

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)

Rockwell International Wheel & Trim)
Superfund Site)
Grenada, MS)

Meritor, Inc.)

Respondent)

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

CERCLA Docket No. 04-2018-3753

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTIONS**



11106302

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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 Meritor, Inc. (“Meritor” or “Respondent”). This Settlement provides for the performance of a removal action by Respondent and the payment of Future Response Costs as defined in Paragraph 9 incurred by the United States at or in connection with the Rockwell International Wheel & Trim Superfund Site (“Site”) located at 635 Highway 332 in Grenada, Grenada County, Mississippi.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (“CERCLA”). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions Through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). This authority was further redelegated by the Regional Administrator of EPA Region 4 to the Chief of the Emergency Response, Removal, and Prevention Branch (“ERRPB”) by Regional Delegation 14-14-A (Determinations of Imminent and Substantial Endangerment), to the Chiefs of the ERRPB and the Superfund Enforcement and Community Engagement Branch by Regional Delegation 14-14-C (Administrative Actions through Consent Orders), and to the Chief of the Superfund Enforcement and Community Engagement Branch by Regional Delegation 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders).

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

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

5. EPA and Respondent recognize that portions of the Work specified in this Settlement have already begun and/or remain ongoing.

II. PARTIES BOUND

6. This Settlement is binding upon EPA and upon Respondent and its 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.

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

8. Respondent shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing Respondent with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Respondent or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondent shall nonetheless be responsible for ensuring that its 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-Enforcement" shall mean the EPA Action Memorandum relating to the Site signed on August 2, 2018, by the Regional Administrator, EPA Region 4, or his/her delegate, and all attachments thereto.

"Building" shall mean the main manufacturing building, estimated at 208,000 square feet in area, located at 635 Highway 332 in Grenada, Grenada County, Mississippi, and currently operated by Ice Industries, Inc. ("Ice").

"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.

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

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

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

“Future Response Costs” shall mean all costs not inconsistent with the National Contingency Plan, 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 otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, or land, water, or other resource use restrictions, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 89 (Work Takeover), community involvement, Section XV (Dispute Resolution), and all litigation costs.

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

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

“Operating Facility” shall mean the entire manufacturing facility located at 635 Highway 332, Grenada, Grenada, County, Mississippi, operated by Ice and including the Property Boundary, Building, and other secondary plant buildings.

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

“Parties” shall mean EPA and Respondent.

“Property Boundary” shall mean the two parcels (103W 05 118.00 and 103W 051 20.00) east of Highway 332 located within the Operating Facility and encompassing the Building.

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

“Respondent” shall mean Meritor, Inc.

“Rockwell International Wheel and Trim Superfund Site Special Account” shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

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

“Site” shall mean the Rockwell International Wheel and Trim Site, located in Grenada, Grenada County, Mississippi, and includes the Operating Facility located at 635 Highway 332 Grenada, Mississippi, other properties adjacent and nearby the Operating Facility, Riverdale Creek, and the areal extent of contamination. The Site is depicted generally on the map attached as Appendix A.

“State” shall mean the State of Mississippi.

“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); and (d) any “hazardous wastes” under Section 17-17-3 of the Mississippi Solid Wastes Disposal Law.

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

IV. EPA’s FINDINGS OF FACT

10. Meritor is an Indiana corporation doing business at 2135 West Maple Road, Michigan.

11. The Site is located in Grenada, Grenada County, Mississippi. For purposes of this Settlement, the Work focuses on the indoor air in the Building and the ambient air outside of the Building that is within the Property Boundary.

12. In the past, chrome-plated automobile wheel cover manufacturing has occurred at the Operating Facility. The Operating Facility was originally constructed in 1961 by Lyon, Inc. ("Lyon"). Lyon operated at the Operating Facility until 1965 when Rockwell-Standard Corporation purchased Lyon, acquiring the Operating Facility and its operations. Rockwell-Standard Corporation continued wheel cover manufacturing at the Operating Facility beginning in approximately 1966, eventually becoming Rockwell International Corporation ("Rockwell") in 1973.

13. Rockwell sold the Operating Facility in 1985 to Randall Wheel Trim, Inc., a division of Textron, Inc. ("Textron"), and eventually spun off its automotive business, creating Meritor Automotive. In 2000, Meritor Automotive merged with Arvin Industries and formed ArvinMeritor, Inc. In January 2011, ArvinMeritor, Inc., divested its light vehicle business and changed its name to Meritor, Inc. ("Meritor"). As a result, Meritor is now a successor to Rockwell for purposes of this Settlement.

14. The Randall Division of Textron continued to manufacture chrome-plated wheel covers at the Operating Facility until 1997 when Textron Automotive Exteriors took over ownership of the Operating Facility and Textron Automotive Company took over operations.

15. In 1999, Textron Automotive Exteriors sold the Operating Facility to Grenada Manufacturing, LLC ("Grenada Manufacturing"). Grenada Manufacturing continued manufacturing wheel covers, in addition to other products, ultimately discontinuing its chromium plating operations in 2001. In 2004, Grenada Manufacturing filed for Chapter 11 bankruptcy and ceased all operations at the Operating Facility. Grenada Manufacturing remains in bankruptcy to date.

16. The Operating Facility property and buildings were divided among Grenada Manufacturing, Grenada County ("County") and the City of Grenada ("City"). The County acquired ownership of the Building, which it eventually leased to Grenada Stamping and Assembly, Inc., formerly Grenada Manufacturing Acquisition Corporation, a division of Ice. The City acquired ownership of secondary plant buildings at the Operating Facility and Grenada Manufacturing retained ownership of the rest of the property at the Operating Facility.

17. Since 2004, Ice has operated the Operating Facility as a metal stamping operation and manufactures stamp-formed parts for various industries. The Operating Facility remains a manufacturing operation and employs approximately 217 workers who work during multiple work shifts.

18. Manufacturing, spills, leaks, and disposal practices during historical Operating Facility operations ultimately resulted in contamination at the Operating Facility, particularly trichloroethylene ("TCE"), which was used at the Operating Facility until 1992.

19. The Operating Facility is currently under a Hazardous Waste Management Permit with the Mississippi Department of Environmental Quality ("MDEQ") for the post-closure

activities and a Hazardous and Solid Waste Amendments Permit with the EPA for corrective action, which expire on May 31, 2019, and August 30, 2020, respectively.

20. In October 2016, EPA directed the performance of air sampling inside the Building. Meritor conducted sampling in October 2016 and January, March, and May 2017. Results from these sampling events indicated elevated levels of TCE in the Building's indoor area, including samples that exceeded EPA Region 4's Removal Management Levels ("RMLs") for industrial settings for sensitive populations (women of childbearing age) and non-sensitive populations (general population).

21. Meritor implemented interim measures, such as additional venting, crack sealing and floor repair inside the Building, starting in January 2017. These measures decreased TCE concentrations within the Building; however, in order to provide a more reliable, long-term method to ensure TCE concentrations remain at acceptable levels, Meritor agreed to install a sub-slab depressurization system (SSDS).

22. From February 2017 until September 2017, Meritor conducted activities to design, install and begin operation of the SSDS, including implementation of an SSDS Pilot Study Work Plan and submission of a Pilot Study Report, implementation of an Enhanced SSDS Pilot Study Work Plan, completion of the design of the SSDS, installation of the SSDS, and implementation of a 30-day Pilot Study from August 11, 2017, to September 11, 2017, the results of which were documented in an Enhanced Pilot Study Report.

23. From March 2017 until October 2017, additional indoor air sampling was conducted inside the Building as part of a pilot test for the SSDS. Samples were collected at multiple locations within the Building prior to, during, and after completion of the SSDS pilot test. Results for indoor air samples collected at designated locations prior to the operation of the SSDS ranged from 0.18 ug/m³ to 28 ug/m³ exceeding the RML of 8.8 ug/m³ for sensitive populations. Concentrations in indoor air samples collected at designated locations during operation of the SSDS have since decreased to 1.7 ug/m³ to 4.7 ug/m³ as of March 2018.

24. At the direction of EPA and MDEQ, Meritor turned off the SSDS on September 11, 2017 following the conclusion of the 30-day pilot study while the agencies considered whether a State air permit would be required.

25. On December 21, 2017, Meritor submitted an SSDS air permit application to MDEQ, which was the event by which EPA and MDEQ had agreed would allow Meritor to restart the SSDS as an extended pilot study. The same day, EPA determined that the ERRPB would conduct a Removal Site Evaluation ("RSE") at the Building.

26. On December 21, 2017, EPA's ERRPB conducted a RSE at the Building. The RSE concluded that the SSDS needed to be restarted and EPA therefore requested Meritor to restart the SSDS as a time-critical removal action. EPA requested that Meritor submit an SSDS Work Plan and to ensure that TCE detections inside the Building remained below EPA's RML for sensitive populations.

27. On December 29, 2017, following EPA approval pursuant to CERCLA authority, Meritor restarted the SSDS and has continuously operated the SSDS since that time. Meritor submitted an SSDS Work Plan to EPA on January 18, 2018 to document the ongoing operation and monitoring of the SSDS, as well as the agreed indoor air sampling program.

28. On January 23, 2018, EPA formally approved Meritor's January 18, 2018 SSDS Work Plan ("January 23, 2018 Approved SSDS Work Plan"). Following further discussions with EPA, Meritor submitted a revised indoor and ambient air monitoring schedule on February 15, 2018, which increased the frequency of indoor sampling in the Building and added ambient sampling locations outside of the Building within the Property Boundary, which EPA approved ("February 2018 Revised Monitoring Schedule"). The indoor air sampling in the Building and ambient air sampling program outside of the Building within the Property Boundary remain ongoing pursuant to the January 23, 2018 Approved SSDS Work Plan and the February 15, 2018 Revised Monitoring Schedule.

V. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The Rockwell International Wheel and Trim 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 EPA's Findings of Fact above, includes [a] "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

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

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondent, as the successor to Rockwell for purposes of this Settlement, was an "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

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

f. EPA determined in an Action Memorandum, dated August 2, 2018, that the conditions at the Site described in the EPA's Findings of Fact above 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).

g. 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

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

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

31. Respondent shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within fourteen (14) days after the Effective Date. Respondent shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least fourteen (14) days prior to commencement of such Work. EPA, upon notification in writing, retains the right to disapprove of any or all of the new contractors and/or new subcontractors retained by Respondent after the Effective Date of the Settlement. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within seven (7) days after EPA's disapproval. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

32. Respondent has designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondent required by this Settlement: John Ellis, Associate Vice President and Principle Geologist, Arcadis, (225) 292-1004, John.Ellis@Arcadis.com. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during the Work. EPA retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 31.

33. EPA has designated Steve Spurlin of the Emergency Response, Removal, and Prevention Branch Region 4, as its On-Scene Coordinator (OSC). EPA and Respondent shall have

the right, subject to Paragraph 32, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA fourteen (14) days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

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

VIII. WORK TO BE PERFORMED

35. Respondent shall perform, at a minimum, all actions necessary to implement the Work inside the Building and outside of the Building within the Property Boundary. The Work to be continued generally includes, but is not limited to, the following:

a. Continue to operate and maintain the SSDS in the Building continuously subject only to periodic maintenance and unanticipated power interruptions and take indoor samples within the Building and ambient air samples outside the Building within the Property Boundary in accordance with the January 23, 2018 Approved SSDS Work Plan and the February 15, 2018 Revised Monitoring Schedule. Continue to document the ongoing operation and maintenance of the SSDS and all air samples taken (inside the Building and outside the Building within the Property Boundary); including results, until such time as EPA approves the Removal Work Plan submitted by Respondent as required by Paragraph 38.a. Thereafter, Respondent shall operate and maintain the SSDS in the Building and conduct air sampling in the Building and outside of the Building within the Property Boundary in accordance with the Removal Work Plan.

36. The actions that Respondent shall perform under the Removal Work Plan submitted in accordance with Paragraph 38.a generally includes, but are not limited to, the following:

a. Operate the SSDS in the Building continuously subject only to periodic maintenance and unanticipated power interruptions to ensure indoor air levels for TCE remain below the RML of 8.8 ug/m^3 for sensitive populations. The SSDS shall be run until EPA notifies Respondent in writing that the SSDS is no longer needed to ensure that indoor air TCE concentrations are below 8.8 ug/m^3 in the Building.

b. Maintain the SSDS in the Building to ensure its continued effectiveness until EPA notifies Respondent in writing that the SSDS is no longer needed to ensure that the indoor air TCE concentrations are below 8.8 ug/m^3 in the Building.

c. Sample indoor air in the Building to ensure the indoor air TCE levels remain below the RML of 8.8 ug/m^3 for sensitive populations until EPA notifies Respondent in writing that the SSDS is no longer needed to ensure that the indoor air TCE concentrations are below 8.8 ug/m^3 in the Building;

d. Sample ambient air outside of the Building within the Property Boundary to monitor the TCE levels in the ambient air;

e. Notify EPA of any damage to the SSDS in the Building, and if TCE levels in the Building are at or above 8.8 ug/m^3 . Such notice shall be provided no less than 72 hours after Respondent becomes aware, or should have been aware through the exercise of due diligence, of such circumstances. In the event Respondent notifies EPA of, or EPA otherwise becomes aware of, any of the above-described events or condition, EPA may require a modification to the Removal Work Plan described in Paragraph 38(a) below, to (1) require the installation of additional equipment necessary to keep TCE in the Building below 8 ug/ m^3 ; and/or (2) require modification to existing equipment or other appropriate measures to keep TCE in the Building below 8.8 ug/m^3 .

f. Maintain records documenting operation and maintenance of the SSDS and all indoor and ambient sampling in the Property Boundary as described above, including dates on which the samples were taken and sample results. All such records shall be maintained for the period of time established for record retention in Section XI (Record Retention). Such records shall be produced to EPA upon request and as set forth in the Removal Work Plan.

g. Transport and dispose of any materials that may contain hazardous substances, generated as a result of the removal action, at an EPA-approved facility.

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

38. Removal Work Plan and Implementation

a. Within thirty (30) days after the Effective Date, in accordance with Paragraph 39 (Submission of Deliverables), Respondent shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan") generally described in Paragraph 36 above. The draft Removal Work Plan shall provide a description of, and a schedule for, the actions required by this Settlement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Removal Work Plan within fifteen (15) days after receipt of EPA's notification of the required revisions. Respondent shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal 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 Work Plan Respondent shall commence implementation of the Work in accordance with the schedule included

therein. Respondent shall not commence or perform any Work except in conformance with the terms of this Settlement.

d. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under Section VIII (Work to Be Performed) above and the Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

39. Submission of Deliverables

a. General Requirements for Deliverables

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

Steve Spurlin
U.S. EPA
Ed Jones Federal Building - B-13
109 S. Highland Avenue
Jackson, TN 38301
(731) 394-8996
Spurlin.Steve@epa.gov

Respondent 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) Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 39.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 by 11 inches, Respondent shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Deliverables

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. EPA Region 4 ERRPB utilizes EPA Environmental Response Team (ERT) Scribe Software; EDD templates for Scribe Software are publicly available at <https://response.epa.gov/scribe>. 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://edg.epa.gov/EME/>.

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

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

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

41. Quality Assurance, Sampling, and Data Analysis

a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples 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. Within thirty (30) days after the Effective Date, Respondent shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the Removal 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), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Respondent shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP 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 <https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondent shall ensure that the laboratories it utilizes 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 <https://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 (<https://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" (<https://www3.epa.gov/ttnamti1/airtox.html>).

d. However, upon approval by EPA, Respondent 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. Respondent shall ensure that all laboratories it uses 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. Respondent 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, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent shall notify EPA not less than seven (7) 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 if EPA notifies Respondent not less than five (5) days in advance of any sample collection activity, unless

Respondent agrees to shorter notice. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA's oversight of Respondent's implementation of the Work.

f. Respondent shall submit to EPA the results of the final verified sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Settlement. However, EPA reserves the right to request that Respondent submit the preliminary results of all unverified sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Settlement.

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

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

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

44. Final Report. Within forty-five (45) days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 109 (notice of completion), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall 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 Respondent's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

45. Off-Site Shipments

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

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the 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. Respondent 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. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

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

IX. PROPERTY REQUIREMENTS

46. Agreements Regarding Access and Non-Interference. Respondent shall use best efforts to secure from Ice and the County an agreement, enforceable by Respondent and EPA, providing that Ice and the County shall: (i) provide EPA, Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to the inside of the Building and the outside of the Building within the Property Boundary to conduct any activity regarding the Settlement, and (ii) refrain from using the Building or the property within the Property Boundary in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action. Respondent shall provide a copy of such access agreement(s) to EPA.

47. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIV (Payment of Response Costs).

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

49. In the event of any transfer of any part of the Operating Facility, unless EPA otherwise consents in writing, Respondent shall continue to comply with its obligations under the Settlement, including its obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Operating Facility.

50. 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

51. Respondent 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 Respondent's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of 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. Respondent 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.

52. Privileged and Protected Claims

a. Respondent may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 52.b, and except as provided in Paragraph 52.c.

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

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

53. **Business Confidential Claims.** Respondent 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). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records that Respondent claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R.

Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

54. 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

55. Until 10 years after EPA provides Respondent with notice, pursuant to Section XXVI (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with regard to the Site and all Records that relate to the liability of any other person under CERCLA with respect to the Site. 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 its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that 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.

56. At the conclusion of the document retention period, Respondent 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 52 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA.

57. 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

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

or state environmental or facility siting laws. Respondents shall include ARARs selected by EPA in the Removal Work Plan.

59. 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. 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

60. 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 Property Boundary that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at 404-562-8700 of the incident or Property Boundary conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

61. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at 404-562-8700, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

62. For any event covered under this Section, Respondent shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIV. PAYMENT OF RESPONSE COSTS

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

a. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a Superfund Cost Recovery Imaging and Online Systems (SCORPIOS) Report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within 30 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 65 (Contesting Future Response Costs).

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

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

and shall reference Site/Spill ID Number B48C and the EPA docket number for this action. Respondent may make payment to EPA by Automated Clearinghouse (ACH) to:

500 Rivertech Court
Riverdale, Maryland 20737
Contact – John Schmid 202-874-7026 or REX, 1-866-234-5681
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number B48C and the EPA docket number for this action. Respondent may also make payment at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to Respondent by EPA.

Respondent may make payment by official bank check made payable to "EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, Site/Spill ID Number B48C, and the EPA docket number for this action, and shall be sent to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

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

Paula V. Painter
U.S. EPA Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303
Painter.paula@epa.gov

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

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

Such notice shall reference Site/Spill ID Number B48C and the EPA docket number for this action.

d. Deposit of Future Response Costs Payments. The total amount to be paid by Respondent pursuant to Paragraph 63.a shall be deposited by EPA in the Rockwell International Wheel and Trim Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Rockwell International Wheel and Trim Superfund Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

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

65. Contesting Future Response Costs. Respondent may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 63 (Payments for Future Response Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was

inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondent shall submit a Notice of Dispute in writing to the 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 Respondent submits a Notice of Dispute, Respondent shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 63, 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. Respondent shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 63. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 63. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

66. 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.

67. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within thirty (30) days after such action. EPA and Respondent shall have thirty (30) days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

68. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within twenty (20) days thereafter, submit a statement of position. Thereafter, an EPA management official at the Branch Chief level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondent shall fulfill the

requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

69. Except as provided in Paragraph 65 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Except as provided in Paragraph 79, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

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

71. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region 4, within ten (10) days of when Respondent first knew that the event might cause a delay. Within seven (7) days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 70 and whether Respondent has exercised its best efforts under

Paragraph 70, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

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

73. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 70 and 71. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

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

XVII. STIPULATED PENALTIES

75. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 76.a and 77 for failure to comply with the obligations specified in Paragraphs 76.b and 77, unless excused under Section XVI (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondent with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

76. Stipulated Penalty Amounts - Payments, Major Deliverables, and Other Milestones.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 76.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$750	15th through 30th day

\$3,500

31st day and beyond

b. Obligations

(1) Timely submission of the Removal Work Plan contemplated under Section VIII (Work to be Performed).

(2) Timely submission of the Health and Safety Plan in Paragraph 40.

(3) Timely submission of the Quality Assurance Project Plan in Paragraph 41.

(4) Payment of any amount due under Section XIV (Payment of Response Costs).

(5) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 65 (Contesting Future Response Costs).

77. Stipulated Penalty Amounts – Other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement, other than those specified in Paragraph 76.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1000	31st day and beyond

78. In the event that EPA assumes performance of all or any portion(s) of the Work pursuant to Paragraph 89 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of two hundred and seventy-five thousand dollars (\$275,000).

79. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 378 (Removal Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Branch Chief level or higher, under Paragraph 68 (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.

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

81. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section 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 63 (Payments for Future Response Costs).

82. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 79 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 81 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

84. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 89 (Work Takeover).

85. 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

86. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon

the complete and satisfactory performance by Respondent of its obligations under this Settlement. These covenants extend only to Respondent and do not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

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

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

- a. liability for failure by Respondent to meet a requirement of this Settlement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the Work;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

89. Work Takeover

- a. In the event EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its

performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondent. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of 3 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 3-day notice period specified in Paragraph 89.a, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 89.b.

c. Respondent may invoke the procedures set forth in Paragraph 68 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 89.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 89.b until the earlier of (1) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 68 (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 RESPONDENT

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

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

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

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

91. 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 88.a (liability for failure to meet a requirement of the Settlement), 88.c (criminal liability), or 88.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

92. 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).

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

XXI. OTHER CLAIMS

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

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

96. 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

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

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

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

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

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

XXIII. INDEMNIFICATION

102. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as EPA's authorized representatives under

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

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

104. Respondent covenants 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 Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

105. No later than thirty (30) days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVI (Notice of Completion of Work), commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent 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, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons

performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent needs provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Rockwell International Wheel and Trim Superfund Site, Grenada, Mississippi, and the EPA docket number for this action.

XXV. MODIFICATION

106. 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.

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

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

XXVI. NOTICE OF COMPLETION OF WORK

109. 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 and record retention, EPA will provide written notice to Respondent. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Removal Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Removal Work Plan shall be a violation of this Settlement.

XXVII. INTEGRATION/APPENDICES

110. 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 map of the Site.

XXVIII. EFFECTIVE DATE

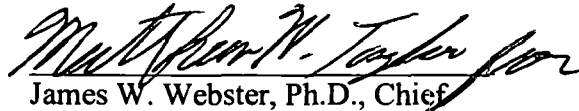
111. This Settlement shall be effective five (5) days after the Settlement is signed by the Regional Administrator or his/her delegatee.

**Signature Page for Settlement Regarding
Rockwell International Wheel and Trim Superfund Site**

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

8/2/2018
Dated




James W. Webster, Ph.D., Chief
Emergency Response, Removal and Prevention Branch
Superfund Division, Region 4

**Signature Page for Settlement Regarding
Rockwell International Wheel and Trim Superfund Site**

FOR: MERITOR, INC.

July 26, 2018
Dated


Signature

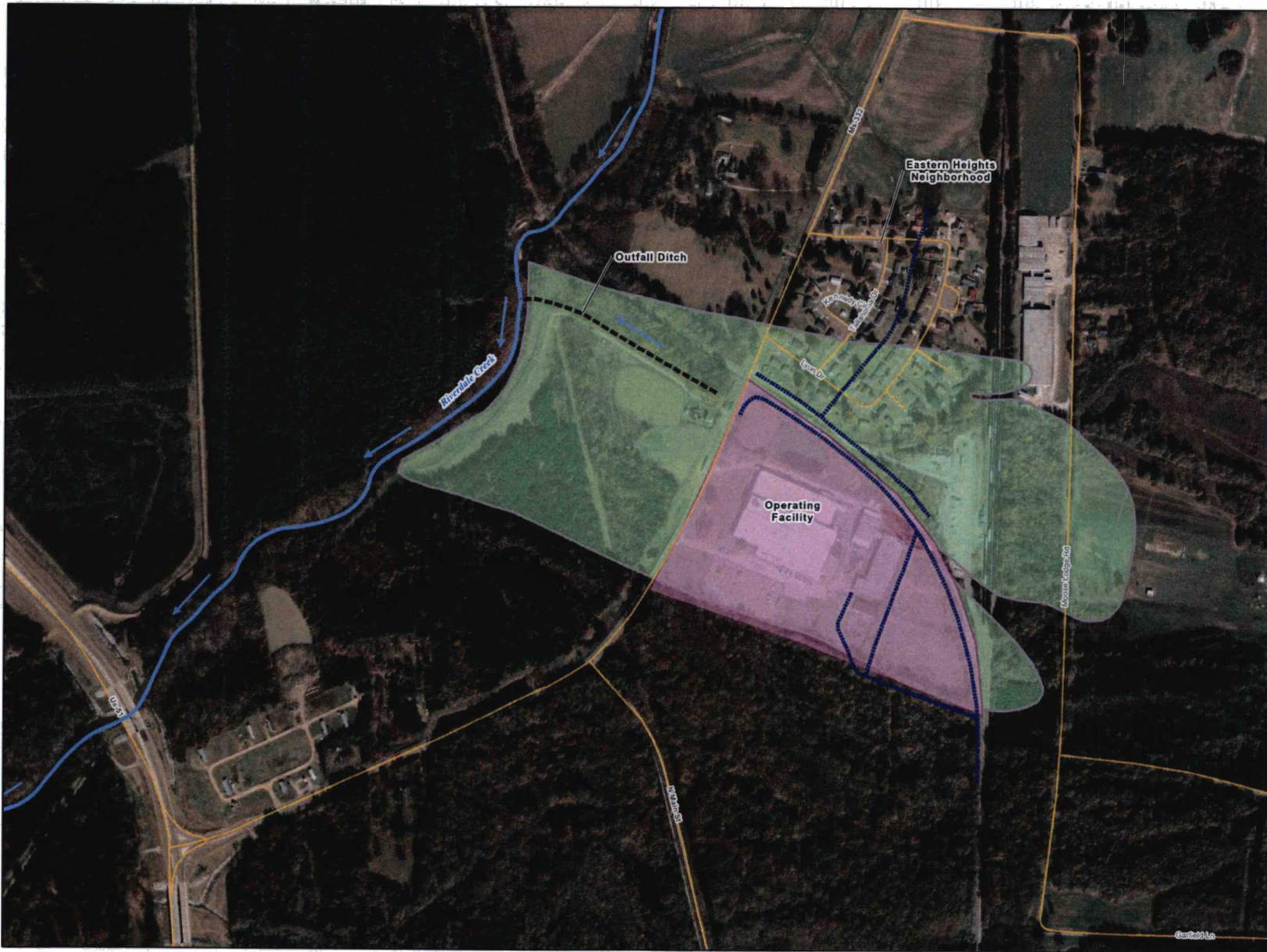
Name: David A. O'Connor, MPH

Title: Corporate Environmental Manager

Company

Address: 2135 West Maple Road
Attn: Legal Department
Troy, Michigan 48084

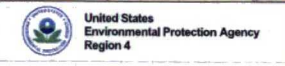
APPENDIX A



- Legend**
- Outfall Ditch
 - Surface Water
 - Direction of Flow
 - Drainage Ditch
 - Street
 - Approximate Property Boundary
 - Approximate Area of Groundwater Contamination



Notes:
 This map was prepared by the EPA as an appendix to the Administrative Settlement Agreement and Order on Consent for Removal Actions, CERCLA Docket No. 04-2018-3753.
 Map Source: ESRI World Imagery, 2015. The source of this map image is ESRI, used by the EPA with ESRI's permission.



USEPA Approximate Site Area

Site Name: Rockwell International Wheel & Trim

City: Grenada **County:** Grenada **State:** Mississippi

Date: 7/12/2018
Analyst: dale.vonbusch

