

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

## **XXV. INSURANCE**

71. At least ten (10) days prior to commencing any on-Site Work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of \$1,200,000.00 dollars, combined single limit, naming EPA as an additional insured. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

## **XXVI. FINANCIAL ASSURANCE**

72. Within thirty (30) days of the Effective Date, Respondents shall establish and maintain financial security for the benefit of EPA in the amount of \$1,200,000.00 in one or more of the following forms, in order to secure the full and final completion of the Work by Respondents:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;
- e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Respondents, or by one or more unrelated companies that have a substantial business relationship with at least one of Respondents; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. a demonstration of sufficient financial resources to pay for the Work made by one or more of Respondents, which shall consist of a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

If any Respondent or guarantor who seeks to provide a demonstration under 40 C.F.R. § 264.143(f) has provided a similar demonstration at other RCRA, CERCLA, TSCA or other federally-regulated sites, the amount for which it is providing financial assurance at those sites by means of passing the financial test should be added to the estimated costs of the Work for purposes of determining the total dollar amount for which they must “pass the test,” and Respondents must provide EPA with documentation of the prior demonstration.

73. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA’s sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within thirty (30) days of receipt of notice of EPA’s determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 72, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within thirty (30) days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents’ inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

74. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 72.e or 72.f of this Settlement Agreement, Respondents shall (i) demonstrate to EPA’s satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references “sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates,” the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of \$1,200,000.00 for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondents or guarantor to EPA by means of passing a financial test.

75. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 72 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving

written approval from EPA. In the event of a dispute, Respondents may seek dispute resolution pursuant to Section XVI (Dispute Resolution). Respondents may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

76. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

## **XXVII. MODIFICATIONS**

77. The OSC may make modifications to 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. Respondents may request a meeting with EPA to discuss any modifications. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

78. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 77.

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

## **XXVIII. ADDITIONAL REMOVAL ACTION**

80. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the plan pursuant to Section VIII, Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVII (Modifications). Respondents may request a meeting with EPA to discuss any such additional removal actions.

## **XXIX. NOTICE OF COMPLETION OF WORK**

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

## **XXXI. INTEGRATION/APPENDICES**

82. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

- a. Appendix A, List of Respondents

## **XXXII. EFFECTIVE DATE**

83. This Settlement Agreement shall be effective on the date that it is signed by the Regional Administrator or his/her delegate.

The undersigned representative of each Respondent certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

Agreed this 31<sup>st</sup> day of December 2009.

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

**RESPONDENT:** Action Resources, Inc.  
**Name of Company**

  
(Signature)

By: Dean D. Flint

Title: Chief Executive Officer

Address: 40 County Road 517

Hanceville, AL 35077

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

**RESPONDENT:** ARMOR ENVIRONMENTAL SERVICES, INC.  
Name of Company

Tony Livengood  
(Signature)

By: Tony Livengood

Title: President

Address: 101 South Park Drive

Mount Pleasant, TN 38474

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

**RESPONDENT:** Ashland Inc., for itself and Hercules Incorporated  
Name of Company

Michael S. Roe  
(Signature)

By: MICHAEL S. ROE

Title: Assistant General Counsel

Address: 50 East River Center Blvd.

Covington, KY 41011

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

RESPONDENT: Cytex Industries Inc.  
Name of Company

  
(Signature)

By: Jeffrey Kravitz

Title: Chief Litigation Counsel

Address: 5 Garret Mountain Plaza  
Woodland Park, NJ 07424

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

RESPONDENT: DOW REICHHOLD SPECIALTY LATEX LLC  
Name of Company

Robert V. Pavlock  
(Signature)

By: ROBERT V. PAVLOCK

Title: LIQUIDATOR

Address: 2400 ELLIS ROAD, SUITE 100  
BURHAM, NC 27403

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

RESPONDENT: Hyundai Motor Manufacturing Alabama, LLC  
Name of Company

Richard E. Neal  
(Signature)

By: RICHARD E. NEAL

Title: VICE PRESIDENT LEGAL & GENERAL COUNSEL

Address: 700 HYUNDAI BOULEVARD  
MONTGOMERY AL 36105

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

RESPONDENT: LEADING EDGE AVIATION SERVICES  
Name of Company

  
(Signature)

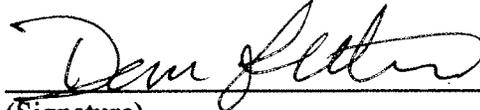
By: Mike Manclark

Title: President

Address: 19301 Campus Drive  
Santa Ana CA. 92707

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

RESPONDENT: NEMAK USA, INC.  
Name of Company

  
(Signature)

By: DAN Souliere

Title: Controller, NEMAK USA & CANADA

Address: Two Towne Square, Ste. 300  
Southfield MI, 48076

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

RESPONDENT: OMNICHEM, LLC.  
Name of Company

Timothy P Wing  
(Signature)

By: TIMOTHY P WING

Title: PRESIDENT

Address: 2021 S. SCHAEFER Hwy  
DETROIT, MI 48217

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

RESPONDENT: One Stop Environmental, LLC  
Name of Company

Shannon S. Riley  
(Signature)

By: Shannon S. Riley

Title: President/CEO

Address: 4924 1<sup>st</sup> Ave North

Birmingham, AL 35222

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

RESPONDENT: Printpack Inc.  
Name of Company

Todd Wiederhold  
(Signature)

By: Todd Wiederhold

Title: Director, EHS

Address: 2800 Overlook Parkway  
Atlanta, GA 30339

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

**RESPONDENT:** Safety-Kleen Systems, Inc.  
Name of Company

  
\_\_\_\_\_  
(Signature)

By: Virgil Duffie

Title: Asst. Secretary

Address: 5360 Legacy Drive, Bldg. 2, Ste. 100

Plano, TX 75024

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

**RESPONDENT:** Spectrum Industrial Services, Inc.  
**Name of Company**

  
(Signature)

By: Stephen P. Castleman

Title: Vice President

Address: 85 Spectrum Cove

Alabaster, AL 35007

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

RESPONDENT: TEKSID ("TK ALUMINUM NORTH AMERICA INC)  
Name of Company

  
(Signature)

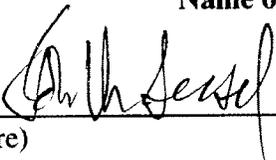
By: MARK W.R. SMITH

Title: SOLE MANAGER OF TK ALUMINUM US SARL, AS MANAGER OF

Address: c/o DELOITTE & TOUCHE TK ALUMINUM NORTH AMERICA INC)  
CORNER HOUSE, CHURCH & PARLIAMENT ST  
HAMILTON HM 12  
BERMUDA

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

RESPONDENT: Cedar Ridge Landfill, Inc.  
Name of Company

  
(Signature)

By: John Van Gessel

Title: Vice President

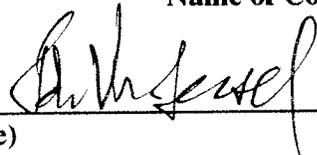
Address: 1000 Parkwood Circle

Suite 700

Atlanta, GA 30339

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

**RESPONDENT:** Quail Hollow Landfill, Inc.  
Name of Company

  
(Signature)

By: John Van Gessel

Title: Vice President

Address: 1000 Parkwood Circle  
Suite 700  
Atlanta, GA 30339

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

**RESPONDENT:** MAVERICK TUBE, L.L.C.  
**Name of Company**



(Signature)

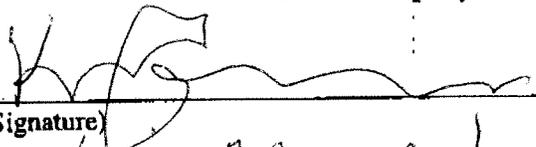
By: John W. Traeger

Title: Attorney for Maverick Tube, L.L.C.

Address: Gallop, Johnson & Neuman, L.C.  
101 S. Hanley, Suite 1700  
St. Louis, MO 63105

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

RESPONDENT: Premier Environmental Services  
Name of Company

  
(Signature)

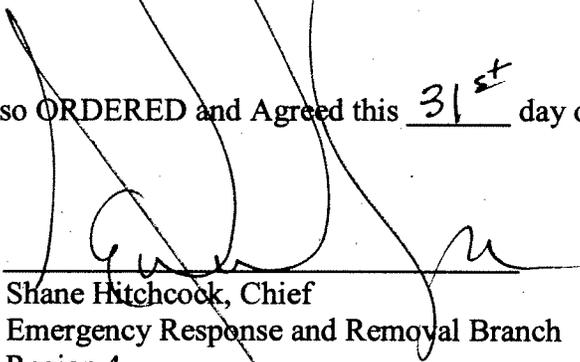
By: KEVIN CREAMER

Title: Chairman

Address: P.O. Box 1327  
Dublin, GA 30096

In the matter of the BPA SUPERFUND SITE in Decatur, Morgan County, Alabama:

It is so ORDERED and Agreed this 31<sup>st</sup> day of Dec., 2009

BY:   
Shane Hitchcock, Chief  
Emergency Response and Removal Branch  
Region 4  
U.S. Environmental Protection Agency

DATE: 12/31/2009

 EFFECTIVE DATE: 12/31/2009

## APPENDIX A

Appendix A  
List of Respondents

1. Action Resources, Inc.
2. Armor Environmental Resources, Inc.
3. Ashland Inc. (for itself and Hercules Incorporated)
4. Cytec Industries, Inc.
5. Dow Reichhold Specialty Latex, LLC
6. Hyundai Motor Manufacturing Alabama, LLC
7. Leading Edge Aviation Services
8. Nematik USA, Inc.
9. OmniChem, LLC
10. One Stop Environmental, LLC
11. Printpack Inc.
12. Safety-Kleen Systems, Inc.
13. Spectrum Industrial Services, Inc.
14. TK Aluminum North America, Inc. (successor to Teksid)
15. Cedar Ridge Landfill, Inc. (a Waste Management company)
16. Quail Hollow Landfill, Inc. (a Waste Management company)
17. Maverick Tube, L.L.C.
18. Premier Industrial Services, LLC