UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:	CERCLA Docket No. 04-2020-2500
Hydromex Site 700 S. Industrial Parkway Yazoo City, Mississippi	
United States Department of Defense; National Aeronautics and Space Administration; and United States Coast Guard	
Settling Federal Agencies	
AAR Landing Gear Corporation; Space Gateway Support, LLC; Goodrich Corporation, as the partial successor to BF Goodrich; Lockheed Martin Corporation; and The Boeing Company	
Respondents	
Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622	**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTIONS**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA), AAR Landing Gear Corporation (AAR), The Boeing Company (Boeing), Lockheed Martin Corporation (Lockheed Martin), Goodrich Corporation (Goodrich), as partial successor to BF Goodrich, and Space Gateway Support, LLC (Space Gateway), collectively " Performing Respondents" and the Settling Federal Agencies or SFAs named herein. This Settlement provides for the performance of a removal action by Performing Respondents and the payment of certain response costs incurred by the United States and payment by the United States on behalf of SFAs at or in connection with the Hydromex Superfund Site" (the Site) generally located at 700 S. Industrial Parkway, Yazoo City, Mississippi.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos**:** 14-14A (Determinations of Imminent and Substantial Endangerment, Jan. 31, 2017), 14-14C (Administrative Actions through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). This authority was further redelegated by the Regional Administrator of EPA Region 4 to the Chief of the Emergency Response, Removal, Prevention and Preparedness Branch, Superfund and Emergency Management Division (SEMD), by Regional Delegation 14-14-A (Determinations of Imminent and Substantial Endangerment), to the Chiefs of the Emergency Response, Removal, Prevention and Preparedness Branch, SEMD, and the Enforcement Branch, SEMD, by Regional Delegation 14-14-C (Administrative Actions through Consent Orders, July 8, 2010), and to the Chief of the Enforcement Branch, SEMD, by Regional Delegation 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, July 8, 2010).

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

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

II. PARTIES BOUND

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

6. Performing 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 Performing Respondent to implement the requirements of this Settlement, the remaining Performing Respondents shall complete all such requirements. This provision does not apply to SFAs.

7. Each signatory to this Settlement certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind the party represented by him or her.

8. Performing 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 Performing Respondents with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Performing 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. Performing Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

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

"Action Memorandum" shall mean EPA's Action Memorandum relating to the Site signed on April 14, 2020, by the Regional Administrator, EPA Region 4, or his/her delegate, and all attachments thereto.

"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 removal action,

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

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

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

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

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

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Performing Respondents' performance of the Work to determine whether such performance is consistent with the requirements of this Settlement, including costs incurred in reviewing deliverables submitted pursuant to this Settlement, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, inter alia: the costs incurred by EPA pursuant to Section IX (Property Requirements), XIII (Emergency Response and Notification of Releases), Paragraph 92 (Work Takeover), Paragraph 116 (Access to Financial Assurance), or the costs incurred by the United States in enforcing this Settlement, including all costs incurred under Section XV (Dispute Resolution) and all litigation costs.

"Future Response Costs" shall mean all costs on and after March 17, 2020, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 92 (Work Takeover), Paragraph 116 (Access to Financial Assurance), Paragraph 39 (Community Involvement Plan) (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include 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.

"Main Building" shall mean the main building located at 700 S. Industrial Parkway in Yazoo City, Mississippi (as illustrated on the map attached as Appendix A).

"MDEQ" shall mean the Mississippi Department of Environmental Quality and any successor departments or agencies of the State.

"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 Performing Respondent, that owns or controls any Affected Property, including Delta Logging & Company, Inc. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.

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

"Parties" shall mean EPA, Performing Respondents, and SFAs.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through March 16, 2020, plus Interest on all such costs through such date.

"Performing Respondents" shall mean AAR Landing Gear Corporation (AAR), The Boeing Company (Boeing), Lockheed Martin Corporation (Lockheed Martin), Goodrich Corporation (Goodrich), as partial successor to BF Goodrich, and Space Gateway Support, LLC (Space Gateway).

"Performing Respondents' Response Costs" shall mean all costs incurred in performance of the Work, consistent with the National Contingency Plan, and shall include the payment of EPA's Future Response Costs, but shall exclude any payment of penalties by Performing Respondents, including, but not limited to, any payment of penalties under Section XVII.

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

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

"Settling Federal Agencies" or "SFAs" shall mean the National Aeronautics and Space Administration, United States Coast Guard, the United States Department of Defense, and their successor departments, agencies, or instrumentalities. The United States

Department of Defense shall mean the Department of Defense as described in 10 U.S.C. § 111.

"Site" shall mean the Hydromex Superfund Site, located at 700 S. Industrial Parkway in Yazoo City, Yazoo County, Mississippi, encompassing approximately six acres on which Hydromex operated and the areal extent of contamination. The Site is depicted generally on the map attached as Appendix A.

"State" shall mean the State of Mississippi.

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

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

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any "hazardous material" under Section 17-17-3 of the Mississippi Solid Wastes Disposal Law.

"Work" shall mean all activities and obligations Performing Respondents are required to perform under this Settlement except those required by Section XI (Record Retention).

IV. EPA'S FINDINGS OF FACT

10. The Hydromex Superfund Site, located at 700 S. Industrial Parkway in Yazoo City, Mississippi, encompasses approximately six acres of property on which an office building and "the Main Building" are located. The Site is surrounded by industrial facilities to the north, south and west. South Industrial Parkway borders the Site to the east. The nearest residential neighborhood is located on the east side of South Industrial Parkway and approximately 300 feet from the Site entrance and 0.2 miles from the Main Building. Surface water drainage from the Site enters the Yazoo River approximately 0.5 mile west of the Site.

11. U.S. Technology (U.S. Tech) is a company organized under the laws of the State of Ohio. U.S. Tech was in the business of selling and leasing blast media (i.e., plastic, glass, aluminum oxide and urea) to be used to strip paint from airplanes and equipment. The customer/user would spray the blast media against a painted metal surface to remove the paint without damage to the remaining surface. During use, the blast media in some instances could become contaminated with toxic characteristic levels of heavy metals, including cadmium, chromium and lead, and after use was known as Spent Blast Media (SBM). The standard disposal practice for waste exhibiting a characteristic of toxicity would be to dispose of it at a permitted hazardous waste Treatment, Storage, and Disposal Facility. However, U.S. Tech represented to its customers, including Performing Respondents and SFAs, that the SBM could be recycled in compliance with RCRA and contracted with its customers for recyling of SBM.

12. From 2000 to 2002, U.S. Tech contracted with Hydromex, Inc. (Hydromex) to recycle the SBM from U.S. Tech's customers by mixing the SBM with cement to manufacture concrete blocks to be used in construction. In some instances, U.S. Tech arranged for the direct transportation of SBM from its customers' facilities to the Site while on other occasions U.S. Tech transported the SBM from customers' facilities to U.S. Tech's own facilities and subsequently shipped the SBM from its facilities to the Site.

13. AAR is a company organized under the laws of the State of Delaware. AAR was a U.S. Tech customer and blast media user. From at least February 2002 through September 2002, SBM from AAR was transported to the Site.

14. Goodrich, as partial successor to BF Goodrich, is a company organized under the laws of the State of New York. From at least September 2001 to October 2002, SBM from Goodrich was transported to the Site.

15. Boeing is a company organized under the laws of the State of Delaware. Boeing was a U.S. Tech customer and blast media user. From at least September 2001 through October 2002, SBM from Boeing was transported to the Site.

16. Lockheed Martin is a company organized under the laws of the State of Maryland. Lockheed was a U.S. Tech customer and blast media user. From at least August 2001 through January 2002, SBM from Lockheed Martin was transported to the Site.

17. Space Gateway is a company organized under the laws of the State of Virginia. Space Gateway was a U.S. Tech customer and blast media user. From at least April 2002 through September 2002, SBM from Space Gateway was transported to the Site.

18. Settling Federal Agencies were U.S. Tech customers and blast media users. From at least September 2001 through November 2002, SBM from Settling Federal Agencies was transported to the Site.

19. On June 25, 2002, EPA and Mississippi Department of Environmental Quality (MDEQ) conducted an inspection at the Hydromex facility after receiving a citizen complaint. The inspection revealed that Hydromex, after accepting tons of SBM, had stopped producing concrete blocks. Hydromex had excavated trenches on the Site, filled them with the failed concrete blocks as well as SBM and capped them with concrete. In addition, Hydromex was storing SBM in drums and containers on the Site. MDEQ sampled SBM, and it failed the Toxic Characteristic Leaching Procedure (TCLP) for metals, including cadmium.

20. On November 14, 2002, MDEQ issued an Order to Hydromex, requiring Hydromex to cease and desist all acceptance, treatment and disposal of SBM (all hazardous and solid waste) at its facility. Hydromex ceased operation shortly after issuance of the Order. In 2007, the owner of Hydromex pleaded guilty to, and was sentenced for, among other things, illegal storage and disposal of hazardous waste.

21. On July 18, 2003, U.S. Tech, pursuant to an Agreed Order with MDEQ, agreed to remove the SBM and the SBM in the concrete blocks from the soil trenches at the Site and treat the SBM and contaminated soil to render it non-hazardous and acceptable for land disposal. U.S.

Tech did not fully comply with this Agreed Order, leaving SBM in trenches, drums and containers at the Site.

22. Between February 2011 and February 22, 2017, MDEQ amended the Agreed Order between U.S. Tech and MDEQ four times due to U.S. Tech's failure to comply with the Agreed Order and its subsequent amendments. The amendments required U.S. Tech to conduct soil sampling, install groundwater monitoring wells and sample the groundwater, recycle or dispose of the SBM, treat and/or remove materials at the Site, among other tasks. U.S. Tech failed to fully comply with any of the amendments to the Agreed Order.

23. In October and November, 2013, U.S. Tech illegally shipped via truck SBM from the Site to Missouri Green Materials in Berger, Missouri. U.S. Tech and its President, Ray Williams, were indicted in the Eastern District of Missouri and pleaded guilty to, and have since been sentenced for, among other things, illegal transportation of the SBM from Mississippi to Missouri.

24. On January 8, 2018, MDEQ informed EPA that U.S. Tech failed to meet the requirements of the Fourth Amendment to the Agreed Order. MDEQ visited the Site and found that approximately 7,000,000 pounds of SBM remained stored in bags and large piles in and around the Main Building on the Site. The bags storing the SBM were deteriorating, and the Main Building (in which the bags and piles were stored) was dilapidated with a leaking roof. On April 13, 2018, MDEQ referred the Site to EPA's Superfund program.

25. On May 3, 2018, EPA conducted a Removal Site Evaluation to document current Site conditions and collected samples of SBM in the bags and piles at the Site. Sampling results indicated that all 10 SBM samples contained cadmium concentrations in excess of the TCLP regulatory limit of 1.0 mg/l, which is found in 40 C.F.R. § 261.24, Table 1. The ten samples collected by EPA ranged from 1.12 mg/l to 10.6 mg/l. Therefore, these SBM samples meet the definition of hazardous waste by virtue of the characteristic of toxicity pursuant to 40 C.F.R. § 261.24, Table 1. Cadmium is a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

26. The threat of release at the Site is the potential leaching of the contamination from bulk SBM into the soil and groundwater. Yazoo City, Mississippi uses the groundwater as the drinking water supply serving approximately 11,180 people. Yazoo City has a drinking water supply well approximately 0.5 miles south of the Site. The groundwater from the Site flows southwest.

V. EPA's CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The Hydromex 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 EPA's Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

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

d. Each of the Performing Respondents and SFAs is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Performing Respondents and SFAs arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

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

f. The conditions described in EPA's Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). EPA determined in an Action Memorandum dated April 14, 2020, that the conditions at the Site described in EPA's Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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

VI. SETTLEMENT AGREEMENT AND ORDER

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

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

29. Performing Respondents shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within 45 days after the Effective Date. Performing Respondents shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 14 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Performing Respondents. If

EPA disapproves of a selected contractor or subcontractor, Performing Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 30 days after EPA's disapproval in writing. With respect to any proposed contractor, Performing Respondents shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Performing Respondents shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

30. Within 30 days after the Effective Date, Performing Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Performing Respondents required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 29. If EPA disapproves of the designated Project Coordinator, Performing Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 30 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Performing Respondents' Project Coordinator shall constitute notice or communication to all Performing Respondents.

31. EPA has designated Steve Spurlin of the Region 4 Emergency Response, Removal, Prevention and Preparedness Branch, as its On-Scene Coordinator (OSC). EPA and Performing Respondents shall have the right, subject to Paragraph 30, to change their respective designated OSC or Project Coordinator. Performing Respondents shall notify EPA 14 days before such a change is made. The initial notification by Performing Respondents may be made orally, but shall be promptly followed by a written notice.

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

VIII. WORK TO BE PERFORMED

33. Performing Respondents shall perform, at a minimum, all actions necessary to implement the Work set forth below. The actions to be implemented generally include, but are not limited to, the following:

a. Establish and maintain a cover on the visible SBM to prevent migration of the SBM due to wind, rain, or human activity prior to, and during, transportation and disposal of the SBM.

b. Remove the SBM and SBM related Waste Material that is visible in the Main Building, in the piles and bags on the exterior of the Main Building, in surface soil surrounding the Main Building, and in drainage pathways impacted by SBM. Collect composite surface soil samples (0 to 6 inches) in the areas where the SBM was removed, including beneath the SBM stockpiles and in the drainage pathways leading from the areas where the SBM was removed to the dirt road surrounding the Main Building

c. After completing the work in Paragraph 33.b, analyze the composite surface soil samples collected for TCLP metals for comparison to regulatory levels and take the following actions:

(1) If laboratory results show that all composite surface soil samples taken pursuant to Paragraph 33.b are below the TCLP regulatory levels for metals, Performing Respondents shall not be required to take any further composite surface soil samples. Performing Respondents shall not be required to remove any soil.

(2) If any laboratory result shows that composite surface soil samples collected pursuant to Paragraph 33.b equals or exceeds the TCLP regulatory levels for metals, Performing Respondents shall remove the surface soil in the area(s) that exceeds those TCLP regulatory levels. After removing the surface soil, Performing Respondents shall collect a second set of composite surface soil samples (0 to 6 inches) in the next layer of surface soil in the area(s) where the surface soil exceeds those TCLP regulatory levels. Those samples shall be analyzed for TCLP metals for comparison to regulatory levels. If a laboratory result shows that an area(s) in the second set of composite surface soil samples collected equals or exceeds TCLP regulatory levels for metals, Performing Respondent shall remove the surface soil in the area(s) that exceeds those TCLP regulatory levels. Performing Respondents shall continue collecting and analyzing composite surface soil samples for TCLP regulatory levels for metals and removing surface soil in the area(s) that exceed those TCLP regulatory levels until such time as all laboratory results show that composite surface soil samples collected in the area where SBM was removed pursuant to Paragraph 33.b are below the TCLP regulatory levels for metals.

d. Transport and dispose of the SBM and the SBM related Waste Material, as defined above in Section III (Definitions), including soil, debris and pallets to an EPA-approved facility.

e. Performing Respondents are not required to conduct surface water or groundwater sampling at the Site.

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

35. **Work Plan and Implementation**

a. Within 75 days after the Effective Date, in accordance with Paragraph 36 (Submission of Deliverables), Performing Respondents shall submit to EPA for approval a draft work plan for performing the removal action (the Removal Work Plan) generally described in Paragraph 33 above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Performing Respondents shall submit a revised draft Removal Work Plan within 21 days after receipt of EPA's notification of the required revisions. Performing Respondents shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

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

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

36. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Performing Respondents shall direct all submissions required by this Settlement to the OSC at Ed Jones Federal Building - B-13, 109 S. Highland Avenue, Jackson, TN 38301, (731) 394-8996, spurlin.steve@epa.gov. Performing Respondents shall submit all deliverables required by this Settlement, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Performing Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 36.b. All other deliverables shall be submitted to EPA in the form specified by the OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Performing Respondents shall also provide EPA with paper copies of such exhibits.

b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. EPA Region 4 utilizes EPA Environmental Response Team (ERT) Scribe Software; EDD templates for Scribe Software are publicly

available at https://response.epa.gov/scribe. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

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

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

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

37. **Health and Safety Plan.** Within 75 days after the Effective Date, Performing Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OlC (Nov. 2002), available on the NSCEP database at https://www.epa.gov/nscep, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at https://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Performing Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

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

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

b. Within 75 days after the Effective Date, Performing Respondents shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of

a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the Removal Work Plan, the NCP and applicable guidance documents, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" EPA 240/B-01/003 (March 2001, reissued May 2006), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Performing Respondents shall contractually require all laboratories utilized by Performing Respondents in implementing this Settlement to allow EPA personnel and it authorized representatives access at reasonable times. In addition, Performing Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) available at http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures. Performing Respondents shall contractually require that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/clp), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (https://www.epa.gov/hw-sw846), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www3.epa.gov/ttnamti1/airtox.html).

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

collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e. Upon request, Performing Respondents shall provide split or duplicate samples to EPA or its authorized representatives. Performing Respondents shall notify EPA not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Performing Respondents split or duplicate samples of any samples it takes as part of EPA's oversight of Performing Respondents' implementation of the Work.

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

g. Performing Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Performing Respondents in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Performing Respondents object to any other data relating to the Work, Performing Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 30 days after the monthly progress report containing the data.

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

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

41. **Final Report**. Within 90 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 122 (notice of completion), Performing Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of a Performing Respondent or Performing Respondents' Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

42. **Off-Site Shipments**

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

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

c. Performing Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42

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

IX. PROPERTY REQUIREMENTS

43. **Agreements Regarding Access and Non-Interference.** Performing 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 Performing Respondents and EPA, providing that such Non-Settling Owner (i) provide EPA, Performing Respondents, 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 in Paragraph 43.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action Performing Respondents shall provide a copy of such access agreement(s) to EPA.

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

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States;

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions;

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

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 92 (Work Takeover); and

(8) Assessing Performing Respondents' compliance with the Settlement.

44. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Performing 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 Performing 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 Performing 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 XIV (Payment of Response Costs).

45. 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, Performing Respondents shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls.

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

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

X. ACCESS TO INFORMATION

48. Each Performing Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within each Performing Respondent's 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 regarding the Work. Each Performing Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

49. **Privileged and Protected Claims**

a. Performing Respondents may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Performing Respondents comply with Paragraph 49.b, and except as provided in Paragraph 49.c.

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

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

50. **Business Confidential Claims**. Performing Respondents may assert that all or part of a Record provided to EPA under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b) and any subsequent case law interpreting such provisions. Performing Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Performing Respondents assert business confidentiality claims. Records that Performing Respondents claim to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B and any subsequent case law interpreting such provisions. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Performing 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) and any subsequent case law interpreting such provisions, the public may be given access to such Records without further notice to Performing Respondents.

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

XI. RECORD RETENTION

52. Until 10 years after EPA provides Performing Respondents with notice, pursuant to Section XXVII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Performing Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the Site. Each Performing 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 Performing 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.

53. At the conclusion of the document retention period, Performing Respondents shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 49 (Privileged and Protected Claims), Performing Respondents shall deliver any such Records to EPA .

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

55. The United States acknowledges that each SFA (1) is subject to all applicable federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to Section 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.

XII. COMPLIANCE WITH OTHER LAWS

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

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

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

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

58. **Emergency Response**. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Performing Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Performing Respondents shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Performing Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at (404) 562-8700, and the National Response Center at (800) 424-8802 of the incident or Site conditions. In the event that Performing Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Performing Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

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

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

XIV. PAYMENT OF RESPONSE COSTS

61. **Payment for Past Response Costs by Performing Respondents and SFAs.** Performing Respondents and SFAs are not required to pay EPA's Past Response Costs for this Site.

62. **Payment for Future Costs by Performing Respondents**. Performing Respondent shall pay to EPA all Future Response Costs not inconsistent with the NCP excluding the first one hundred and eight-five thousand dollars ($185,000) of Future Oversight Costs.

a. **Periodic Bills**. On a periodic basis, EPA will send Performing Respondents a bill requiring payment that includes a Superfund Cost Recovery Imaging and Online Systems (SCORPIOS) Report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Performing

Respondents shall make all payments within 60 days after Performing Respondents' receipt of each bill requiring payment, except as otherwise provided in Paragraph 65 (Contesting Future Response Costs).

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

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

and shall reference Site/Spill ID Number C450 and the EPA docket number for this action. Performing Respondents may also make payments by check to:

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

and shall reference Site/Spill ID Number C450 and the EPA docket number for this action.

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

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

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

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

Such notice shall reference Site/Spill ID Number C450 and the EPA docket number for this action.

63. **Deposit of Future Response Costs Payments from Performing Respondents**. The total amount to be paid by Performing Respondents pursuant to Paragraph 62.a (Periodic Bills) shall be deposited by EPA in the EPA Hazardous Substance Superfund.

64. **Interest on Future Response Costs Payments made by Performing Respondents**. In the event that any payment for Future Response Costs by Performing Respondents is not made by the date required, Performing 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 Performing 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 Performing Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

65. **Contesting Future Response Costs Paid by Performing Respondents** . Performing Respondents may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 62 (Payments for Future Response Costs by Performing Respondents) 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, Performing Respondents shall submit a Notice of Dispute in writing to the OSC within 45 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 Performing Respondents submit a Notice of Dispute, Performing Respondents shall within the 45-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 62, 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. Performing Respondents shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 30 days after the resolution of the dispute, Performing Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 62. If Performing Respondents prevail concerning any aspect of the contested costs, Performing Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 62. Performing Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Performing Respondents' obligation to reimburse EPA for its Future Response Costs.

66. **Payment by SFAs to Performing Respondents**.

a. The United States, on behalf of the Settling Federal Agencies, agrees to pay 68 percent of Performing Respondents' Response Costs, through two payments to be made in the following manner. Upon Performing Respondents' submission to EPA of the Final Report required by Paragraph 41, Performing Respondents may submit their initial written claim for reimbursement of Performing Respondents' Response Costs to the Section Chief of the Environmental Defense Section of the United States Department of Justice at the address listed below, identifying what Performing Respondents believe to be the Settling Federal Agencies' share of Performing Respondents' Response Costs as of the date of the Final Report ("Initial Claim for Reimbursement"). Performing Respondents shall include with the Initial Claim for Reimbursement a statement of all of Performing Respondents' Response Costs incurred by Performing Respondents, along with any invoices and back-up documentation that support the claim for reimbursement, as well as proof of payment by Performing Respondents of all costs composing the claim for reimbursement, and certification from one or more Performing Respondents under penalty of perjury that such costs were properly incurred and consistent with Section 107(a)(4)(B) of CERCLA, 42 U.S.C. § 9607(a)(4)(B), and this Settlement.

b. Upon EPA's issuance of the written Notice of Completion of Work required by Section XXVII, Performing Respondents may submit a final written claim for reimbursement of Performing Respondents' Response Costs incurred and not included in the Initial Claim for Reimbursement to the Section Chief of the Environmental Defense Section of the United States Department of Justice at the address listed below ("Final Claim for Reimbursement"). Performing Respondents shall include with the Final Claim for Reimbursement a statement of all of Performing Respondents' Response Costs incurred by Performing Respondents after the Final Notice, along with any invoices and back-up documentation that support the Final Claim for Reimbursement, as well as proof of payment by Performing Respondents of all costs composing the Final Claim for Reimbursement, and certification from one or more Performing Respondents under penalty of perjury that such costs were properly incurred and consistent with Section 107(a)(4)(B) of CERCLA, 42 U.S.C. § 9607(a)(4)(B), and this Settlement.

c. Upon receipt of a Performing Respondents' claim for reimbursement, the United States, on behalf of the Settling Federal Agencies, shall have 90 days to review the claim for reimbursement and raise any objections related thereto. Any objection must be in writing and must identify any disputed costs and the basis for objection. In the event the United States raises an objection to a claim for reimbursement, Performing Respondents and the United States agree to participate in informal negotiations to resolve the dispute. The period for informal negotiations shall be 60 days from the date the United States transmits its written objection, and may be extended upon mutual consent of Performing Respondents and the United States. If informal negotiations are unsuccessful, Performing Respondents and the United States may agree to non-binding mediation to resolve the matter. The reasonable costs and expenses of mediation shall be borne 50% by the United States and 50% by the Performing Respondents, and each party shall bear its own attorneys' fees, expert fees, and other costs of its participation in such mediation. Paragraph 65 and Section XV (Dispute Resolution) of this Settlement Agreement do not apply to disputes raised pursuant to this Paragraph. Any such dispute shall not excuse performance by Performing Respondents of their obligations under this Settlement.

d. If the United States does not raise an objection to a Performing Respondents' claim for reimbursement, then the United States shall pay, on behalf of the Settling Federal Agencies, 68% of each of claim for reimbursement as soon as reasonably practicable after expiration of the 90 day review period. If the United States does raise an objection to a claim for reimbursement, then payment of the Settling Federal Agencies' share of the claim for reimbursement is due as soon as reasonably practicable after final resolution of the dispute, which final resolution shall be acknowledged in writing by the United States and Performing Respondents.

e. Payment by the United States will be deposited into the following account, in accordance with the following electronic funds transfer instructions:

Remit To: JPMorgan Chase Bank
1 Chase Manhattan Plaza
New York, New York 10004
212-270-6000

ABA Number: 021000021
Account Number: 9102776607

For Credit To: The Boeing Company-SSG Division

Swift Code: CHASUS33

Reference: CHARGELINE: GG, 6835000, GGPERHYDRMX,
SSG10APK, X, GG, N400, 699
CONTACT: ART LENOX, BOEING CO, 818-466-8795

f. The Parties to this Settlement recognize and acknowledge that the payment obligations of the United States, on behalf of the Settling Federal Agencies, under this Settlement can only be paid from appropriated funds legally available for such purpose. Nothing in this Settlement shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

g. **Interest**. In the event the United States' payment, on behalf of the Settling Federal Agencies, is not made within 120 days after the expiration of the 90 day review period or within 120 days after the final resolution of any dispute, then the United States, on behalf of the SFAs, shall pay Interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with such Interest commencing on the 121st day.

XV. DISPUTE RESOLUTION

67. 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.

68. **Informal Dispute Resolution**. If Performing 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 30 days after such action. EPA and Performing Respondents shall have 30 days from EPA's receipt of Performing 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.

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

70. Except as provided in Paragraph 65 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Performing Respondents under this Settlement. Except as provided in Paragraph 80, 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 Performing Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

71. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Performing Respondents, of any entity controlled by Performing Respondents, or of Performing Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Performing Respondents' best efforts to fulfill the obligation. The requirement that Performing 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.

72. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Performing Respondents intend or may intend to assert a claim of force majeure, Performing Respondents shall notify EPA's OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region 4, within 10 days of when Performing Respondents first knew that the event might cause a delay. Within 10 days

thereafter, Performing 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; Performing Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Performing Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Performing Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Performing Respondents shall be deemed to know of any circumstance of which Performing Respondents, any entity controlled by Performing Respondents, or Performing Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Performing Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 71 and whether Performing Respondents have exercised their best efforts under Paragraph 71, EPA may, in its unreviewable discretion, excuse in writing Performing Respondents' failure to submit timely or complete notices under this Paragraph.

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

74. If Performing Respondents elect to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Performing 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 Performing Respondents complied with the requirements of Paragraphs 71 and 72. If Performing Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Performing Respondents of the affected obligation of this Settlement identified to EPA.

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

XVII. STIPULATED PENALTIES

76. Performing Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 77.a and 78 for failure to comply with the obligations specified in Paragraphs 77.b and 78, unless excused under Section XVI (Force Majeure). "Comply" as used in the previous sentence shall include compliance by Performing Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

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

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 77.b:

Penalty Per Violation Per Day	Period of Noncompliance
$750	1st through 14th day
$1,000	15th through 30th day
$2,500	31st day and beyond

b. **Obligations**

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

(2) Establishment and maintenance of financial assurance in accordance with Section XXV (Financial Assurance).

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

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

(5) Timely submission of the Health and Safety Plan in Paragraph 37.

(6) Timely submission of the Quality Assurance Project Plan in Paragraph 38.b.

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

Penalty Per Violation Per Day	Period of Noncompliance
$750	1st through 14th day

$1,000	15th through 30th day
$1,500	31st day and beyond

79. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 92 (Work Takeover), Performing Respondents shall be liable for a stipulated penalty in the amount of two hundred-fifty thousand dollars ($250,000). "Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 92 (Work Takeover) and 116 (Access to Financial Assurance).

80. 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 30 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 35 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Performing Respondents of any deficiency; and (b) with respect to a decision by EPA's Management Official at the Branch level or higher, under Paragraph 69 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that EPA's 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.

81. Following EPA's determination that Performing Respondents have failed to comply with a requirement of this Settlement, EPA may give Performing Respondents written notification of the failure and describe the noncompliance. EPA may send Performing 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 Performing Respondents of a violation.

82. All penalties accruing under this Section shall be due and payable to EPA within 45 days after Performing Respondents' receipt from EPA of a demand for payment of the penalties, unless Performing Respondents invoke the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 45-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 63b.

83. If Performing Respondents fail to pay stipulated penalties when due, Performing Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Performing Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 80 until the date of payment; and (b) if Performing Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 82 until the date of payment. If Performing Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

85. 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 Performing Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 92 (Work Takeover).

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

XVIII. COVENANTS BY EPA

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

88. **Covenants for SFAs by EPA**. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to take administrative action against SFAs pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs and Future Response Costs. This covenant shall take effect upon the Effective Date. This covenant is conditioned upon the complete and satisfactory performance by the United States, on behalf of the SFAs, of their obligations under this Settlement. This covenant extends only to SFAs and does not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

89. 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, except as specifically provided in this settlement 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 Performing Respondents or SFAs in the future to perform additional activities pursuant to CERCLA or any other applicable law.

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

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

b. liability for costs not included within the definitions of Past Response Costs or 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 Material 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.

91. EPA reserves, and this Settlement is without prejudice to, all rights against the SFAs with respect to all other matters, including, but not limited to:

a. liability for violations of federal or state law;

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

c. liability arising from the past, present, or future disposal, release or threat of release of hazardous substances outside of the Site.

92. **Work Takeover**

a. In the event EPA determines that Performing 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 Performing Respondents. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Performing Respondents a period of 5 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 5-day notice period specified in Paragraph 92.a, Performing 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 Performing Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 92.b. Funding of Work Takeover costs is addressed under Paragraph 116 (Access to Financial Assurance).

c. Performing Respondents may invoke the procedures set forth in Paragraph 69 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 92.b. However, notwithstanding Performing Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 92.b until the earlier of (1) the date that Performing Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 69 (Formal Dispute Resolution).

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

XX. COVENANTS BY PERFORMING RESPONDENTS AND SFAS

93. **Covenant by Performing Respondents**. Performing Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, Performing Respondents' Response Costs, and this Settlement, including, but not limited to:

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

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

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

94. **Covenants by SFAs**. SFAs agree not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 107, 111, 112, 113, or any other provision of law with respect to the Work, Past Response Costs, Future Response Costs, Performing Respondents' Response Costs, and this Settlement. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a SFA in the performance of its duties (other than pursuant to this Settlement) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

95. Except as provided in Paragraph 98 (Waiver of Claims by Performing Respondents), these covenants in Paragraphs 93 and 94 shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 90.a (liability for failure to meet a requirement of the Settlement), 90.d (criminal liability), or 90.e (violations of federal/state law during or after implementation of the Work), but only to the extent that claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

96. 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).

97. Performing 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 Performing Respondents' deliverables or activities.

98. **Waiver of Claims by Performing Respondents**

a. Performing 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 Performing 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.

(2) **De Minimis/Ability to Pay Waiver**. For response costs relating to the Site against any person that has entered or in the future enters into a final Section 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay with EPA with respect to the Site.

b. **Exceptions to Waivers**

(1) The waivers under this Paragraph 98 shall not apply with respect to any defense, claim, or cause of action that a Performing Respondent may have against any person otherwise covered by such waivers, if such person asserts a claim or cause of action relating to the Site against such Performing Respondent.

(2) The waiver under Paragraph 98.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

XXI. OTHER CLAIMS

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

100. Except as expressly provided in Paragraph 93 (Covenants by Performing Respondents), Paragraph 98 (Waiver of Claims by Performing Respondents), and Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Performing 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.

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

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

102. Except as provided in Paragraphs 98 (Waiver of Claims by Performing Respondents), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX

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

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

104. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which each Performing Respondent and SFA 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).

105. Each Performing 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 Performing 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 Performing 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.

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

XXIII. INDEMNIFICATION

107. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Performing 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). Performing Respondents shall indemnify, save, and hold harmless the United States, its officials,

agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Performing Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Performing Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Performing 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 Performing 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 Performing Respondents in carrying out activities pursuant to this Settlement. Neither Performing Respondents nor any such contractor shall be considered an agent of the United States.

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

109. Performing 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 Performing 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, Performing 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 Performing Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

110. No later than 30 days before commencing any on-site Work, Performing Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVII (Notice of Completion of Work), commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Performing Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Performing Respondents shall provide EPA with a certificate of such insurance. Performing Respondents shall resubmit such certificate each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Performing 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 Performing Respondents in furtherance of this Settlement. If Performing 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, Performing Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Performing Respondents shall ensure that all submittals to EPA under this Paragraph identify the Hydromex Site, Yazoo City, Mississippi and the EPA docket number for this action.

XXV. FINANCIAL ASSURANCE

111. In order to ensure completion of the Work, Performing Respondents shall secure financial assurance, initially in the amount of $ 1.85 million ("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. Performing Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

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

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

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

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

e. A demonstration by a Performing Respondent that it meets the financial test criteria of Paragraph 113 accompanied by a standby funding commitment, which obligates the affected Performing 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 Performing Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Performing Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of Paragraph 111.

112. Performing Respondents shall, within 30 days after the Effective Date, obtain EPA's approval of the form of Performing Respondents' financial assurance. Within 30 days of such approval, Performing Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with EPA's-approved form of financial assurance and shall submit such mechanisms and documents to Paula V. Painter, Program Analyst, Superfund Division, at U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia, 30303.

113. Performing Respondents seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 111.e or 111.f must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) the affected Performing 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 $10 million; 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 Performing 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 $10 million; 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 Performing Respondents 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/.

114. Performing Respondents providing financial assurance by means of a demonstration or guarantee under Paragraph 111.e or 111.f must also:

a. Annually resubmit the documents described in Paragraph 113.b within 90 days after the close of the affected Performing Respondent's or guarantor's fiscal year;

b. Notify EPA within 30 days after the affected Performing Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Performing Respondent or guarantor in addition to those specified in Paragraph 113.b; EPA may make such a request at any time based on a belief that the affected Performing Respondent or guarantor may no longer meet the financial test requirements of this Section.

115. Performing Respondents shall diligently monitor the adequacy of the financial assurance. If any Performing 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 Performing Respondent of such determination. Performing 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 Performing 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. Performing Respondents shall follow the procedures of Paragraph 117 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Performing Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

116. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 92.b, then, in accordance with any applicable financial assurance mechanism and/or related standby funding commitment, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 116.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Performing Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 116.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 92.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 Paragraph 111.e or 111.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. Performing Respondents shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 116 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 Hydromex Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 116 must be reimbursed as Future Response Costs under Section XIV (Payments for Response Costs).

117. **Modification of Amount, Form, or Terms of Financial Assurance**. Performing Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 112, 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 Performing Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Performing Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (Dispute Resolution). Performing 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 Performing 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, Performing Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 112.

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

XXVI. MODIFICATION

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

120. If Performing Respondents seek permission to deviate from any approved work plan or schedule, Performing Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Performing Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 119.

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

XXVII. NOTICE OF COMPLETION OF WORK

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

XXVIII. PUBLIC COMMENT

123. Final acceptance by EPA of the Paragraph 61 (Payment for Past Response Costs by Performing Respondents and SFAs) and the Paragraph 62 (Payment for Future Response Costs by Performing Respondents) compromises included in this Settlement shall be subject to Section 122(i) of CERCLA, 42 U.S.C.§ 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all or part of Section XIV (Payment of Response Costs) of this Settlement if comments received disclose facts or considerations that indicate that Section XIV of this Settlement is inappropriate, improper, or inadequate. Otherwise, Section XIV shall become effective when EPA issues notice to Respondents and SFAs that public comments received, if any, do not require EPA to modify or withdraw from Section XIV of this Settlement.

XXIX. INTEGRATION/APPENDICES AND NOTICE TO SFAS

124. This Settlement and its appendix constitutes 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. Appendix "A," a map of the Site, is attached to and incorporated into this Settlement.

a. All notices to the SFAs shall be sent to:

Chief, Environmental Defense Section
United States Department of Justice
Environment & Natural Resources Division
Post Office Box 7611
Washington, DC 20044-7611
Re: DJ # 90-11-6-21361

XXX. EFFECTIVE DATE

125. This Settlement shall be effective five days after the Settlement is signed by the Regional Administrator or his/her delegatee with the exception of the Past Response Costs in Paragraph 61 (Payment for Past Response Costs by Performing Respondents and SFAs) and the Future Response Costs in Paragraph 62 (Payment for Future Response Costs by Performing Respondents) compromised in this Settlement, which shall be effective when EPA issues notice to Performing Respondents and SFAs that public comments received, if any, do not require EPA to modify or withdraw from the Paragraph 61 (Payment for Past Response Costs by Performing Respondents and SFAs) and/or the Paragraph 62 (Payment for Future Response Costs by Performing Respondents) compromises included within this Settlement.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

May 20, 2020
Dated

James W. Webster

Digitally signed by James W. Webster
DN: cn=James W. Webster, o=Superfund and Emergency Management Division, ou=Emergency Response, Removal, Prevention and Preparedness Branch, email=webster.james@epa.gov, c=US
Date: 2020.05.20 08:54:28 -04'00'

James W. Webster, Ph.D., Chief
Emergency Response, Removal, Prevention and Preparedness Branch
Superfund and Emergency Management Division,
U.S. Environmental Protection Agency, Region 4

Signature Page for Settlement Regarding Hydromex Superfund Site

U.S. ENVIRONMENTAL PROTECTION AGENCY:

05/19/2020
Dated

Maurice L. Horsey, IV, Chief
Enforcement Branch
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 4

Signature Page for Settlement Regarding Hydromex Superfund Site

FOR UNITED STATES DEPARTMENT OF DEFENSE

5/15/20
Dated

Harry H. Kelso
Printed Name: Harry H. Kelso
Title: Deputy General Counsel
(Environment, Energy & Installations)
Address: Office of the General Counsel
1600 Defense Pentagon, Room 3B747
Washington, D.C. 20305

Signature Page for Settlement Regarding Hydromex Superfund Site

FOR UNITED STATES COAST GUARD

JUDGE.BRIAN.M.1044062204 Digitally signed by JUDGE.BRIAN.M.1044062204 Date: 2020.04.27 09:58:39 -04'00'

Dated

Brian Judge
Chief, Office of Claims and Litigation
U.S. Coast Guard Stop 7213
2703 Martin Luther King Jr. Ave. SE
Washington, DC 20593-7213

Signature Page for Settlement Regarding Hydromex Superfund Site

FOR AAR LANDING GEAR CORPORATION:

April 14, 2020

Dated

Brian Sartain
Vice President
AAR Landing Gear, LLC
9371 NW 100th Street
Miami, FL 33178

Signature Page for Settlement Regarding Hydromex Superfund Site

FOR SPACE GATEWAY SUPPORT, LLC:

Edward Sturms (A35396) Digitally signed by Edward Sturms (A35396)
Date: 2020.04.16 09:36:41 -04'00'

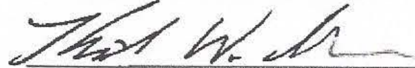
_____________________ ____________________________________
Dated

Ed Sturms
Executive Manager
Space Gateway Support, LLC
7575 Colshire Drive
McLean, VA 22102

Signature Page for Settlement Regarding Hydromex Superfund Site

FOR GOODRICH CORPORATION, AS PARTIAL SUCCESSOR TO BF GOODRICH:

4/3/20
Dated

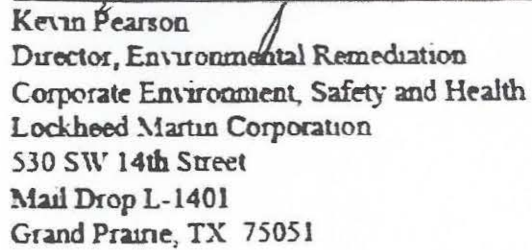


Kristen W. Sherman
Associate General Counsel, Environmental Health and Safety
Goodrich Corporation
One Hamilton Road, MS-1-1-BC18
Windsor Locks, CT 06096

Signature Page for Settlement Regarding Hydromex Superfund Site

4/14/20
Dated

FOR LOCKHEAD MARTIN CORPORATION:



Kevin Pearson
Director, Environmental Remediation
Corporate Environment, Safety and Health
Lockheed Martin Corporation
530 SW 14th Street
Mail Drop L-1401
Grand Prairie, TX 75051

Signature Page for Settlement Regarding Hydromex Superfund Site

FOR NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

CALVIN WILLIAMS Digitally signed by CALVIN WILLIAMS
Date: 2020.05.06 14:38:26 -04'00'

Calvin F. Williams
Assistant Administrator for Strategic Infrastructure

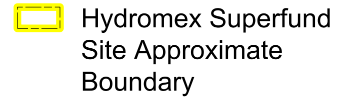
Dated

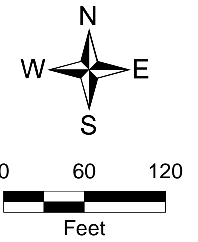
Signature Page for Settlement Regarding Hydromex Superfund Site

FOR THE BOEING COMPANY:

April 8, 2020
Dated

Steven L. Shestag
Director – Environment, EHS
The Boeing Company
P.O. Box 3707, MC 9U4-08
Seattle, WA 98124-2207





Map Source:
ESRI World Imagery

United States
Environmental Protection Agency
Region 4

Appendix A

TDD Name: Hydromex

TDD No.: TT-02-037

City:	County:	State:
Yazoo City	Yazoo	Mississippi

Date: 7/12/2019
Analyst: KATIE.WISE

File: G:\TT-02-037_Hydromex\GIS\MXDs\(Other_MXD_Type)\TT-02-037_Hydromex_Fig2.mxd