UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:	)	CERCLA Docket No. 02-2019-2008
PURE EARTH RECYCLING SITE	)	
RESPONDENTS listed on Appendix A.	)	
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	)	**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION**

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency (EPA) and the Respondents listed in Appendix A ("Respondents"). This Settlement provides for the performance of a removal action by Respondents and the payment of certain response costs incurred by the United States at or in connection with the Pure Earth Recycling Site (the "Site") generally located at 3209 North Mill Road, 3119 Chammings Court, and 3137 Chammings Court in Vineland, Cumberland County, New Jersey.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Jan. 18, 2017) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). This authority was further redelegated by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division by EPA Regional Delegations 14-14-C and 14-14-D and conferred to the Director of the Superfund and Emergency Management Division of EPA Region 2 by Regional Memorandum "Redelegations and the Regional Realignment" (March 27, 2019).

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

4. EPA and Respondents recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain 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. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they 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 Respondents and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement.

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

7. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind the Respondent(s) he or she represents to this Settlement.

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

III. DEFINITIONS

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

"Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on Sept. 27, 2018, by the Regional Administrator, EPA Region 2, or his delegate, and all attachments thereto. The Action Memorandum is attached as Appendix B.

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

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

"Deliverables" shall mean the following plans and reports that Respondents must or may be required to submit to EPA pursuant to this Settlement: the Removal Action Work Plan described in Paragraph 28, the Health and Safety Plan described in Paragraph 30, the Sampling and Analysis Plan described in Paragraph 31(b), the Community Air Monitoring Plan described in Paragraph 32, the Disposal Plan described in Paragraph 33, the Progress Reports described in Paragraph 34, the Final Report described in Paragraph 35, and the emergency response and/or release reporting described in Paragraphs 48–50.

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

"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.

"NJDEP" shall mean the New Jersey Department of Environmental Protection and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after the Effective Date in reviewing or developing Deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or in 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, the costs of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 80 (Work Takeover), Paragraph 102 (Access to Financial Assurance), the costs associated with community involvement (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include the costs incurred by the Agency for Toxic Substances and Disease Registry ("ATSDR") regarding the Site, that Respondents have agreed to pay under this Settlement that accrue pursuant to 42 U.S.C. § 9607(a) after the Effective Date.

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

"Interim Response Costs" shall mean all costs, including but not limited to direct and indirect costs in connection with the Site (a) paid by the United States between July 31, 2018 and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.

"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 Respondents.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs at or in connection with the Site that the United States paid through the Effective Date of this Settlement, including but not limited to: (1) costs of $5,890,048.65

incurred through July 31, 2018; and (2) all Interim Costs incurred between July 31, 2018 and the Effective Date of this Agreement; plus Interest on all such costs through such date.

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

"Respondents" shall mean those Parties identified in Appendix A.

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

"Site" shall mean the Pure Earth Recycling Superfund Site, encompassing approximately 35 acres, and three parcels located at:

(1) 3209 North Mill Road [Block 603, Lot 2, formerly Block 89, Lots 15 and 17];

(2) 3119 Chammings Court [Block 603, Lot 18, formerly Block 89, Lot 13]; and

(3) 3137 Chammings Court [Block 603, Lot 3, formerly Block 89, Lot 14], in Vineland, Cumberland County, New Jersey and depicted generally on the map attached as Appendix D.

"State" shall mean the State of New Jersey.

"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 Respondents are required to perform under this Settlement, as further set forth herein, except those required by Section XI (Record Retention).

IV. FINDINGS OF FACT

10. The Site, comprised of three parcels totaling approximately 35 acres, is located at

3209 North Mill Road, 3119 Chammings Court and 3137 Chammings Court, Vineland, New Jersey. The immediate neighborhood is rural and a mix of commercial and residential properties. A small, seasonally dry stream bed adjoins the Site that drains into Malaga Lake which in turn feeds into the Maurice River which discharges to the Delaware River.

11. Historically, the Site consisted of two office buildings, a waste-oil fired steam generator, 15 above ground storage tanks ("ASTs"), a rotary kiln incinerator, a scale house, two settling lagoons, and various out-buildings used for maintenance and storage. Past removal actions completed through December 2018 involved the decommissioning of all ASTs except for Tank 17. The natural soil is sandy, and there are small areas of wetlands around the Site delineated by stands of Phragmites.

12. Pure Earth Recycling, Inc. ("PER"), a wholly-owned subsidiary of Pure Earth, Inc. ("PE"), operated a commercial solid and hazardous waste facility (EPA ID No. NJD045995693) to store and treat on-site and off-site generated waste prior to shipment to off-site authorized facilities. PER also operated a used oil recycling center at the Site, processing waste oils by gravity separation, filtration, and heating. In addition, PER accepted chemical wastes and wastewaters containing trace organic or surfactant compounds. Wastewater streams generated during the waste oil and wastewater treatment processes were discharged to the sewer system. Finally, PER operated a recycling center for contaminated soils, receiving petroleum contaminated soil, and soil contaminated with manufactured gas plant residues from soil remediation contractors. Large soil piles remain on the Site.

13. Rezultz, Inc. ("Rezultz"), another wholly-owned subsidiary of PE, owns two of the three lots comprising the Site (the 3119 Chamming Court lot has since been transferred numerous times and is currently held by Aliano Brothers Land Management LLC.), and Mid-Atlantic Recycling Technologies owns the third lot. At or around the end of January 2011, PER ceased operations. PER never initiated closure activities at the Site as required by the approved closure plan for the facility, due to lack of funds. None of the affiliated companies (PE, PER, Rezultz) are actively conducting business and essentially exist only on paper.

14. On July 6, 2012, a call was received from NJDEP notifying the EPA Regional Emergency Operations Center of a release at the Site. NJDEP requested that EPA evaluate the release for a CERCLA emergency removal action.

15. EPA's On-Scene Coordinators ("OSCs") responded to the request on July 9, 2012. After touring the Site with representatives of NJDEP, the OSCs determined that a release was occurring and that there were additional threats of releases to the environment. The OSCs initially observed over 100 drums of oxidizers, acids, and other chemicals scattered about the premises, most of which were located outside and exposed to the elements. Also observed were dozens of compressed gas cylinders including hydrogen, acetylene and oxygen. Streams of liquid leaking from a portable storage tank and from the above-ground storage tanks labeled "waste oil" were also observed. On July 13, 2012, EPA activated an Emergency and Rapid Response Services ("ERRS") contractor to initiate an emergency removal action.

16. The ERRS contractor completed repairs to an existing office building that was used as the Command Post; sampled every liquid storage tank and tank wagon on the Site and identified thousands of gallons of waste oil suitable for fuels blending; retrieved and disposed of more than 500 chemical containers; installed a web-based video camera security system with motion detectors and fire/smoke detectors; disposed of 38,000 gallons of contaminated water into the local POTW; recycled 854 pounds of Ni-Cd batteries; stopped a leak from one storage tank containing contaminated liquid: recycled over 200 gallons of 50% peroxide solution; shipped over 250,000 gallons of waste oil for recycling; shipped over 180,000 gallons of contaminated soil pile leachate for wastewater treatment; and recycled 75 cylinders of compressed gasses.

17. From September 2017 to approximately August 2018, work at the Site was suspended during EPA's response efforts to Hurricane Maria and mitigation efforts in Puerto Rico. In September 2018, EPA resumed work at the Site to complete the removal of on-site wastes. This included the removal of wastes and decommissioning of tanks identified as TF2-T1, TF2-T3, TK-414, TK-416, TK-103A and TK-103B. The waste generated as a result of this work was disposed of off-site. Additional actions included the sampling, consolidation, and removal of wastes, including oil and sludge located in an oil/water separator in the maintenance building and the disposal of hazardous and non-hazardous waste in three roll off containers. All on-site wastes were removed from the Site by February 25, 2019, with the exception of the contents of Tank 17. As of July 31, 2018, EPA had incurred Past Response Costs of $5,890,048.65 in connection with response efforts conducted at the Site. EPA previously recovered $255,070 in Past Response Costs from PER under an Agreement for Recovery of Past Costs dated July 2, 2013.

18. There exists an immediate threat from the continued presence of approximately 70,000 gallons of sludge in Tank 17. Circumstances prevented the removal of the sludge during the initial phases of the removal action. The sludge in Tank 17 has been sampled and contains volatile organic compounds and is a RCRA hazardous waste exhibiting the characteristic of toxicity (benzene--D018). A release of the sludge into the environment would result in widespread contamination of the Site and adjacent wetlands, which would allow transport of contaminants to the Maurice River, a nearby recreational waterway and a designated Wild and Scenic River.

19. Exposure to the various hazardous substances present at the Site by direct contact, inhalation, or ingestion may cause a variety of adverse human health effects.

20. The Respondents are among more than one thousand parties who allegedly sent or contributed waste to the Site during decades of its operation.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

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

e. Respondents either arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), or accepted hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

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. EPA determined in an Action Memorandum dated September 27, 2018, that the conditions at the Site may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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

VI. SETTLEMENT AGREEMENT AND ORDER

22. 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 Respondents 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, except as further set forth herein.

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

23. Respondents shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) or subcontractor(s) within 30 days after the Effective Date. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 21 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If

EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name and qualifications within 14 days after EPA's disapproval. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification that such persons meet minimum technical background and experience requirements.

24. Within 30 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, email address, and qualifications within 14 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator shall constitute notice or communication to all Respondents.

25. EPA has designated Andrew L. Confortini of the Removal Action Branch as its OSC. EPA and Respondents shall have the right, subject to Paragraph 24, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA seven days before such a change is made. The initial notification by Respondents may be made orally, but shall be promptly followed by a written notice.

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

VIII. WORK TO BE PERFORMED

27. <u>Removal Action</u>

a. The scope of the work to be performed for the Removal Action (the "Work") is limited to Tank 17. Although the Action Memorandum also describes work involving Tank 1, Tank 3, roll-off boxes, and other tanks, containers, or waste material, the work involving those other tanks, roll-off boxes, containers or waste material is not part of this Work to be performed pursuant to Paragraph 28. Respondents shall perform all actions necessary to implement the Work described in the Action Memorandum relating to removing and disposing of the contents of, and decontaminating, Tank 17 (the "Removal Action"). Tank 17 is approximately 47 feet tall, 27 feet wide and has a capacity of 200,000 gallons (See Appendix C). The steel tank has a wall thickness that ranges from ¼ to 3/16 of an inch. Prior EPA activities involved removing approximately 18 feet of waste oil from the tank. The tank currently contains approximately 16 feet or 70,000 gallons of sludge. The material has been sampled by EPA and determined to exhibit the characteristic of toxicity under RCRA (benzene--D018).

b. The Work may include the introduction of a solidification agent or other material to Tank 17 if Respondents, in their sole discretion, determine that such material is necessary to allow safer, easier, or quicker removal of the contents of Tank 17. The Work may include removal of a portion of Tank 17, if necessary to allow access to the tank's contents in order to facilitate removal of its contents, but the Work does not include and/or require the disassembly, demolition, removal, or disposal of Tank 17 itself, or of any piping, equipment, and containment structures connected to or otherwise associated with Tank 17, after its contents have been removed and disposed of, unless such actions have, in EPA's opinion, compromised the structure of Tank 17 to the extent it poses a hazard. Except to the extent otherwise provided in Paragraphs 28 (Removal Action Work Plan and Implementation) or 47 (Emergency Response) of this Settlement Agreement, and notwithstanding EPA's reservation of rights under Paragraph 78 to require Respondents "in the future to perform additional activities pursuant to CERCLA or any other applicable law," the Respondents are not required by the terms of this Settlement Agreement to fund or perform:

(i) any removal or remedial actions selected by EPA for the Site; or

(ii) any other additional activities pursuant to CERCLA or any other applicable law, in connection with any known or unknown conditions at the Site (including any new or previously unknown conditions or contamination discovered during or in connection with performance of the Work pursuant to this paragraph).

c. Such additional removal or remedial actions selected for the Site, or other "additional activities," may be the subject of a future settlement between EPA, Respondents, and/or other persons not a party to this Settlement Agreement, or may otherwise be the subject of separate enforcement actions by EPA.

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

28. Removal Action Work Plan and Implementation.

a. Within 60 days after the Effective Date, in accordance with Paragraph 29 (Submission of Deliverables), Respondents shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Action Work Plan") generally described in Paragraph 27 above. The draft Removal Action Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Action Work Plan in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Removal Action Work Plan within 30 days after receipt of EPA's

notification of the required revisions. Respondents shall implement the Removal Action Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Action Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

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

d. Respondent shall conduct the Work required hereunder in accordance with CERCLA, the NCP, and in addition to guidance documents referenced above, EPA Region 2's "Clean and Green Policy," which may be found at http://www.epa.gov/greenercleanups/epa-region-2-clean-and-green-policy.

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

29. Submission of Deliverables.

a. General Requirements for Deliverables.

(1) Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to Andrew L. Confortini (OSC) at USEPA, 2890 Woodbridge Avenue-MS-211, Edison, New Jersey, 08837, Attention: Pure Earth Recyling Site On-Scene Coordinator, (732) 906-6827, confortini.andrew@epa.gov. Respondents shall submit all Deliverables required by this Settlement, or any approved Work Plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondents shall submit all Deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 29.b. All other Deliverables shall be submitted to EPA in the form specified by the OSC. If any Deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide EPA with 2 paper copies of such exhibits

b. Technical Specifications for Deliverables.

(1) Sampling and monitoring data contained in any Deliverable should be submitted in standard regional Electronic Data Deliverable ("EDD") format. Region 2's "Comprehensive Electronic Data Deliverable Specification Manual 5.0" (February 2018) explains the systematic implementation of EDD within EPA Region 2 and provides detailed instructions of data preparation and identification of data fields required

for data submissions. Additional Region 2 EDD guidance and requirements documents, including the "Electronic Data Deliverables Valid Values Reference Manual" and tables, the "Basic Manual for Historic Electronic Data," the "Standalone EQuIS Data Processor User Guide," and EDD templates, can be found at https://www.epa.gov/superfund/region-2-superfund-electronic-data-submission. 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 Respondents does not, and is not intended to, define the boundaries of the Site.

30. Health and Safety Plan. Within 45 days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety of Site personnel during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OlC (Nov. 2002), available on the NSCEP database at http://www.epa.gov/nscep/index.html, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at http://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

31. Quality Assurance, Sampling, and Data Analysis.

a. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. Sampling and Analysis Plan. Within 60 days after the Effective Date, Respondents shall submit a sampling and analysis plan (the "Sampling and Analysis Plan") to EPA for review and approval. This plan shall consist of a Field Sampling Plan ("FSP") and a Quality Assurance Project Plan ("QAPP") that is consistent with the Removal Action Work Plan, the NCP, and applicable guidance documents, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" EPA 240/B-01/003 (March 2001, reissued May 2006), "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005), and "Uniform Federal Policy for Quality Assurance Project Plans – Optimized UFP-QAPP Worksheets," Part 2A, Revision 1, (March 2012). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Respondents shall make reasonable efforts to ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Settlement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) available at http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/clp), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (https://www.epa.gov/hw-sw846), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www.epa.gov/ttnamti1/airtox.html).

d. However, upon approval by EPA, Respondents may use other appropriate analytical method(s), as long as (i) quality assurance/quality control ("QA/QC") criteria are contained in the method(s) and the method(s) are included in the QAPP; (ii) the analytical

method(s) are at least as stringent as the methods listed above; and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network ("ERLN") laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP"), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

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

f. Respondents shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the implementation of the work pursuant to this Settlement.

g. Respondents waive any objections to any data gathered, generated, or evaluated by EPA or Respondents in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondents object to any other data relating to the Work, Respondents 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 ("Progress Report") containing the data.

32. Community Air Monitoring Plan.

Within 45 days after the Effective Date, Respondents shall submit to EPA for review and approval a community air monitoring plan ("CAMP") which shall be prepared in accordance with the generic CAMP guidance found in the New York State Department of Environmental Conservation, Division of Environmental Remediation (DER-10) Technical Guidance for Site Investigation and Remediation.

33. Disposal Plan. Within 60 days after the Effective Date, Respondents shall submit to EPA for review and approval a disposal plan (the "Disposal Plan") that addresses the proper disposition of hazardous substances removed from the Site to treatment, storage, and disposal facilities in compliance with RCRA, 42 U.S.C. §§ 6901-6991, and Section 300.440 of the NCP and/or in accordance with state regulations.

34. Progress Reports. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement on a weekly basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Removal Action Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVII, unless otherwise directed in writing by the OSC. The Progress Reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

35. Final Report. Within 60 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 108108 (Notice of Completion), Respondents shall submit for EPA review and approval a final report (the "Final Report") summarizing the actions taken to comply with this Settlement. The Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The Final Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The Final Report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondents' 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."

36. Off-Site Shipments.

a. Respondents may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if

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

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

IX. PROPERTY REQUIREMENTS

37. Agreement Regarding Access and Non-Interference. On June 20, 2013, EPA entered into an Agreement for Recovery of Past Response Costs with Pure Earth Recycling, Inc. (the "PER Agreement"). The PER Agreement provides EPA access to the Site for the purpose of conducting any response activity. The PER Agreement also granted such access to EPA's representatives, including contractors, and any parties performing work at the Site pursuant to an administrative order under CERCLA. EPA acknowledges that the instant Settlement between the Respondents and EPA constitutes "an administrative order under CERCLA," within the meaning of the PER Agreement. EPA further acknowledges that the Respondents constitute "any parties performing work at the Site" within the meaning of the PER Agreement and, as such, the Respondents and their contractors are entitled to the full right of access to the Site pursuant to the PER Agreement.

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

X. ACCESS TO INFORMATION

39. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or

control or that of their contractors or agents relating the implementation of the Work pursuant to this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

40. Privileged and Protected Claims.

a. Respondents may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph40.b, and except as provided in Paragraph 40.c.

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

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

41. Business Confidential Claims. Respondents may assert that all or part of a Record provided to EPA under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents 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, or if EPA has notified Respondents 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 Respondents.

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

XI. RECORD RETENTION

43. Until ten (10) years after EPA provides Respondents with notice, pursuant to Section XXVII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

44. At the conclusion of the document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 40 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA.

45. Each Respondent 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 the Site since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. COMPLIANCE WITH OTHER LAWS

46. Nothing in this Settlement limits Respondents' 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. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement 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. Respondents shall identify ARARs in the Removal Action Work Plan subject to EPA approval.

47. 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, Respondents shall submit timely and complete applications and take all other

actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

48. 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, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer through the National Response Center at (800) 424-8802 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

49. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondents are 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, Respondents shall immediately orally notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer through the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

50. For any event covered under this Section, Respondents 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.

XIV. PAYMENT OF RESPONSE COSTS

51. Payment for Past Response Costs.

a. Within 60 days after the Effective Date, Respondents shall pay to EPA $750,000 in full and final settlement of Respondents' liability for payment of Past Response Costs and Interim Response Costs. Respondents shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) through the Pay.gov website using the following link: https://www.pay.gov/public/form/start/11751879. Please ensure that the following information is included on the payment form:

i. Amount of Payment:
ii. Name of remitter:
iii. Docket Number: 02-2019-2008
iv. Site Name: Pure Earth Recycling Site
v. Site/Spill identifier: A284

At the time of payment, Respondents shall send notice that payment has been made to Andrew Confortini by email at confortini.andrew@epa.gov, to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov and to Clay Monroe, Site Attorney, by email at monroe.clay@epa.gov. Such notice shall reference Site/Spill ID Number A284 and the EPA docket number for this action.

b, Deposit of Past Response Costs Payments. The total amount to be paid by Respondents pursuant to Paragraph a shall be deposited by EPA in the EPA Hazardous Substance Superfund.

52. Payments for Future Response Costs. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP.

53. Periodic Bills. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a SCORPIOS report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondents shall make all payments within 30 days after Respondents' receipt of each bill requiring payment, except as otherwise provided in Paragraph 566 (Contesting Future Response Costs), and in accordance with Paragraph 51.a (Payment for Past Response Costs).

54. Deposit of Future Response Costs Payments. The total amount to be paid by Respondents pursuant to Paragraph 53 (Periodic Bills) shall be deposited by EPA in the EPA Hazardous Substance Superfund.

55. Interest. In the event that any payment for Past Response Costs or Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under

this Section, including but not limited to, payment of stipulated penalties pursuant to Paragraph 67 (Stipulated Penalties - Work).

56. Contesting Future Response Costs. Respondents may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 52 (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the OSC within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents 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 522, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC") and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 52. If Respondents prevail concerning any aspect of the contested costs, Respondents 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 52. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

57. 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.

58. Informal Dispute Resolution. If Respondents object to any EPA action taken pursuant to this Settlement, except for billings for Future Response Costs (which is set forth in Paragraph 56) and except for force majeure (which is set forth in Paragraph 62), they shall send EPA a written Notice of Dispute describing the objection(s) within 14 days after such action. EPA and Respondents shall have 30 days from EPA's receipt of Respondents' 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.

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

60. Except as provided in Paragraph 56 (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 Respondents under this Settlement. Except as provided in Paragraph 70, 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 Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

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

62. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify EPA's OSC orally or, in his or her absence, an alternate EPA OSC if one has been designated, or, in the event both of EPA's designated representatives are unavailable, Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA Region II at 732-321-6658, within forty-eight (48) hours of when Respondents first knew that the event might cause a delay. Within five (5) days thereafter, Respondents 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; Respondents' rationale for attributing such delay to a force majeure;

and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents 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 61 and whether Respondents have exercised their best efforts under Paragraph 61, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

63. 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 Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

64. If Respondents elect to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents 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 Respondents complied with the requirements of Paragraphs 61 and 62. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

65. 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 Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XVII. STIPULATED PENALTIES

66. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 67 and 68 for failure to comply with the requirements of this Settlement specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Respondents shall include completion of all activities and obligations, including payments, required under this Settlement, or any Deliverable approved under this Settlement, in accordance with all applicable requirements of law, this Settlement, and any Deliverable(s) approved under

this Settlement and within the specified time schedules established by and approved under this Settlement.

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

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 67.b.:

$1000	1st through 14th day
$3000	15th through 30th day
$6000	31st day and beyond

b. Compliance Milestones.

1) Failure to comply with the schedule in the Removal Action Work Plan;

2) Failure to pay Past and/or Future Costs in a timely manner; and

3) Establishment and maintenance of financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XXV (Financial Assurance).

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

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

69. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 800 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of $500,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 80 (Work Takeover) and 102 (Access to Financial Assurance).

70. 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, unless Respondents prevail on the disputed issue. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 28 (Removal Action 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 Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Branch Chief level or higher, under Paragraph 59 (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.

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

72. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 522 (Payments for Future Response Costs).

73. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents 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 Paragraph 700 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 72 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

75. 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 Respondents' 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 80 (Work Takeover).

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

XVIII. COVENANTS BY EPA

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

XIX. RESERVATIONS OF RIGHTS BY EPA

78. 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 Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

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

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

i. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;

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

c. criminal liability;

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

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

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

80. Work Takeover.

a. In the event EPA determines that Respondents: (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 Respondents. 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 Respondents a period of 10 business days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10 business-day notice period specified in Paragraph 80.a., Respondents have not addressed 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 Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 80.b. Funding of Work Takeover costs is addressed under Paragraph 1022 (Access to Financial Assurance).

c. Respondents may invoke the procedures set forth in Paragraph 59 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 80.b However, notwithstanding Respondents' 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 80.b until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 59 (Formal Dispute Resolution).

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

XX. COVENANTS BY RESPONDENTS

81. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, and this Settlement, except as set forth herein, 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, Past Response Costs, 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 New Jersey Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

82. Except as provided in Paragraph 85 (Waiver of Claims by Respondents), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 79.a (liability for failure to meet a requirement of the Settlement), 79.d (criminal liability), or 79.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

83. 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).

84. Respondents reserve, 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 Respondents' Deliverables or activities.

85. Waiver of Claims by Respondents.

a. Respondents 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:

i. De Micromis Waiver. For the Work, Past Response Costs and Future Response Costs, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous

substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

ii. *De Minimis*/Ability to Pay Waiver. For the Work, Past Response Costs and Future Response Costs, against any person that has entered or in the future enters into a final Section 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to the Site.

b. Exceptions to Waivers.

i. The waivers under this Paragraph 85 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against such Respondent.

ii. The waiver under Paragraph 85.a.i (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

XXI. OTHER CLAIMS

86. 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 Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

87. Except as expressly provided in Paragraphs 85 (Waiver of Claims by Respondents) and Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents 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.

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

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

89. Except as provided in Paragraphs 85 (Waiver of Claims by Respondents), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondents), 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).

90. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of 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, Past Response Costs, and Future Response Costs.

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

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

93. 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, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVIII (Covenants by EPA).

94. Effective upon signature of this Settlement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Respondent the payment(s) required by Paragraphs 511 (Payment for Past Response Costs) and, if any, Section XVII (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 900 and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondents that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XXIII. INDEMNIFICATION

95. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents 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). Respondents 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 Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree 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 Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

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

performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

98. No later than 30 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVII (Notice of Completion of Work), commercial general liability insurance with limits of $5 million, for any one occurrence, and automobile insurance with limits of $5 million, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XXV. FINANCIAL ASSURANCE

99. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of $1,000,000 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at http://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

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

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

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

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

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

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

100. If Respondents provide financial assurance by means of a demonstration or guarantee under Paragraph 99.e. or 99.f., the affected Respondents shall also comply and shall ensure that their guarantors comply with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including, but not limited to: (a) the initial submission to EPA of required documents from the affected entity's chief financial officer and independent certified public accountant no later than 30 days after the Effective Date; (b) the annual resubmission of such documents within 90 days after the close of each such entity's fiscal year; and (c) the notification of EPA no later than 30 days, in accordance with Paragraph 101, after any such entity determines that it no longer satisfies the relevant financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). Respondents agree that EPA may also, based on a belief that an affected entity may no longer meet the financial test requirements of Paragraph 99.e. or 99.f require reports of financial condition at any time from such entity in addition to those specified in this Paragraph. For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (2) the phrase "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" includes the sum of all environmental obligations (including obligations under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work under this Settlement; (3) the terms "owner" and "operator" include each Respondent making a demonstration or obtaining a guarantee under Paragraph 99.e or 99.f; and (4) the terms "facility" and "hazardous waste management facility" include the Site.

101. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance

provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures of Paragraph 103 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Settlement, including, without limitation, the obligation of Respondents to complete the Work in accordance with the terms of this Settlement.

102. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 80.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 102.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 102.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 80.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 Paragraph 99.e or 99.f, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within 14 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 102 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 PER Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at

or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 1022 must be reimbursed as Future Response Costs under Section XIV (Payments for Response Costs).

103. Modification of Amount, Form, or Terms of Financial Assurance. Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 99, 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 Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 99.

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

XXVI. MODIFICATION

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

106. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 105.

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

XXVII. NOTICE OF COMPLETION OF WORK

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

XXVIII. INTEGRATION/APPENDICES

109. 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 list of Respondents.

b. Appendix B is the Action Memorandum.

c. Appendix C is a picture of Tank 17.

d. Appendix D is a map of the Site.

XXIX. PUBLIC COMMENT

110. Final acceptance by EPA of the Settlement shall be subject to Section 122(i) of CERCLA, 42 U.S.C.§ 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the Settlement, and to consider any comments received in determining whether to consent to the proposed settlement. EPA may withhold final acceptance of the Settlement, or seek to modify all or part of Section XIV (Payment of Response Costs) of this Settlement if any comments received disclose facts or considerations that indicate that Section XIV of this Settlement is inappropriate, improper, or inadequate. If upon considering any comments received, EPA decides to finally

accept the Settlement, EPA shall issue a notice to Respondents that such public comments received, if any, do not require EPA to withhold final acceptance of this Settlement.

XXX. ATTORNEY GENERAL APPROVAL

111. The Attorney General or his/her designee has approved the response cost settlement embodied in this Settlement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XXXI. EFFECTIVE DATE

112. This Settlement shall become effective only upon the occurrence of all of the following events: (1) all Respondents have signed the Settlement; (2) the Regional Administrator or his/her delegatee has signed the Settlement; and (3) EPA issues a notice to Respondents stating that public comments received do not require EPA to withhold final acceptance of the Settlement. If all of the aforementioned events occur and this Settlement becomes effective, the Effective Date shall be the date five (5) days after the occurrence of whichever of the three aforementioned events occurs later.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Evangelista, Pat

Digitally signed by Evangelista, Pat
Date: 2020.09.10 15:21:24 -04'00'

9/10/2020

Dated

Pat Evangelista, Director,
Region 2 Superfund and Emergency Management Division

Signature Page for Settlement Regarding the Pure Earth Recycling Superfund Site

FOR ____:
[Print name of Respondent]

______________ ______________________________________
Dated [Name]
[Title]
[Company]
[Address]

[NOTE: A separate signature page is required for each settlor.]

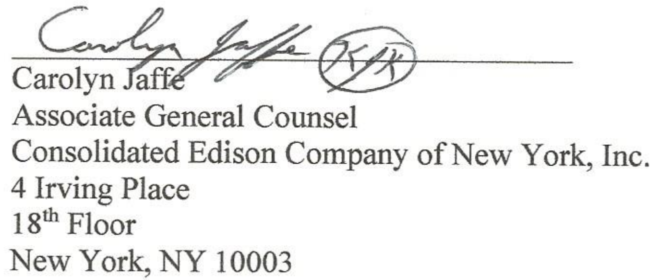
APPENDIX A

1. Consolidated Edison Company of New York, Inc.
2. Exxon Mobil Corporation and ExxonMobil Oil Corp.
3. Hess Corporation
4. International-Matex Tank Terminals LLC
5. Infineum USA L.P.
6. Lorco Petroleum Services
7. National Grid USA
8. Patrick J. Kelly Drums, Inc.
9. Philadelphia Gas Works, by the Philadelphia Facilities Management Corporation
10. Public Service Electric and Gas Company ("PSE&G") (and its affiliate, PSEG Fossil, LLC)
11. Sasol North America Inc. and Sasol Chemicals (USA) LLC
12. Superfund Management Operations, a series of Evergreen Resources Group, LLC on behalf of itself and ETC Sunoco Holdings LLC f/k/a Sunoco, Inc.

Signature Page for Settlement Regarding the Pure Earth Recycling Superfund Site

FOR Consolidated Edison Company of New York, Inc. :
[Print name of Respondent]

5/14/2020
Dated



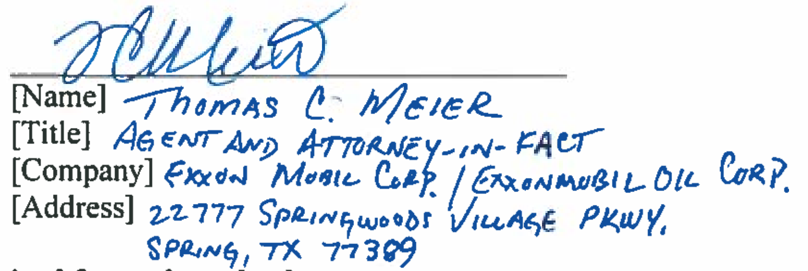
Carolyn Jaffe
Associate General Counsel
Consolidated Edison Company of New York, Inc.
4 Irving Place
18th Floor
New York, NY 10003

[NOTE: A separate signature page is required for each settlor.]

Signature Page for Settlement Regarding the Pure Earth Recycling Superfund Site

FOR EXXON MOBIL CORP. / EXXONMOBIL OIL CORP.:
[Print name of Respondent]

30 APR 2020
Dated

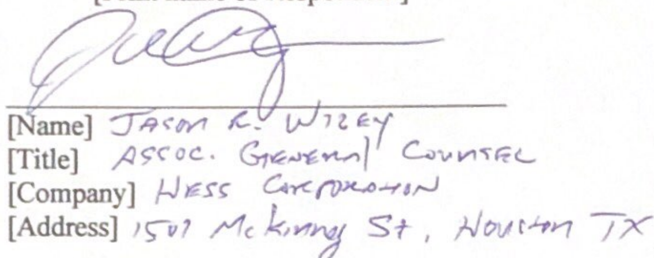


[Name] Thomas C. Meier
[Title] AGENT AND ATTORNEY-IN-FACT
[Company] EXXON MOBIL CORP. / EXXONMOBIL OIL CORP.
[Address] 22777 SPRINGWOODS VILLAGE PKWY.
SPRING, TX 77389

[NOTE: A separate signature page is required for each settlor.]

Signature Page for Settlement Regarding the Pure Earth Recycling Superfund Site

FOR Hess Corporation:
[Print name of Respondent]



5-11-2020
Dated

[Name] Jason R. Wiley
[Title] Assoc. General Counsel
[Company] Hess Corporation
[Address] 1501 McKinney St, Houston TX

[NOTE: A separate signature page is required for each settlor.]

Signature Page for Settlement Regarding the Pure Earth Recycling Superfund Site

FOR International-Matex Tank Terminals LLC:
[Print name of Respondent]

4/16/20
Dated

[Name] Richard B. Jurisich, Jr.
[Title] Secretary and General Counsel
[Company] International-Matex Tank Terminals LLC
[Address] 400 Poydras Street, Suite 3000, New Orleans, LA 70130

[NOTE: A separate signature page is required for each settlor.]

DocuSign Envelope ID: 8BD0ADC5-2FB9-4C48-839C-CFBADDD29DEA

Signature Page for Settlement Regarding the Pure Earth Recycling Superfund Site

FOR Aldo Govi **:**
[Print name of Respondent]

27 aprile 2020
Dated

DocuSigned by:
Aldo Govi
52DD806D51134E4...

[Name] Aldo Govi
[Title] President
[Company] Infineum USA L.P.
[Address] 1900 E. Linden Ave., Linden, NJ 07036

[NOTE: A separate signature page is required for each settlor.]

Signature Page for Settlement Regarding the Pure Earth Recycling Superfund Site

LORCO PETROLEUM SERVICES

~~FOR~~ By: FRANK LoBello :
[Print name of Respondent]

4-20-20
Dated

Frank LoBello V.P.

[Name] Frank LoBello
[Title] Vice President
[Company] Lorco Petroleum Services
[Address] 450 S. Front Street
Elizabeth, NJ 07202

[NOTE: A separate signature page is required for each settlor.]

Signature Page for Settlement Regarding the Pure Earth Recycling Superfund Site

FOR Keri Sweet Zavaglia **:**
[Print name of Respondent]

04/30/2020
Dated

Keri Sweet Zavaglia
[Name] Keri Sweet Zavaglia
[Title] SVP & US General Counsel
[Company] National Grid USA
[Address] 40 Sylvan Rd., Waltham, MA 02451

[NOTE: A separate signature page is required for each settlor.]

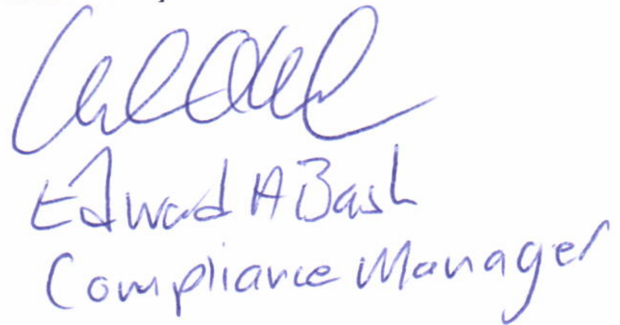
Signature Page for Settlement Regarding the Pure Earth Recycling Superfund Site

FOR Edward A Bash :
[Print name of Respondent]

4-16-2020
Dated

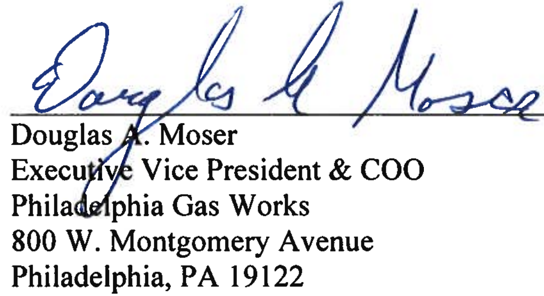
Patrick J. Kelly Drums Inc
[Name] 6226 Pidcock Creek Rd
[Title]
[Company] New Hope PA 18938
[Address]

[NOTE: A separate signature page is required for each settlor.]



Signature Page for Settlement Regarding the Pure Earth Recycling Superfund Site

FOR: PHILADELPHIA GAS WORKS
by the PHILADELPHIA FACILITIES
MANAGEMENT CORPORATION



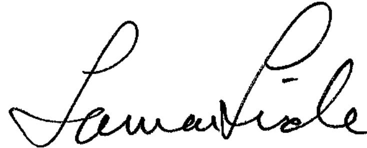
4/2/2020
Dated

Douglas A. Moser
Executive Vice President & COO
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

[NOTE: A separate signature page is required for each settlor.]

Signature Page for Settlement Regarding the Pure Earth Recycling Superfund Site

FOR Public Service Electric and Gas Company, and PSEG Fossil, LLC:



5/11/2020
Dated

Tamara L. Linde
Executive Vice President and General Counsel
Public Service Enterprise Group Inc.
c/o PSEG Office of Environmental Counsel
80 Park Plaza, MC T5
Newark, NJ 07102

[NOTE: A separate signature page is required for each settlor.]

Signature Page for Settlement Regarding the Pure Earth Recycling Superfund Site

FOR Sasol Chemicals (USA) LLC **:**

[Print name of Respondent]

Mike Thomas

Mike Thomas
2020-04-28 15:41:25 +02:00
I approve this document

____
Dated

[Name] Mike Thomas
[Title] Senior Vice President
[Company] Sasol Chemicals (USA) LLC
[Address] 12120 Wickchester Ln,
Houston, TX 77079

[NOTE: A separate signature page is required for each settlor.]

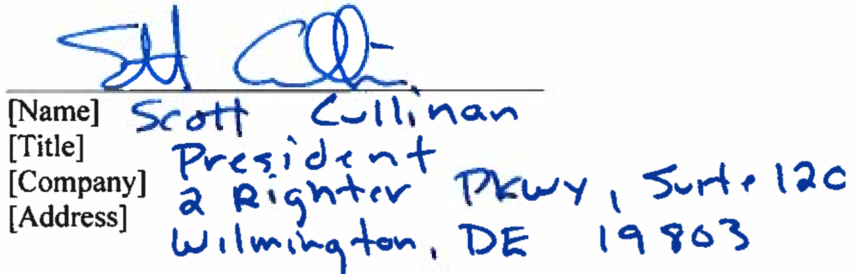
Signature Page for Settlement Regarding the Pure Earth Recycling Superfund Site

FOR: Superfund Management Operations, a series of Evergreen Resources Group, LLC on behalf of itself and ETC Sunoco Holdings LLC f/k/a Sunoco, Inc.

[Print name of Respondent]

4/16/20

Dated



[Name] Scott Cullinan
[Title] President
[Company]
[Address] 2 Righter Pkwy, Suite 120
Wilmington, DE 19803

[NOTE: A separate signature page is required for each settlor.]