each of the Settling *De Minimis* Parties generated or arranged for the transportation or disposal of wastes which may have contained hazardous substances at or connection with OU2, and that the volume of such waste attributable to each Settling *De Minimis* Party was less than 2% of the approximate 2,217,000 cubic yard total volume of waste material identified by the ROD as having been disposed of at OU2.

120. By Signing this CD, each Settling *De Minimis* Party certifies, individually, that, to the best of its knowledge and belief, it:

a. has not altered, mutilated, discarded, or destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding OU2 after notification of potential liability or the filing of a suit against it regarding OU2; and

b. has complied fully with any and all EPA requests for information to it regarding OU2 pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or similar requests from RIDEM, if any.

XXVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

121. This CD shall be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the CD disclose facts or considerations that indicate that the CD is inappropriate, improper, or inadequate. SDs consent to the entry of this CD without further notice.

122. If for any reason the Court should decline to approve this CD in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXVII. SIGNATORIES/SERVICE

123. Each undersigned representative of a SD to this CD and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and the Director for the State Rhode Island Department of Environmental Management for the State certifies that he or she is fully authorized to enter into the terms and conditions of this CD and to execute and legally bind such Party to this document.

124. Each SD agrees not to oppose entry of this CD by this Court or to challenge any provision of this CD unless the United States has notified SDs in writing that it no longer supports entry of the CD.

125. Each SD shall identify, on the attached signature page, the name, address, email address and telephone number of an agent who is authorized to accept service of process by mail or email on behalf of that Party with respect to all matters arising under or relating to this CD. SDs agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. SDs need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this CD.

XXVIII. FINAL JUDGMENT

126. This CD and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the CD. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this CD.

127. Upon entry of this CD by the Court, this CD shall constitute a final judgment between and among the United States, the State, and SDs. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 2016.

United States District Judge

FOR THE UNITED STATES OF AMERICA:

Dated

John C. Cruden
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Washington, D.C. 20530

Dated

Donald G. Frankel
Senior Counsel
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
One Gateway Center
Suite 616
Newton, MA 02458
617-450-0442

Dated

Amy J. Dona
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
601 D. St. NW, Room 8406
Washington, D.C. 20044
202-514-0223

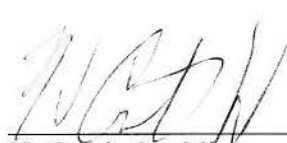
Peter F. Neronha
United States Attorney
District of Rhode Island

Richard Myrus
Chief, Civil Division
United States Attorney's Office
District of Rhode Island

Signature Page for CD regarding OU2 of the Peterson/Puritan, Inc. Superfund Site


**FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY:**

9/15/16
Dated



H. Curtis Spalding
Regional Administrator, Region 1
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

9-12-16
Dated

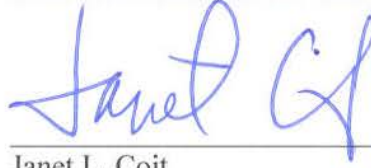


Michelle Lauterback
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Mail Code OES04-3
Boston, MA 02109-3912

Signature Page for CD regarding OU2 of the Peterson/Puritan, Inc. Superfund Site

9/2/16
Dated

FOR THE STATE OF RHODE ISLAND



Janet L. Coit
Director

Department of Environmental Management
235 Promenade Street
Providence, Rhode Island 02908

Signature Page for CD regarding OU2 of the Peterson/Puritan, Inc. Superfund Site

FOR _____
[Print name of Settling Defendant]

Dated

Name (print):
Title:
Address:

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

Name (print): _____
Title: _____
Company: _____
Address: _____
Phone: _____
email: _____

**APPENDIX A:
SETTLING DEFENDANTS**

1. ACS Industries, Inc.
2. Agfa Corporation (successor to Compugraphic Corporation)
3. AIW Wind Down Corp. (f/k/a American Insulated Wire Corporation)
4. Alcatel-Lucent USA Inc., (as successor to Western Electric Company), its parents, affiliates, predecessors, and successors in interest for purposes of the Site
5. Alcoa Inc. (on behalf of its former subsidiary Crystal Thermoplastics, Inc.)
6. Allied Waste Industries, LLC (f/k/a Allied Waste Industries, Inc.), Allied Waste Services of Massachusetts, LLC (for purposes of claims asserted against BFI), Browning-Ferris Industries, Inc., a Massachusetts corporation (as successor in interest to Barry Brothers, Inc.), and American Disposal Services of Missouri, Inc. (as successor in interest to Beattie's Rubbish, Inc.)
7. American Optical Corporation
8. Analog Devices, Inc.
9. Avnet, Inc. (for Carol Cable Company)
10. BAE Systems Information and Electronic Systems Integration Inc. (Hazeltine)
11. Benjamin Moore & Co.
12. Benny's Inc., Benny's of Mass., Inc. and Benny's of R.I., Inc.
13. BNS Co. (now BNS LLC, formerly Brown & Sharpe Manufacturing Co.)
14. Brigham and Women's Faulkner Hospital, Inc. (f/n/a The Faulkner Hospital, Inc.)
15. Bull HN Information Systems (Honeywell Brighton)
16. CAP, Inc. (LFE)
17. CBS Operations, Inc., TCI Pacific Communications, Inc. and Morse Cutting Tools, Inc.
18. City of Boston as Successor to Boston City Hospital
19. Clean Harbors, Inc.
20. Compo Industries, Inc./Compo Chemical Company, Inc. (Ausimont Industries Inc. on behalf of Compo Industries, Inc., Ausimont Industries, Inc., and Solvay Solexis (n/k/a Solvay Specialty Polymers USA, LLC) and all their successors, predecessors, and assigns and IRG Mansfield, LLC on behalf of Compo Chemical Company, Inc. and IRG Mansfield, LLC and their successors, predecessors, and assigns)

21. Continental Tire the Americas, LLC (General Tire)
22. Corning Incorporated, formerly known as Corning Glass Works
23. Costa Inc. as successor by merger to AT Cross Company
24. Cumberland Engineering Corporation (now known as ACS Auxiliaries Group, Inc.)
25. CVS Pharmacy, Inc. (on behalf of Adams Drug Co., Inc.)
26. Energizer Manufacturing, Inc. (responsible party for Union Carbide)
27. Enviro Corp. (Liqwacon)
28. Flint Group US LLC, successor to Flint Ink Corporation
29. Fortifiber Corporation (Sisalkraft)
30. Galego Equities, Inc. (f/k/a Galego Oil)
31. General Cable Industries, Inc. (for Carol Cable Company)
32. General Electric Company
33. Georgia-Pacific LLC (successor to Scott Graphics)
34. GTE Sylvania/Sylvania; OSRAM Sylvania, Inc.
35. Handy & Harman Electronic Materials Corp. and Handy & Harman, a New York corporation
36. Hasbro, Inc.
37. Hindley Manufacturing Co., Inc.
38. Hollingsworth & Vose Company
39. Honeywell International Inc. on behalf of Honeywell International Inc., Honeywell, Inc. and all their successors, predecessors and assigns
40. HP Inc., f/k/a Hewlett-Packard Company (for itself and Digital Equipment Corp.)
41. Huhtamaki, Inc. (f/k/a Nyman Manufacturing Co., Inc.)
42. International Paper Company (on behalf of Allied Container, Sisalkraft Division of St. Regis Paper Co.)
43. Invensys Systems, Inc. (f/k/a The Foxboro Company)
44. J. H. Lynch & Sons, Inc.
45. Kaman Aerospace Corp. on behalf of Kaman, its predecessors, successors and assigns
46. KIK Custom Products, Inc.

47. Kmart Corporation
48. Landry & Martin Oil Co., Inc.
49. Larson Tool and Stamping Company
50. Louis M. Gerson Co., Inc. (Gerson Co.)
51. Mandeville Signs Inc.
52. Microfibres, Inc. by Joseph M. DiOrio, Chapter 7 Bankruptcy Trustee
53. Motorola Solutions, Inc. f/k/a Motorola, Inc. (Codex)
54. Mule Emergency Lighting, Inc.
55. Murata Power Solutions, Inc. (Datel, Inc.)
56. NSTAR Electric Company d/b/a Eversource Energy
57. Oce Imaging Supplies (f/k/a Arkwright Inc.)
58. Olin Corporation (including Philip A. Hunt Chemical Corporation and The North Terminal Company)
59. Organic Dyestuffs Corporation
60. Pentair Valves & Controls, LLC (Tyco International, successor to Crosby Valve)
61. Philips Electronics North America Corp. (Amperex Electronics)
62. President and Fellows of Harvard College, including, without limitation, its constituent parts
63. Quest Diagnostics Incorporated on behalf of Damon Corporation, a dissolved corporation
64. Raytheon Company
65. Rockwell Collins, Inc., for itself and for its wholly-owned subsidiary, Maine Electronics, Inc.
66. Rohm and Haas Chemical LLC (on behalf of Rohm and Hass Company, Shipley Company and Ventron Corporation)
67. Sears Roebuck & Co.
68. Sequa Corporation (f/k/a Sun Chemical Corporation and its divisions General Printing Ink and Graphic Arts Materials)
69. Shawmut Corporation
70. Sikorsky Aircraft Corporation
71. Standard Rubber Products, Inc.

72. Supervalu Holdings, Inc. (f/k/a Roger Williams Foods)
73. Teknor Apex Company (Truex Incorporated)
74. Texas Instruments Incorporated
75. Textron Inc. (Gorham Manufacturing)
76. The Hilsinger Company d/b/a HilcoVision
77. The Narragansett Electric Company d/b/a National Grid as successor by merger to Blackstone Valley Electric Company
78. The Okonite Company, Inc.
79. The Sherwin-Williams Company
80. The Stop & Shop Supermarket Company LLC (f/k/a Stop & Shop, Inc., The Stop & Shop Companies, Inc. (a Massachusetts corporation), Stop & Shop Holdings, Inc., The Stop & Shop Companies, Inc. (a Delaware corporation), Stop & Shop Grocery Co., Inc., Stop & Shop Supermarket Holdings Co., Inc. and The Stop & Shop Supermarket Company)
81. Thermo Fisher Scientific, Inc. and Thermo EGS Gauging, Inc.
82. Thomas & Betts Corporation (Augat, Inc.)
83. Three R Transportation, Inc.
84. Tyco Electronics Corporation (d/b/a TE Connectivity), successor to Microwave Associates
85. Uniroyal, Inc. (Uniroyal Holding Inc. and Michelin North America, Inc.)
86. Valentine Tool & Stamping, Inc.
87. Verizon New England, Inc. (New England Telephone and Telegraph Co.)
88. Waste Management of Massachusetts, Inc., Waste Management Disposal Services of Massachusetts, Inc. and Waste Management of Rhode Island, Inc.
89. WestRock MWV, LLC (on behalf of US Envelope Company)
90. Wyman-Gordon Company
91. Zeneca, Inc. (I.C.I. Americas, Inc., Polyvinyl Chemical)

**APPENDIX B:
SETTLING PERFORMING DEFENDANTS**

1. ACS Industries, Inc.
2. Alcoa Inc. (on behalf of its former subsidiary Crystal Thermoplastics, Inc.)
3. Avnet, Inc. (for Carol Cable Company)
4. Clean Harbors, Inc.
5. Costa Inc. as successor by merger to AT Cross Company
6. Cumberland Engineering Corporation (now known as ACS Auxiliaries Group, Inc.)
7. CVS Pharmacy, Inc. (on behalf of Adams Drug Co., Inc.)
8. General Cable Industries, Inc. (for Carol Cable Company)
9. Hindley Manufacturing Co., Inc.
10. Hollingsworth & Vose Company
11. International Paper Company (on behalf of Allied Container, Sisalkraft Division of St. Regis Paper Co.)
12. KIK Custom Products, Inc.
13. Philips Electronics North America Corp. (Amperex Electronics)
14. Sears Roebuck & Co.
15. Shawmut Corporation
16. Supervalu Holdings, Inc. (f/k/a Roger Williams Foods)
17. Teknor Apex Company (Truex Incorporated)
18. Texas Instruments Incorporated
19. The Narragansett Electric Company d/b/a National Grid as successor by merger to Blackstone Valley Electric Company
20. The Stop & Shop Supermarket Company LLC (f/k/a Stop & Shop, Inc., The Stop & Shop Companies, Inc. (a Massachusetts corporation), Stop & Shop Holdings, Inc., The Stop & Shop Companies, Inc. (a Delaware corporation), Stop & Shop Grocery Co., Inc., Stop & Shop Supermarket Holdings Co., Inc. and The Stop & Shop Supermarket Company)
21. Waste Management of Massachusetts, Inc., Waste Management Disposal Services of Massachusetts, Inc. and Waste Management of Rhode Island, Inc.
22. Wyman-Gordon Company

**APPENDIX C:
SETTLING *DE MINIMIS* DEFENDANTS AND THEIR SETTLEMENT AMOUNTS**

Name of Defendant/Paying Party	Formerly Known As or On Behalf Of (If Applicable)	Settlement Amount
Agfa Corporation	Compugraphic Corporation	\$30,044
AIW Wind Down Corp.	American Insulated Wire Corporation/Northeast Cable	\$54,243
Alcatel-Lucent USA Inc.	Western Electric Company and its parents, affiliates, predecessors and successors in interest for purposes of the Site	\$30,044
Allied Waste Industries, LLC	f/k/a Allied Waste Industries, Inc.; Allied Waste Services of Massachusetts, LLC (for BFI); Browning-Ferris Industries, Inc., a Massachusetts corporation (for Barry Brothers, Inc.); American Disposal Services of Missouri, Inc. (for Beattie's Rubbish Disposal, Inc.)	\$437,500
American Optical Corporation		\$30,044
Analog Devices, Inc.		\$325,336
BAE Systems Information and Electronic Systems Integration Inc.	Hazeltine	\$30,044
Benjamin Moore & Co.		\$355,671
Benny's Inc., Benny's of Mass., Inc. and Benny's of R.I., Inc.		\$325,336
BNS LLC	BNS Co. and Brown & Sharpe Manufacturing Co.	\$78,443
Brigham and Women's Faulkner Hospital, Inc.	The Faulkner Hospital, Inc.	\$30,044
Bull HN Information Systems	Honeywell Brighton	\$30,044
CAP, Inc.	LFE (Laboratory for Electronics)	\$15,022
CBS Operations, Inc.	TCI Pacific Communications, Inc. and Morse Cutting Tools, Inc.	\$30,044
City of Boston	Boston City Hospital	\$30,044
Compo Industries, Inc./Compo Chemical Company, Inc.	Ausimont Industries Inc. on behalf of Compo Industries, Inc., Ausimont Industries, Inc., and Solvay Solexis (n/k/a Solvay Specialty Polymers USA, LLC) and all their successors, predecessors, and assigns and IRG Mansfield, LLC on behalf of Compo Chemical Company, Inc. and IRG Mansfield, LLC and their successors, predecessors, and assigns	\$173,657
Continental Tire the Americas, LLC	General Tire	\$30,044
Corning Incorporated	Corning Glass Works	\$38,111

Name of Defendant/Paying Party	Formerly Known As or On Behalf Of (If Applicable)	Settlement Amount
Energizer Manufacturing, Inc.	Union Carbide	\$30,044
Envirite Corp.	Liqwacon	\$30,044
Flint Group US LLC	Successor to Flint Ink Corporation	\$102,642
Fortifiber Corporation	Sisalkraft	\$54,243
Galego Equities, Inc.	Galego Oil	\$86,509
General Electric Company		\$90,000
Georgia-Pacific LLC	Scott Graphics	\$62,310
GTE Sylvania/Sylvania; OSRAM Sylvania, Inc.		\$38,111
Handy & Harman Electronic Materials Corp. and Handy & Harman, a New York corporation		\$62,310
Hasbro, Inc.		\$264,664
Honeywell International Inc.	on behalf of Honeywell International Inc., Honeywell, Inc. and all their successors, predecessors and assigns	\$54,243
HP Inc.	f/k/a Hewlett-Packard Company (for itself and Digital Equipment Corp.)	\$30,044
Huhtamaki, Inc.	Nyman Manufacturing Co., Inc.	\$750,036
Invensys Systems, Inc.	f/k/a The Foxboro Company	\$30,044
J. H. Lynch & Sons, Inc.		\$131,187
Kaman Aerospace Corp.	on behalf of Kaman, its predecessors, successors and assigns	\$30,044
Landry & Martin Oil Co., Inc.		\$86,509
Larson Tool and Stamping Company		\$86,509
Louis M. Gerson Co., Inc.	Gerson Co.	\$38,111
Mandeville Signs Inc.		\$568,022
Motorola Solutions Inc.	f/k/a Motorola, Inc. (Codex)	\$568,022
Mule Emergency Lighting, Inc.		\$38,111
Murata Power Solutions, Inc.	Datel, Inc.	\$173,657
NSTAR Electric Company d/b/a Eversource Energy		\$102,642
Oce Imaging Supplies	Arkwright Inc.	\$54,243
Olin Corporation	Philip A. Hunt and North Terminal	\$325,336
Organic Dyestuffs Corporation	Organic Chemical Corp.	\$54,243
Pentair Valves & Controls, LLC	Tyco International, successor to Crosby Valve	\$30,044
President and Fellows of Harvard College	Including, without limitation, its constituent parts	\$30,044
Quest Diagnostics Incorporated	Damon Corporation	\$30,044
Raytheon Company		\$102,642
Rockwell Collins, Inc.	Maine Electronics, Inc.	\$30,044

Name of Defendant/Paying Party	Formerly Known As or On Behalf Of (If Applicable)	Settlement Amount
Rohm and Haas Chemical LLC	Rohm and Hass Company, Shipley Company and Ventron Corporation	\$38,111
Sequa Corporation	Sun Chemical Corporation and its divisions General Printing Ink and Graphic Arts Materials	\$131,187
Sikorsky Aircraft Corporation	United Technologies Corporation	\$54,243
Standard Rubber Products, Inc.		\$54,243
Textron Inc.	Gorham Manufacturing	\$173,657
The Hilsinger Company d/b/a HilcoVision		\$173,657
The Okonite Company, Inc.		\$54,243
The Sherwin-Williams Company		\$46,177
Thermo Fisher Scientific Inc. and Thermo EGS Gauging, Inc.		\$15,022
Thomas & Betts Corporation	Augat, Inc.	\$173,657
Three R Transportation, Inc.		\$11,000
Tyco Electronics Corporation d/b/a TE Connectivity	Microwave Associates	\$30,044
Uniroyal Holding Inc.	Uniroyal, Inc. and Michelin North America, Inc.	\$46,177
Valentine Tool & Stamping, Inc.		\$46,177
Verizon New England, Inc.	New England Telephone and Telegraph Co.	\$568,022
WestRock MWV, LLC	On behalf of U.S. Envelope Company	\$30,044
Zeneca, Inc.	I.C.I. Americas, Inc., Polyvinyl Chemical	\$173,657
Kmart Corporation*		\$54,243
Microfibres, Inc. by Joseph M. DiOrio, Chapter 7 Bankruptcy Trustee**		

*Kmart's settlement amount will be deposited into the Peterson/Puritan OU2 Disbursement Special Account.

**The amount to be paid by Microfibres, Inc. by Joseph M. DiOrio, Chapter 7 Bankruptcy Trustee has not yet been determined in the bankruptcy proceedings.

**APPENDIX D:
SETTLING *DE MINIMIS* FEDERAL AGENCIES**

United States Postal Service

United States Department of Veterans Affairs

United States Department of Defense

United States Department of the Treasury, Internal Revenue Service

**APPENDIX E:
FINANCIAL ASSURANCE**

**APPENDIX F:
AFFECTED PROPERTY MAP**

**APPENDIX G:
MAP OF OU2**

**APPENDIX H:
MAP OF SPECIFIC AREAS LOCATED WITHIN OU2**

**APPENDIX I:
DRAFT FORM OF PROPRIETARY CONTROLS**

**APPENDIX J:
RECORD OF DECISION (ROD)**

**APPENDIX K:
STATEMENT OF WORK (SOW)**