

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

B.F. Goodrich Superfund Site

Goodrich Corporation,
PolyOne Corporation,
Westlake Vinyls, Inc.

Respondents

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

CERCLA Docket No.04-2019-3765

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMEDIAL DESIGN**

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR
REMEDIAL DESIGN**



11128901

TABLE OF CONTENTS

I.	PARTIES BOUND.....	3
II.	DEFINITIONS	4
III.	FINDINGS OF FACT	7
IV.	CONCLUSIONS OF LAW AND DETERMINATIONS.....	8
V.	SETTLEMENT AGREEMENT AND ORDER	9
VI.	PERFORMANCE OF THE WORK	9
VII.	PROPERTY REQUIREMENTS.....	11
VIII.	ACCESS TO INFORMATION.....	14
IX.	RECORD RETENTION	15
X.	COMPLIANCE WITH OTHER LAWS	16
XI.	PAYMENT OF RESPONSE COSTS	16
XII.	DISPUTE RESOLUTION.....	18
XIII.	FORCE MAJEURE.....	19
XIV.	STIPULATED PENALTIES.....	20
XV.	COVENANTS BY EPA.....	23
XVI.	RESERVATIONS OF RIGHTS BY EPA	23
XVII.	COVENANTS BY RESPONDENTS	25
XVIII.	OTHER CLAIMS.....	26
XIX.	EFFECT OF SETTLEMENT/CONTRIBUTION	27
XX.	INDEMNIFICATION	28
XXI.	INSURANCE	28
XXII.	FINANCIAL ASSURANCE.....	29
XXIII.	INTEGRATION/APPENDICES	33
XXIV.	MODIFICATION.....	33
XXV.	EFFECTIVE DATE	33

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 Goodrich Corporation, PolyOne Corporation and Westlake Vinyls, Inc. (“Respondents”). This Settlement provides for the performance of a Remedial Design (RD) by Respondents and the payment of certain response costs incurred by the United States at or in connection with the “B.F. Goodrich Superfund Site” (the “Site”) generally located at Calvert City, Marshall County, Kentucky.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607, and 9622 (CERCLA). This authority was delegated to the EPA Administrator on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions Through Consent Orders, Jan. 18, 2017). These authorities were further redelegated by the Regional Administrator of EPA Region 4 through the Director, Superfund Division, through the Deputy Director, Superfund Division, to the Chief of the Superfund Remedial Branch and no further.

3. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified United States Fish and Wildlife Service on September 17, 2018 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Settlement.

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

I. PARTIES BOUND

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

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

7. Respondents hereby confirm that none of the existing agreements between Respondents or between any combination of them, have been modified, amended or altered in any respect by this Settlement.

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

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

II. DEFINITIONS

10. 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:

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the RD, including, but not limited to, the following properties located on the southern side of the Tennessee River approximately 4 miles downstream from the Kentucky Dam, bordered on the north by the Tennessee River, on the south by Kentucky Highway 1523, on the west by areas owned by Air Products and Chemicals, Inc., and Carbide Industries LLC, and on the east by areas owned by PolyOne, Linde LLC, Westlake and the AIRCO Superfund Site owned by Linde.

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

“Commonwealth” shall mean the Commonwealth of Kentucky.

“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 Commonwealth 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 XXV.

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

“KDEP” shall mean the Kentucky Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

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

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section VII (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), ¶ 62 (Work Takeover), ¶ 16 (Emergencies and Releases), ¶ 83 (Access to Financial Assurance), ¶ 17 (Community Involvement Plan (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), and the costs incurred by the United States in enforcing the terms of this Settlement, including all costs incurred in connection with Dispute Resolution pursuant to Section XII (Dispute Resolution) and all litigation costs. Future Response Costs shall also include all Interim Response Costs incurred during the period from December 8, 2017 to the Effective Date, and Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site.

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

“Interim Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs: (a) paid by the United States in connection with the Site between December 8, 2017 and the Effective Date, or (b) incurred between December 8, 2017 and the Effective Date, but paid after that date.

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

“Non-Settling Owner” shall mean any person, other than a Respondent, that owns or controls any Affected Property, including Carbide Industries LLC., Linde LLC, and Lubrizol Advanced Materials, Inc. The clause “Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by Non-Settling Owner.

“Owner Respondents” shall mean any Respondent that owns or controls any Affected Property, including Westlake Vinyls, Inc. and PolyOne Corporation. The clause “Owner Respondent’s Affected Property” means Affected Property owned or controlled by Owner Respondent.

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

“Parties” shall mean EPA and Respondents.

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

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

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site, signed on September 5, 2018 by the Acting Administrator, and all attachments thereto. The ROD is attached as Appendix A.

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

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

“Remedial Design Work Plan” or “RDWP” shall mean the document describing the activities Respondents must perform to implement the RD, which is attached as Appendix B. There is no Statement of Work associated with this Settlement.

“Respondents” shall mean Goodrich Corporation, PolyOne Corporation, and Westlake Vinyls, Inc., as identified in Appendix D.

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

“Site” shall mean the B.F. Goodrich Superfund Site, encompassing approximately 250 acres, located at Kentucky Highway 1523 in Calvert City, Marshall County, Kentucky and depicted generally on the map attached as Appendix C.

“The B.F. Goodrich 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), and established under the

Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study CERCLA Docket No. 04-2010-3761.

“Supervising Consultant” shall mean the principal contractor retained by Respondents to supervise and direct the implementation of the Work under this Settlement.

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

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and any federal natural resource trustee.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous material” under KRS Chapter 224.

“Work” shall mean all activities and obligations Respondents are required to perform under this Settlement, except those required by Section IX (Record Retention).

III. FINDINGS OF FACT

11. Based on available information and investigation, EPA has found:

a. The B.F. Goodrich Superfund Site is on the National Priorities List (NPL) and is located in an industrial area in Calvert City, Marshall County, Kentucky. It is located on the southern side of the Tennessee River approximately four (4) miles downstream from the Kentucky Dam. The Site is bordered on the north by the Tennessee River, on the south by Kentucky Highway 1523, on the west by areas owned by Air Products and Chemicals, Inc. and Carbide Industries LLC, and on the east by areas owned by PolyOne, Linde LLC, Westlake and the AIRCO Superfund Site owned by Linde. The Site is approximately 250 acres and consists of multiple actively operating chemical plants.

b. Significant amounts of hazardous substances, from years of various chemical plants which have operated since the 1950s have caused releases from different areas, including but not limited to a landfill and unlined ponds wherein tens of millions of pounds of wastes contaminated with chlorinated volatile organic compounds, EDC, benzene, naphthalene and mercury were placed.

c. Chemical releases have occurred at the Site since manufacturing operations began in the 1950s. Chemical releases have been associated directly with the manufacturing facilities at the Site, ancillary features of the manufacturing facilities (i.e. process sewers and chemical storage and transfer areas), and waste disposal practices. Releases from chemicals into soil and groundwater may flow into the Tennessee River on occasion. Significant

quantities of contaminants and waste material were also released to the environment from tanks, sumps, pipelines, ponds, spillage to the surface, and emissions to the ambient air occurred.

d. As identified through human health and ecological risk assessments performed as a part of the Remedial Investigation, the greatest risk to human health and the environment is the exposure to contaminants that discharge to the Tennessee River through groundwater seeps. Potential human receptors include individuals that use the Tennessee River for recreational purposes or that walk along the banks of the river; plant workers; and a hypothetical future resident. Ecological receptors include lower and upper-level trophic organisms associated with the water and sediment of the Tennessee River, on-site ponds, and drainage features. Ecological risks include the potential for increased risk to avian receptors from the ingestion of invertebrates and aquatic organisms contaminated by mercury near the barge slip and the Tennessee River seeps.

e. Non-aqueous phase liquids (NAPL) serves as a source of contamination to other exposure pathways and could also pose a significant risk should direct exposure occur.

f. The B.F. Goodrich Superfund Site was listed on the National Priorities List (NPL) by EPA pursuant to CERCLA § 105, 42 U.S.C. § 9605, on September 8, 1983.

g. Respondents, at the Site consist of current and former owner/operators. Respondents include current owner/operator Westlake Vinyls Inc., PolyOne Corporation, and Goodrich Corporation.

h. Portions of the Site are regulated under a Resource Conservation and Recovery Act (RCRA) Post-Closure/Corrective Action Permit, a 1992 CERCLA Consent Decree (landfill), and a 2009 CERCLA Administrative Settlement Agreement for a Remedial Investigation/Feasibility Study (RI/FS). In August 1981, the Commonwealth of Kentucky (Kentucky) issued a hazardous waste management permit to Goodrich for a portion of the Site comprising what was the B.F. Goodrich complex ("the RCRA" facility). In September 1989, Kentucky and the EPA jointly issued a hazardous waste Post-Closure Permit, following closure of the former wastewater ponds, which was subsequently renewed in October 2003. A 2006, Five Year Review concluded that the 1992 Consent Decree remedy was protective in the short term, but that additional actions were necessary to ensure that the remedy was protective in the long-term because groundwater cleanup goals had not been achieved, among other deficiencies. In May 2009, Kentucky requested that the EPA exercise its authority under CERCLA to address contamination at the portion of the Site formerly addressed under RCRA. The EPA and the PRPs entered into an AOC in December 2009 for a RI/FS. The ROD was issued on September 5, 2018.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

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

(1) Respondents Westlake Vinyls Inc. is the current "owner" and/or "operator" of a portion of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

(2) Respondent PolyOne Corporation is the current owner and/or "operator" of a portion of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

(3) Respondent Goodrich Corporation was the "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 ¶ 11 of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The RD 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.

V. SETTLEMENT AGREEMENT AND ORDER

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

VI. PERFORMANCE OF THE WORK

14. Coordination and Supervision

a. Project Coordinators.

(1) Each Respondent shall designate a Project Coordinator. Project Coordinators must have sufficient technical expertise to coordinate the Work. Respondents'

Project Coordinators may not be an attorney representing any Respondent in this matter and may not act as the Supervising Consultant. Respondents' Project Coordinators may assign other representatives, including other contractors, to assist in coordinating the Work.

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

(3) Respondents' Project Coordinators shall meet, either in person or via conference call, with EPA's Remedial Project Manager at least monthly.

b. Supervising Consultant. Respondents shall jointly retain a Supervising Consultant to supervise and direct the implementation of the Work under this Settlement. Respondents' proposed Supervising Consultant must have sufficient technical expertise to supervise the Work and a quality assurance 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).

c. Procedures for Disapproval/Notice to Proceed

(1) Respondents shall designate, and notify EPA, within 10 days after the Effective Date, of the name[s], title[s], contact information, and qualifications of Respondents' proposed Project Coordinators and Supervising Consultant, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

(2) EPA shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinators and Supervising Consultant, as applicable. If EPA issues a notice of disapproval, Respondents shall, within [30] days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Consultant, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Respondents may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of Respondents' selection.

(3) Any Respondent may change its Project Coordinator and Respondents may change the Supervising Consultant, as applicable, by following the procedures of ¶¶ 14.c(1) and 14.c(2).

15. **Performance of Work and Approval of Deliverables.** Respondents shall develop the RD in accordance with the RDWP and all EPA-approved, conditionally-approved, or modified deliverables as required by the RDWP. All deliverables required to be submitted for approval under the Settlement or RDWP shall be subject to approval by EPA in accordance with the following provisions:

a. Initial submissions

(1) After review of any deliverable that is required to be submitted for EPA approval under the Settlement or the RDWP, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. Resubmissions. Upon receipt of a notice of disapproval under ¶ 15.a, or if required by a notice of approval upon specified conditions under ¶ 15.a, Respondents shall, within 15 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (5) any combination of the foregoing.

c. Implementation. Upon approval, approval upon conditions, or modification by EPA under ¶ 15.a or ¶ 15.b, of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (2) Respondents shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 15.a or ¶ 15.b does not relieve Respondents of any liability for stipulated penalties under Section XIV (Stipulated Penalties).

16. **Emergencies and Releases.** Respondents shall comply with the emergency and release response and reporting requirements under ¶ 5.1.4 (Emergency Response Plan) of the RDWP. Subject to Section XV (Covenants by EPA), nothing in this Settlement, including ¶ 5.1.4 of the RDWP, limits any authority of EPA: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site. If, due to Respondents' failure to take appropriate response action under ¶ 5.1.4 of the RDWP, EPA takes such action instead, Respondents shall reimburse EPA under Section XI (Payment of Response Costs) for all costs of the response action.

17. **Community Involvement.** EPA has the lead responsibility for developing and implementing community involvement activities at the Site. If requested by EPA, Respondents shall participate in community involvement activities under EPA's oversight as provided for in, and in accordance with, the NCP. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator and implementation of a technical assistance plan. Costs incurred by EPA under this Section constitute Future Response Costs to be reimbursed under Section XI (Payments for Response Costs).

18. **Modification of RDWP or Related Deliverables**

a. If EPA determines that it is necessary to modify the work specified in the RDWP and/or in deliverables developed under the RDWP in order to carry out the RD, then EPA may notify Respondents of such modification. If Respondents object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Section XII (Dispute Resolution).

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

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

VII. PROPERTY REQUIREMENTS

19. **Agreements Regarding Access and Non-Interference.** Respondents shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondents and the EPA, providing that such Non-Settling Owner and Owner Respondent shall, with respect to Owner Respondent's Affected Property or with respect to Non-Settling Owner's Affected Property, provide EPA, the Respondents, the Commonwealth, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed below in ¶ 19.a to 19.k. Respondents shall provide a copy of such access agreement(s) to EPA and the Commonwealth. The following is a list of activities for which access is required regarding the Affected Property:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States or the Commonwealth;
- c. Conducting investigations regarding contamination at or near the Site;
- d. Obtaining samples;

- e. Assessing the need for, planning, implementing, or monitoring response actions;
- f. Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as provided in the RDWP;
- g. Implementing the Work pursuant to the conditions set forth in ¶ 62 (Work Takeover);
- h. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section VIII (Access to Information);
- i. Assessing Respondents' compliance with the Settlement;
- j. Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and
- k. Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

20. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents 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 Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, 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 XI (Payment of Response Costs).

21. 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, Respondents shall cooperate with EPA's and the Commonwealth's efforts to secure and ensure compliance with such institutional controls.

22. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligations to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

23. **Notice to Successors-in-Title.** Owner Respondent shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier: (a) Notify the proposed transferee that EPA has determined that an RD must be performed at the Site, that potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of such RD, (identifying the name, docket number, and the effective date of this Settlement); and (b) Notify EPA and the Commonwealth of the name and address of the proposed transferee and provide EPA and the Commonwealth with a copy of the above notice that it provided to the proposed transferee.

24. Notwithstanding any provision of the Settlement, EPA and the Commonwealth retains all of its their access authorities and rights, as well as all of their 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.

VIII. ACCESS TO INFORMATION

25. Respondents shall provide to EPA and the Commonwealth, 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 their possession or control or that of their 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 related to the Work. Respondents shall also make available to EPA and the Commonwealth, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

26. **Privileged and Protected Claims**

a. Respondents may assert all or part of a Record requested by EPA or the Commonwealth is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with ¶ 26.b, and except as provided in ¶ 26.c.

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

c. Respondents may make no claim of privilege or protection regarding:
(1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring,

hydrogeological, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

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

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

IX. RECORD RETENTION

29. Until 10 years after EPA provides notice pursuant to ¶ 6.4.7 of the RDWP (Notice of Work Completion), that all work has been fully performed in accordance with this Settlement, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to their liability under CERCLA with respect to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

30. At the conclusion of the document retention period, Respondents shall notify EPA and the Commonwealth at least 90 days prior to the destruction of any such Records and, upon request by EPA or the Commonwealth, and except as provided for in ¶ 26 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA or the Commonwealth.

31. Each Respondent certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the Commonwealth and that it has fully complied with any and all EPA and Commonwealth 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.

X. COMPLIANCE WITH OTHER LAWS

32. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the RDWP. The activities conducted pursuant to this Settlement, if approved by EPA, shall be considered consistent with the NCP.

33. **Permits.** As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(c)(3) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e. within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal, state, or local permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

34. Respondents may seek relief under the provisions of Section XIII (Force Majeure) for any delay in performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 33 (Permits) and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XI. PAYMENT OF RESPONSE COSTS

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

a. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a Superfund Cost Recovery and Imaging Online System ("SCORPIOS") Report, and will, upon reasonable request from Respondents, provide related backup documentation for direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondents shall make all payments within 30 days after Respondents' receipt of each bill requiring payment, except as otherwise provided in ¶ 37 (Contesting Future Response Costs), and Respondents shall make payments 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 0461 and the EPA docket number for this action.

For ACH payment:

Respondents shall make payment by Automated Clearinghouse (ACH) to:

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

and shall reference Site/Spill ID Number 0461 and the EPA docket number for this action.

For online payment:

Respondents shall make payment at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to Respondents by EPA.

At the time of payment, Respondents shall send notice that payment has been made, by email or U.S. mail, to Brad Jackson and Ms. Paula V. Painter, U.S. EPA Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303, 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 0461 and the EPA docket number for this action.

b. Deposit of Future Response Costs Payments. The total amount to be paid by Respondents pursuant to ¶ 35.a (Periodic Bills) shall be deposited by EPA in the B.F. Goodrich 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 B.F. Goodrich 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.

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

37. **Contesting Future Response Costs.** Respondents may initiate the procedures of Section XII (Dispute Resolution) regarding payment of any Future Response Costs billed under ¶ 35.a (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the EPA Project Coordinator within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in ¶ 35.a, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in ¶ 35.a. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in ¶ 35.a. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XII. DISPUTE RESOLUTION

38. 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.

39. **Informal Dispute Resolution.** If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within twenty (20) days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have twenty (20) days from EPA's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

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

41. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement, except as provided by ¶ 37 (Contesting Future Response Costs), as agreed by EPA.

42. Except as provided in ¶ 52, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

XIII. FORCE MAJEURE

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

44. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify the EPA Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region 4, within ten days (10) of when Respondents first knew that the event might cause a delay. Within ten (10) days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 43 and whether Respondents have exercised their best efforts under ¶ 43, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

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

46. If Respondents elect to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of ¶¶ 43 and 44. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

47. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents

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

XIV. STIPULATED PENALTIES

48. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in ¶¶ 49.a and 50 for failure to comply with the obligations specified in ¶¶ 49.a and 50, unless excused under Section XIII (Force Majeure). “Comply” as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement. If (i) an initially submitted or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under ¶ 15.a.2; or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph. Respondents shall not be liable for stipulated penalties for an initially submitted deliverable or a resubmitted deliverable containing a material defect unless Respondents are provided 15 calendar days to cure the defect prior to the imposition of stipulated penalties.

49. Stipulated Penalty Amounts: Payments, Financial Assurance, Major Deliverables, and Other Milestones.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with any obligation identified in ¶ 49.b:

Penalty Per Violation Per Day	Period of Noncompliance
\$500	1st through 14th day
\$1000	15th through 30th day
\$1500	31st day and beyond

b. Obligations

- (1) Payment of any amount due under Section XII (Payment of Response Costs).
- (2) Establishment and maintenance of financial assurance in accordance with Section XXII (Financial Assurance).
- (3) Establishment of an escrow account to hold any disputed Future Response Costs under ¶ 37 (Contesting Future Response Costs).
- (4) Performance of the Work (Section VI).

50. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement, other than those specified in ¶ 49.b:

Penalty Per Violation Per Day	Period of Noncompliance
\$500	1st through 14th day
\$1000	15th through 30th day
\$1500	31st day and beyond

51. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 62 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of \$50,000.00. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under ¶¶ 62 (Work Takeover) and 83 (Access to Financial Assurance).

52. 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. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ 15 (Performance of Work and Approval of Deliverables) during the period, if any, beginning on the 31st day after EPA's receipt of such submission until 15 days after the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Division Director level or higher, under Section XII (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.

53. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation, except as provided in paragraphs 52(a) and 52(b).

54. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XII (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 ¶ 35.a (Payments for Future Response Costs).

55. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed

pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 52 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 54 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

57. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(I) of CERCLA, 42 U.S.C. § 9622(I), 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 122(I) 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 ¶ 62 (Work Takeover).

58. 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.

XV. COVENANTS BY EPA

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

XVI. RESERVATIONS OF RIGHTS BY EPA

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

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

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

62. **Work Takeover**

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Respondents. Any Work Takeover Notices issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 10-day notice period specified in ¶ 62.a Respondents have not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 62.b. Funding of Work Takeover costs is addressed under ¶ 83 (Access to Financial Assurance).

c. Respondents may invoke the procedures set forth in ¶ 40 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under ¶ 62.b. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 62.b until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with ¶ 40 (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.

XVII. COVENANTS BY RESPONDENTS

63. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, 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 claim under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to 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 Commonwealth Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

64. Except as expressly provided in ¶ 67 (Waiver of Claims by Respondents), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVI (Reservations of Rights by EPA), other than in ¶ 61.a (liability for failure to meet a requirement of the Settlement), 61.d (criminal liability), or 61.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

65. 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).

66. Respondents reserve, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which

the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

67. Waiver of Claims by Respondents

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

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

b. Exceptions to Waiver

(1) The waiver under this ¶ 67 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against such Respondent.

(2) The waiver under ¶ 67.a.1 (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver, if EPA determines that: (i) that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise.

XVIII. OTHER CLAIMS

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

69. Except as expressly provided in ¶ 67 (Waiver of Claims by Respondents) and Section XV (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

70. 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).

XIX. EFFECT OF SETTLEMENT/CONTRIBUTION

71. Except as provided in ¶ 67 (Waiver of Claims by Respondents), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XVII (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that 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).

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

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

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

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

XX. INDEMNIFICATION

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

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

78. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made, or to be made, to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account

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

XXI. INSURANCE

79. No later than thirty (30) days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Work Completion pursuant to ¶ 6.4.7 of the RDWP, commercial general liability insurance with limits of liability of \$1 million per occurrence, and automobile 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 Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the B.F. Goodrich Superfund Site Name, Calvert City, Marshall County, Kentucky and the EPA docket number for this action.

XXII. FINANCIAL ASSURANCE

80. In order to ensure the completion of the Work, Respondents shall secure financial assurance, initially in the amount of \$3.1M ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

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

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

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

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

e. A demonstration by a Respondent that it meets financial test criteria of Paragraph 84, accompanied by a standby funding commitment, which obligates the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of Paragraph 84.

81. Respondents have selected, and EPA has found satisfactory, the guarantee under ¶ 80(f) as an initial form of financial assurance. Within 30 days of the Effective Date, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Financial Management Officer, Ms. Paula Painter at U.S. EPA Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303.

82. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed [60] days. Respondents shall follow the procedures of ¶ 85 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

83. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 62.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 83.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 83.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 62.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 80.e or 80.f then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within 14 days of such demand, pay the amount demanded as directed by EPA

d. Any amounts required to be paid under this ¶ 83 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the B.F. Goodrich Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 83 must be reimbursed as Future Response Costs under Section XI (Payments for Response Costs).

84. Financial Test Criteria. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 80.e or 80.f, must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) The affected Respondent or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

- ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
 - iii. Tangible net worth of at least \$10M; and
 - iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or
- (2) The affected Respondent or guarantor has:
- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
 - ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
 - iii. Tangible net worth of at least \$3.1M; and
 - iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

85. Modification of Amount, Form, or Terms of Financial Assurance.

Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 80, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a

requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XII (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 81.

86. Release, Cancellation, or Discontinuation of Financial Assurance.

Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Work Completion under ¶ 6.4.7 of the RDWP; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XII (Dispute Resolution).

XXIII. INTEGRATION/APPENDICES

87. 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 ROD.
- b. Appendix B is the RDWP.
- c. Appendix C is the map of the Site.
- d. "Appendix D" is the complete list of Respondents.

XXIV. MODIFICATION

88. The EPA Project Coordinator may modify any plan, schedule, or RDWP 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 EPA Project Coordinator's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

89. If Respondents seek permission to deviate from any approved work plan, schedule, or RDWP, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the EPA Project Coordinator pursuant to ¶ 88.

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

XXV. EFFECTIVE DATE

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

92. IT IS SO AGREED AND ORDERED;

U.S. ENVIRONMENTAL PROTECTION AGENCY:

4/11/2019

Dated

Caroline Freeman

Caroline Freeman
Chief, Superfund Remedial Branch, Region 4

Signature Page for Settlement regarding the B.F. Goodrich Superfund Site

FOR _____ :
Westlake Vinyls, Inc.

April 5, 2019

Dated _____

DocuSigned by:
David Huyck


David A. Huyck
Plant Manager III
Westlake Vinyls, Inc.
2801 Post Oak Blvd.
Houston, Texas 77056

DS
RM

April 1, 2019

Signature Page for Settlement regarding the B.F. Goodrich Superfund Site

FOR PolyOne Corporation :



March 18, 2019

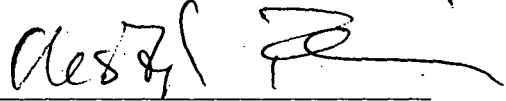
Dated

M. John Midea
SVP, Global Operations and Process Improvement
PolyOne Corporation
33587 Walker Road, Avon Lake, Ohio 44012

Signature Page for Settlement regarding the B.F. Goodrich Superfund Site

FOR _____:

Goodrich Corporation



April 1, 2019
Dated

[Name] Christoph Feddersen
[Title] Vice President & General Counsel
[Company] Goodrich Corporation
[Address] Four Coliseum Centre
2730 West Tyvola Road
Charlotte, NC 28217