

ADMINISTRATIVE ORDER ON CONSENT

VERMONT MILL PROPERTIES SITE  
BENNINGTON, VERMONT

Docket Number

01-2008-0036

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

IN THE MATTER OF:

VERMONT MILL PROPERTIES SITE  
BENNINGTON, VERMONT

BENMONT MILL PROPERTIES, INC., and  
MACE SECURITY INTERNATIONAL, INC.,

Respondents.

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

U.S. E.P.A Region 1  
CERCLA Docket No. 01-2008-0036

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT

**I. JURISDICTION**

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Benmont Mill Properties, Inc. and Mace Security International, Inc. ("Respondents"). This Settlement Agreement provides for the performance of removal activities by Respondents and reimbursement of certain response costs incurred by the United States in connection with the Vermont Mill Properties Site in Bennington, Bennington County, Vermont ("the Site").

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Regional Administrator by EPA Delegation Numbers 14-14-A, 14-14-C and 14-14-D and further delegated to the Director, Office of Site Remediation and Restoration on July 26, 1995, EPA Delegation Numbers 14-14-A, 14-14-C and 14-14-D.

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

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

## **II. PARTIES BOUND**

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

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

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

## **III. DEFINITIONS**

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

a. "Action Memorandum" shall mean the EPA Action Memorandum and the EPA Action Memorandum Addendum relating to the Site signed on February 21, 2008 and February 29, 2008 respectively by the Director of the Office of Site Remediation & Restoration, and all attachments thereto. The Action Memoranda are attached as Appendix A.

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

c. “Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

d. “Effective Date” shall be the effective date of this Settlement Agreement as provided in Section XXX.

e. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

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.

g. “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.

h. “VT DEC” shall mean the Vermont Department of Environmental Conservation and any successor departments or agencies of the State.

i. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

j. “Parties” shall mean EPA and Respondents.

k. “Respondents” shall mean Benmont Mill Properties, Inc. and Mace Security International, Inc., and their successors and assigns.

l. “Response Costs” shall mean all costs, including, but not limited to, 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, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 37 (costs

and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 44 (emergency response) or Paragraph 71 (work takeover).

m. “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

n. “Settlement Agreement” shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Settlement and any appendix, this Settlement Agreement shall control.

o. “Site” shall mean the Vermont Mill Properties Superfund Removal Site, Bennington, Vermont as set forth in Appendix C.

p. “State” shall mean the State Vermont.

q. “Statement of Work” or “SOW” shall mean the statement of work for implementation of the removal action at the Site, as set forth in Appendix B to this Settlement Agreement and any modifications made thereto in accordance with this Settlement Agreement.

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

s. “Work” shall mean all activities Respondents are required to perform under this Settlement Agreement.

t. “Written” shall include electronic means of transfer of a communication in writing by email, email attachment, facsimile machine, CD or DVD.

#### **IV. FINDINGS OF FACT**

##### **Site Description**

9. The Vermont Mill Properties Superfund Site (“Site”) includes 160-180 Benmont Avenue in Bennington, Vermont. More specifically, the Site is located between Leonard Street to the North and Holden Street to the South. The eastern boundary is Benmont Avenue. The western boundary extends just beyond the Walloomsac River along Leonard Street and Anthony Drive. Vermont Mills Properties Inc. owns land and a portion of the old mill directly to the South. The Site is located in an area that is a mixed use of residential and commercial, with the closest residence approximately a few hundred feet from the mill. The Site is bounded to the north, south and east by mostly residential properties and several businesses and to the west by the Walloomsac River which is a tributary of the Hoosic River. The Site is listed on the National Register of Historic Places.

10. The Site consists of a mill which was erected in 1865 and was used to manufacture wool products and other textiles during the late 1800s. Known at this time as the Bennington Woolen mill, it produced in excess of one-half million yards of heavy overcoating. The mill also produced material for military uniforms during World War I. Several changes in ownership of the textile company ended with the mill closing in 1949. In 1951, Ben-Mont Papers, Inc. purchased a section of the property for the manufacture of waxed and wrapping paper.

11. In 2000, Benmont Mill Properties, Inc. (“Benmont Mill Properties”) purchased the center section and the north wing of the mill. Both Vermont Mill Properties and Benmont Mill Properties are private real estate management corporations owned by Jon E. Goodrich. The mill is now used as commercial space for several businesses, including a health club, doctor’s offices, lawyer’s offices, a publishing company and a social services office.

12. A portion of the mill also houses Mace Security International, Inc. (“Mace”), a publicly traded company which manufactures and distributes mace and pepper spray products. Mace produces waste from the testing of its products and is currently storing drums and containers of waste in sections of the mill identified on a schematic developed for the mill as locations #2967, 3048 and 3143, also referred to as Space 3 and Space 4.

### **Respondents**

13. Respondent Benmont Mill Properties is a Vermont corporation with its usual place of business at 180 Benmont Street, Bennington, Vermont. Respondent Mace Security International is a Delaware corporation with its usual place of business at 160 Benmont Street, Bennington, Vermont.

14. By letters dated February 5, 2008, EPA notified Benmont Mill Properties and Mace Security of their status as potentially responsible parties (“PRPs”) at the Site and afforded them the opportunity to perform or finance necessary removal actions.

15. Respondents have informed EPA that they are willing to undertake removal activities at the Site. On March 10, 2008, counsel for Mace informed EPA that the Company was in the process of hiring a cleanup contractor, Wilcox and Barton, Inc.

### **Site History**

16. In 1998, the Site was remediated for polychlorinated biphenyl (“PCB”) contaminated soil under the direction of the Vermont Department of Environmental Conservation (“VT DEC”) and a cap installed on sections of the property to address the exposure pathway.

17. On January 8, 2008, EPA received a complaint from a local citizen regarding activities conducted by Mace onsite. The caller stated that Mace had transferred pallets and drums of material from trailers located behind the mill into a wing of the warehouse. The caller

stated that the material may be hazardous. EPA informed VT DEC of the situation. VT DEC subsequently dispatched a responder who confirmed the transfer of the material.

18. On January 24 and 25, 2008, personnel from EPA's Removal, Resource Conservation and Recovery Act ("RCRA") and Emergency Planning and Community Right to Know ("EPCRA") programs performed a site investigation ("SI"). Hazardous substances identified on the site (subject to verification by testing and analysis) that pose a threat of release include but are not limited to: containers labeled flammable, toxic, reactive, corrosive and explosive chemicals; oil and oily material; and more than 50,000 pounds of 2-chlorobenzalmalononitrile ("CS") a tear gas agent. During the SI, EPA learned that the drums and containers were stored outside in trailers for approximately 10-12 years before being moved into the mill during the week of January 8, 2008. Drums located in the section of the mill identified as Space 3 and Space 4 are in fair to poor condition and many were informally labeled as CS waste. Space 3 and Space 4 may not be structurally sound and may present a threat to safety for people working in this section of the building. The presence of a functioning sprinkler system could not be confirmed. EPA subsequently determined that an emergency removal action was necessary.

19. On February 5, 2008, EPA sent Notice of Potential Liability Letters to Benmont Mill Properties as a current owner, and to Mace Security as an operator and arranger, who by contract or agreement, arranged for the disposal, treatment or transportation of hazardous substances at the Site.

20. On February 21, 2008, EPA issued an Action Memorandum (Appendix A) which is incorporated herein.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

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

- a. The Vermont Mill Properties Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response actions and for response costs incurred and to be incurred at the Site.

- i. Respondents are the “owner(s)” and/or “operator(s)” 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. Respondents were the “owners” and/or “operators” of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
  - iii. Respondents arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
- e. The conditions described in the Action Memorandum 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 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**

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

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

23. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within three (3) days of the Effective Date. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least three (3) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within three (3) days of EPA's disapproval.

24. Within three (3) days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within five (5) days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

25. EPA has designated Catherine Young of the Emergency Planning and Response Branch, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the OSC at the following address:

Catherine Young  
U.S. Environmental Protection Agency  
Office of Site Remediation & Restoration  
Emergency Planning & Response Branch  
Emergency Response & Removal Section I (HBR)  
One Congress Street, Suite 1100  
Boston, MA 02114-2023  
TEL (617) 918-1217  
FAX (617) 918-0217  
Email: Young.Catherine@epa.gov

26. EPA and Respondents shall have the right, subject to Paragraph 24, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA seven (7) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

27. The Respondents shall provide a copy of this Settlement Agreement to all contractors, subcontractors, laboratories, and consultants retained in connection with this Settlement Agreement within seven (7) days after the Settlement Agreement's effective date or of such retention, whichever is later. The Respondents shall ensure that all such contractors, subcontractors, laboratories and consultants will perform all work in conformity with CERCLA, the NCP, and the terms and conditions of this Settlement Agreement and Scope of Work.

#### **VIII. WORK TO BE PERFORMED**

28. Respondents shall perform, at a minimum, all actions necessary to implement the

Scope of Work (Appendix B). The actions to be implemented generally include, but are not limited to, the following:

- a. Provide to the OSC an inventory of all hazardous waste and materials stored at the Site, including its size, container type, condition, volume contained (if known), detail of any labeling and dates. (If containers were not labeled or dated, indicate "not labeled" or "not dated");
- b. Secure the services of a licensed structural engineer to assess the structural integrity of the Cold Storage and the 1924 building and perform any necessary shoring operations, as recommended and documented in the engineering report, to ensure a safe working environment during removal activities;
- c. Establish and maintain a command post at the Site;
- d. If necessary, install runoff control measures for containment during removal activities;
- e. Delineate the work zones and decontamination area in compliance with Occupational Safety and Health Administration ("OSHA") regulations;
- f. Develop a site-specific Health and Safety Plan ("HASP"), in accordance with OSHA regulations 29 CFR Parts 1910, 1926 and 1904, that addresses all stages of removal activities;
- g. Implement measures to ensure safe egress and access to containers and materials during characterization, disposal and restaging operations;
- h. Prepare an air monitoring plan and perform air monitoring, as required, to ensure worker safety during removal activities;
- i. Develop task specific Work Plans which include Quality Assurance/Quality Control (QA/QC) procedures;
- j. Develop task specific sampling and analysis plans ("SAP") for sampling, identification and hazard characterization of all waste and materials located at the Site which has been designated by the OSC as requiring disposal or restaging (e.g., sampling will include, but not be limited to, all drums and containers of waste material located in the 1924 and Cold Storage building, 2-chlorobenzalmalononitrile material, debris material stored in rolloff containers stored at the site, soil samples);
- k. Based on the results of the sampling, perform consolidation, appropriate segregation, staging and offsite disposal of materials at an EPA approved disposal facility;
- l. Per the direction of the OSC, assess and characterize any additional hazardous materials

discovered during the course of this action;

m. Due to being stored outside for an extended period of time and being exposed to extremes of temperature, random sampling of approximately 10% of 2-chlorobenzalmalononitrile containers located within the Cold Storage and 1924 buildings is required to determine the present condition of the materials for identification and hazard categorization for threat analysis. OSC to determine the containers requiring sampling;

n. Arrange for disposal of all waste streams, including decontamination waste and spent PPE (e.g., including, but not be limited to, all drums and containers of waste material located in the 1924 and Cold Storage building, debris material stored in rolloff containers stored at the site, contaminated soils);

o. Removal of hazardous materials being stored on site for use or sale to appropriate storage locations on or off site to ensure safety of the public and the environment;

p. Disposal of materials in accordance with *40 CFR Part 300.440 Procedures for Planning and Implementing Off-Site Response Actions*. Determine that all disposal facilities are in compliance with the *CERCLA Off-Site Rule (40 CFR Part 300.440)* or are deemed to be more appropriate facilities as approved in writing by the OSC; and

q. Provide and affix all appropriate labels in accordance with state and federal regulations for storage, transportation, and/or disposal of waste streams, as appropriate.

All work performed by the Respondents shall be conducted in accordance with CERCLA, the NCP, applicable guidance documents provided by EPA, and the provisions of this Settlement Agreement including any standards, specifications, and time schedules contained in the Scope of Work or specified by the OSC.

#### 29. Work Plan and Implementation.

a. Within five (15) days after the inventory is complete and accepted by the OSC, Respondents shall submit to EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 28 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within five (5) days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 29(b).

30. Health and Safety Plan. Within five (5) days after the Effective Date of this Settlement Agreement, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910, 1926 and 1904. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the removal action.

31. Quality Assurance and Sampling.

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

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

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

32. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondents shall submit a proposal for post-removal site control consistent with Section 300.415(I) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondents shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

33. Reporting.

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

b. Respondents shall submit three (3) copies of all plans, reports or other submissions required by this Settlement Agreement, the Scope of Work, or any approved Work Plan. Upon request by EPA, Respondents shall submit such documents in electronic form.

c. If Respondents own or control property at the Site Respondents 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 EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also agree to require that their successors comply with the immediately proceeding sentence and Sections IX (Site Access) and X (Access to Information).

34. Final Report. Within sixty (60) days after completion of all Work required by this Settlement Agreement, Respondents shall submit for EPA review and approval 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." 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."

35. Off-Site Shipments.

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

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

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action. Respondents shall provide the information required by Paragraph 35(a) and 35(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

**IX. SITE ACCESS**

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

37. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within seven (7) days after the Settlement Agreement's

Effective Date in Paragraph 89. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, “best efforts” includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney’s fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVI (Payment of Response Costs).

38. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

39. Such written access agreements or other interests obtained pursuant to the preceding paragraph shall provide the Respondents, the Respondents’ authorized representatives, and the EPA and their officers, employees, agents, contractors, consultants, and other authorized representatives, access to the Site at all times for purposes of implementing and monitoring work under this Settlement Agreement. Such written access agreements or other interests shall specify that the Respondents are not EPA’s representative or agent with respect to liability associated with the Site.

40. In the event that site access agreements or other interests sufficient for implementation and monitoring of work under this Settlement Agreement are not obtained within the time period specified above, the Respondents shall notify EPA in writing within three (3) days thereafter regarding the lack of such agreements and the efforts made by the Respondents to obtain them. Lack of access shall not excuse or justify failure to perform any activity or to meet any deadline not requiring or directly dependent upon such access.

**X. ACCESS TO INFORMATION; RECORD PRESERVATION;**  
**CONFIDENTIALITY CLAIMS**

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

42. For a period of at least nine (9) years following completion of all work conducted by the Respondents pursuant to this Settlement Agreement, the Respondents shall preserve all documents, records and information of whatever kind, nature or description in their possession and/or control or that of their officer, employees, agents, accountants, contractors, attorneys,

successors and assigns, that relate in any way to the performance of work under this Settlement Agreement, or relate in any way to releases or threatened releases of hazardous substances which are the subject of the removal action addressed by this Settlement Agreement. After this nine (9) year period has expired, the Respondents shall provide EPA with thirty (30) days advance written notice prior to the destruction of any such records, documents or information. The Respondents shall send such notice, accompanied by a copy of this Settlement Agreement, to:

Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
One Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023  
Attn: Michelle Lauterback, Senior Enforcement Counsel  
Mail Code: SES  
Re: Removal Action at Vermont Mill Properties Superfund Site  
CERCLA Docket No. 01-2008-0036

Upon request, the Respondents shall provide to EPA copies of all such records, documents, or information.

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

#### **XI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

44. Upon the occurrence of any incident or change of conditions during the activities conducted pursuant to this Settlement Agreement that causes or threatens a release of Waste Material from the Site or an endangerment to the public health or welfare or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment. The Respondents shall also immediately notify the OSC or, in the event of her unavailability, shall notify the National Response Center, telephone (800) 424-8802 and/or call the 24-hour Emergency OSC telephone number (617) 723-8928. In taking any actions under this paragraph, the Respondents shall act in accordance with all applicable provisions of the Health and Safety Plan prepared pursuant to the Scope of Work. In the event that the Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payment of Response Costs).

45. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the OSC or, in the event of her unavailability shall notify the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) days after each incident specified above, 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 incident and to prevent the reoccurrence of such an incident. 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.*

## **XII. COMPLIANCE WITH OTHER LAWS**

46. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondents shall identify ARARs in the Work Plan subject to EPA approval.

## **XIII. AUTHORITY OF ON-SCENE COORDINATOR**

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

## **XIV. INSURANCE**

48. At least seven (7) days prior to commencing any on-site work under this Settlement Agreement, the Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability and automobile insurance with limits of fifty thousand dollars (\$50,000) combined single limit. The United States shall be named as an additional insured for all such insurance policies. Within the same time period, the Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondents demonstrate to EPA that any contractor or subcontractor maintains insurance equivalent to that described above or insurance covering the same risks but in a lesser amount, then the Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

**XV. FINANCIAL ASSURANCE**

49. Within fourteen (14) days of the Effective Date, Respondents shall establish and maintain financial security in the amount of \$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 payable to or at the direction of EPA, issued by a financial institution(s) acceptable in all respects to EPA;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;
- e. a written guarantee to perform or pay for the Work by one or more parent corporations or subsidiaries of Respondents, or by one or more unrelated corporations that have a substantial business relationship with the Respondents; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or
- f. a demonstration of sufficient financial resources to pay for the Work made by one or more of Respondents which shall consist of a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

50. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 49, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

51. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 49(e) or 49(f) of this Settlement Agreement, Respondents shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA, to EPA.

For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references “sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates,” the dollar amount to be used in the relevant financial test calculations shall be \$500,000 plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondent or guarantor to EPA by means of passing a financial test.

52. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 49 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Respondents may reduce the amount of the security in accordance with the written decision resolving the dispute.

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

#### **XVI. PAYMENT OF RESPONSE COSTS**

54. Respondents shall pay EPA for all Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes direct and indirect costs incurred by EPA and its contractors. Respondents shall make all payments within forty-five (45) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 55 of this Settlement Agreement.

a. Respondents shall make all payments required by this Paragraph by a certified or cashier's check, electronic funds transfer, or checks made payable to “EPA Hazardous Substance Superfund,” referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number 01EQ. Respondents shall send the check(s) to:

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

Electronic funds transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York  
33 Liberty Street

New York NY 10045  
ABA No.: 021030004  
Account No.: 68010727  
SWIFT address: FRNYUS33  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

Any electronic funds transfers received at the EPA lockbox bank after 10:30 am (Eastern Standard Time) will be credited to the next business day. Payment shall be accompanied by a statement identifying the names and addresses of the Settling Parties, the Site name, EPA Region 1 and Site/Spill ID Number 01CB, and the EPA docket number for this action.

b. At the time of payment, Respondents shall send notice that payment has been made to:

Tina Hennessy, Enforcement Coordinator  
U.S. Environmental Protection Agency  
One Congress Street, Suite 1100 (HBR)  
Boston, MA 02114-2023

c. In the event that the payments for Response Costs are not made within 45 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XIX.

55. Respondents may dispute all or part of a bill for Response Costs submitted under this Settlement Agreement, if Respondents allege that EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 54 on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 54(b) above. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within fourteen (14) days after the dispute is resolved.

## **XVII. DISPUTE RESOLUTION**

56. The Parties to this Settlement Agreement shall attempt to resolve, expeditiously and informally, any disagreements concerning this Settlement Agreement.

57. If the Respondents object to any EPA action taken pursuant to this Settlement Agreement the Respondents shall notify EPA in writing of their objection within **five (5) working days** of such action, unless the objection has been informally resolved.

58. EPA and Respondents shall, **five (5) working days** from EPA's receipt of the Respondents' written objections, attempt to resolve the dispute through formal negotiations (Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. EPA's decision regarding an extension of the Negotiation Period shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review.

59. Any agreement reached by the Parties pursuant to this Paragraph shall be in writing, signed by all Parties, and shall upon the signature by all Parties be incorporated into and become an enforceable element of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Branch Chief level or higher will issue a written decision on the dispute to the Respondents. The decision of EPA shall be incorporated into and become an enforceable element of this Settlement Agreement upon Respondents' receipt of the EPA decision regarding the dispute. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Any agreement reached by the Parties pursuant to this Paragraph 59 shall not alter Respondents' obligation to perform or complete other tasks required by the Settlement Agreement which are not directly affected by the agreement reached pursuant to this Paragraph.

60. Following resolution of the dispute, as provided by Paragraph 59, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No EPA decision made pursuant to Paragraph 58 shall constitute a final agency action giving rise to judicial review.

### **XVIII. FORCE MAJEURE**

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

62. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within 48 hours of when Respondents first knew that the event might cause a delay. Within two (2) days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all

actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

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

#### **XIX. STIPULATED PENALTIES**

64. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 64 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVIII (*Force Majeure*). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any Work Plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

a. Stipulated Penalty Amounts - Work. The following stipulated penalties shall accrue per violation per day for any noncompliance except those identified in Paragraph 64b. below:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$200.00	1st through 14th day
\$350.00	15th through 30th day
\$500.00	31st day and beyond

b. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 33 and 34:

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<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100.00	1st through 14th day
\$200.00	15th through 30th day
\$300.00	31st day and beyond

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65. Upon receipt of written demand by EPA, Respondents shall make payment to EPA within **thirty (30) days**. Interest shall accrue on late payments as of the date the payment is due, which is the date of the violation or act of noncompliance triggering the stipulated penalties. All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," and shall be mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

and shall reference the EPA Region and Site/Spill ID Number 01EQ, the EPA Docket number 01-2008-0036, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 54.

66. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Settlement Agreement. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Settlement Agreement.

67. In addition to the above penalties, violation of any provision of this Settlement Agreement may subject Respondents to civil penalties of up to thirty-two thousand, five hundred dollars (\$32,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Settlement Agreement or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

## **XX. COVENANT NOT TO SUE BY EPA**

68. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42

U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement, including, but not limited to, payment of Response Costs pursuant to Section XVI. This covenant not to sue extends only to Respondents and does not extend to any other person.

## **XXI. RESERVATIONS OF RIGHTS BY EPA**

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

70. The covenant not to sue set forth in Paragraph 68 above does not pertain to any matters other than those expressly identified therein. EPA reserves and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definitions of Response Costs;
- c. liability arising from the past, present or future disposal, release, or threat of release of hazardous substances from the Site;
- d. liability for performance of response action other than the Work;
- e. criminal liability;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

71. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an

endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XVII (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Response Costs that Respondents shall pay pursuant to Section XVI (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XXII. COVENANT NOT TO SUE BY RESPONDENTS**

72. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, 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 State of Vermont Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

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

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 70 (b) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

## **XXIII. OTHER CLAIMS**

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

74. Except as expressly provided in Paragraph 68 Covenant Not to Sue by EPA, nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any

claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

75. This Settlement Agreement does not constitute approval or a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

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

#### **XXIV. CONTRIBUTION**

77a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date in Paragraph 89, 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 Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Dates in paragraphs 88 and 89, resolved their liability to the United States for the Work and Response Costs.

c. Nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 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).

78. Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work and Response Costs. Except as provided in Section XXI, Paragraphs 69 and 70, of this Settlement Agreement, nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands against any persons not parties to this Settlement Agreement for indemnification, contribution, or cost recovery.

## **XXV. INDEMNIFICATION**

79. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

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

## **XXVI. MODIFICATIONS**

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

83. If Respondents seek permission to deviate from any approved Work Plan or schedule or Scope of Work, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 82.

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

#### **XXVII. ADDITIONAL REMOVAL ACTION**

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

#### **XXVIII. NOTICE OF COMPLETION OF WORK**

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

#### **XXIX. SEVERABILITY/INTEGRATION/APPENDICES**

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

88. This Settlement Agreement constitutes 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

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understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: Action Memorandum (Appendix A), Scope of Work (Appendix B) and Site Map (Appendix C).

**XXX. EFFECTIVE DATE**

89. This Settlement Agreement shall be effective three (3) business days after the Settlement Agreement is signed by the Director of the Office of Site Remediation & Restoration.

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

Agreed this 21 day of MARCH, 2008.

For Respondent Benmont Mill Properties, Inc.

By 

Title President


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

Agreed this 20 day of March, 2008.

For Mace Security International, Inc.

By 

Title Executive Vice President

It is so ORDERED and Agreed this 25<sup>th</sup> day of March, 2008.

By: 

James T. Owens, III, Director  
Office of Site Remediation & Restoration  
U.S. Environmental Protection Agency