UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF: Kellogg-Deering Well Field Superfund Site Main Norwalk, LLC, Respondent Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622	)	Docket No.: CERCLA-01-2019-0012 **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT**

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT

{S7168358}

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("ASAOC" or "Settlement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Main Norwalk, LLC ("Respondent"). This Settlement provides for the performance of work by Respondent, and the payment of certain response costs incurred by the United States, in connection with the relocation of a groundwater treatment plant, which is a component of the selected remedy for the Kellogg-Deering Well Field Superfund Site ("Site") in Norwalk, Connecticut.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). This authority was further redelegated by the Regional Administrator of EPA Region 1 to the Director Office of Site Remediation and Restoration by Delegation Nos. 14-14-C (Administrative Actions through Consent Orders, April 10, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, April 10, 2017).

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

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

II. PARTIES BOUND

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

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

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

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

III. DEFINITIONS

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

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

"CTDEEP" shall mean the Connecticut Department of Energy and Environmental Protection and any successor departments or agencies of the State.

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

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

"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 Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, or to secure, implement, monitor, maintain, or enforce ICs, including, but not limited to, the amount of just compensation) Section XII (Emergency Response and Notification of Releases), Paragraph 76 (Work Takeover), Paragraph 34 (Community Involvement Plan) (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XIV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry costs regarding the Site.

"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 the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the integrity of the selected remedy at the Site; or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

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

"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.

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

"Parties" shall mean EPA and Respondent.

"Property" shall mean all real property at the Site acquired by Main Norwalk, LLC, pursuant to a deed recorded at Book 8256, Page 324 of the Norwalk, Connecticut, Office of the Town Clerk Land Records and located at 272-280 Main Avenue, Norwalk, Connecticut.

"Proprietary Controls" shall mean easements or covenants running with the land that: (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

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

"Respondent" shall mean Main Norwalk, LLC.

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

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXVI

(Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site" shall mean the Kellogg-Deering Well Field Superfund Site.

"State" shall mean the State of Connecticut.

"Statement of Work" or "SOW" shall mean the document describing the activities Respondent must perform to implement the pursuant to this Settlement, as set forth in Appendix A, and any modifications made thereto in accordance with this Settlement.

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

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

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

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

IV. FINDINGS OF FACT

10. The Kellogg-Deering Well Field Superfund Site ("Site") located in Norwalk, Connecticut, includes a 10-acre public water supply well field along the western bank of the Norwalk River, and a source area to the east of the river that contributed to the contamination of the aquifer that supplies the well field.

11. The Kellogg-Deering Well Field, which was the initial area of contaminant detection at the Site, is owned and operated by the Norwalk First Taxing District ("NFTD") Water Department. It consists of five municipal water supply wells that provide a portion of the water to residents and businesses in the city of Norwalk. The water supply wells are located in an aquifer that is classified as GAA under the State of Connecticut's Water Quality Standards and II-A under EPA's Groundwater Protection Strategy.

12. On September 21, 1984, EPA placed the Site on the National Priorities List, 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register, 49 Fed. Reg. 37070. Established pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, the National Priorities List is a national list of hazardous waste sites posing the greatest threat to health, welfare and the environment.

13. EPA divided the Site into operable units for the purpose of the remedial investigation, and for selecting and implementing remedial actions. EPA conducted an initial Remedial Investigation/Feasibility Study ("RI/FS") for the Site from 1984 to 1986. Based on that initial RI/FS, EPA issued the first operable unit ("OU1") Record of Decision ("ROD") in September 1986. NFTD Water Department has conducted the activities required by the OU1 ROD pursuant to an administrative order issued by EPA on May 1, 1987, including construction of the air stripping facility at the well field and its continued operation from 1988 to the present. It is the expectation of the Parties that Respondent's Work pursuant to this ASAOC will have no impact on NFTD's operation of the air stripping facility and that ongoing coordination between Respondent and NFTD in connection with performance of Respondent's Work will not be required.

14. EPA conducted a Supplemental RI/FS for the second operable unit ("OU2") at the Site from 1987 to 1989, and issued a second operable unit ROD on September 29, 1989. This OU2 ROD focuses on remediation at the major source of the contamination, which was determined to be located roughly 2,000 feet east of the well field, at and around a complex of buildings on Main Avenue and Matheis Court in Norwalk. The OU2 ROD selected a remedy for the Site that included in-situ vacuum extraction of contaminated soils, pumping and treating of contaminated groundwater, monitoring, and institutional controls.

15. The OU2 ROD defined a source area or Source Remediation Area ("SRA") as the area where trichloroethene ("TCE") concentrations in groundwater exceed 6,600 parts per billion. The SRA includes property located at 272 to 280 Main Avenue, an area of approximately six acres that included three buildings at the time of the issuance of the OU2 ROD. These three buildings had supported light industrial activity, but were subsequently demolished in the summer of 2006. Following demolition, the concrete slab floors and foundations of the buildings remained in place until these were excavated and removed in 2012 by the then owner of the property, 272-280 Main Avenue, LLC.

16. On November 25, 1992, the United States District Court for the District of Connecticut entered a Consent Decree for implementation of the OU2 ROD (i.e., remedial design and remedial action ("RD/RA")) and for the recovery of certain past and future costs of the United States at the Site. *United States v. EDO Corp., et.al.*, Civil Action No. 91 CV 00078 JAC (the "RD/RA Consent Decree").

17. Pursuant to the RD/RA Consent Decree, the settling defendants designed and constructed an integrated treatment system ("ITS") to perform two remedial functions. The first was to reduce concentrations of volatile organic compounds ("VOCs") in soils beneath portions of the SRA to levels established in the OU2 ROD by means of in-situ soil vapor extraction ("SVE"). This portion of the remedy was completed in 2006, and EPA authorized discontinuation of the SVE component of the system at that time.

18. The second remedial function of the ITS is as a groundwater extraction and treatment system that is designed both to restore the groundwater quality and to manage the migration of VOC-impacted groundwater from the SRA. The settling defendants have operated the groundwater extraction and treatment system since the fall of 1996.

19. On October 14, 2015, Respondent acquired property identified as 272-280 Main Avenue in Norwalk, Connecticut, from 272-280 Main Avenue, LLC, pursuant to a deed recorded at Book 8256, Page 324 of the Land Records of the Norwalk Town Clerk's Office (the "Property"). The Property is also sometimes described in EPA documents as the "Complex," or as a portion thereof, and is located within the SRA. The Property contains some of the components of the ITS, including a building housing the treatment plant facility, five groundwater extraction wells, associated extraction and ITS discharge piping, and electrical supply and control wiring. Additionally, three (3) overburden and fifteen (15) bedrock monitoring wells are located on the Property.

20. Respondent has expressed its desire to redevelop the Property for retail and commercial uses. The proposed redevelopment includes plans for construction of a two-story structure that would occupy the majority of the Property. The plan requires re-grading (cutting) of the ground surface, including in areas where the ITS piping network and treatment plant building are currently located. To facilitate the redevelopment, Respondent proposes to relocate a portion of the ITS located on the Property. A separate building would be constructed in the southwest portion of the Property to house the relocated treatment plant. In addition, redevelopment activities include removal and rerouting of the existing stormwater drain line located on the eastern portion of the Property.

21. Because Respondent plans to relocate the existing groundwater treatment plant at the Property, and to perform re-grading and other redevelopment activities that might temporarily impact the on-going remedial action, Respondent agrees to perform these activities consistent with the requirements of this Settlement. Respondent also represents that it has entered into an agreement with the afore-mentioned settling defendants to ensure that the planned redevelopment does not adversely affect performance of the settling defendants' continuing responsibilities under the RD/RA Consent Decree, including but not limited to settling defendants' responsibility to operate and maintain the groundwater treatment plant as currently located, and as will be re-located, on the Property. Among other things, Respondent represents that its agreement with the settling parties includes requirements for financial assurance and access.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

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

f. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

VI. SETTLEMENT AGREEMENT AND ORDER

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

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND REMEDIAL PROJECT MANAGER

24. Respondent has retained GZA GeoEnvironmental, Inc. ("GZA") to develop a workplan to conduct the Work. GZA will not serve as Respondent's contractor to conduct the Work, but will oversee the performance of the Work on behalf of Respondent to ensure the Work is carried out in accordance with the requirements of this Settlement. Respondent shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors at least 45 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 30 days after EPA's disapproval. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

25. Respondent's Project Coordinator is:

James J. Clark
Senior Principal
GZA GeoEnvironmental, Inc.
655 Winding Brook Dr., Ste. 402

Glastonbury, CT 06033
Mobile: (860) 250-6344
Office: (860) 858-3134
james.clark@gza.com

The Project Coordinator shall be responsible, on behalf of Respondent, for implementation of this Settlement Agreement. The Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Settlement Agreement. To the greatest extent possible, the Project Coordinator shall be present at the Property or readily available during the conduct of the Work. In the event that Respondent changes its Project Coordinator, Respondent shall submit to EPA the new Project Coordinator's name, title, address, telephone number, email address, and qualifications. EPA retains the right to disapprove of the new Project Coordinator. If EPA disapproves of the new Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within ten days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent.

26. EPA has designated Terrence Connelly of the Office of Site Remediation and Restoration, as its Remedial Project Manager ("RPM") for the Site. EPA and Respondent shall have the right, subject to Paragraph 24, to change their respective designated RPM or Project Coordinator. Respondent shall notify EPA soon as practicable before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

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

VIII. WORK TO BE PERFORMED

28. Respondent shall perform all actions necessary to implement the ITS Relocation Work Plan as set forth in the SOW. The actions to be implemented are relocation of components of the ITS, which generally include, but are not limited to: construction of a new building to house the ITS treatment plant; replacement or re-use of existing ITS equipment; re-routing of piping for underground groundwater extraction, electrical supply and controls, and for treated groundwater discharge; fabrication, startup, and testing of the relocated treatment system; operation and maintenance of the relocated ITS for the verification period; and, operation of a temporary treatment system during construction to minimize ITS downtime. The overall goal is to relocate the ITS while maintaining consistency with the original design described in the EPA approved Final Remedial Design Report/Plans and Specifications – Operable Unit No. 2 dated January 1995, the Remedial Action Work Plan dated August 1995, and the Remedial Construction Report for Soil and Groundwater – Operable Unit No. 2 dated November 1996.

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

30. **Work Plan and Implementation**

a. The ITS Relocation Workplan dated August 9, 2018, prepared by GZA on behalf of Respondent is Respondent's Work Plan for the Work, as generally described in Paragraph 28 above. Following an opportunity for review and comment by the Connecticut Department of Energy and Environmental Protection ("CTDEEP"), EPA hereby approves Respondent's Work Plan, which is incorporated as Attachment 2 to the SOW. The SOW, together with Respondent's Work Plan, is attached and incorporated hereto as Appendix A. Respondent's Work Plan may be revised upon agreement by both parties in writing. Respondent's Work Plan, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

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

c. EPA may approve, disapprove, require revisions to, or modify the draft deliverables in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft deliverable within ten days after receipt of EPA's notification of the required revisions.

d. Upon approval or approval with modifications of the deliverables, Respondent shall commence or continue implementation of the Work in accordance with the schedule included therein. Respondent shall not commence or perform any Work except in conformance with the terms of this Settlement.

31. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the RPM at:

Terrence Connelly, Remedial Project Manager
US EPA Region 1
5 Post Office Square, Suite 100, Mail Code:
Boston, MA 02109-3912
(617) 918-1373
Connelly.terry@epa.gov

(2) Respondent shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(3) Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 31.b. All other deliverables shall be submitted to EPA in the form specified by the RPM.

b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://www.epa.gov/geospatial/epa-metadata-editor.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult https://www.epa.gov/geospatial/geospatial-policies-and-standards for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

32. **Health and Safety Plan.** In accordance with the schedule provided in Section II of the SOW, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at https://www.epa.gov/nscep, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at https://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the

plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the Work.

33. **Quality Assurance, Sampling, and Data Analysis.**

a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples as set forth in the August 1995 Quality Assurance Plan for Remedial Action/Remedial Construction and Operation and Maintenance ("QAPP").

b. **Field Sampling Plan.** Respondent shall submit a Field Sampling Plan to EPA for review and approval as required by the SOW and in accordance with the schedule developed pursuant to Section II of the SOW

c. Respondent shall ensure that EPA and CTDEEP personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP currently approved for use at the Site.

d. Upon request, Respondent shall provide split or duplicate samples to EPA and CTDEEP or their authorized representatives. Respondent shall notify EPA and CTDEEP not less than seven days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and CTDEEP shall have the right to take any additional samples that EPA or CTDEEP deem necessary. Upon request, EPA and CTDEEP shall provide to Respondent split or duplicate samples of any samples they take as part of EPA's oversight of Respondent's implementation of the Work.

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

f. Respondent waives any objections to any data gathered, generated, or evaluated by EPA, CTDEEP or Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or the Field Sampling Plan and QAPP. If Respondent objects to any other data relating to the Work, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

34. **Community Involvement Plan.** EPA will prepare a community involvement plan, in accordance with EPA guidance and the NCP. If requested by EPA, Respondent shall participate in community involvement activities, including participation in (1) the preparation of

information regarding the Work for dissemination to the public, with consideration given to including mass media and Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondent's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any community advisory groups, (2) any technical assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondent at EPA's request are subject to EPA's oversight. Upon EPA's request, Respondent shall establish a community information repository at or near the Site to house one copy of the administrative record.

35. **Progress Reports**. Respondent shall submit a written progress reports to EPA concerning actions undertaken pursuant to this Settlement in accordance with the requirements set forth in the SOW.

36. **Final Report**. Within 60 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 96 (notice of completion), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of Waste materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the Work (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondent's Project Coordinator:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

37. **Off-Site Shipments**

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

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

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

IX. PROPERTY REQUIREMENTS

38. **Agreements Regarding Access and Non-Interference.** Respondent shall, with respect to the Property: (i) provide EPA and CTDEEP with access at all reasonable times to conduct any activity regarding the Settlement, including those activities listed in Paragraph 38.a (Access Requirements); and (ii) refrain from using the Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the remedy.

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

(1) Monitoring the Work;

(2) Obtaining samples;

(3) Assessing implementation of quality assurance and quality control practices as defined in the QAPP ;

(4) Implementing the Work pursuant to the conditions set forth in Paragraph 76 (Work Takeover);

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

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

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

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

b. **Land, Water, or Other Resource Use Restrictions**. Attached hereto as Appendix B is Respondent's Plan for Implementation of Institutional Controls at the Property ("IC Plan"). This plan provides for activity and use restrictions that will run with the land, will serve to prevent risk of unacceptable exposure to soil, groundwater, or inhalation of contaminants at the Property, and will prohibit any activities that could interfere with the remedial action. Respondent will implement the ICs as set forth in the IC Plan and in accordance with the schedule therein.

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

40. In the event of any Transfer of the Property, unless EPA otherwise consents in writing, Respondent shall continue to comply with its obligations under the Settlement, including its obligation to provide access and ensure compliance with any land, water, or other resource use restrictions regarding the Property, and to implement, maintain, monitor, and report on Institutional Controls.

41. Notwithstanding any provision of the Settlement, EPA and CTDEEP 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.

X. RECORD RETENTION, DOCUMENTATION, AND AVALABILITY OF INFORMATION

42. Respondent shall preserve all documents and information relating to the Work, or relating to the hazardous substances, pollutants or contaminants found on or released from the Site, and shall submit them to EPA, upon request, at the completion of the Work required by this Settlement, or earlier if requested by EPA.

43. **Business Confidential Claims.** Respondent may assert that all or part of a Record provided to EPA and CTDEEP under this Section is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts

thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records that Respondent claims to be confidential business information 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 CTDEEP, or if EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

44. Notwithstanding any provision of this Settlement, EPA and CTDEEP 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.

XI. COMPLIANCE WITH OTHER LAWS

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

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

XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

47. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer of the Emergency Planning and Response Branch, EPA Region 1, at (617) 918-1224 of the incident or Site conditions. In the event that

Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIII (Payment of Response Costs).

48. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at (617) 918-1224, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

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

XIII. PAYMENT OF RESPONSE COSTS

50. **Payments for Future Response Costs**. Respondent shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. Respondent shall make payment to EPA by Fedwire Electronic Funds Transfer ("EFT") to:

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

and shall reference Site/Spill ID Number 0156 and the EPA docket number for this action.

b. At the time of each payment, Respondent shall send notice that such payment has been made to:

Terrence Connelly, Remedial Project Manager
US EPA Region 1
5 Post Office Square, Suite 100, Mail Code:
Boston, MA 02109-3912
(617) 918-1373
Connelly.terry@epa.gov

and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to:

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

Such notice shall reference Site/Spill ID Number 0156 and the EPA docket number for this action.

c. **Periodic Bills.** On a periodic basis, EPA will send Respondent a bill requiring payment that includes an itemized cost summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within 30 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 52 (Contesting Future Response Costs), and in accordance with Paragraphs a and b.

d. **Deposit of Future Response Costs Payments.** The total amount to be paid by Respondent pursuant to Paragraph 50.c (Periodic Bills) shall be deposited by EPA in the EPA Hazardous Substance Superfund.

51. **Interest.** In the event that any payment for Future Response Costs is not made by the date required, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondent's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVI (Stipulated Penalties).

52. **Contesting Future Response Costs.** Respondent may initiate the procedures of Section XIV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 50 (Payments for Future Response Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondent shall submit a Notice of Dispute in writing to the RPM within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall, within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 50, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation, and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow

account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within five days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 50. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 50. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XIV. DISPUTE RESOLUTION

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

54. **Informal Dispute Resolution**. If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within five business days after such action. EPA and Respondent shall have 14 days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

55. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Branch Chief level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

56. Except as provided in Paragraph 52 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Except as provided in Paragraph 66, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

XV. FORCE MAJEURE

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

58. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's RPM orally or, in his or her absence, the Director of the Office of Site remediation and Restoration, EPA Region 1, within three days of when Respondent first knew that the event might cause a delay. Within two business days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 57 and whether Respondent has exercised best efforts under Paragraph 57, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

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

60. If Respondent elects to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 57 and 58. If Respondent meets its burden, the delay at issue shall be deemed not to be a violation by Respondent's obligation under this Settlement.

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

XVI. STIPULATED PENALTIES

62. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 63.a and 64 for failure to comply with the obligations specified in Paragraphs 63.b and 64, unless excused under Section XV (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondent with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

63. **Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones.**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 63.b:

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

b. **Obligations**

(1) Payment of any amount due under Section XIII (Payment of Response Costs); and

(2) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 52 (Contesting Future Response Costs).

64. **Stipulated Penalty Amounts – Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement, other than those specified in Paragraph 63.b:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 250	1st through 14th day
\$ 500	15th through 30th day
\$ 1,000	31st day and beyond

65. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 76 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of $250,000.

66. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 30 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Branch Chief level or higher, under Paragraph 55 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

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

68. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XIV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 50 (Payments for Future Response Costs).

69. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 66 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 68 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

71. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 76 (Work Takeover).

72. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XVII. COVENANTS BY EPA

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

XVIII. RESERVATIONS OF RIGHTS BY EPA

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

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

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

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

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

d. criminal liability;

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

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

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

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

76. **Work Takeover**

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

b. If, after expiration of the three-day notice period specified in Paragraph 76.a, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 76.b.

c. Respondent may invoke the procedures set forth in Paragraph 55 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 76.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 76.b until the earlier of (1) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work

Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 55 (Formal Dispute Resolution).

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

XIX. COVENANTS BY RESPONDENT

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

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

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

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

78. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVIII (Reservations of Rights by EPA), other than in Paragraph 75.a (liability for failure to meet a requirement of the Settlement), 75.d (criminal liability), or 75.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

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

on EPA's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

XX. OTHER CLAIMS

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

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

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

XXI. EFFECT OF SETTLEMENT/CONTRIBUTION

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

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

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

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

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

XXII. INDEMNIFICATION

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

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

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

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

XXIII. INSURANCE

92. No later than 30 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXV (Notice of Completion of Work), commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance. Respondent shall resubmit such certificates each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Kellogg-Deering Well Field Superfund Site, Norwalk, Connecticut, and the EPA docket number for this action.

XXIV. MODIFICATION

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

94. If Respondent seeks permission to deviate from any approved work plan, schedule or the SOW, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph 93.

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

XXV. NOTICE OF COMPLETION OF WORK

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

XXVI. INTEGRATION/APPENDICES

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

a. "Appendix A" is the SOW.

b. "Appendix B" is the Institutional Controls Work Plan.

XXVII. EFFECTIVE DATE

98. This Settlement shall be effective three (3) days after the Settlement is signed by the Director of the Office of Site Remediation and Restoration.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

12/20/18

Dated

Bryan Olsen, Director
Office of Site Remediation and Restoration, EPA Region 1

Signature Page for Settlement Regarding Kellogg-Deering Well Field Superfund Site

AGREED:

RESPONDENT, MAIN NORWALK, LLC

By: ______________________ Date: 12/20/2018

Albert Feinstein, Manager
54 East 66th Street, New York, NY 10065