REDACTED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF: Town of Pines Groundwater Plume Site - Soil Removal Action Town of Pines, Porter County, Indiana Northern Indiana Public Service Company, Respondent Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622	Docket No. V-W-16-C-008 **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION**

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Northern Indiana Public Service Company (NIPSCO or Respondent). This Settlement provides for the performance of a removal action by Respondent and the payment of certain response costs incurred by the United States at or in connection with the "Town of Pines Groundwater Plume Site" (the Site) generally located at numerous residential, municipal, and other properties within or near the Town of Pines, Porter County, Indiana.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-A (Determinations of Imminent and Substantial Endangerment, Nov. 1, 2001), 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). These authorities were further redelegated by the Regional Administrator of EPA Region 5 to the Director, Superfund Division, Region 5, by Region 5 delegations 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 Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections 0 (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

5. This Settlement is binding upon EPA and upon Respondent and Respondent's successors and assigns.

6. Any change in ownership or corporate status of 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.

7. Respondent shall be responsible for ensuring that Respondent's contractors and subcontractors perform the Work in accordance with the terms of this Settlement and shall be responsible for any noncompliance with this Settlement.

III. DEFINITIONS

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

"Affected Property" shall mean each parcel of real property in the Town of Pines or in the Area of Investigation, as depicted in Figure 1: (i) at which soil has been screened under AOC II for the presence of arsenic, thallium and/or lead pursuant to the Supplemental Soil Characterization Work Plan (SSCWP) and/or the Expanded Properties Sampling and Analysis Plan Addendum (EPSAP): and (ii) that are found to contain arsenic, thallium or lead from CCBs at levels above the soil clean-up criteria set forth in Paragraph 26.f. A list of Affected Properties that have been identified in this manner under AOC II as of the Effective Date is included in Appendix A. The Parties expect that such soil screening will be performed under AOC II at additional properties in or near the Town of Pines that do not appear in Appendix A as of the Effective Date of this Settlement. Any such property that is in the Town of Pines or in the Area of Investigation, as depicted in Figure 1, will be an Affected Property for purposes of this Settlement if it meets the criteria in (i) and (ii) in this paragraph above. Respondent shall periodically update the list in Appendix A to include Affected Properties identified after the Effective Date. Streets are not included within the definition of Affected Property; rights-of-way adjoining or adjacent to Affected Properties will be included within the definition of Affected Property if soils in the right-of-way contain arsenic, thallium, or lead at levels above the soil clean-up criteria set forth in Paragraph 26.f, but only to the extent that excavation of such soils will not compromise the physical integrity or function of the adjacent street or utilities. The Affected Properties are part of the Town of Pines Groundwater Plume Superfund Site. References herein to "the Affected Properties" shall include any one or more of the Affected Properties unless the context clearly specifies otherwise.

"AOC I" shall mean the Administrative Order on Consent entered into between EPA and a group of respondents, including Respondent NIPSCO, on February 6, 2003, Docket No. V-W-03-C-730, and as amended from time to time, concerning the groundwater removal action undertaken by the signing respondents in certain areas in and near the Town of Pines, Indiana.

"AOC II" shall mean the Administrative Order on Consent entered into between EPA and a group of respondents, including Respondent NIPSCO, on April 5, 2004, Docket No. V-W-04-C-784, and as amended from time to time, concerning the performance by signing respondents of a Remedial Investigation and Feasibility Study for the Town of Pines Groundwater Plume Site.

"Business day" shall mean each calendar day, excluding Saturdays, Sundays, and federal or state holidays.

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

"Coal Combustion Byproducts" or "CCBs" shall mean the solid particles of non-combusted and noncombustible material resulting from the combustion of coal including bottom ash and fly ash and any other coal combustion residuals.

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

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

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

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

"IDEM" shall mean the Indiana Department of Environmental Management and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 81 (Work Take-over), community involvement, Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Affected Properties, all Interim Response Costs, and all Interest on those Past Response Costs Respondent has agreed to pay under this Settlement that have accrued pursuant to 42 U.S.C. § 9607(a) during the period from September 30, 2015, to the Effective Date. For purposes of this paragraph, the term "Affected Properties" shall also include properties in the Town of Pines or the Area of Investigation as depicted on Figure 1 for which the soil will be screened under AOC II pursuant to the SSCWP or the EPSAP and that are not found to contain arsenic, thallium or lead at levels above the soil clean-up criteria set forth in Paragraph 26.f.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change

on October 1 of each year. Rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.1

"Interim Response Costs" shall mean (a) all costs, including but not limited to direct and indirect costs paid by the United States in connection with the Affected Properties in preparation for or in connection with work to be performed under this Settlement between September 30, 2015, and the Effective Date, or (b) such costs incurred prior to the Effective Date, but paid after that date. For purposes of this paragraph, the term "Affected Properties" shall also include properties in the Town of Pines or the Area of Investigation as depicted on Figure 1 for which the soil has been screened under AOC II pursuant to the SSCWP or the EPSAP and that are not found to contain arsenic, thallium or lead at levels above the soil clean-up criteria set forth in Paragraph 26.f.

"Michigan City Power Generation Station" shall mean the coal and gas fired power generation station located at 101 Wabash Street, Michigan City, Indiana. The Michigan City Power Generation Station was and is owned by the Northern Indiana Public Service Company.

"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.

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

"Parties" shall mean EPA and the Respondent.

"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 Affected Properties in preparation for or in connection with the work to be performed under this Settlement, through September 30, 2015, plus Interest on all such costs through such date. "Past Response Costs" shall not include any cost incurred by the United States under AOC I or AOC II that were not incurred in connection with Affected Properties. For purposes of this paragraph, the term "Affected Properties" shall also include properties in the Town of Pines or the Area of Investigation as depicted on Figure 1 for which the soil has been screened under AOC II pursuant to the SSCWP or the EPSAP and that are not found to contain arsenic, thallium or lead at levels above the soil clean-up criteria set forth in Paragraph 26.f.

"Post-Removal Site Controls" shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Settlement consistent with Sections 300.415(l) and 300.5 of the NCP and "Policy on Management of Post-Removal Site Control" (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

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1 Web addresses are subject to change and corrected web addresses will be supplied as necessary or requested.

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

"Removal Management Levels" or "RMLs" means the risk-based level used by EPA to support a decision to undertake a removal action under CERCLA.

"Respondent" shall mean Northern Indiana Public Service Company (NIPSCO).

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

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

"Site" shall mean the Town of Pines Groundwater Plume Superfund Site.

"State" shall mean the State of Indiana.

"Town of Pines Groundwater Plume Superfund Site" and/or "Site" includes the area located in and near the Town of Pines in Porter County, Indiana, and includes all locations where hazardous substances, pollutants or contaminants from the Town of Pines Groundwater Plume Superfund Site related to coal combustion byproducts have or may have come to be located.

"Town of Pines Groundwater Plume Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Town of Pines Groundwater Plume Superfund Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3.

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

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

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any "hazardous substance" under Indiana Statute IC 13-11-2-98 or "hazardous waste" under Indiana Statute IC 13-11-2-99.

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

IV. FINDINGS OF FACT

9. A state-permitted landfill known as Yard 520 located within the Town of Pines, Indiana, received CCBs from Respondent's Michigan City Power Generating Station.

10. Laboratory analysis of groundwater samples from drinking water wells collected by IDEM and EPA during the period September 2001 through May 2002 showed that drinking water wells at over 30 homes and businesses in the Town of Pines had elevated levels of boron and/or molybdenum that exceeded Removal Action Levels (RALs), risk based levels used by EPA to support decisions to undertake a response action under CERCLA prior to EPA's use of RMLs.

11. CCBs are known to contain detectable levels of boron, arsenic, molybdenum, and other metals. Boron, molybdenum and arsenic are "hazardous substances" within the meaning of CERCLA.

12. On February 6, 2003, EPA entered into AOC I in connection with the Town of Pines Groundwater Plume Superfund Site with a group of respondents that included Respondent NIPSCO pursuant to which the respondents agreed to design and construct municipal water service to certain of the businesses and residences located in or near the Town of Pines.

13. The work required by AOC I was undertaken and substantially completed by respondents by December 1, 2003, so that certain neighborhoods in or near the Town of Pines were and are receiving municipal water service. The area receiving municipal water service has subsequently been expanded, as described in an amendment to AOC I.

14. On April 5, 2004, EPA entered into AOC II in connection with the Town of Pines Groundwater Plume Superfund Site with the same group of respondents as AOC I to determine the nature and extent of contamination by conducting a remedial investigation and feasibility study (RI/FS) and accomplish other purposes specified therein. The RI/FS is currently on-going.

15. As part of the RI/FS, soil sampling was conducted on suspected CCBs encountered in the streets and rights-of-way in the Town of Pines. Sampling performed as of the Effective Date in the roads and rights-of-way has not identified contamination by metals, including but not limited to arsenic and thallium, at levels above RMLs.

16. In November 2014, as part of the RI/FS being performed under AOC II, Respondent conducted supplemental soil sampling under the Supplemental Soil Characterization Work Plan due to concerns regarding the historical use of fly ash, bottom ash or other CCBs as fill material in locations in and near the Town of Pines. The survey and soil sampling were conducted at nine properties, including residential properties and properties owned by the Town of Pines, Indiana, that were identified as likely to have used CCBs from the Michigan City Power Generation Station as fill material.

17. Laboratory analysis of samples taken during the supplemental soil sampling showed elevated levels of arsenic and thallium, including seven properties for which the sampling result exceeded background levels, and five properties with arsenic levels exceeding

the RMLs. The highest value found for arsenic at the surface (0-6") strata was 501 mg/kg. The highest value found for arsenic at a depth of 18-60" was 888 mg/kg. Thallium levels were above the removal management level of 2.3 mg/kg on six of the sampled properties with the highest value found in the near surface strata (6-18") at 12.1 mg/kg.

18. Utilizing town records from the 1970s, information from residents, and visual inspections conducted during the municipal water line installation, among other means, numerous additional properties have been identified where fly ash, bottom ash, or other CCBs were used or might have been used as fill or for similar use.

19. Beginning in November 2014, as part of the RI/FS being performed under AOC II Respondents have been conducting additional soil sampling under the Expanded Properties Sampling and Analysis Plan Addendum due to concerns regarding the historical use of fly ash, bottom ash or other CCBs as fill material in locations in and near the Town of Pines.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

d. Respondent NIPSCO 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, specifically including the Affected Properties. Respondent NIPSCO arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Affected Properties, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

e. The conditions present at the Site constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The conditions present at the Site constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

g. The 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 C.F.R. § 300.415(b)(2).

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

VI. SETTLEMENT AGREEMENT AND ORDER

21. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the administrative record, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement, including, but not limited to, all attachments to this Settlement and all documents incorporated by reference into this Settlement.

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

22. Respondent 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 five (5) business days after the Effective Date. Respondent 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 five (5) 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 Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within five (5) business days after EPA's disapproval. The proposed contractor must demonstrate compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs-Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002, March 2001, reissued May 2006), or equivalent documentation as required by EPA.

23. Respondent has designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondent required by this Settlement: Dan Sullivan, Northern Indiana Public Service Company, 801 E. 86th Avenue, Merrillville, Indiana 46410, (219) 647-5264, dsullivan@nisource.com. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent 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. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent.

24. EPA has designated Jacob Hassan of the Superfund Division, Emergency Response Branch II, Region 5, as its On-Scene Coordinator (OSC). EPA and Respondent shall have the right, subject to Paragraph 23, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA as early as possible before such change is made, but in no event less than 24 hours before such a change. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

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

VIII. WORK TO BE PERFORMED

26. Respondent shall conduct activities and submit deliverables as specified below for the purposes of excavating soils at all Affected Properties contaminated with hazardous substances, pollutants or contaminants from CCBs in excess of soil cleanup standards set forth in Paragraph 26.f; and safely disposing of the excavated soils. The actions to be implemented by Respondent generally include, but are not limited to, the following:

a. Develop and implement a Removal Work Plan (defined in Paragraph 28 of this Settlement) (including but not limited to a Health and Safety Plan, Site Security Plan, Air Monitoring Plan, and Traffic Management Plan), decontamination procedures, and necessary staging/support areas.

b. Conduct title search and land surveying activities to the extent necessary to identify real property owners and to locate boundaries of Affected Properties, easements, special features (pipes, storage tanks, etc.), utilities, sample locations, and other pertinent features.

c. Conduct sampling and/or re-sampling and analysis for arsenic, thallium, and lead at each Affected Property, in accordance with the approved Removal Work Plan.

d. At each Affected Property, excavate and stage soils contaminated with arsenic, thallium, and lead at levels above the soil clean-up criteria set forth in Paragraph 26.f in accordance with the Removal Work Plan approved under this Settlement. Transport excavated soils for off-site disposal at a RCRA/CERCLA approved disposal facility in accordance with the EPA Off-Site Rule.

e. For Affected Properties at which excavation is conducted, conduct confirmatory sampling for excavation of soils as directed by the OSC.

f. The basic soil clean-up criteria for arsenic, thallium, and lead are the Removal Management Levels, 67 mg/kg arsenic, 2.3 mg/kg thallium, and 400 mg/kg lead. However, excavation of contaminated soils at or above such levels will leave residual contamination in place, and long-term remedial action will likely be necessary to fully address

the threat posed by the release of such metals. In accordance with 40 C.F.R. § 300.415(d), (e)(6), and (g), the removal action under this Settlement shall ensure an orderly transition from removal activities to remedial activities and shall contribute to the efficient performance of a future long-term remedial action by setting soil clean-up criteria to the extent practicable – within the meaning of 40 C.F.R. § 300.415(d) and (g) - for arsenic, thallium, and lead at the likely remedial soil cleanup levels, if such values are more stringent than the basic removal soil clean-up criteria set forth in this Paragraph 26.f.

g. After excavation of properties where contaminated soils are left in place, place a permanent, permeable visual barrier such as landscape fabric or orange construction fencing in the excavation area before backfilling with clean fill and topsoil to demarcate where clean fill and soils end.

h. Document the condition of each real property prior to commencing cleanup activities. Restore property damaged by the Work to a condition at, or near, the condition of the property prior to commencement of the Work or, if the property owner agrees, provide payment to the property owners sufficient to cover the costs of restoring property damaged by the Work to a condition at, or near, the condition it was in prior to commencement of the Work. Restoration activities shall include but not be limited to backfilling excavated areas with clean fill material and topsoil; laying sod or planting other appropriate ground cover, shrubs, trees, or other vegetation; repairing or replacing concrete or other paved areas; and repairing damage to structures.

i. If at a future date a property owner wishes to obtain or obtains a permit from the appropriate permitting authority to repair, modify, or replace an existing septic system or to install a new septic system at the property, and such project will require replacing CCB-contaminated soil or the clean fill material placed by Respondent as part of this removal action, then Respondent shall excavate the CCB -contaminated soils and/or clean fill material at the property and replace them with a replacement fill, as required by the permitting authority and requested by the property owner's licensed contractor.

NIPSCO shall dispose of all such excavated CCB-contaminated soils and clean fill as described in the Removal Work Plan approved under this Settlement and as required by applicable law.

Respondent's obligations under this paragraph shall be limited to:

(i) Assisting the property owner in obtaining replacement fill for the project, including confirming with the property owner's licensed contractor or the property owner the specifications for the replacement fill, identifying borrow areas for the replacement fill, making arrangements to obtain material from the borrow areas, and arranging for delivery of the material to the property to use as replacement fill;

(ii) Coordinating with the property owner's licensed contractor or the property owner regarding the scheduling for excavation and backfilling work;

(iii) Properly excavating and disposing of the CCB-contaminated soils and/or clean fill material and replacing them with the replacement fill; and

(iv) Reimbursing the property owner for the incremental costs incurred in obtaining and/or implementing a septic system permit, which costs are due to the contaminated nature of the CCB-contaminated soils, or the physical or chemical characteristics of clean fill material placed by Respondent as part of the removal action.

Respondent's obligations under this paragraph shall continue until the replacement of an existing septic system or installation of a new septic system at the property would not necessitate excavating any additional CCB-contaminated soils or clean fill materials and replacing them with a replacement fill, as required by the permitting authority.

Respondent's commitment shall be documented in the Post-Removal Site Control commitments referenced in Paragraph 33.

j. Ensure that restoration of vegetation is successful.

k. Take such other actions as may be necessary or appropriate to complete excavation of soils at Affected Properties contaminated with arsenic, thallium and/or lead in excess of soil cleanup standards set forth in Paragraph 26.f; and to safely stage and dispose of the excavated soils.

l. Take any necessary response action to address any site-related release or threatened release of a hazardous substance, pollutant, or contaminant attributable to the Work described herein, that EPA determines may pose an imminent and substantial endangerment to the public health or the environment.

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

28. Work Plan and Implementation.

a. Within ten (10 business) days after the Effective Date, in accordance with Paragraph 29 (Submission of Deliverables), Respondent shall submit to EPA for review and approval a draft work plan for performing the removal action ("Removal Work Plan") generally described in Paragraph 26 above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Removal Work Plan within ten (10) business days after receipt of EPA's notification of the required revisions. Respondent shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved,

or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

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

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

29. Submission of Deliverables.

a. General Requirements for Deliverables.

(i) Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the OSC at the following address or such other electronic or other address as he directs: Jacob Hassan OSC, Superfund Division (SR-5J), U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, IL 60604. Respondent shall submit all deliverables required by this Settlement, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(ii) Respondent shall submit 2 paper copies of all deliverables and shall also submit all deliverables in electronic form on 2 compact discs, unless the OSC specifies otherwise. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondent shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Deliverables.

(i) Electronic versions of sampling and monitoring data should be submitted in pdf.a3 format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

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

(iii) Each file must include an attribute name for each site unit or sub-unit submitted. Consult http://www2.epa.gov/geospatial for any further available guidance on attribute identification and naming.

(iv) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

30. Health and Safety Plan.

a. Within ten (10) business days after the Effective Date, Respondent shall submit for EPA review and approval a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at http://www.epa.gov/nscep/index.html, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at http://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

31. Quality Assurance, Sampling, and Data Analysis.

a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. Prior to the commencement of any monitoring project under this Settlement, Respondent shall submit to EPA for review and approval a Quality Assurance Project Plan (QAPP) or, in the alternative, an addendum to QAPP prepared pursuant to AOC II that is consistent with the Removal Work Plan and the NCP. The Respondent shall develop the QAPP addendum in accordance with the requirements in AOC II for the development of a QAPP. The Respondent shall develop the QAPP in accordance with EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006); Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R 02/009 (Dec. 2002); and Uniform Federal Policy for Quality Assurance Project Plans, Parts 1- 3, EPA/505/B-04/900A though 900C (Mar. 2005) or other applicable guidance as identified by EPA. Respondent shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will

satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with EPA's "Field Operations Group Operational Guidelines for Field Activities" (http://www.epa.gov/region8/qa/FieldOperationsGroupOperationalGuidelinesForFieldActivities.pdf) and "EPA QA Field Activities Procedure" (http://www2.epa.gov/sites/production/files/2015-03/documents/2105-p-02.pdf). Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" (http://www2.epa.gov/sites/production/files/2015-03/documents/fem-lab-competency-policy.pdf) and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www2.epa.gov/clp), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (http://www3.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www3.epa.gov/ttnamti1/airtox.html), and any amendments made thereto during the course of the implementation of this Settlement. However, upon approval by EPA, Respondent may use other appropriate analytical method(s), as long as (a) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (b) the analytical method(s) are at least as stringent as the methods listed above, and (c) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs-Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs (http://www2.epa.gov/measurements) as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

c. Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent 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. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA's oversight of Respondent's implementation of the Work.

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

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

32. Community Involvement. If requested by EPA, Respondent shall participate in community involvement activities, including but not limited to participation in public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. All community involvement activities conducted by Respondent at EPA's request are subject to EPA's oversight.

33. Post-Removal Site Control. In accordance with the Removal Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for Post-Removal Site Control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondent shall provide EPA with documentation of all Post-Removal Site Control commitments.

34. Progress Reports. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement on a monthly basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVI, 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.

35. Final Report. Within ninety (90) days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 103 (Notice of Completion), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall conform with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports," and with the "Superfund Removal Procedures: Removal Response Reporting – 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, 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 and permits). The final report shall also

include the following certification signed by a responsible corporate official of a Respondent or Respondent's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

36. Off-Site Shipments.

a. Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b). Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if Respondent comply with EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992).

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

IX. PROPERTY REQUIREMENTS

37. Agreements Regarding Access. Where any action under this Settlement is to be performed in an area owned by or in possession of someone other than Respondent, to the extent the area has been identified as an Affected Property on Appendix A as of the Effective Date, Respondent shall use its best efforts to obtain all necessary access agreements within fifteen (15) business days after the Effective Date, or as soon thereafter as practicable. Respondent shall immediately notify EPA in writing if after using its best efforts it is unable to obtain such agreements within 45 days after the Effective Date. Where any action under this Settlement is to be performed in an area owned by or in possession of someone other than Respondent that is identified as an Affected Property after the Effective Date, Respondent shall commence efforts to secure access to each such Affected Property within three days after it is added to Appendix A,

and shall use its best efforts to obtain all necessary access agreements as soon as practicable after the property has been identified as an Affected Property. Respondent shall immediately notify EPA in writing if after using its best efforts it is unable to obtain such agreements within 45 days after the property is added to Appendix A. Where any action under this Settlement is to be performed in an area owned by or in possession of someone other than Respondent that is not an Affected Property, Respondent shall use its best efforts to obtain all necessary access agreements as soon as practicable after the property has been identified as a property where action under this Settlement is to be performed. Respondent shall immediately notify EPA in writing if after using its best efforts it is unable to obtain such agreements within 45 days after such property has been identified as a property where action is to be performed. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement, using such means as EPA deems appropriate. Respondent 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 XIV (Payment of Response Costs).

38. If an Affected Property, or any other real property where access is needed to implement this Settlement, is owned or controlled by the Respondent, Respondent shall, commencing on the Effective Date, provide EPA and its representatives including contractors with access at all reasonable times to the Affected Property, or such other property, for the purpose of conducting any activity related to this Settlement.

39. For each Affected Property owned or controlled by the Respondent, Respondent shall, at least thirty (30) days prior to the conveyance of any real property interest in the Affected Property, give written notice to the transferee that the Affected Property is subject to this Settlement and written notice to EPA of the proposed conveyance, including the name and address of the transferee. For each such Affected Property, Respondent also agrees to require as a condition of conveyance that its successor or successors in interest comply with the notice requirement in the previous sentence and also with Paragraph 38 and Section X (Access to Information), as if the successor or successors in interest were included in the term "Respondent."

40. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, Respondent shall continue to comply with its obligations under the Settlement, including its obligation to provide and/or secure access and to comply with or ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

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

X. ACCESS TO INFORMATION

42. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondent's possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondent 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.

43. Privileged and Protected Claims.

a. Respondent may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 43.b, and except as provided in Paragraph 43.c.

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

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

44. Business Confidential Claims. Respondent may assert that all or part of a Record provided to EPA under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records submitted to EPA 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 Records when they are submitted to EPA or if EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

45. Personally Identifiable Information. Respondent shall keep confidential and shall not disclose or permit disclosure of "Personally Identifiable Information" pertaining to the owners of Affected Properties to any other individual or entity, except for EPA's employees and EPA's contractors, agents and their employees, or Respondent's employees and Respondent's contractors, agents and their employees, who need access to such information for purposes of performing the Work under this AOC. Respondent shall require that its employees and its contractors, agents, and their employees, shall not disclose such information to any individual or entity other than EPA's employees and EPA's contractors, agents and their employees, or Respondent's employees and Respondent's contactors, agents and their employees, who need access to such information for purposes of performing the Work under this AOC. "Personally Identifiable Information" means "Personally Identifiable Information" as defined in 2 CFR § 200.79 and EPA's Privacy Policy , and generally includes information that can be used to distinguish, trace, or identify an individual's identity, including personal information which is linked or linkable to an individual. Personally Identifiable Information includes but is not limited to names, addresses, GPS coordinates, telephone numbers, fax numbers, email addresses, social security numbers, or labels (including, e.g., character strings linked with real estate depicted in maps or assigned to sampling data) or other personal information that can be linked to an individual. Respondent shall clearly identify all Records or parts thereof submitted under this Settlement which contain Personally Identifiable Information upon submittal of such Records to EPA. For purposes of this paragraph, the term "Affected Properties" shall also include properties for which the soil has been or will be screened under AOC II pursuant to the SSCWP or the EPSAP that are not found to contain arsenic, thallium or lead at levels above the soil clean-up criteria set forth in Paragraph 26.f.

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

XI. RECORD RETENTION

47. Until six (6) years after EPA provides Respondent with notice, pursuant to Section XXVI (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability or the liability of any other person under CERCLA with regard to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that the Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

48. At the conclusion of the document retention period, Respondent shall notify EPA at least 60 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 43 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA.

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

XII. COMPLIANCE WITH OTHER LAWS

50. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 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 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. Respondent shall identify ARARs in the Removal Work Plan subject to EPA review and approval.

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

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

52. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the

Health and Safety Plan. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, EPA Region 5 at (312) 353-2318 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

53. Release Reporting. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, EPA Region 5 at (312) 353-2318 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 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.

XIV. PAYMENT OF RESPONSE COSTS

54. Payment for Past Response Costs.

a. Within 30 days after the Effective Date, Respondent shall pay to EPA $193,511.85 for Past Response Costs, as itemized in the attached Itemized Cost Summary. Respondent shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

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

and shall reference Site/Spill ID Number B5V9 OU2 and the EPA docket number for this action.

b. At the time of payment, Respondent shall send notice that payment has been made to Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604-3590; to Terence Branigan, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois 60604-3590; and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

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

Such notice shall reference Site/Spill ID Number B5V9 OU2 and the EPA docket number for this action.

c. Deposit of Past Response Costs Payments. The total amount to be paid by Respondent pursuant to Paragraph 54.a shall be deposited by EPA in the Town of Pines Groundwater Plume Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

55. Payments for Future Response Costs. Respondent shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. On a periodic basis, EPA will send Respondent a bill with an itemized cost summary requiring payment that includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within 30 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 57 (Contesting Future Response Costs), and in accordance with Paragraphs 54.a and 54.b (Payments for Past Response Costs).

b. Deposit of Future Response Costs Payments. The total amount to be paid by Respondents pursuant to Paragraph 55.a shall be deposited by EPA in the Town of Pines Groundwater Plume Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Town of Pines Groundwater Plume Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

56. Interest. In the event that any payment for Past Response Costs or Future Response Costs is not made by the date required, Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondent's 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 Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Paragraph 68 (Stipulated Penalty Amounts - Work).

57. Contesting Future Response Costs. Respondent may submit a Notice of Dispute, initiating the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 55 if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a

specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the OSC. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 55. Simultaneously, Respondent shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 55. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 55. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

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

59. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within ten (10) days after such action. EPA and Respondent shall have fourteen (14) days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by all Parties, be incorporated into and become an enforceable part of this Settlement.

60. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within ten (10) days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within ten (10) days thereafter, submit a statement of position. In the event the 10-day time periods for submission of the statements of position may cause a delay in the Work, they shall be shortened upon, and in accordance with, notice by 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 Statements of Position served pursuant to this Paragraph. Thereafter, upon review of the

Administrative Record, the Director of the Superfund Division, EPA Region 5, will issue a written decision resolving the dispute consistent with the NCP and this Settlement to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

61. Except as provided in Paragraph 57 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 71. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

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

63. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 24 hours of when Respondent first knew that the event might cause a delay. Within seven (7) days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent

from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 62 and whether Respondent has exercised their best efforts under Paragraph 62, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

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

65. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 10 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 62 and 63. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

66. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondent from meeting one or more deadlines under the Settlement, Respondent may seek relief under this Section.

XVII. STIPULATED PENALTIES

67. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 68 and 69 for failure to comply with the requirements of this Settlement specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Respondent shall include completion of all activities and obligations, including payments, required under this Settlement, and any deliverable approved under this Settlement, in accordance with all applicable requirements of law, this Settlement, the Removal Work Plan and all deliverables approved under this Settlement or the Removal Work Plan and within the specified time schedules established by and approved under this Settlement.

68. Stipulated Penalty Amounts - Work (Including Payments and Excluding Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 68.b:

Penalty Per Violation Per Day	Period of Noncompliance
$ 1,000	1st through 14th day
$ 2,500	15th through 30th day
$ 5,000	31st day and beyond

b. Compliance Milestones. Except as specified in Paragraph 69, each failure to implement the Work in the manner or within the times required by this Settlement or in the Removal Work Plan is a violation for which stipulated penalties shall accrue under Paragraph 68.a above.

69. Stipulated Penalty Amounts - Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement or the Removal Work Plan:

Penalty Per Violation Per Day	Period of Noncompliance
$ 1,000	1st through 14th day
$ 2,500	15th through 30th day
$ 5,000	31st day and beyond

70. In the event that EPA assumes performance of all or any portion(s) of the Work pursuant to Paragraph 81 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of $15,000.

71. 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: (a) with respect to a deficient submission under Paragraph 28 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the Director, EPA Superfund Division, Region 5, under Paragraph 60 of Section XV (Dispute Resolution), during the period, if any, beginning the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order.

72. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the

penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

73. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 55 (Payments for Future Response Costs).

74. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraphs 71 and 73 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 73 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

76. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 81 (Work Takeover).

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

XVIII. COVENANTS BY EPA

78. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, for Past Response Costs paid by Respondent pursuant to Section XIV in the amount of $193,511.85, as itemized in the attached Itemized Cost Summary, and Future Response Costs paid by Respondent pursuant to

Section XIV. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of their obligations under this Settlement. These covenants extend only to Respondent and do not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

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

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

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

b. liability for costs not included within the definition[s] of Past Response Costs or Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

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

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Affected Properties;

h. liability arising from residual Waste Materials left in place at the Site or at any or all Affected Properties at the conclusion of the Work; and

i. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Affected Properties not paid as Future Response Costs under this Settlement.

81. Work Takeover.

a. In the event EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (Work Takeover Notice) to Respondent. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of five (5) business days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 5-business day notice period specified in Paragraph 81.a, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (Work Takeover). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 81.b.

c. Respondent may invoke the procedures set forth in Paragraph 60 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 81.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 81.b until the earlier of (1) the date that Respondent remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 60 (Formal Dispute Resolution).

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

XX. COVENANTS BY RESPONDENT

82. Respondent covenants 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, and this Settlement, including, but not limited to:

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

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

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

83. Except as provided in Paragraph 86 (Waiver of Claims by Respondent), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 80.a (liability for failure to meet a requirement of the Settlement), 80.d (criminal liability), or 80.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

84. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

85. Respondent reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

86. Waiver of Claims by Respondent.

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

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

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

b. Exceptions to Waiver[s].

(i) The waiver[s] under this Paragraph 86 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person otherwise covered by such waiver[s] if such person asserts a claim or cause of action relating to the Site against Respondent.

(ii) The waiver under Paragraph 86.a(i) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

XXI. OTHER CLAIMS

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

88. Except as expressly provided in Paragraph 86 (Waiver of Claims by Respondent) and Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

90. Except as provided in Paragraph 86 (Waiver of Claims by Respondent), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of

CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

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

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

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

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

95. Effective upon signature of this Settlement by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Respondent the payment(s) required by Paragraph 54 (Payment for Past Response Costs) and, if any, Section XVII (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 91 and that, in any action brought by the United States related to the "matters addressed," Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

XXIII. INDEMNIFICATION

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

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

98. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent 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, Respondent 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 Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

99. No later than seven (7) days before commencing any on-Site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVI (Notice of Completion of Work), commercial general liability insurance with limits of $ 3 million, for any one occurrence, and automobile insurance with limits of $ 3 million, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's

compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XXV. MODIFICATION

100. The OSC may modify any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties. EPA's agreement to any such modification of such other requirements of this Settlement must be approved in writing by an authorized official at the level of the Director, Superfund Division, EPA Region 5, or higher.

101. If Respondent seeks permission to deviate from any approved work plan or schedule Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 100.

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

XXVI. NOTICE OF COMPLETION OF WORK

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

XXVII. INTEGRATION/APPENDICES

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

a. "Appendix A" – List of Affected Properties Identified as of Effective Date.

XXVIII. EFFECTIVE DATE

This Settlement shall be effective the date the Settlement is signed by the Director of the Superfund Division, Region 5.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

3-17-16

Dated

Richard C. Karl
Superfund Division Director
U.S. Environmental Protection Agency
Region 5

For Northern Indiana Public Service Company

2-29-2016
Dated

[Signature]

VIOLET G. SISTOVARIS
[Print Name]

EVP, NIPSCO
[Title]

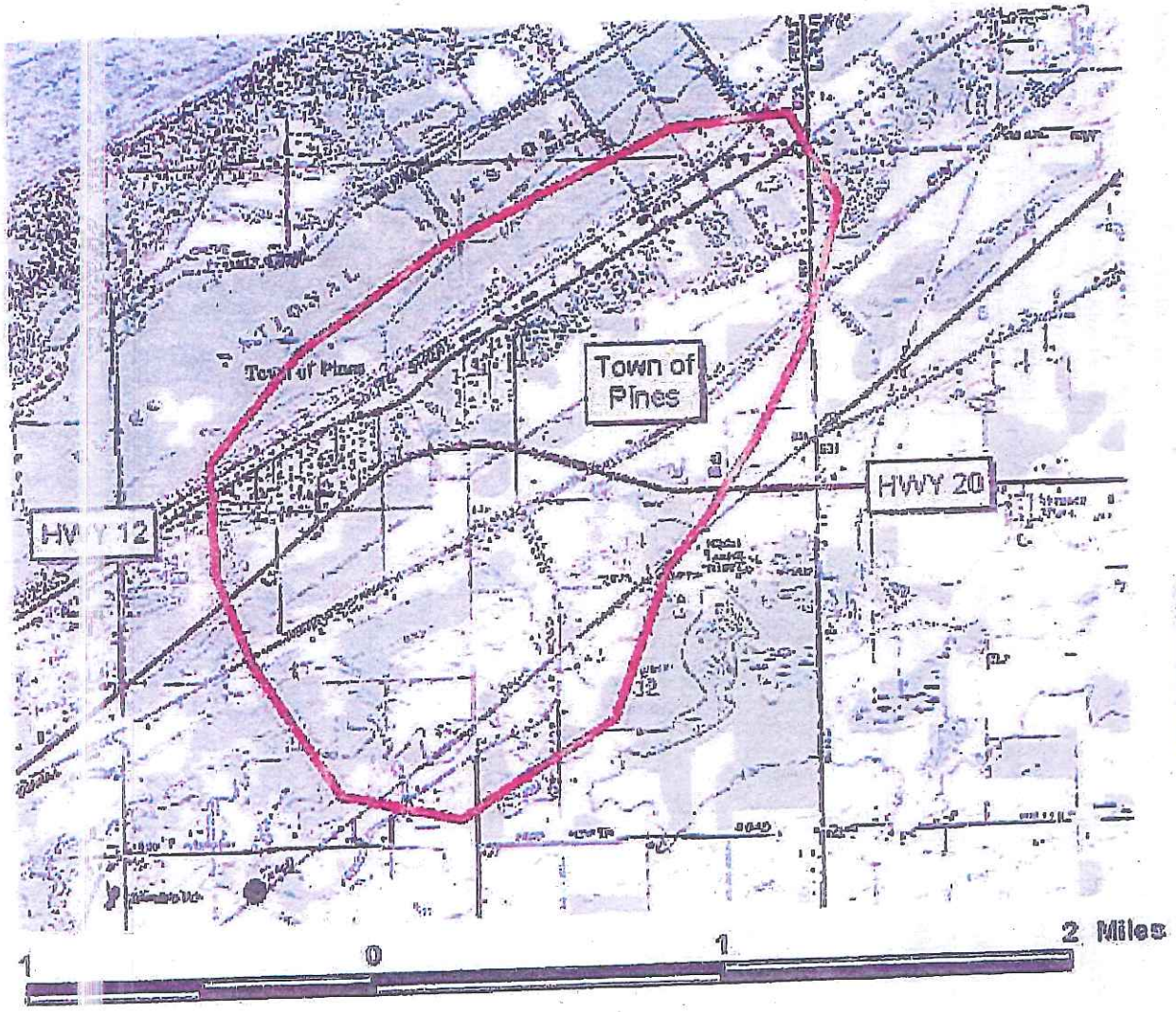
NIPSCO
[Company]

801 E. 86th AVE.
[Address]
MERRILLVILLE, IN 46410

FIGURE 1

Pines RI/FS Site Location

Porter County, Indiana



LEGEND

Area of Investigation

REDACTED

APPENDIX A

List of Affected Properties Identified As Of Effective Date

FS Addendum Access Tracking ID	Property Owner Surname	Property Address/Description

THIS APPENDIX CONTAINS PERSONALLY IDENTIFIABLE INFORMATION