



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

APR 07 2011

REPLY TO THE ATTENTION OF:
S-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ESI Environmental Inc Site PRP Group
c/o Virgil W. Duffie III
Vice President & Assistant General Counsel
Safety-Kleen Systems, Inc.
5360 Legacy Drive
Building 2, Suite 100
Plano, Texas 75024

Re: ESI Environmental Inc Site, Indianapolis, Indiana (B5YS)

Dear Mr. Duffie:

Enclosed please find an executed copy of the Administrative Settlement Agreement and Order on Consent issued for this Site pursuant to Sections 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 42 U.S.C. §§ 9606 and 9622. Thank you for your cooperation in this matter.

If you have any questions regarding this Order, please contact Nola Hicks, Associate Regional Counsel, at (312) 886-7949 or Verneta Simon, On-Scene Coordinator, at (312) 886-3601.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas Ballotti".

Douglas Ballotti, Acting Director
Superfund Division

Enclosure

cc: Mr. Bruce Palin, Indiana Department of Environmental Management, Superfund Program Manager

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

ESI Environmental Inc Site
Indianapolis, Marion County, Indiana
(B5YS)

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

Docket No. V-W-11-C-967

Respondents:

Listed in Attachment A

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive Environmental
Response, Compensation, and Liability Act of
1980, as amended, 42 U.S.C. § 9601, *et seq.*

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement Agreement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Respondents. This Settlement Agreement provides for the performance of removal actions by Respondents and the reimbursement of certain response costs incurred by the United States at or in connection with the property located at 4910 West 86th Street in Indianapolis, Marion County, Indiana, the "ESI Environmental Inc Site" or the "Site".

2. This Settlement Agreement 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, as amended, 42 U.S.C. § 9601, *et seq.* (CERCLA). This authority has been delegated to the Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

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

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

II. PARTIES BOUND

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

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

7. Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which 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 Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXVIII (Effective Date).

c. "Future Response Costs" shall mean all costs, including direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement on or after the Effective Date. Future Response Costs shall also include all costs, including direct and indirect costs, incurred prior to the Effective Date, but paid after that date and all costs, including direct and indirect costs, paid by the United States in connection with the Site between December 31, 2010, and the Effective Date".

d. "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.

e. "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.

f. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto listed in Section XXVIII (Severability/Integration/Attachments). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

g. "Parties" shall mean EPA and Respondents.

h. "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 December 31, 2010.

i. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

j. "Respondents" shall mean those Parties identified in Attachment A. The Parties identified in Attachment A are further identified as either performing Parties under this Settlement Agreement or non-performing Parties.

k. "Site" shall mean the ESI Environmental Inc Superfund Site, encompassing approximately eight acres, located at 4910 West 86th Street in Indianapolis, Marion County, Indiana.

l. "State" shall mean the State of Indiana.

m. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

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

o. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

9. Based on available information, including the Administrative Record in this matter, EPA hereby finds that:

a. The Site is a former commercial used oil processing facility located at 4910 West 86th Street in Indianapolis, Marion County, Indiana and is situated in a commercial and industrial area. The approximately eight-acre Site is bordered to the north by an industrial property, to the south by West 86th Street with commercial properties beyond, and to the east and west by open land. The coordinates for the Site are latitude 39.912866° North and longitude -86.24213° West.

b. The Site includes a tank farm which has various above and below ground tanks. The Site also consists of several ancillary buildings which include a wastewater treatment plant, a sludge treatment building, a sludge treatment process area, an oil dehydration process area, and a truck off-loading building. In addition, the Site includes an office/maintenance building immediately adjacent to the tank farm, and a rail unloading area less than one mile west of the tank farm. An asphalt and concrete berm surrounds the entire Site, and a secure fence is present along the majority of the perimeter of the Site.

c. The Site was operated by Ecological Systems, Inc. (ESI), which was previously known as Envirosolve. Envirosolve was formerly located at 1125 Brookside Avenue, Suite D and 5608 Massachusetts Avenue in Indianapolis, Indiana. The ESI corporate office was located at 5232 West 79th Street in Indianapolis, Indiana.

d. ESI relocated and began operations at the Site on or about December 10, 1999. The facility processed petroleum-contaminated water in order to reclaim the oil for resale. The business began by using small temporary storage tanks, with oil being shipped off-site almost as soon as it was produced. Later operations consisted of shipments received via truck and rail of oily waters, machining coolants, and lubricating oil. The solids were separated after which the oil was removed. The recovered oil was then heat-finished with the use of live steam, pH control, and demulsifiers. The separated oil was pumped off, allowed to cool, and sold after analysis. The water phase was re-circulated back into the water treatment system. The rag phase was dewatered and, depending on the British Thermal Unit content, was either sold or solidified as waste for disposal.

e. Water collected during ESI's process was discharged separately into the City of Indianapolis (City) sanitary sewer system under an approved Industrial Discharge Permit issued by the City. The Site was also designed to capture rain water in an internal sewer system. The resulting stormwater could then be run through the facility's wastewater processing equipment prior to discharge into the City's sanitary sewer system.

f. According to ESI's Facility Response Plan, there are 12 above ground storage tanks at the facility with a total oil storage capacity of 1,199,392 gallons. The largest above ground tank has the capacity of 1.04 million gallons. There are also 3 underground storage tanks at the facility with a total oil storage capacity of 1,025,000 gallons. The total above ground and below ground tank capacity is 2,224,392 gallons.

g. On April 20, 2001, the City, through its Department of Public Works (DPW), Office of Environmental Services, issued a Notice of Violation (NOV) with no penalty assessed to ESI for one sample which exceeded its discharge permit limit for Total Petroleum Hydrocarbon. On July 11, 2003, the City issued a NOV with no penalty assessed to ESI for one sample which exceeded its discharge permit limit for copper. On June 9, 2004, the City issued a NOV with no penalty assessed to ESI for one zinc sample and one copper sample which exceeded its discharge permit limits.

h. On September 1, 2005, the City issued a NOV with penalty to ESI for 12 discharge permit violations of copper, pH, lead, zinc, tin, and Benzene, Toluene, Ethylbenzene, and Xylene (BTEX) on various dates between January 28, 2004, and July 27, 2005. On February 7, 2006, a Compliance Agreement was finalized to resolve the NOV which included a penalty of \$1,500.

i. On February 13, 2006, and subsequently revised on June 28, 2006, the City issued a NOV with penalty to ESI for 11 discharge permit violations involving benzene, BTEX, and copper on various dates between December 19, 2005, and May 30, 2006. On August 8, 2006, a Compliance Agreement was finalized which included a compliance program for installation of an air stripper and a penalty of \$15,750.

j. On March 15, 2007, ESI discharged untreated oil-impacted stormwater and oil through two internal storm drains located on the northwest side of its facility into the City sanitary sewer system, which then overflowed through manholes at locations on the north side of Indianapolis, several miles downstream from the facility. The receding water from the sewer overflows deposited oil onto the soil and vegetation at the overflow locations. At least 27 residences, 1 church, 1 City park, 3 golf courses, and 5 manholes were impacted by ESI's discharge. Dye testing conducted by the City and its contractor after the discharge confirmed that two of ESI's on-site storm drains had allowed untreated stormwater and oil to enter the City's sanitary sewer system without proper treatment prior to discharge.

k. On March 16, 2007, ESI was notified by the State of a sanitary sewer overflow, and on March 17, 2007, ESI began removing black sludge-like substances from the impacted soils. ESI failed to provide a written report of the discharge to the City within five days of the incident as required.

l. On May 17, 2007, the City issued a NOV with penalty to be assessed to ESI for 10 discharge violations involving benzene, BTEX, and Methyl Tertiary Butyl Ether on various dates between October 31, 2006, and May 1, 2007, and for the illegal discharge that occurred on March 15, 2007.

m. On July 18, 2007, ESI was informed by a customer that approximately 28 milligrams per kilogram (mg/kg) of Polychlorinated Biphenyls (PCBs) had been discovered in a used oil shipment from the facility. The customer returned the shipment to the Site and it was placed in a segregated holding tank. Samples were collected from each of the product storage frac tanks and other process tanks located at the Site and analyzed for PCBs. It was discovered that detectable PCBs were present in four loads of oily water from one generator/transporter. The City did not find the presence of PCBs in any follow-up samples taken of ESI's discharges.

n. On October 15, 2007, IDEM issued a NOV to ESI for the illegal discharge that occurred on March 15, 2007. On August 25, 2008, IDEM finalized an Agreed Order which included a penalty of \$10,500.00 to resolve the NOV.

o. On January 29, 2008, the City signed and issued a modified Authorization to Discharge Industrial Wastewater To The Municipal Sewer System, permit #495306, to ESI. The modified permit included a requirement that ESI routinely sample for PCBs in its discharges.

p. On February 26, 2010, criminal charges were filed by the U.S. Attorney's office against two ESI managers for violations of the Clean Water Act. The charges were the result of an investigation by EPA's Criminal Investigation Division, IDEM, and the Indiana Department of Natural Resources' Law Enforcement Division. In February 2009, the two managers allegedly directed lower-level employees to pump the contents of a tank containing approximately 300,000 gallons of untreated wastewater, oil, and other waste materials through hoses directly into the sewer system. An oily sludge-like substance then

flowed out of various sewer manholes and into the yards of several Indianapolis residents, who then contacted IDEM. According to the charging documents, the two managers falsely insisted to IDEM inspectors that no bypass event had occurred. The U.S. Attorney's office also alleged that ESI misrepresented the available waste storage capacity of tanks to regulators, and that one manager, at the direction of a corporate officer, regularly submitted falsified monitoring reports to the City. As of the end of September 2010 the two managers charged had entered into Plea Agreements with the cases pending in district court.

q. On August 16, 2010, representatives from ESI met with IDEM to discuss future operations of the facility. During the meeting IDEM was informed by ESI that it would continue to accept used oil until the end of September 2010 and, unbeknownst to its employees, intended to file for Chapter 7 bankruptcy on October 1, 2010, and permanently shut down its facility. ESI presented a closure plan to IDEM, but due to the company's limited financial resources, the plan had a very limited scope which would ultimately result in a large volume of waste being left on-site after ESI vacated the facility.

r. On August 24, 2010, the Site was brought to the attention of the EPA Region 5 Emergency Response Branch by IDEM.

s. On September 1, 2010, representatives from EPA Region 5 Superfund Division and Land and Chemicals Division travelled to Indianapolis to meet with representatives of Marion County Health Department (MCHD), IDEM, City DPW, and ESI to discuss the facility's imminent closure, and determine whether a CERCLA removal action was warranted at the Site. In addition, PCB issues involving the Site tank farm were discussed. EPA conducted a limited Site Assessment only to determine whether the Site's abandonment would pose an imminent and substantial endangerment to the public health, welfare, or the environment. No investigative samples were collected. EPA Land and Chemicals Division and IDEM also jointly conducted a PCB inspection.

t. On September 23, 2010, EPA verbally issued a General Notice of Potential Liability (General Notice) by telephone to ESI as the current owner/operator of the Site through its representative, Michael Scanlon, Esq. The General Notice gave ESI the opportunity, as a potentially responsible party, to voluntarily perform or fund the removal action required at the Site as a result of its impending abandonment. ESI's response to the General Notice was that it intended to file for bankruptcy on October 1, 2010, and would not fund or perform the removal action at the Site.

u. On September 29, 2010, ESI prepared a list of its customers, including generators, for the period 2005 through 2010 which it provided to EPA. The list included a brief description of the wastes and amounts sent to the facility.

v. On September 30, 2010, criminal charges were filed by the U.S. Attorney's office against one ESI manager for violations of the Clean Water Act and one count of making false statements. The charges were the result of an investigation by EPA, IDEM, and Department of Natural Resources. From 2001 through 2007 the manager allegedly

authorized ESI employees to take multiple waste water discharge samples, but only report the most favorable sample results to the City. In doing so, ESI attempted to reduce the surcharge owed to the City for the discharge of higher levels of certain pollutants under its permit. From 2006 through 2007 the manager also allegedly authorized ESI employees to take non-representative samples of its discharge during rain events in an effort to get a more diluted sample. In addition, the manager allegedly signed six years of monthly reports to the City knowing they did not contain true results of ESI's effluent.

w. On September 30, 2010, EPA issued a unilateral Administrative Order (UAO) to ESI in care of its attorney. The UAO required ESI secure the Site; characterize acids, caustics, waste oil, tank semi-solids (sludges), and unknown wastes for treatment and/or off-site disposal; characterize the extent of PCB contamination in wastes and soils at the Site; characterize the extent of contamination at residential properties and the golf courses impacted by past sewer overflows; remove and dispose of properly characterized wastes and contaminated soils; and, leave the Site in such a manner that stormwater is properly managed and that any remaining contaminants no longer pose a threat to public health, welfare, or the environment. No response was received from ESI regarding its intent to comply with the UAO.

x. On September 30, 2010, EPA Region 5 Superfund Division approved an Action Memorandum - Request for funds to initiate a Time-Critical Removal Action at the Site, which approved expenditures up to \$1,548,000 to abate an imminent and substantial threat to public health, welfare, and the environment caused by the abandonment of the Site.

y. On September 30, 2010, EPA Region 5 Land and Chemicals Division issued a risk-based Toxic Substances Control Act PCB disposal and decontamination approval letter to ESI for Tank 51. The approval was based upon an application submitted on behalf of ESI's insurance company by ESI and WSP Environment and Energy, WSP Group, PLC. The application sought the approval of a remedial action and environmental restoration work plan for the decontamination of on-site oil storage Tank 51 and associated piping, and to dispose of the sludge at the bottom of the tank.

z. On October 1, 2010, IDEM issued a letter to Barnes & Thornburg, LLP, Indianapolis, Indiana, approving the "Tank 51 Restoration Workplan" submitted by WSP Environmental and Energy Inc. on behalf of ESI and Chartis Insurance.

aa. On October 8, 2010, EPA mobilized to the Site to provide temporary site security and perform emergency stabilization tasks that have included the management of untreated oil-impacted stormwater runoff and sanitary sewer system diversion. A number of chemicals were present at the facility including recycled oil, caustic soda, hydrogen peroxide and sulfuric acid in tanks and totes. In addition, 1.5 million gallons of sludge was present on-site stored in two separate 1,000,000-gallon bunker tanks.

bb. On October 22, 2010, EPA issued a Request for Information Pursuant to Section 104 of CERCLA (Information Request) to the top 30 generators by volume based upon information provided in ESI's September 29, 2010, customer list.

cc. On December 9, 2010, the City Department of Public Works approved a Special Discharge Agreement in order for EPA to temporarily discharge stormwater from the southwest portion of the ESI facility into the City sanitary sewer system due to unusual and extraordinary circumstances at the Site. The purpose of the discharge was to make space available in 84,000-gallon capacity on-site fracturing tanks which already contained stored stormwater. The available tank space was necessary for the storage and retention of stormwater volume in the event of future precipitation events.

dd. On December 20, 2010, EPA issued a General Notice to the top 28 generators by volume. On the same date, EPA also issued a combination General Notice and Information Request to the next top 20 generators by volume. The General Notices and combination General Notice and Information Requests were issued based upon information provided in ESI's September 29, 2010, customer list.

ee. EPA is currently operating under a second Special Discharge Agreement approved by the City Department of Public Works on January 3, 2011. The Agreement allows EPA to temporarily discharge stormwater from the southwest portion of the ESI facility into the City sanitary sewer system due to unusual and extraordinary circumstances at the Site. The purpose of the discharge is to maintain available capacity which may be needed by EPA for storage and retention of stormwater volume in the event of future precipitation events. The current agreement specifies that the discharge volume will not exceed 120,000 gallons.

ff. On October 1, 2010, ESI filed for Chapter 7 bankruptcy in the Southern District of Indiana, Cause no. 10-14958-JKC-7 ("bankruptcy proceeding"). The Site and assets were surrendered to the bankruptcy proceeding Trustee by ESI.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The ESI Environmental Inc Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

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

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.

i. Respondents listed in Attachment A are persons who 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); and/or are persons who accept or accepted hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

ii. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. §§ 9601(22) and 9601(8).

e. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended (NCP), 40 CFR § 300.415(b)(2). These factors include, but are not limited to, the following:

i. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants;

This factor is present at the Site due to the existence of the outcome of a limited Site Assessment conducted by EPA on September 1, 2010. The Site Assessment confirmed several incidents of releases from this facility occurring between 2007 through October 1, 2010, that caused oily sludge to affect approximately 27 residential properties and 3 golf courses. The ESI facility is considered the source of the releases since it is the only facility that discharged to the North Belmont Public Owned Treatment Works. Sampling data in the Administrative Record is a compilation of pre- and post- sampling since 2007 by ESI, ESI's contractor (Keramida), City DPW, MCHD, etc. For example, total lead in soil sample results ranged from 124 to 14.6 mg/kg; diesel range organics (DRO) results ranged from 67,000 to 130,000 mg/kg; and extended range organics (ERO) results ranged from 450,000 to 13 mg/kg. The cleanups performed from 2007 through October 1, 2010, applied IDEM's Risk Integrated System of Closure, which is 81 mg/kg total lead for residential, 230 mg/kg total lead for commercial, 410 mg/kg total lead for direct contact, 80 mg/kg for both DRO and ERO for residential, 330 mg/kg DRO and 1000 mg/kg ERO for industrial or commercial. The City DPW has spent \$100,000 to complete cleanups in 2007, 2008, 2009, and 2010. Residents affected by discharges from the Site were unaware of pre- or post- sampling results since it does not appear those residents received confirmatory letters from the regulatory agencies involved in sampling and cleanup. Documentation is also lacking regarding the conditions present after each overflow, excavation and backfilling incident.

ii. Actual or potential contamination of drinking water supplies or sensitive ecosystems;

This factor is present at the Site due to the existence of ESI's FRP, which also includes a Vulnerability Analysis (VA). According to the VA, if a release were to occur from a 1,000,000-gallon tank, the result would be a 27-mile plume. Such a release would take the path of least resistance and would first reach the dry ditch that handles stormwater run-off from the Marathon-Ashland property, then flow into Oil Creek, Crooked Creek, and Lake Sullivan, and eventually reach the White River. The VA identifies water intakes, schools, medical facilities, residential areas, businesses, wetlands, fish and wildlife, lakes and streams, recreational areas, transportation routes, utilities, and other areas of economic importance and are listed below:

- Water Intakes – The White River is the only navigable body of water with enough flow to warrant withdrawing water from it. According to IDEM's Water Section, there are not any drinking water intakes within 28 miles of the confluence of the Crooked Creek and White River. There are several industrial/utility intakes such as Beveridge Paper Mill, Simkins Industries, Indianapolis Power and Light, Perry K Generation Station, E.W. Stouret Generation Station, and the White River Basin.
- Schools – There are 31 schools.
- Hospitals and Medical Facilities – There are 5 medical facilities.
- Residential Areas – There are numerous developments in the area.
- Businesses – The two primary businesses are Asphalt Materials and Marathon-Ashland.
- Wetlands - Wetlands are present.
- Fish and Wildlife – The White River contains fishable areas that have edible fish.
- Recreation Areas – On Oil Creek, there are not any defined recreation areas. On Crooked Creek, there is Broodmoor Country Club and Lake Sullivan Golf Course. On the White River, there is an amusement park and soap box derby racetrack.

iii. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

This factor is present at the Site due to the existence of a history of various sewer overflow incidents originating from the ESI facility. Maps showing the extent of the sewer overflows are contained in the Administrative Record.

iv. The unavailability of other appropriate federal or state response mechanisms to respond to the release;

This factor supports the actions required by this Settlement Agreement at the Site due to the fact that the Site was referred to the EPA Emergency Response Branch by IDEM for further enforcement. MCHD, City DPW, ESI, and EPA met on September 1, 2010, to discuss closure of the facility and any actions needed. ESI, the Respondent named in the

September 29, 2010, UAO, and the agencies involved thus far, lack the resources required to fund or perform the removal action required at the Site after its abandonment, or respond to future releases from the facility.

- v. Other situations or factors that may pose threats to public health or welfare or the environment;

This factor is present at the Site due to the existence of National Oceanographic and Atmospheric Agency data which states that annual rainfall for the area is between 40 and 41 inches. Since this facility is predominately concrete, there is little opportunity for precipitation to absorb into the ground, resulting in the generation of large amounts of clean stormwater. It is estimated that the Site receives approximately 228,000 gallons of stormwater run-off per inch of precipitation. Based upon EPA pretreatment estimates, an average of 5.5 inches of rainfall was expected for the months of September and October 2010. This amount of precipitation would generate 1,254,000 gallons of clean stormwater at this facility, which already has a history of overflows.

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

VI. SETTLEMENT AGREEMENT AND ORDER

11. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

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

12. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within thirty (30) business days of the Effective Date. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least ten (10) business 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 Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within three (3) business days of EPA's disapproval. The contractor must demonstrate compliance with American National Standards Institute/American Society for Quality Control (ANSI/ASQC) E-4-2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management

Plan (QMP). The QMP should be prepared consistent with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002), or equivalent documentation as required by EPA. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from the On-Scene Coordinator (OSC) and Regional quality assurance personnel to the Site file.

13. Within five (5) business days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. In addition, the Project Coordinator, or his/her representative, will attend community meetings either in person or by telephone. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator then EPA shall provide written notice specifying the reason(s) for the disapproval, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within four (4) business days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

14. EPA has designated Verneta Simon of the Emergency Response Branch #2, Region 5, as its OSC. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the OSC at 77 West Jackson Boulevard, SE-5J, Chicago, Illinois 60604. All Respondents are encouraged to make their submissions to EPA on recycled paper (which includes significant post consumer waste paper content where possible) and using two-sided copies.

15. EPA and Respondents shall have the right, subject to Paragraphs 12 and 13, to change their respective designated OSC or Project Coordinator. EPA shall notify the Respondents, and Respondents shall notify EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

16. Performing Party Respondents shall perform, at a minimum, the following activities during the removal action:

- a. Develop and implement a site-specific Health and Safety Plan, Site Security Plan, and Emergency Contingency Plan;
- b. Secure the Site, as needed, to prevent unauthorized access to hazardous substances and oil in tanks and other containers;

- c. Upon the Effective Date of this Settlement Agreement and during the removal action, manage stormwater resulting from precipitation (i.e. rain and melting snow) that occurs during the removal action to prevent the release of contaminated stormwater from the Site.
- d. Characterize the contents of tanks, bunkered tanks, frac tanks, containers, pipes, process lines, pits, solidification pits, dissolved air floatations, American Petroleum Institute oil-water separators, roll-off boxes, trenches, and on-site storm water systems for treatment and/or off-site disposal;
- e. Clean all residues from the on-site storm water system for proper treatment and/or off-site disposal.
- f. Consolidate and package all properly characterized or identified hazardous substances, pollutants, wastes, and contaminants for transport and off-site disposal at a Resource Conservation and Recovery Act/CERCLA-approved disposal facility, in accordance with EPA's Off-Site Rule, 40 C.F.R. § 300.440.
- g. Perform post-removal confirmatory sampling for the action items listed above;
- h. Direct stormwater to a receiving water by capping storm sewers and removing berms as needed to ensure that any remaining contaminants no longer pose a threat to public health, welfare or the environment.

17. Work Plan and Implementation.

a. Within thirty (30) business days after the Effective Date, Respondents shall submit to EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 16 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement. The Work Plan shall include a Quality Assurance Project Plan (QAPP). The following documents shall be used for the development of QAPPs for Region 5 Superfund sites:

- The Uniform Federal Policy for Quality Assurance Projects Plans (UFP-QAPP), OSWER Directive 9272.0-17; the QAPP format can be found at:
<http://www.epa.gov/fedfac/documents/qualityassurance.htm>
- EPA Requirements for Quality Assurance Project Plans EPA QA/R-5, March 2001, Reissued May 2006.

The following guidance may be used in conjunction with the requirements above:

- Guidance for the Quality Assurance Project Plans EPA QA/G-5, December 2002.
- Guidance on Choosing a Sampling Design for Environmental Data Collection EPA QA/G-5S, December 2002.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within seven (7) business days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 16(b).

18. Health and Safety Plan. Within thirty (30) business days after the Effective Date, 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 Agreement. This plan shall be prepared consistent with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). 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. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

19. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), 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 laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

b. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than three (3) business days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

20. Reporting.

a. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, 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.

b. Respondents shall submit three copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by EPA, Respondents shall submit such documents in electronic form.

c. Respondents who own or control property at the Site shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the State of Indiana of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also agree to require that their successors comply with the immediately proceeding sentence and Sections IX (Site Access) and X (Access to Information).

21. Final Report. Within sixty (60) calendar days after completion of all Work including final receipt of all validated analytical data required by Section VIII (Work To Be Performed) of this Settlement Agreement, Respondents shall submit for EPA review a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and with the guidance set forth in "Superfund Removal Procedures: Removal Response Reporting B POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, 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 person who supervised or directed the preparation of that report:

“Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is 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.”

22. Off-Site Shipments.

a. Respondents shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action. Respondents shall provide the information required by Paragraph 22(a) and 22(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

23. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

24. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to

obtain all necessary access agreements within ten (10) business days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

25. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

26. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

27. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement 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). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

28. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

29. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

30. Until six (6) years after Respondents' receipt of EPA's notification pursuant to Section XXVI (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 6 years after Respondents' receipt of EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

31. At the conclusion of this document retention period, Respondents shall notify EPA at least sixty (60) days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

32. Each Respondent hereby 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, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied and will fully comply with any and all EPA requests for information 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.

XII. COMPLIANCE WITH OTHER LAWS

33. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(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 Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the

situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Respondents shall identify ARARs in the Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

34. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Response Branch #2, Region 5 at (312) 353-2318, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action consistent with the NCP pursuant to Section XV (Payment of Response Costs).

35. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the OSC at (312) 353-2318 and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

36. The OSC shall be responsible for overseeing Respondents' implementation of this Settlement Agreement. 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 Agreement, 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.

XV. PAYMENT OF RESPONSE COSTS

37. Payment for Past Response Costs.

a. Within ninety (90) days after the Effective Date, Respondents shall pay to EPA \$627,662.69 for Past Response Costs. Payment shall be made to EPA by Electronic Funds Transfer (EFT) in accordance with current EFT procedures that EPA Region 5 will provide Respondents, and shall be accompanied by a statement identifying the name and address of the Party(ies) making payment, the Site name, EPA Region 5, the Site/Spill ID Number B5YS and, if any, the EPA docket

number for this action. Respondents shall: 1) complete Respondents' required bank form; 2) include Federal Reserve Bank of New York, ABA #021030004 on the bank form; 3) include the EPA Account #68010727 on the form; 4) include the SWIFT address FRNYUS33, 33 Liberty Street, New York, NY, 10045; 5) include "D68010727 Environmental Protection Agency" in Field Tag 4200 of the Fedwire message; and, 6) include a statement identifying the name and address of the Party(ies) making payment, the Site name, and the EPA Region and Site/Spill ID Number B5YS. Such payment shall be held in escrow pending completion of the Removal Action and resolution, if any, of a dispute as to Past Response Costs. To the extent EPA recovers some or all of its Past Response Costs from any proceeds through the bankruptcy proceeding of ESI then the amount owed by Respondents shall be reduced accordingly.

b. At the time of payment, Respondents shall send notice that such payment has been made to the Director, Superfund Division, EPA Region 5, 77 West Jackson Boulevard., Chicago, Illinois 60604-3590 and to Nola Hicks, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois 60604-3590.

c. The total amount to be paid by Respondents pursuant to Paragraph 37(a) shall be deposited in the ESI Environmental Inc Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

38. Payments for Future Response Costs.

a. Respondents shall pay EPA all Future Response Costs consistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that consists of an Itemized Cost Summary. Respondents shall make all payments within thirty (30) calendar days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 40 of this Settlement Agreement according to the following procedures:

i. If the payment amount demanded in the bill is for \$10,000 or greater, payment shall be made to EPA by EFT in accordance with current Electronic Funds Transfer (EFT) procedures to be provided to Respondents by EPA Region 5. Payment shall be accompanied by a statement identifying the name and address of the Party(ies) making payment, the Site name, EPA Region 5, the Site/Spill ID Number B5YS, and, if any, the EPA docket number for this action. Respondents shall: 1) complete Respondents' required bank form; 2) include Federal Reserve Bank of New York, ABA #021030004 on the bank form; 3) include the EPA Account #68010727 on the form; 4) include "D68010727 Environmental Protection Agency" in Field Tag 4200 of the Fedwire message; and 5) include the statement identifying the name and address of the Party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number B5YS.

b. At the time of payment, Respondents shall send notice that payment has been made to the Director, Superfund Division, EPA Region 5, 77 West Jackson Boulevard., Chicago, Illinois 60604-3590 and to Nola Hicks, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois 60604-3590.

c. The total amount to be paid by Respondents pursuant to Paragraph 37(a) shall be deposited in the ESI Environmental Inc Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

39. In the event that the payment for Past Response Costs is not made within ninety (90) days of the Respondents' receipt of the cost statement, or the payments for Future Response Costs are not made within thirty (30) days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the ninety-first (91st) day of the Respondents' receipt of the cost statement and shall continue to accrue until the date of payment. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII (Stipulated Penalties).

40. Respondents may dispute all or part of a bill for Future Response Costs submitted under this Settlement Agreement, only if Respondents allege that EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 38 on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 38(b) above. Respondents shall ensure that the prevailing Party or Parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within twenty (20) calendar days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

41. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

42. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Past or Future Response Costs, they shall notify EPA in writing of their objection(s) within ten (10) calendar days of such action, unless the objection(s) has/have been resolved informally. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting

Respondents' position, and all supporting documentation on which such Party relies. EPA shall provide its Statement of Position, including supporting documentation, no later than ten (10) calendar days after receipt of the written notice of dispute. In the event that these ten (10)-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of EPA. An administrative record of any dispute under this Section shall be maintained by EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding Paragraph. Upon review of the administrative record, the Director of the Superfund Division, EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement.

43. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

44. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

45. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within 24 hours of when Respondents first knew that the event might cause a delay. Within seven (7) calendar days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall be grounds for EPA to deny Respondents an extension of time for performance. Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a *force majeure* that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

46. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the

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

XVIII. STIPULATED PENALTIES

47. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 48 and 49 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of this Settlement Agreement within the specified time schedules established by and approved under this Settlement Agreement.

48. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 48(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,500	5th through 30th day
\$5,000	31st day and beyond

b. Compliance Milestones

Identified in Paragraphs 12, 13, 17, 18, 19, 20, 21, 24, 35, 37, 38, 42, and 46.

49. **Stipulated Penalty Amounts - Reports.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 20, 21 and 30-32:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$2,000	31st day and beyond

50. 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. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the

period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, Region 5, under Paragraph 42 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after EPA submits its written statement of position until the date that the Director of the Superfund Division issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

52. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Region 5, P.O. Box 371531, Pittsburgh, Pennsylvania 15251-7531, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Site/Spill ID Number B5YS, the EPA Docket Number, and the name and address of the Party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 38(b).

53. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

54. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until twenty (20) days after the dispute is resolved by agreement or by receipt of EPA's decision.

55. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 52. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement 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 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 herein, except in the case of a willful violation of this Settlement Agreement. Should Respondents violate this Settlement Agreement or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA,

42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

56. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XV (Payment of Response Costs) of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV (Payment of Response Costs) and XVIII (Stipulated Penalties) of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV (Payment of Response Costs). This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

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

58. The covenant not to sue set forth in Section XXI (Covenant Not to Sue by EPA) above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition 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 damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

59. 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, or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Indiana Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 58 (b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

60. Nothing in this Agreement 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).

XXII. OTHER CLAIMS

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

62. Except as expressly provided in Section XXI (Covenant Not to Sue by Respondents), and Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a Party to this Settlement Agreement, 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.

63. No action or decision by EPA pursuant to this Settlement Agreement 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).

XXIII. CONTRIBUTION PROTECTION

64. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are 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, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42. U.S.C. § 9613(f)(3)(B), pursuant to which the Respondents have, as of the Effective Date, resolved their liability to the United States for the Work, Past Response Costs, and Future Response Costs.

c. Except as provided in Section XXI (Covenant Not To Sue By Respondents), of this Settlement Agreement, nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Section 113(f)(2) and (3), 42 U.S.C. § 9613(f)(2) and (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) of CERCLA, 42 U.S.C. § 9613(f)(2).

XXIV. INDEMNIFICATION

65. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United

States shall not be held out as a Party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States. The Federal Tort Claims Act (28 U.S.C. §§ 2671, 2680) provides coverage for injury or loss of property, or injury or death caused by the negligent or wrongful act or omission of an employee of EPA while acting within the scope of his or her employment, under circumstances where EPA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

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

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

XXV. MODIFICATIONS

68. 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. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

69. 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 68.

70. 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.

XXVI. NOTICE OF COMPLETION OF WORK

71. 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, *e.g.*, post-removal site

controls, 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.

XXVII. SEVERABILITY/INTEGRATION/ATTACHMENTS

72. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondents shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

73. This Settlement Agreement and its attachments 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.

XXVIII. EFFECTIVE DATE

74. Upon mutual consent of EPA and the Respondents this Settlement Agreement may be amended to add additional Respondents as signatories. This Settlement Agreement shall be effective upon signature of the Director, Superfund Division, EPA Region 5.

IN THE MATTER OF:

ESI ENVIRONMENTAL INC SITE
INDIANAPOLIS, INDIANA

The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this 29th day of MARCH, 2011.

For: Safety-Kleen Systems, Inc.

Name of Company

5360 Legacy Drive, Bldg. 2, St. 100

Address of Company

Plano, Texas 75024

City, State, Zip Code

By: 

Name of Approving Official - VIRGIL DUFFIE

Title: ASSISTANT SECRETARY

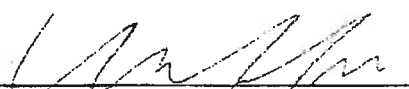
IN THE MATTER OF:

ESI ENVIRONMENTAL INC SITE
INDIANAPOLIS, INDIANA

The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this 29th day of MARCH, 2011.

For: Safety-Kleen Systems, Inc.
Name of Company
5360 Legacy Drive, Bldg. 2, St. 100
Address of Company
Plano, Texas 75024
City, State, Zip Code

By: 
Name of Approving Official - VIRGIL DUFFIE

Title: ASSISTANT SECRETARY

IN THE MATTER OF:

ESI ENVIRONMENTAL INC SITE
INDIANAPOLIS, INDIANA

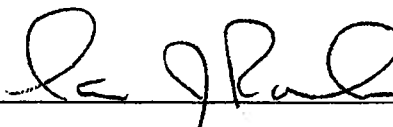
The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this _____ day of _____, 2011.

For: Nucor Corporation
Name of Company

1915 Rexford Road
Address of Company

Charlotte, NC 28211
City, State, Zip Code

By: Steven J. Rowlan 
Name of Approving Official

Title: Director of Environmental Affairs

IN THE MATTER OF:

ESI ENVIRONMENTAL INC SITE
INDIANAPOLIS, INDIANA

The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this 29 day of MARCH, 2011.

For: Heritage-Crystal-Clean, LLC
Name of Company

2175 Point Blvd, Suite 375-EHS
Address of Company

Elgin, Illinois 60123
City, State, Zip Code

By: Catherine A. McCord
Name of Approving Official



Title: Vice-President Environment, Health, and Safety

IN THE MATTER OF:

ESI ENVIRONMENTAL INC SITE
INDIANAPOLIS, INDIANA

The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this 29th day of MARCH, 2011.

For: Heritage Environmental Services, LLC
Name of Company
7901 West Morris Street
Address of Company
Indianapolis, IN 46231
City, State, Zip Code

By: Debi Edwards / Debi Edwards
Name of Approving Official
Title: Vice President

IN THE MATTER OF:

ESI ENVIRONMENTAL INC SITE
INDIANAPOLIS, INDIANA

The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this 29th day of March, 2011.

For: Midwest Environmental Services, Inc.

Name of Company

P.O. Box 218

Address of Company

Brownstown, IN 47220

City, State, Zip Code

By: 

Name of Approving Official

Title: Vice President Operations

IN THE MATTER OF:

EMI ENVIRONMENTAL INC SITE
INDIANAPOLIS, INDIANA

The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this 31ST day of March, 2011.

For: Illinois Environmental
Name of Company
8295 Access Road
Address of Company
Carmel, IL 62832
City, State, Zip Code

By: [Signature]
Name of Approving Official

Title: Attorney at Law, Illinois Environmental

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IN THE MATTER OF:

ESI ENVIRONMENTAL INC SITE
INDIANAPOLIS, INDIANA

The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this 4 day of April 2011.

For: Warrior Oil Service Inc.
Name of Company
809 Overstreet
Address of Company
Franklin IN 46131
City, State, Zip Code

By: Joe Anderson
Name of Approving Official

Title: Owner

IN THE MATTER OF:

ESI ENVIRONMENTAL INC SITE
INDIANAPOLIS, INDIANA

The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this 4th day of April, 2011.

For: Armor Environmental Services

Name of Company

101 South Park Drive

Address of Company

Mount Pleasant, TN 38474

City, State, Zip Code

By: 

Name of Approving Official: Tony Livengood

Title: President

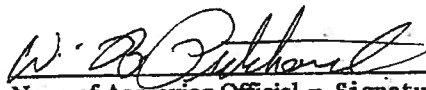
IN THE MATTER OF:

ESI ENVIRONMENTAL INC SITE
INDIANAPOLIS, INDIANA

The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this 31st day of March, 2011.

For: Enterprise Waste Oil Co., Inc.
Name of Company
5201 North Middlebrook Pike
Address of Company
Knoxville, TN 37921
City, State, Zip Code

By:  Wayman Pritchard
Name of Approving Official - Signature Typed
Title: President

IN THE MATTER OF:

ESI ENVIRONMENTAL INC SITE
INDIANAPOLIS, INDIANA

The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this 30TH day of MARCH, 2011.

For: FUTURE ENVIRONMENTAL INC.
Name of Company
19701 S 97TH AVE. MOKENA IL
Address of Company
MOKENA IL 60448
City, State, Zip Code

By: STEVEN LEMPERA
Name of Approving Official
Title: PRESIDENT


IN THE MATTER OF:

ESI ENVIRONMENTAL INC SITE
INDIANAPOLIS, INDIANA

The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this 29 day of March, 2011.

For: Liquid Waste Removal
Name of Company
500 S. P/K St. Suite 100
Address of Company
Greenwood, IN 46143
City, State, Zip Code

By:  MATTHEW L. MOORE
Name of Approving Official
Title: Vice President

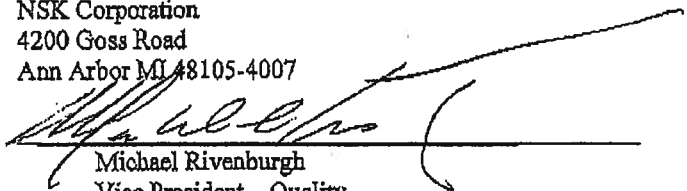
IN THE MATTER OF:

ESI ENVIRONMENTAL INC SITE
INDIANAPOLIS, INDIANA

The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Party they represent to this document.

Agreed this 31st day of March 2011.

For: NSK Corporation
4200 Goss Road
Ann Arbor MI 48105-4007

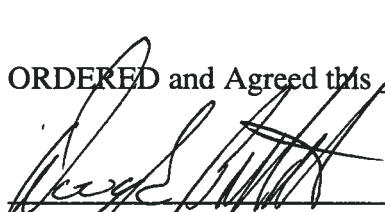
By: 
Michael Rivenburgh
Title: Vice President - Quality

IN THE MATTER OF:

ESI ENVIRONMENTAL INC SITE
INDIANAPOLIS, INDIANA

It is so ORDERED and Agreed this 7th day of April, 2011.

BY:



Douglas Ballotti, Acting Director
Superfund Division
United States Environmental Protection Agency
Region 5

Attachment A: Respondents

ESI Environmental Inc Site, Indianapolis, Indiana

Performing Parties	
1	Safety-Kleen Systems, Inc.
2	Nucor Corporation
3	Heritage-Crystal-Clean, LLC
4	Heritage Environmental Services, LLC
5	Midwest Environmental Services, Inc./The Midwest Resource Recovery Center/Klor Kleen
6	Illini Environmental
7	Warrior Oil Service Inc.
8	Aarmor Environmental Services
9	Enterprise Waste Oil Co., Inc.
10	Future Environmental Inc.
11	Liquid Waste Removal
12	NSK Corporation
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Attachment A: Respondents

ESI Environmental Inc Site, Indianapolis, Indiana

Non-Performing Parties (This Order will be amended to add the non-performing Parties.)	
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