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PRELIMINARY STATEMENT

The parties hereto, the Kansas Department of Health and Environment (KDHE), and the Obee Road PRP Group Members who are, or may in the future be, signatories to this Agreement, that presently being the City of Hutchinson, Kansas, The Cessna Aircraft Company, Consolidated Manufacturing, Inc., Superior Boiler Works, Inc., Stutzman Refuse Disposal, Inc., and PAMICO, Inc. (the "Members"), (the KDHE and the Members being collectively the "Parties") having agreed that settlement of this matter is in the best interests of all parties and the public, hereby represent and state as follows:

1. KDHE is a duly authorized agency of the State of Kansas, created by act of the legislature.

2. KDHE has general jurisdiction of matters involving hazardous substance and hazardous substance cleanups under the authority of the Kansas Environmental Response Act (K.S.A. 65-3452a. et seq.), as well as hazardous waste and its clean-up (K.S.A. 65-3430 et seq.) and has general authority and responsibility to protect the waters and soils of the state under the authority of K.S.A. 65-161, et seq.

3. The Members, as well as other persons and entities who are not presently participating in this Agreement, have been advised by the United States Environmental Protection Agency ("EPA") and the KDHE that they may have liability under federal and

28 state law for certain groundwater contamination at the Obee Road  
29 Site. The Members believe that there are economic benefits and  
30 efficiencies to addressing the Obee Road Site contamination issues  
31 on a joint and cooperative basis. Thus, the Members desire to  
32 investigate the degree and extent of contamination so as to  
33 determine what, if anything, may be necessary and appropriate with  
34 respect to remediation of any such contamination.

35 4. The Members agree to undertake all actions required by  
36 the terms and conditions of this Agreement To Perform A Remedial  
37 Investigation and Feasibility Study (the "Agreement"). In any  
38 action by KDHE to enforce the terms of this Agreement, the Members  
39 agree not to contest the authority or jurisdiction of the Secretary  
40 of Health & Environment either to issue this Order entitled an  
41 Agreement or to enter into this Agreement. In the event that  
42 enforcement of this Agreement shall become necessary, Members agree  
43 that it may be enforced by the Secretary of Health and Environment  
44 as though it were an administrative order and KDHE agrees that it  
45 may be enforced by the Members as a common law contract against  
46 nonparticipating Potentially Responsible Parties ("PRPs").

47 5. This Agreement shall apply to and be binding upon KDHE  
48 and the Members, their agents, successors, and assigns. The  
49 signatories to this Agreement certify that they are authorized to  
50 execute and to legally bind the parties on whose behalf they sign.

51 No change in the ownership or corporate status of the Members  
52 shall alter the responsibilities of the Parties under this  
53 Agreement.

54           6.    The Members shall provide a copy of this Agreement to any  
55    subsequent owners or successors before ownership rights are  
56    transferred. The Members shall provide a copy of this Agreement  
57    to all contractors, sub-contractors, laboratories, and consultants  
58    which are retained to conduct any work performed under this  
59    Agreement, within 14 days after retaining their services. As  
60    between the Parties, the Members' obligations under this Agreement  
61    may not be assigned or transferred by contract or otherwise.

62           7.    The activities conducted under this Agreement are subject  
63    to approval by KDHE as set forth herein and shall provide all  
64    appropriate necessary information for a remedial  
65    investigation/feasibility study that is consistent with the  
66    National Contingency Plan (NCP), 40 CFR Part 300. A plan will be  
67    developed by the Members describing the activities required to  
68    perform an RI/FS (hereinafter the "Work Plan"). Upon final  
69    approval of the Work Plan by KDHE and EPA, then it shall be  
70    determined and considered to be consistent and in compliance with  
71    the requirements of the National Contingency Plan and the guidance  
72    as set forth in paragraph 24. Upon completion of all tasks set  
73    forth in the approved Work Plan, the work performed thereunder  
74    shall be determined and considered to be consistent and in  
75    compliance with the requirements of the National Contingency Plan  
76    and the guidance as set forth in paragraph 24.

77           8.    While the Members to this Agreement specifically deny  
78    liability for any contamination of the Obee Road Site defined  
79    hereunder and the surrounding environment, for the reasons stated

80 herein they agree to enter into this Agreement to prepare a RI/FS  
81 in conformity with the Work Plan to be developed pursuant to this  
82 Agreement, which Work Plan will be subject to the approval of KDHE  
83 and EPA. Once approved, the Work Plan will be deemed a part of  
84 this Agreement and incorporated herein by reference.

85

86

FINDINGS OF FACT

87

88 9. The following "Findings of Fact" are submitted by KDHE  
89 as the factual background for this Agreement. The Members are  
90 presently without knowledge or information sufficient to admit or  
91 deny these statements of fact and do not, by their execution of  
92 this Agreement, so admit or deny such facts. Nevertheless, for the  
93 reasons stated herein, the Members have agreed to enter into this  
94 Agreement and to proceed with the preparation of a RI/FS assuming  
95 for that purpose only, the facts stated below:

96 10. The Obee Road Site (the "Site") includes an abandoned  
97 City of Hutchinson landfill and the area immediately surrounding  
98 the same, near and along Obee Road, and an industrial area and the  
99 area immediately surrounding the same, near and along Airport Road,  
100 between 17th Avenue on the north and the AT & SF railroad on the  
101 south. The primary area of concern is located in Section 10,  
102 Township 23 S, Range 5 W, Reno County, Kansas, which formerly  
103 served a majority of Reno County residents.

104 11. KDHE investigation in August of 1984 detected  
105 tetrachloromethane and trichloromethane in a shallow aquifer which

106 was or is used as a source of industrial and domestic water supply.

107 12. Pursuant to further KDHE investigation, it has been shown  
108 that the groundwater in Sections 10, and certain adjoining sections  
109 of Township 23S, Range 5W, in Reno County, Kansas are contaminated  
110 with hazardous substances listed in paragraphs 11 and 13.

111 13. KDHE has installed seven monitoring wells in the vicinity  
112 of the city landfill and monitoring of those is continuing.  
113 Sampling of the monitoring wells and soils reflects a  
114 trichloroethylene (TCE) concentration of 8,880 ug/l, and vinyl  
115 chloride concentration of 10.3 ug/l.

116 14. The Site was placed on the National Priorities List on  
117 July 22, 1987, Federal Register .

118 15. The contaminants in the groundwater and soil which are  
119 listed in paragraphs 11 and 13 are the result of one or more  
120 releases of hazardous substance(s) and hazardous waste(s).

121

122 CONCLUSIONS OF LAW

123

124 16. Members are "persons" within the meaning of K.S.A. 65-  
125 164, et seq., K.S.A. 65-3430, et seq., and K.S.A. 65-3452a, et seq.

126 17. The presence of the contaminants identified in the  
127 groundwater underlying the Site constitutes "pollution" as defined  
128 by K.S.A. 65-171d.

129 18. The contaminants identified in the groundwater underlying  
130 the Site, as set forth in paragraphs numbered 11 and 13, are  
131 "hazardous substances" as defined by K.S.A. 65-3452a and "hazardous

132 wastes" as defined by K.S.A. 65-3430.

133 19. The area described in paragraph 9 as the Obee Road Site  
134 constitutes a "site" within the meaning of K.S.A. 65-3453.

135 20. Under the facts as shown above, the Parties hereto have  
136 agreed that the Secretary has jurisdiction over this matter, and  
137 the Members agree not to challenge the Secretary's authority to  
138 enforce this agreement as an order entered pursuant to Kansas Law  
139 and further that there is a need for an appropriate response  
140 action. The KDHE has concluded, and the Secretary has confirmed,  
141 that there is a need for further investigation to determine whether  
142 additional actions are required to prevent a continuing release or  
143 threat of release of hazardous substances from the Obee Road Site  
144 and remove the pollution or hazard which might be found to exist.

145 21. The investigation of such discharges is necessary to  
146 determine whether removal of the pollution or hazard is required  
147 to protect the public health and safety and the environment, giving  
148 rise to the authority of the Kansas Department of Health and  
149 Environment to enter this agreement. A necessary part of this  
150 investigation is the study (Remedial Investigation) of the nature  
151 and extent of the threat to the public health or welfare or the  
152 environment caused by the release or threatened release of  
153 hazardous substances, pollutants, or contaminants from the Site  
154 and an evaluation of alternatives (Feasibility Study) for the  
155 appropriate extent of remedial action to prevent or mitigate the  
156 migration of the release or threatened release of hazardous  
157 substances, pollutants, or contaminants from the Site.

158           22. The Kansas Department of Health and Environment has  
159 authority to enter this agreement, and to make the findings of fact  
160 and conclusions of law herein stated.

161           23. The Secretary of Health and Environment is authorized by  
162 K.S.A. 65-3453, K.S.A. 65-164, et seq., K.S.A. 65-3430, et seq. and  
163 the regulations issued pursuant thereto to enter an order  
164 confirming the Agreement of the Parties, and ordering that the  
165 actions and obligations required hereunder be completed.

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167                           ACTIVITIES, COMMITMENTS & OBLIGATIONS

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169           NOW, THEREFORE, in consideration of the foregoing findings of  
170 fact and conclusions of law, the Parties hereto agree to the  
171 following activities and commitments:

172           24. Within 120 days of the effective date of this Agreement,  
173 Members shall submit a draft Work Plan prepared pursuant to the  
174 "Guidance for Conducting Remedial Investigations and Feasibility  
175 Studies under CERCLA", OSWER Directive 9355.3-01, October 1988, for  
176 KDHE approval and a courtesy copy to EPA. KDHE will provide  
177 comments on the draft Work Plan. All references in this Agreement  
178 to review and concurrence by or the comments of KDHE on  
179 deliverables submitted by the Members shall be deemed to  
180 incorporate therein the comments or concurrences of EPA. Within 30  
181 days of receipt of KDHE's comments( or some later date if so agreed  
182 by KDHE), Members shall submit for final approval a revised Work  
183 Plan that addresses KDHE's comments. Upon KDHE approval, the Work

184 Plan shall become incorporated into this Agreement and a part  
185 thereof as Exhibit 1. KDHE shall notify the Members in writing  
186 of its approval of the Work Plan.

187 25. Within 30 days from date of KDHE approval of the Work  
188 Plan, Members shall commence the schedule of work and thereafter  
189 complete the tasks contained in the Work Plan. The work shall be  
190 conducted in accordance with the EPA Remedial Investigation and  
191 Feasibility Study guidance documents referenced in paragraph 24  
192 above and with the standards and specifications contained in the  
193 Work Plan.

194 26. Members shall provide preliminary and final reports to  
195 KDHE according to the schedule contained in Exhibit 1 which  
196 incorporate KDHE's comments.

197 27. After KDHE reviews the preliminary reports and the final  
198 reports, KDHE shall notify Members in writing, of KDHE's approval  
199 or disapproval of these reports or any part thereof. KDHE shall  
200 also notify Members in writing of KDHE's approval or disapproval  
201 of Members' implementation of the approved Work Plan. KDHE agrees  
202 to review said implementation and if it disapproves the  
203 implementation of the Work Plan, to do so within thirty (30) days  
204 after submission of a certificate of completion by the Members. In  
205 the event that such is not possible, KDHE agrees to notify the  
206 Members of delays beyond thirty (30) days.

207 28. In the event of any KDHE disapproval of a submitted  
208 report or disapproval of Respondent's implementation of the  
209 approved Work Plan, KDHE shall send Members a Notice of Disapproval

210 delineating the deficiencies, setting out needed revisions to the  
211 reports or modified work to cure the deficiencies in the work and  
212 setting a reasonable schedule for response by Members; provided  
213 however that any such revisions are consistent with the objectives  
214 of the Work Plan and Agreement.

215         29. Thereafter, Members shall amend and submit to KDHE  
216 revised reports as required by KDHE in the Notice of Disapproval  
217 as described in paragraph 28.

218         30. KDHE may determine that additional tasks are necessary  
219 in addition to the approved Work Plan tasks including reports,  
220 which have been completed pursuant to this Agreement. Such  
221 additional tasks shall be set forth in an amendment to the approved  
222 Work Plan. KDHE may request Members to implement any such  
223 additional tasks within a reasonable timeframe specified by KDHE.  
224 Failure by Members to implement additional tasks within the  
225 reasonable timeframe set by KDHE, shall be considered a violation  
226 of this Agreement.

227         31. All work performed pursuant to this Agreement shall be  
228 under the direction and supervision of a professional engineer or  
229 geologist with expertise in hazardous waste site investigations  
230 and remediation. Within 60 days of the effective date of this  
231 Agreement, Members shall notify KDHE in writing of the name, title,  
232 and qualifications of the engineer or geologist.

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234

QUALITY ASSURANCE

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236           32. All samples analyzed pursuant to this Agreement shall be  
237 analyzed by a laboratory which participates in a quality  
238 assurance/quality control program equivalent to that specified in  
239 the document entitled "USEPA Contract Laboratory Program Statement  
240 of Work for Organic Analysis" and USEPA Contract Laboratory Program  
241 Statement of Work for Metals Analysis" (1988) ("Contract Lab  
242 Statement of Work") and is certified by the state of Kansas  
243 pursuant to K.S.A. 65-1,107. Field screening analysis may be  
244 performed by portable Gas Chromatograph Analyzer; however, any data  
245 obtained by such method must be identified and "flagged" as not  
246 meeting the minimum requirements of the Kansas Laboratory  
247 Certification Program. Further, it is agreed that such data not  
248 be used in the data base for the RI/FS. However, such data shall  
249 be supplied to KDHE upon request.

250           33. All sample collection and analysis shall be performed in  
251 compliance with EPA-approved methods, including timing of analyses,  
252 documentation of sample collection, handling and analysis, as  
253 described in the following documents:

254           a. "NEIC Manual for Ground Water/Subsurface  
255               Investigations at Hazardous Waste Sites," Document  
256               No. EPA/330/9-81-002; and

257           b. Contract Lab Statement of Work.

258           34. Laboratory deliverables as specified in the Contract Lab  
259 Statement of Work shall be submitted to KDHE for all analytical  
260 work performed pursuant to this Agreement. Any deviations from the  
261 procedures and methods set forth in these documents must be

262 approved in writing by KDHE prior to use.

263 35. Members shall use the quality assurance, quality control,  
264 and chain of custody procedures specified in the Quality Assurance  
265 Project Plan, which is part of the Work Plan, for all sample  
266 collection and analysis performed pursuant to this Agreement.

267 36. All contracts for field work and laboratory analysis  
268 shall provide that KDHE and EPA representatives are allowed access,  
269 for auditing and evaluation purposes, at reasonable times upon  
270 reasonable request, to all laboratories and personnel utilized by  
271 Members for sample collection and analysis and other field work.  
272 Upon request by KDHE, the laboratories shall perform analysis of  
273 a reasonable number of known samples provided by KDHE to  
274 demonstrate the quality of the analytical data.

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#### REPORTING

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279 37. Members shall provide KDHE with written progress reports  
280 quarterly, pursuant to the Schedule in the Work Plan. At a  
281 minimum, these progress reports shall: (1) describe the actions,  
282 progress, and status of projects which have been taken toward  
283 achieving compliance with this Agreement, as well as the actions  
284 which are scheduled for the next quarter; (2) identify any  
285 requirements under this Agreement that were not completed as  
286 provided and any problem areas and anticipated problem areas in  
287 complying with this Agreement; and (3) include all results of

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289 sampling, tests, data, and conclusions, if any, drawn from data  
290 generated pursuant to the Work Plan(s).

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### ACCESS

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38. KDHE and EPA and any of their agents or contractors are authorized by Members to enter and freely move about all property of the Members at the Site at all reasonable times and subject to FAA requirements for the purposes of, inter alia; interviewing site personnel and contractors' inspecting records, operating logs, and contracts related to the conduct of the RI/FS; reviewing the progress of Members in carrying out the terms of this Agreement; conducting such sampling and tests as KDHE deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to KDHE by Members. Members shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this paragraph. Upon disclosure to KDHE, such information shall be protected pursuant to K.S.A. 65-170g, K.S.A. 65-3447 and as allowed by K.S.A. 45-221, et seq.

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39. To the extent that work required by the Work Plan must be done on property not owned or controlled by Members, Members shall use their best efforts to obtain site access agreements from

314 the present owner(s) of such property. Best effort includes, but  
315 is not limited to, reasonable payment of monies to the property  
316 owner. Any such access agreement shall be incorporated by  
317 reference into this Agreement. In the event that agreements for  
318 site access are not obtained within thirty (30) days of the date  
319 such access is initially requested, Members shall notify KDHE  
320 within seven (7) days thereafter. In the event that KDHE or EPA  
321 obtains access for Members, all reasonable costs incurred by KDHE  
322 or EPA shall be reimbursed by Members and Members shall undertake  
323 approved work on such property. KDHE shall not be responsible for  
324 any injury or damage to persons or property caused by the negligent  
325 or willful acts or omissions of Members, their officers, employees,  
326 agents, successors, assigns, contractors, or any other person  
327 acting on Members' behalf in carrying out any activities pursuant  
328 to the terms of this Agreement. Members shall not be responsible  
329 for any injury or damage to persons or property caused by the  
330 negligent or willful acts or omissions of KDHE or EPA, their  
331 officers, employees, agents, successors, assigns, contractors, or  
332 any other person acting on KDHE's behalf in carrying out any  
333 activities pursuant to the terms of this Agreement.

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336 SAMPLING AND DATA/DOCUMENT AVAILABILITY

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338 40. Members shall make available to KDHE all results of  
339 sampling, tests, or other data generated by or on its behalf with

340 respect to the implementation of this Agreement. Members shall  
341 submit these results in the progress reports described in the  
342 "Reporting" Section of this Agreement. KDHE will make sampling  
343 results and other data available to Members. Members may perform  
344 such other additional investigations and take such additional  
345 samples as may be deemed appropriate for their own purposes and  
346 shall not be required under this Agreement to furnish such  
347 information to KDHE unless specifically requested by KDHE. If such  
348 information is submitted to KDHE and does not reflect additional  
349 contamination as contemplated by this Agreement, the Members may  
350 claim confidentiality pursuant to K.S.A. 65 - 170g, K.S.A. 65-3447  
351 and as allowed by K.S.A. 45-221 et seq.

352

353 41. Members shall notify KDHE at least seven (7) calendar  
354 days before conducting any well drilling, installation of  
355 equipment, or sampling. At the request of KDHE, Members shall  
356 provide or allow KDHE or EPA or their authorized representatives  
357 to take split samples of all samples collected by Members pursuant  
358 to this Agreement. Similarly, at the request of Members KDHE and  
359 EPA shall allow Members or their authorized representatives to take  
360 split or duplicate samples of all samples collected by KDHE or EPA  
361 under this Agreement. KDHE and EPA shall notify Members at least  
362 seven (7) days before conducting any sampling under this Agreement,  
363 provided, however, that if seven (7) days notice of sample  
364 collection activity is not possible, KDHE, EPA, and Members shall  
365 give such advance notice to enable each party to have a

366 representative present during said sample collection activity.

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RECORD PRESERVATION

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370 42. Members agree that they shall preserve, during the  
371 pendency of this Agreement and for a minimum of six (6) years after  
372 its termination, all records and documents which have not  
373 previously been provided to KDHE in their possession or in the  
374 possession of divisions, employees, agents or consultants or  
375 contractors which relate in any way to this Agreement or to  
376 hazardous waste management and disposal at the Site. During the  
377 six (6) year retention period, Members shall make such records  
378 available to KDHE for inspection or shall provide copies of any  
379 such records to KDHE.

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STIPULATED PENALTIES

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383 43. For each period of time that Members fail without excuse  
384 as provided by this Agreement to submit reports or deliverables at  
385 the times set out in the approved Work Plan which is part of this  
386 Agreement, Members shall pay as stipulated penalties, except as  
387 otherwise provided in this Agreement, the following: up to \$1,000  
388 for the first week of delay or part thereof; up to \$3,000 for delay  
389 from the 8th through 14th day or part thereof and up to \$1,000 per  
390 day of delay thereafter.

391

44. Any accrued penalties with respect to the remedial

392 investigation shall be forgiven in the event the next deliverable  
393 concerning the Remedial Investigation is submitted in a form that  
394 fulfills requirements for the RI as set out in the NCP by the  
395 originally scheduled completion date. Likewise, accrued penalties  
396 shall be forgiven if the final deliverable concerning the  
397 Feasibility Study is submitted in a form that fulfills requirements  
398 for the FS as set forth in the NCP by the originally scheduled  
399 completion date. Penalties shall not be forgiven for any  
400 deliverable which is submitted later than the due date. If Members  
401 fail to comply with the time requirement of any of the tasks  
402 required under this Agreement, the period of non-compliance shall  
403 terminate upon Members' performance of said requirement.

404 45. Any unexpected delay as described in this Agreement shall  
405 not be the basis for penalties under this Agreement.

406 46. If Members dispute the basis for imposition of stipulated  
407 penalties, the issue shall be resolved under the dispute resolution  
408 provisions of this Agreement. Liability of the Members for  
409 penalties occurring prior to and during the period of dispute shall  
410 be resolved by the dispute resolution process as part of the  
411 original dispute. If Members prevail on any issue submitted for  
412 dispute resolution, the Members shall not be liable for the  
413 respective stipulated penalties which would otherwise accrue.

414 47. Any stipulated penalties shall be payable within twenty-  
415 one (21) days after Members' receipt of demand by KDHE; provided  
416 however, that should Members dispute the penalty under the Dispute  
417 Resolution provisions of this Agreement, the stipulated penalty

418 shall not become payable until the KDHE's final decision on the  
419 dispute and/or the Parties' settlement of the dispute. Any  
420 stipulated penalty shall be paid by certified check to:

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Secretary of Health and Environment  
Landon Building - Ninth and Jackson  
Suite 904  
Topeka, Kansas 66612

427 A copy of the check and a transmittal letter shall be sent to the  
428 KDHE contact specified herein. Members shall remit a check for  
429 the full amount of penalty stated in the demand.

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#### DISPUTES RESOLUTION

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434 48. If Members disagree, in whole or in part, with any  
435 approval or other decision by KDHE made pursuant to this Agreement,  
436 Members shall notify KDHE within fifteen (15) days of receipt of  
437 the disapproval. Members and KDHE shall then have an additional  
438 forty-five (45) working days to attempt to resolve the dispute.  
439 If agreement is reached, the resolution shall be reduced to  
440 writing, signed by each party and incorporated thereupon into this  
441 Agreement. If agreement is not reached, the KDHE shall issue its  
442 final decision on the dispute, in writing, to inform the Members  
443 of the decision of KDHE.

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49. Members reserve their rights to appeal any final decision  
of the KDHE, which is not consistent with law or which is  
arbitrary or capricious concerning a dispute under this Agreement,

447 to an administrative body with applicable jurisdiction and  
448 thereafter in compliance with the Kansas Administrative Procedures  
449 Act and Judicial Review Act. The final decision or resolution of  
450 such authority shall be incorporated as a part of this Agreement.  
451 For purposes of this Agreement, final order or decision shall mean  
452 an order or decision from which no appeal may be taken.

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OTHER CLAIMS AND PARTIES

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457 50. Nothing in this Agreement or the documents required  
458 hereunder, including the Work Plan, shall be used or construed as  
459 evidence or an admission in any proceeding other than the  
460 proceedings under this Agreement. Nothing in this Agreement shall  
461 constitute or be construed as a release by the Parties, or either  
462 of them, of any claim, cause of action or demand in law or equity  
463 against any person, firm, partnership, or corporation not a  
464 signatory to this Agreement for any liability it may have arising  
465 out of or relating in any way to the generation, storage,  
466 treatment, handling, transportation, release, or disposal of any  
467 hazardous constituents, hazardous substances, hazardous wastes,  
468 pollutants, or contaminants found at, taken to, or taken from the  
469 facility/site. KDHE shall use its best efforts to encourage non-  
470 participating Potentially Responsible Parties (as that term is  
471 defined in its broadest sense under the environmental laws of the  
472 U.S. and the State of Kansas) to become signatories to this

473 Agreement and to otherwise participate with the Members in their  
474 efforts, whether or not covered by this Agreement, to investigate  
475 and remediate the contamination described hereinabove as being of  
476 concern to the Parties. Any costs incurred in connection with such  
477 activities shall not be deemed to be oversight costs.

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RELEASE OF CLAIMS

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483 51. Except as provided in this paragraph, effective upon  
484 completion of activities described in the Work Plan and any other  
485 environmental response requirements covered by this Agreement, the  
486 KDHE hereby covenants not to sue or take any further action against  
487 Members for any additional requirements in connection with the  
488 activities described herein and covered by this Agreement.  
489 However, the requirements of this Agreement represent the best  
490 professional judgment of the KDHE at this time, based upon  
491 available information. If circumstances change, or if additional  
492 information is needed to determine if a threat exists or if data  
493 indicates that a threat of danger to public health or safety, or  
494 the environment exists, or a threat of pollution is different than  
495 is contemplated herein, KDHE retains the right to reasonably modify  
496 the dates and requirements of the Work Plan, or add additional  
497 reasonable requirements respecting the Remedial Investigation and  
498 Feasibility Study as necessary and appropriate to the purposes of

499 this Agreement, and Members retain the right to appeal any such  
500 modifications or additional requirements, subject to the provision  
501 of this Agreement. All such modifications shall be in writing.

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503

CONTRIBUTION PROTECTION

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505           52. a. KDHE acknowledges that under 42 U.S.C. 9613(f)(2),  
506 by entry of this Agreement, participating Members are not liable  
507 for claims for contribution regarding matters addressed herein, and  
508 that this Agreement does not discharge any other potentially  
509 responsible parties.

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b. KDHE acknowledges that Members have a right of contribution under federal law and may have such rights under state law, against other, non-participating potentially responsible parties who may have created, contributed to, or otherwise have become responsible for the matters described herein, in that Members have expended or will expend reasonable response costs in performance of the activities required under this settlement agreement, and KDHE agrees to provide reasonable assistance upon request to Members to assist Members with enforcement of their claims against such third parties. The assistance referred to herein shall include making available, as permitted by State law, records which relate to this matter, providing statements or testimony of staff upon notification when such requirements are relevant to the proceedings, or such other assistance as is reasonable and appropriate.

525           c.    The KDHE hereby expressly reserves a cause of action  
526 for any claims of whatever kind or nature not subject to this  
527 Agreement which it may have or hereafter have against any other  
528 person or persons not afforded protection hereunder.

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OTHER APPLICABLE LAWS

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532           53. All actions required to be taken pursuant to this  
533 Agreement shall be undertaken in accordance with the substantive  
534 requirements of all applicable local, state, and federal laws and  
535 regulations.

536

UNEXPECTED DELAYS

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538           54. Impossibility of performance or delays ("delay") that  
539 result from Acts of God or other causes beyond the Member's  
540 reasonable control and which cannot be overcome by due diligence  
541 shall not be a violation of their obligations under this Agreement.  
542 The Members shall notify KDHE orally as soon as possible but no  
543 later than five (5) business days after the Members know of any  
544 delay or anticipated delay in compliance with the requirements of  
545 this Agreement, and in writing no later than five (5) business days  
546 after the oral notification of the delay. The written notice shall  
547 describe the nature of the delay, whether and why the delay is  
548 beyond the reasonable control of the Members, the actions taken  
549 and/or that will be taken to mitigate, prevent and/or minimize  
550 further delay, and the anticipated length of the delay. The

551 Members shall adopt all reasonable measures to avoid or minimize  
552 such delay. To the extent a delay is caused by circumstances  
553 beyond the reasonable control of the Members, the schedule affected  
554 by the delay shall be extended for a period equal to the delay  
555 resulting from such circumstances. Such an extension does not  
556 alter the schedule for performance or completion of other tasks  
557 required by the Agreement unless these are also specifically  
558 altered by amendment of the Agreement. Failure to comply with the  
559 notice provision of this section shall be grounds for KDHE to deny  
560 Members an extension of time for performance. Unexpected delay  
561 events do not include unanticipated or increased costs of  
562 performance, changed economic circumstances, or normal  
563 precipitation events. In the event the KDHE determines that  
564 Respondent's delay as stated in their written notice to KDHE was  
565 not due to unexpected delay events, the dispute resolution  
566 provisions may be invoked otherwise, stipulated penalties shall  
567 accrue as set out in paragraph 43.

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PROJECT COORDINATORS

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572 55. Thirty (30) days after the effective date of this  
573 Agreement, KDHE and Members shall each designate a Project  
574 Coordinator. Each Project Coordinator shall be responsible for  
575 overseeing the implementation of this Agreement. The KDHE Project  
576 Coordinator will be KDHE's designated representative. To the

577 maximum extent possible, all communications between Members and  
578 KDHE and all documents, reports, approvals, and other  
579 correspondence concerning the activities performed pursuant to the  
580 terms and conditions of this Agreement, shall be directed through  
581 the Project Coordinator. The parties agree to provide at least  
582 seven (7) days written notice prior to changing Project  
583 Coordinators. The absence of the KDHE Project Coordinator from the  
584 Site shall not be cause of the stoppage of work.

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NOTIFICATION

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590 56. Unless otherwise specified, reports, notice or other  
591 submissions required under this Agreement shall be in writing and  
592 shall be sent to:

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- a. For KDHE  
Ms. Rachel Miller  
Environmental Geologist  
Kansas Department of Health and Environment  
Forbes Field  
Topeka, Kansas 66620

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- b. For Members:

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Joe Palacios, City Manager  
P.O. Box 1567  
Hutchinson, KS 67504-1567

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REIMBURSEMENT OF COSTS

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610           57. a. KDHE shall submit to the Members an accounting for the  
611 cost of designing and implementing the Community Relations Plan  
612 required under CERCLA. Upon receipt of such accounting, the Members  
613 agree to reimburse KDHE for such amount. KDHE agrees to use a  
614 qualified contractor to perform such design and implementation.  
615 KDHE agrees that such cost shall not exceed \$10,000.

616           b. Six months after the effective date of this Agreement  
617 and semiannually thereafter, KDHE shall submit to Members an  
618 accounting of all reasonable oversight costs incurred by KDHE with  
619 respect to this Agreement. KDHE's oversight shall be no more than  
620 \$ 10,000 per year for the first two years following the execution  
621 of this Agreement. At the conclusion of the first two years, the  
622 amount of KDHE's oversight shall be re-negotiated. Members shall,  
623 within thirty (30) calendar days from receipt of said accounting,  
624 remit a check for the amount of the KDHE costs made payable to the  
625 Secretary of Health and Environment. The check should be addressed  
626 to:

627                           Secretary of Health and Environment  
628                           Landon Building - Ninth and Jackson  
629                           Suite 904  
630                           Topeka, Kansas 66612

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639 A copy of the check and transmittal letter shall be sent to the  
640 KDHE contact specified herein. Members shall remit a check for  
641 the full amount of those costs.

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EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

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645 58. This Agreement shall become effective when signed by the  
646 Secretary of the Department of Health and Environment, which date  
647 shall be promptly communicated to the Members.

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59. This Agreement may be amended by mutual agreement of KDHE  
and Members. Any such amendments shall be in writing, shall have  
as their effective date the date on which they are signed by both  
parties, and shall be incorporated into this Agreement. Nothing  
herein shall limit KDHE's ability to require additional tasks as  
set forth in Paragraph 30 herein.

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60. Any reports, plans, specifications, schedules and  
attachments required by this Agreement are, upon approval by KDHE,  
incorporated into this Agreement. Any non-compliance with such  
approved reports, plans, specifications, schedules, and attachments  
shall be considered a violation of this Agreement.

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61. No informal advice, guidance, suggestions, or comments  
by KDHE regarding reports, plans, specifications, and any other  
writing submitted to Members will be construed as relieving Members  
of their obligation to obtain written approval, if and when  
required by this Agreement.

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TERMINATION

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METHOD OF EXECUTION

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IN WITNESS WHEREOF, the parties have affixed their signatures

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below:

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~~STATE OF KANSAS:~~

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David Traster, Esq.  
General Counsel to Secretary of  
Health & Environment

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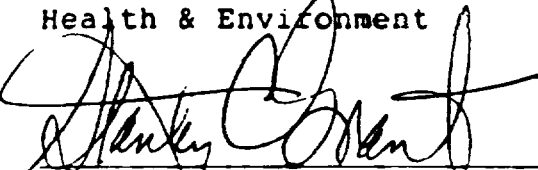
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Stanley C. Grant, Ph.D.  
Secretary of Health and Environment

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Members' approval appear on subsequent pages.

3/27/90

MEMBER:

THE CESSNA AIRCRAFT COMPANY  
Company Name

5800 East Pawnee  
Street Address

Wichita, Kansas                      67218  
City, State                                  Zip Code

T. W. Wakefield  
Authorized Signature

General Counsel and Assistant Secretary  
Title

3/21/90  
Date

Ed Paul  
Authorized Signature

Manager, Environmental Resources  
Title

3/22/90  
Date

MEMBER:

Superior Boiler Works Inc  
Company Name

2524 E 4th St.  
Street Address

Hutchinson, Ks 67501  
City, State Zip Code

Thomas J. Rouse  
Authorized Signature

President  
Title

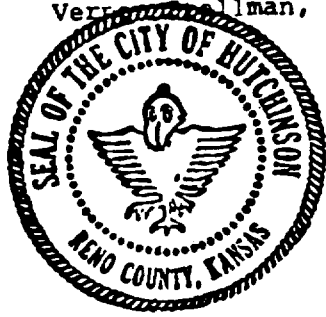
3.22.90  
Date

CITY OF HUTCHINSON, KANSAS

  
\_\_\_\_\_  
Frances J. Garcia, Mayor

ATTEST:

  
\_\_\_\_\_  
Vernon Stallman, CMC, AAE, City Clerk

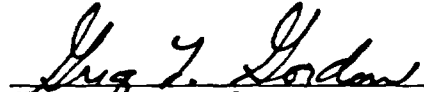


MEMBER:

Consolidated Manufacturing, Inc.

1600 North Halstead

Hutchinson, KS 67501

  
\_\_\_\_\_  
Greg L. Gordon  
President

March 22, 1990



MEMBER:

STUTZMAN REFUSE DISPOSAL, INC.  
Company Name

215 NORTH WALNUT  
Street Address

SOUTH HUTCHINSON, KANSAS 67505  
City, State Zip Code

John D. Stutzman  
Authorized Signature

PRESIDENT  
Title

MARCH 22, 1990  
Date