



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

COUNTYWIDE RECYCLING AND
DISPOSAL FACILITY
EAST SPARTA, STARK COUNTY, OHIO

Respondent:

REPUBLIC SERVICES OF OHIO II, LLC

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

Docket No. V-W- '08 -C-897

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C. §§
9604, 9606(a), 9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”) is entered into voluntarily by the United States Environmental Protection Agency (“U.S. EPA”) and Respondent. This Settlement Agreement provides for the performance of removal actions by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the property located at 3619 Gracemont Street S.W. in East Sparta, Stark County, Ohio, the “Countywide Recycling and Disposal Facility” or “Countywide”.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended (“CERCLA”). This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

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

4. U.S. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement 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 Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings Of Fact) and V (Conclusions Of Law And Determinations) of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon U.S. EPA and upon Respondent and its successors and assigns. 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 Agreement.

6. Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

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

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

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

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

e. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

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

g. "Parties" shall mean U.S. EPA and Respondent.

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

i. "Respondent" shall mean Republic Services of Ohio II, LLC.

j. "Site" shall mean that portion of the Countywide Recycling and Disposal Facility, consisting of the original 88 acres comprising Cells 1-6, located at 3619 Gracemont Street S.W. in East Sparta, Ohio, and other property owned by Respondent and located within or adjacent to the Countywide Recycling and Disposal Facility where ancillary activities that are necessary to accomplish the work contemplated hereunder may take place.

k. "State" shall mean the State of Ohio.

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

m. "Waste Material" shall mean for purposes of this Settlement Agreement, 1) any hazardous substance under Section 101(14) of CERCLA, 42 U.S.C. §9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous waste" under §3734.01(J) of the Ohio Revised Code. Waste Material does not include leachate, except to the extent that leachate is collected as a direct result of the Work contemplated hereunder.

n. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

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

a. The Countywide Recycling and Disposal Facility (Countywide) is located at 3619 Gracemont Street S.W., East Sparta, Stark County, Ohio 44626. Countywide is a municipal solid waste (MSW) landfill regulated by Subtitle D of the Resource Conservation and Recovery Act (RCRA). Countywide is permitted and licensed by the Ohio Environmental Protection Agency (Ohio EPA or OEPA) to accept solid waste as defined in the Ohio Revised Code. The facility has been in operation since 1991. Countywide was designed and constructed with engineered systems to protect the environment, including a composite liner system, a leachate collection system, and a landfill gas collection and control system (GCCS).

b. Countywide is owned and operated by Republic Services of Ohio II, LLC ("Republic"). Republic has owned and operated the facility since March 1999.

c. Republic estimated that Countywide accepted approximately 600,000 tons of aluminum process waste between 1993 and 2006. The majority of this material was described as "dross" or "salt cake", both of which are by-products of the melting of aluminum with a salt flux. Other related aluminum-containing wastes accepted by Countywide (at much smaller quantities)

included cyclone and bag house dusts from various processes from both pre-processing and the melting of recycled aluminum. Certain types of aluminum waste can react with water-based liquids to form, among other potential gasses, ammonia, hydrogen, methane, and acetylene gasses. In addition, heat is generated due to the reaction.

d. In January 1998, Countywide's prior owner and operator submitted to the Ohio Environmental Protection Agency ("Ohio EPA" or "OEPA") an alteration request for authority to recirculate leachate at the facility. On March 3, 1998, Ohio EPA granted approval for the request. In July 2001, Republic was aware of elevated temperatures in landfill gas wells located in cells 3 and 4 and requested from the Canton Health Department higher operating temperature values for the facility. In July 2001, Republic made a similar request for cells 2 and 4A. In 2003, a third request was submitted for Cell 6A.

e. In 2004, the City of Canton Health Department received from citizens 30 odor complaints in connection with the facility. In November 2004, Republic began the installation of landfill gas collection and control systems in the western part of the landfill to assist in the elimination of potential odors from the landfill.

f. In December 2004, the Stark County Health Department issued Republic its 2005 operating license stipulating that Republic identify and install a fully operational odor suppression system. The system was required to be operational in conjunction with best management practices at the facility. In May 2005, Republic started operation of the odor suppression system. Additionally, in June 2005, Republic completed construction and started operating the GCCS.

g. From June 2005 through the middle of December 2005, only four odor complaints were received by the Canton Health Department. Beginning in December 2005, Republic identified landfill gas (LFG) wells with higher than expected temperatures while increased odors were being attributed to the landfill. From January through August 2006, the Canton Health Department received over 660 odor complaints. As many as 25 complaints were received in a single day.

h. In 2006, Countywide observed an unusual increase in well temperatures, leachate outbreaks, accelerated settlement, and an increase in odors. Republic initiated numerous activities to reduce odor generation from the landfill. Actions included, but were not limited to, discontinued leachate recirculation, discontinued acceptance of all aluminum waste, installation of 38 additional LFG wells, upgrading and repairing various components to its gas collection system, more frequent temperature and well monitoring, and installing additional gas flares. In addition, Republic conducted an evaluation of the potential causes for the temperatures, leachate outbreaks, settlement and odors and informed the Canton City Health Department and Ohio EPA of the issues and steps Republic was taking in response.

i. From May 2006 through December 2006, an area within cells 1 through 6 of the landfill experienced settlement of approximately thirty feet. A localized section along the south

toe of this area was observed to have moved laterally. Republic constructed a stabilizing berm to arrest the lateral movement and an approximately 30-acre temporary flexible membrane liner (FML) cap over the area believed to comprise the reacting area. Countywide also discovered changes in the landfill gas composition, including a decrease in methane, an increase in carbon monoxide, and an increase in hydrogen concentrations.

j. The Ohio EPA issued Director's Final Findings and Orders (DFF&Os) on September 6, 2006. The Orders required Republic to conduct the following activities: weekly monitoring and tuning of all gas wells and fields as required by 40 CFR, Part 60, Subpart WWW; monthly survey of intermediate cover condition, and, as needed, scarify and recompact the intermediate cover; conduct a vacuum survey of the headers and lateral piping system; identifying and sealing locations that were allowing either the venting of landfill gas or the intrusion of air; weekly monitoring of the strength, location, and time of any odor identified by facility personnel at the facility boundary and identification of the possible causes of that odor; investigation of all odor complaints to identify possible causes; evaluation of the current slope stability conditions in the affected areas; monitoring of landfill gas extraction wells for flow, temperature, methane content, and oxygen content; and sampling of leachate and analysis for OEPA required parameters on an annual basis.

k. Between December 16, 2006 and February 16, 2007, over 150 odor complaints were registered against the facility.

l. The Ohio EPA concluded that a fire was occurring in the landfill involving both the aluminum waste and the MSW. The Ohio EPA issued Countywide a second set of DFF&Os which became effective on March 28, 2007. The DFF&Os prohibited all leachate recirculation in the impacted 88 acre portion of the landfill which Republic had already implemented throughout the entire facility effective February 2006. In addition, Republic was required to prepare and submit a Fire Suppression Plan (FSP) which was submitted on May 25, 2007. The DFF&Os specified that Republic should evaluate a minimum of four remedial alternatives in the FSP. These alternatives included application of a magnesium chloride solution, application of specialty foams, excavation of the aluminum wastes, and placement of additional capping materials, and any other alternatives that Republic chose to consider. The DFF&Os required Republic to conduct a comprehensive evaluation of subsurface conditions at the facility to evaluate the extent and magnitude of the reaction. Republic's FSP evaluated the required elements along with some additional elements and recommended implementation of enhanced best management practices (i.e. installation of dewatering pumps in gas wells, installation of additional gas wells, enhance gas collection headers, and repair and/or replacement of compromised gas wells) and additional capping (i.e. the placement of final or temporary cap designed to collect gas and reduce oxygen and liquid infiltration into the landfill).

m. In a letter dated October 1, 2007, the Director of the Ohio EPA selected an interim remedial action for the Site and directed Republic to install an Isolation Barrier between Cells 8A and 8B. The Isolation Barrier would provide a physical separation which would eliminate the potential migration of the reaction into a permitted expansion area of the landfill.

n. On November 7, 2007, the Ohio EPA issued a third set of DFF&Os to Republic. The Orders directed Republic to aggressively reduce liquid in the explosive gas extraction system (EGES) and in the waste mass that was contributing to the reaction of the aluminum production waste and releasing significant amounts of heat. Data collected from the facility revealed the gas extraction wells contained liquid which prevented the gas collection system from functioning at peak efficiency.

o. On January 22, 2008, U.S. EPA Region 5 issued a General Notice of Potential Liability letter to Republic. In a response dated February 4, 2008, Republic agreed to cooperate with U.S. EPA.

p. In a letter dated February 5, 2008, the Director of the Ohio EPA requested U.S. EPA's assistance in requiring Republic to perform a time-critical removal action to address imminent threats posed by the Site. The Director's letter specifically requested that U.S. EPA require Republic to install a "fire break" at the Countywide Facility in the vicinity of cells 5 and 7.

q. On February 7, 2008, the Ohio EPA issued an additional set of DFF&Os to Republic. The Orders directed Republic to conduct additional air testing in the community and expanded the list of parameters to be analyzed.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

b. The conditions found at the Site, as identified in the Findings of Fact above, include the presence and threatened release of "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

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

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

i. Respondent Republic Services of Ohio II, LLC is the "owner" and/or "operator" of

the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

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

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

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

Starting in 2004 and continuing to the present, hundreds of odor complaints have been registered with the Stark County Health Department. Over this time period, numerous air sampling events conducted by the Health Department, OEPA, and Republic have confirmed the presence of volatile organic compounds (VOCs) such as Benzene, Methylene Chloride, 1,2,4-Trimethylbenzene, and Trichloroethylene, all of which are hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14), at the sampling devices required by the March 2007 DFF&Os. While these substances are commonly present in gas at municipal solid waste landfills, action is needed to determine if the reaction creates conditions that may inhibit effective collection and control of landfill gas and might lead to an actual or threatened release of landfill gases that may contain hazardous substance. Several landfill experts from Ohio EPA, U.S. EPA, and retained by Republic’s contractors have confirmed that a subsurface reaction continues in the landfill.

- ii. Threat of fire or explosion.

A reaction involving aluminum waste and producing elevated temperatures has been and still is occurring at the Countywide Facility. Surface manifestations of the reaction became evident during 2006. U.S. EPA believes that liquids in the landfill interacted with the aluminum process waste as follows:



The heat generated by the reaction may have caused pyrolysis to occur in the adjacent MSW. Pyrolysis is a chemical process brought about by heat which accelerates the decomposition of the waste. In areas where the temperature or moisture content is not adequate for pyrolysis to occur, incomplete combustion of the waste may have occurred. In addition, the reaction is generating high levels of hydrogen and carbon monoxide as well as the presence of acetylene. These gases, in conjunction with the methane gas that is naturally generated at MSW landfills, create a

mixture of gasses that may create an explosive atmosphere (i.e. flash-fire or surface fire) around the surface of the landfill.

From May 2006 to December 2006, part of the 88 acre reaction area experienced settlement of approximately 30 feet (landfill depth 200 ft.). Carbon monoxide levels in the gas collection system of the Countywide Facility have been measured at levels up to 7,000 ppmv. This suggests rapid decomposition of the waste mass in the landfill and is evidence of accelerated biological decomposition, drying, pyrolysis, and possibly a subsurface fire.

According to 40 CFR 60.753(c) and Part 111, A.11.6 of the Title V operating permit, the facility is required to operate each interior wellhead in the gas collection system with a landfill gas temperature less than 55° C (131° F). Numerous gas collection wells in the affected area of the landfill have landfill gas temperatures in excess of 160° F. Some downhole well temperatures reached up to 230° F. In addition, OEPA staff has reported to have observed what they described as fire-charred waste from drill cuttings in the affected area of the landfill. Solid waste temperatures up to 257° F were recorded in one thermocouple in one boring. Gas monitoring probes installed pursuant to the November 7th DFF&Os (the SGP series wells), adjacent to the south toe of the 88-acre area and within the facility boundary, exhibited methane concentrations up to 15.7%.

- iii. The availability of other appropriate federal or state response mechanisms to respond to the release.

In a letter dated February 5, 2008, the Director of the Ohio EPA requested U.S. EPA's assistance in requiring Republic to perform a time-critical removal action to address potential threats posed by the reaction within Cells 1 – 6 at the Site. The Director's letter specifically requested that U.S. EPA require Republic to install a fire break at the Countywide Facility in the vicinity of cells 5 and 7 to prevent the reaction from migrating into Cell 7.

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

VI. SETTLEMENT AGREEMENT AND ORDER

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

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

11. Respondent shall retain one or more contractors to perform the Work and shall notify U.S. EPA of the name(s) and qualifications of such contractor(s) within 5 business days of the Effective Date. Respondent shall also notify U.S. EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 5 business days prior to commencement of such Work. U.S. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If U.S. EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval. The contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared consistent with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by U.S. EPA.

12. Within 5 business days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to U.S. EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. U.S. EPA retains the right to disapprove of the designated Project Coordinator. If U.S. EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify U.S. EPA of that person's name, address, telephone number, and qualifications within 4 business days following U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

13. U.S. EPA has designated James Augustyn of the Emergency Response Branch #1, Region 5, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at 25089 Center Ridge Road, Westlake, Ohio, 44145. Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant post consumer waste paper content where possible) and to use two-sided copies.

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

VIII. WORK TO BE PERFORMED

15. Respondent shall perform, at a minimum, the following removal activities:
- a. Installation and operation of an enhanced active gas extraction system. This system will have the capacity to effectively redirect gasses from projecting toward cell 7;
 - b. Installation of an enhanced temperature monitoring system to accurately track the progression of temperatures toward Cell 7 and the western slope of Cells 1 through 6 of the landfill;
 - c. Development of a comprehensive landfill cover and or long term capping plan for Cells 1-6 that would include:
 - i. For areas that are deemed to be stable and not likely subject to untypical differential settlement, Republic shall install a "composite cap." The composite cap shall, at a minimum, meet the performance objectives of OAC Rule 3745-27-08(C)(4) and, further, be able to minimize, to the extent practical, fugitive emissions and oxygen infiltration; a composite cap is also expected to increase gas collection efficiency; and/or,
 - ii. Placement of an exposed geomembrane or other equivalent sealant over selected portions of the landfill where necessary and in areas that U.S. EPA considers unsuitable for composite cap. The cover would more effectively capture landfill gases, the source of the offensive odors, and reduce precipitation infiltration into the impacted cells.
- The landfill cover shall be designed considering gas collection system and leachate collection requirements. All systems shall be designed to support Ohio EPA's efforts to dewater the landfill and effectively capture landfill gases;
- d. On-site disposal of any excavated MSW that may be specified in the Removal Work Plan into existing cells at the landfill as determined by the Ohio EPA;
 - e. Development of an Air Monitoring and Sampling Plan for selected volatile organic compounds (VOCs) that will expand air monitoring and sampling efforts in order to yield data which can be used to assess potential exposures in the community and demonstrate the effectiveness of implemented control technologies. A record of sample locations and results must be maintained and submitted to the Ohio EPA and U.S. EPA;
 - f. Stabilization of the area within which the removal action Work is conducted, which may include backfilling/grading, storm water control, and erosion control; and

g. Conduct monthly thermal imagery flights for the purpose of providing visual images of thermal activity in Cells 1 through 6, and provide a monthly report that includes an interpretation of the observations.

16. Work Plan and Implementation.

a. Within 10 business days after the Effective Date, Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal action generally described in subparagraphs 15. a, b, d, and g above. Within 15 business days after the Effective Date, Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal action generally described in subparagraphs 15.c and f above. Within 25 business days after the Effective Date, Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal action generally described in subparagraph 15.e above. Each draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

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

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

17. Health and Safety Plan. Within 10 business days after the Effective Date, Respondent shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared consistent with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If U.S. EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by U.S. EPA and shall implement the plan during the pendency of the removal action.

18. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures.

Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate U.S. EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

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

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

19. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by U.S. 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 U.S. EPA approval, Respondent shall implement such controls and shall provide U.S. EPA with documentation of all post-removal site control arrangements.

20. Reporting.

a. Respondent shall submit a written progress report to U.S. EPA concerning actions undertaken pursuant to this Settlement Agreement on the last business day of every month after the date of receipt of U.S. EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit 3 copies of all plans, reports or other submissions required by

this Settlement Agreement, or any approved work plan. Upon request by U.S. EPA, Respondent shall submit such documents in electronic form.

c. Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to U.S. EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondent agrees to require that its successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

21. Final Report. Within 60 calendar days after completion of all Work required by Section VIII (Work To Be Performed) of this Settlement Agreement, Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and with the guidance set forth in "Superfund Removal Procedures: Removal Response Reporting - POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

22. Off-Site Shipments.

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

i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for

the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

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

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

IX. SITE ACCESS

23. Respondent shall, commencing on the Effective Date, provide U.S. EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

24. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 10 business days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondent shall reimburse U.S. EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

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

X. ACCESS TO INFORMATION

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

27. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to U.S. EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, or if U.S. EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

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

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

XI. RECORD RETENTION

30. Until 6 years after Respondent's receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic

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

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

32. Respondent hereby 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, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by U.S. EPA or the State or the filing of suit against it regarding the Site and that it has fully complied and will fully comply with any and all U.S. EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. §6927.

XII. COMPLIANCE WITH OTHER LAWS

33. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. §6921(e), and 40 C.F.R. §§300.400(e) and 300.415(j).

In accordance with 40 C.F.R. §300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by U.S. 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 Work Plan subject to U.S. EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

34. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Response Branch #1, 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 U.S. EPA takes such action instead, Respondent shall reimburse U.S. EPA all costs of the response action consistent with the NCP pursuant to Section XV (Payment of Response Costs).

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

XIV. AUTHORITY OF ON-SCENE COORDINATOR

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

XV. PAYMENT OF RESPONSE COSTS

37. Payments for Future Response Costs.

a. Respondent shall pay U.S. EPA all Future Response Costs consistent with the NCP. On a periodic basis, U.S. EPA will send Respondent a bill requiring payment that consists of an Itemized Cost Summary. Respondent shall make all payments within 30 calendar days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 39 of this Settlement Agreement according to the following procedures:

i. If the payment amount demanded in the bill is for \$10,000 or greater, payment shall be made to U.S. EPA by EFT in accordance with current Electronic Funds Transfer ("EFT") procedures to be provided to Respondent by U.S. EPA Region 5. Payment shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number B5FC, and, if any, the U.S. EPA docket number for this action. Respondent shall: 1) complete Respondent's required bank form; 2) include Federal Reserve Bank of New York, ABA #021030004 on the bank form; 3) include the U.S. EPA Account #68010727 on the form; 4) include 'D 68010727 Environmental Protection Agency' in Field Tag 4200 of the Fedwire message; and 5) include the statement identifying the name and address of the party(ies) making payment, the Site name, the U.S. EPA Region and Site/Spill ID Number.

ii. If the amount demanded in the bill is \$10,000 or less, the Settling Respondent may, in lieu of the procedures in subparagraph 37(a)(i), make all payments required by this Paragraph by a certified or cashiers check or checks made payable to "EPA Hazardous Substance Superfund", referencing the name and address of the party making the payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number B5FC, and, if any, the U.S. EPA docket number for this action, and shall be sent to:

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

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

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

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

39. Respondent may dispute all or part of a bill for Future Response Costs submitted under this Settlement Agreement, only if Respondent alleges that U.S. EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to U.S. EPA as specified in Paragraph 37 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 37(b) above. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

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

41. If Respondent objects to any U.S. EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify U.S. EPA in writing of their objection(s) within 10 calendar days of such action, unless the objection(s) has/have been resolved informally. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which such party relies. U.S. EPA shall provide its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of U.S. EPA. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding Paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement.

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

XVII. FORCE MAJEURE

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

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

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

XVIII. STIPULATED PENALTIES

46. Respondent shall be liable to U.S. EPA for stipulated penalties in the amounts set forth in Paragraphs 47 and 48 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any

work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of this Settlement Agreement within the specified time schedules established by and approved under this Settlement Agreement.

47. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 47(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$5,000	31st day and beyond

b. Compliance Milestones

Submission of draft Work Plan

Submission of revised Work Plan

Commencement of Work according to schedule in approved Work Plan

Submission of Health and Safety Plan

Submission of Post-Removal Site Control Plan

48. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Paragraphs 20, 21 and 22:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$750	15th through 30th day
\$1,000	31st day and beyond

49. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, Region 5, under Paragraph 41 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after U.S. EPA submits its written statement of position until the date that the Director of the Superfund Division issues a final

decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

50. Following U.S. EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, U.S. EPA may give Respondent written notification of the failure and describe the noncompliance. U.S. 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 U.S. EPA has notified Respondent of a violation.

51. All penalties accruing under this Section shall be due and payable to U.S. EPA within 30 days of Respondent's receipt from U.S. EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to U.S. EPA under this Section shall be paid by certified or cashier's check(s) made payable to "U.S. EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Region 5, P.O. Box 371531, Pittsburgh, Pennsylvania 15251-7531, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Site/Spill ID Number B5FC, the U.S. EPA Docket Number, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to U.S. EPA as provided in Paragraph 37(b).

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

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

54. If Respondent fails to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 51. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Provided, however, that U.S. EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. Should Respondent violate this Settlement Agreement or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. §9606. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY U.S. EPA

55. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, U.S. 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 and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV (Payment of Response Costs). This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY U.S. EPA

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

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

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of

Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

XXI. COVENANT NOT TO SUE BY RESPONDENT

58. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. §9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Ohio Constitution, the Tucker Act, 28 U.S.C. § 491, the Equal Access to Justice Act, 28 U.S.C. §2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§9607 and 9613, relating to the Site.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 57 (b), (c), and (e) - (g), 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.

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

XXII. OTHER CLAIMS

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

61. Except as expressly provided in Section XXI (Covenant Not to Sue by Respondents), Paragraph 58 and Section XIX (Covenant Not to Sue by U.S. EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against

Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§9606 and 9607.

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

XXIII. CONTRIBUTION PROTECTION

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

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

c. “Except as provided in Section XXI (Covenant Not To Sue By Respondent), Paragraph 58, of this Settlement Agreement”, nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Section 113(f)(2) and (3), 42 U.S.C. §9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action, and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

XXIV. INDEMNIFICATION

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

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

65. 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.

66. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between 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 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.

XXV. MODIFICATIONS

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

68. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. 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 67.

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

XXVI. NOTICE OF COMPLETION OF WORK

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

XXVII. FINANCIAL ASSURANCE

71. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security in the amount of \$4,500,000 in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of Respondents; or
- e. A demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f). {NOTE: For these purposes, references in 40 C.F.R. §264.143(f) to the "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates" shall mean the amount of financial security specified above. If Respondent seeks to provide a demonstration under 40 C.F.R. §264.143(f) has provided a similar demonstration at other RCRA or CERCLA sites, the amount for which it is providing financial assurance at those other sites should generally be added to the estimated costs of the Work for this Paragraph. }

72. If Respondent seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 71(a) of this Section, Respondent shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If

Respondent seeks to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 71(d) or (e) of this Section, it shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the

anniversary of the Effective Date. In the event that U.S. EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondent shall, within 30 days of receipt of notice of U.S. EPA's determination, obtain and present to U.S. EPA for approval one of the other forms of financial assurance listed in Paragraph 71 of this Section. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Settlement Agreement.

73. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 71 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to U.S. EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by U.S. EPA. In the event of a dispute, Respondent may reduce the amount of the security in accordance with the written decision resolving the dispute.

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

XXVIII. INSURANCE

75. At least 7 days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of \$2 million dollars, combined single limit. Within the same time period, Respondent shall provide U.S. EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement, 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 Agreement. If Respondent demonstrates by evidence satisfactory to U.S. EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent needs provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXIX. SEVERABILITY/INTEGRATION/ATTACHMENTS

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

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

XXX. EFFECTIVE DATE

78. This Settlement Agreement shall be effective upon receipt by Respondent of a copy of this Settlement Agreement signed by the Director, Superfund Division, U.S. EPA Region 5.

The undersigned representatives of Respondent certifies that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party they represent to this document.

Agreed this 10th day of April, 2008.

For Respondent

By 

Title General Manager

IN THE MATTER OF:

COUNTYWIDE RECYCLING AND DISPOSAL FACILITY
EAST SPARTA, OHIO

It is so ORDERED and Agreed this 11th day of April, 2008.

BY: 

Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency