

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:
FORSHAW CHEMICALS SITE
CHARLOTTE, MECKLENBURG
COUNTY, NORTH CAROLINA

FORSHAW CHEMICALS, INC.

Respondent.

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

U.S. EPA Region 4
CERCLA Docket No. -04-2009-3979

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 for Removal Action ("Settlement Agreement") is entered into by the United States Environmental Protection Agency ("EPA") and Forshaw Chemicals, Inc. ("Respondent"). This Settlement Agreement provides for the performance of a removal action by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the "Forshaw Chemicals Site" (the "Site") generally located at 650 State Street in Charlotte, Mecklenburg County, North Carolina.

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 "CERCLA", 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended.

3. EPA has notified the North Carolina Department of Environment and Natural Resources ("State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Settlement 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 and V 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 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 Respondent's responsibilities under this Settlement Agreement.

6. Respondent is liable for carrying out all activities required by this Settlement Agreement.

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

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement Agreement, 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 relating to the Site signed on August 4, 2009, by the Director, Superfund Division, EPA Region 4, or his/her delegate, and all attachments thereto. The "Action Memorandum" is 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. 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 XXXI.

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

f. "NCDNR" shall mean the North Carolina Department of Environment and Natural Resources and any successor departments or agencies of the State.

g. "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.

h. "Interim Response Costs" shall mean all costs, including direct and indirect costs, paid by the United States in connection with the Site between January 28, 2009, and the Effective Date, but paid after that date.

I. "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.

j. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent for Removal Action and all appendices attached hereto (listed in Section

XXX). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

k. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

l. "Parties" shall mean EPA and Respondent.

m. "Future Response Costs" shall mean all costs incurred beginning on the effective date of this agreement, 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 23 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), and Paragraph 33 (emergency response), and Paragraph 58 (work takeover).

n. "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).

o. "Respondent" shall mean Forshaw Chemicals, Inc.

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

q. "Site" shall mean the Forshaw Chemicals Superfund Site, encompassing approximately 5.8 acres, located at 650 State Street in Charlotte, Mecklenburg County, North Carolina and depicted generally on the map attached as Appendix B.

r. "State" shall mean the State of North Carolina.

s. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the removal action, as set forth in Appendix C to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

t. "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); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

u. "Work" shall mean all Removal Action activities Respondent is required to perform under this Settlement Agreement: including all activities conducted in connection with or pursuant to the SOW, the Work Plan, and the Work Plan Framework, and performing the Removal Action generally described in Paragraph 25.

v. "Work Plan" shall mean the document submitted to and approved by EPA for implementing the Statement of Work and Work Plan Framework, and generally performing the Removal Action generally described in Paragraph 25.

w. "Work Plan Framework" shall mean the items set forth in Appendix D to this Settlement Agreement, which the Parties have agreed in principle will constitute the basis for the Work Plan.

IV. FINDINGS OF FACT

Respondent is a North Carolina corporation.

The Site is located approximately one mile northwest of downtown Charlotte, North Carolina, at 650 State Street. Respondent is the current owner of the Site. Respondent began pentachlorophenol (PCP) formulation operations at the Site in the early 1970's and ceased these Site operations in 1986.

During operation of the Site at least one sudden and accidental release of a mixture of oil and PCP occurred on the western portion of the Site.

The Site is currently utilized as a distribution center for prepackaged pesticides, herbicides, and other items.

In March 2005, NCDENR conducted a Site inspection for the neighboring Clorox Chemical Site. During this inspection, soil samples were collected along the west side of a building located on the Site. Results from these samples revealed levels of PCP, arsenic, copper, and several other semi-volatiles and pesticides that exceeded screening levels. Additionally, a set of surface water and sediment samples were collected at the probable point of entry for the Clorox Site and the entire Forshaw Site property. These samples revealed levels of PCP and arsenic in the surface water that exceeded screening levels, while arsenic, chlorinated solvents, and dioxin/furan analyses were detected in the sediments.

In December 2005 and January 2006, NCDENR returned to the Site to conduct an Expanded Site Inspection (ESI) at the Clorox Site. This ESI was performed to better characterize the Clorox Site versus other potential sources of contamination. The ESI sample results showed that PCP, arsenic, and several dioxin/furan analytes were present along the stormwater conveyance system on the Forshaw Site property, as well as, off-Site in Stewart Creek which borders the Site property to the east. The stormwater conveyance system traverses portions of the Site. Stormwater enters the Site from off-Site piping located west and south of the Site and also enters stormwater catch basins on the Site. Thus, the system, conveys stormwater that is generated off-Site as well as on-Site. The NCDENR recommended further action for the Forshaw Site because elevated levels of contamination were found on the property and off-Site. In addition, Site-related contaminants were detected along the surface water pathway at the Site.

In 2008, Respondent retained Hart & Hickman, PC (“H&H”) to conduct a Source Assessment Report to evaluate PCP, arsenic, and dioxin/furans detected in previous sampling of the Site’s stormwater conveyance system by NCDENR and EPA. H&H conducted additional sampling north of the Site to assess background levels of arsenic and dioxin/furans. Background concentrations of arsenic ranged from 0.67 mg/kg to 9.4 mg/kg. Dioxin/furans were detected in one of the background samples at a 2,3,7,8-TCDD equivalence of 0.0087 ug/kg.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

- a. The Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contamination found at the Site and off-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. 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 liable for performance of response action and for response costs incurred and to be incurred in connection with the Site.
- e. Respondent, Forshaw Chemicals, Inc. is the “owner” and was an “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).
- f. The conditions described in the Findings of Fact above constitute an actual or threat of “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- g. 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 consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

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 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

10. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 14 days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 7 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 15 days of EPA's disapproval.

11. Within 14 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 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, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 15 days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

12. EPA has designated Mr. Kenneth Rhame of the Emergency Response and Removal Branch, Region 4, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement via certified mail to the OSC at:

Emergency Response and Removal Branch
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8906

13. EPA and Respondent shall have the right, subject to Paragraph 11, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA 7 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

14. Respondent shall perform, at a minimum, all actions necessary to implement the Statement of Work. A Work Plan Framework has been developed that will guide the implementation of the Statement of Work and the preparation of the Work Plan. The Work Plan Framework will constitute the basis for the Work Plan.

15. Work Plan and Implementation.

a. Within 21 days after the Effective Date, Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 14 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 15 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 15(b).

16. Health and Safety Plan. Within 21 days after the Effective Date, Respondent 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. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

17. 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. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate 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 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, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent 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, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 10 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 Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

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

19. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments

anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit 2 copies of all plans, reports or other submissions required by this Settlement Agreement, the Statement of Work, or any approved Work Plan. Upon request by 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 EPA of the proposed conveyance, including the name and address of the transferee. Respondent also agrees to require that its successors comply with the immediately proceeding sentence and Sections IX (Site Access) and X (Access to Information).

20. Final Report. Within 30 days after completion of all Work required by this Settlement Agreement, Respondent 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."

21. Off-Site Shipments.

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state or foreign waste management facility, provide written notification of such shipment of Waste Material to the appropriate state or provincial environmental official in the receiving facility's state or province 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 or province 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 province, or to a facility in another state or province.

ii. The identity of the receiving facility and state or province will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 21(a) and 21(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 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. Before any shipment is made to a foreign province, the Respondent shall certify to EPA the shipment receiving facility is in compliance with the applicable local, provincial and federal laws. 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 this paragraph.

IX. SITE ACCESS

22. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide EPA and its 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.

23. 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 14 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts it is 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. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

24. 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.

X. ACCESS TO INFORMATION

25. Respondent shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of its 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 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.

26. Respondent 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 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.

27. 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, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by 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.

28. 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

29. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), 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 10 years after Respondent's receipt of EPA's notification pursuant to Section XXIX (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.

30. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to 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 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.

31. 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 EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

32. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement 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. Respondent shall identify ARARs in the Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

33. 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. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at the EPA Regional Emergency 24-hour telephone number: 404-562-8700, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

34. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at telephone number 919-475-7397 or the Region at 1-800-241-1754 or 404-562-8700 and the National Response Center at (1-800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103© of CERCLA, 42 U.S.C. § 9603©, 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

35. 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 the cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

36. Payments for Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a Superfund Cost Recovery Package Imaging and On-Line System (SCORPIOS) Report, which includes direct and indirect costs incurred by EPA and its contractors. The bill will be sent to the Respondent on an annual basis from the Effective Date of this Agreement. Respondents shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 39 of this Settlement Agreement.

b. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment and EPA Site/Spill ID number A4PA. Respondent shall send the check(s) to:

US Environmental Protection Agency
Superfund Payments - Region 4
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

c. At the time of payment, Respondent shall send notice that payment has been made to by email to acctsreceivable.cinwd@epa.gov, and to:

Attn: Ms. Paula V. Painter
US Environmental Protection Agency, Region 4
Superfund Division
Superfund Enforcement and Information Management Branch
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8906

37. In the event that the payment for Future Response Costs is not made within 30 days of Respondent's receipt of a bill, Respondent 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.

38. Respondent may contest payment of any Future Response Costs billed under Paragraph 36 if it determines that EPA has made a mathematical error, or if it believes EPA incurred excess costs as a direct result of an EPA action that were inconsistent with the NCP. Such objections shall be made in writing within 30 days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 36. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of North Carolina and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the

escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 36. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 36. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XVI. DISPUTE RESOLUTION

39. 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.

40. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within 7 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 30 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

41. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Respondent's. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. 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 EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

42. 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 its 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 or a failure to attain performance standards/action levels set forth in the Action Memorandum.

43. 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 EPA orally within 3 days of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent 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; Respondent's rationale for attributing such delay to a *force majeure* event if it intends 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 preclude Respondent 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.

44. 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 Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, 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

45. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 46 and 47 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 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.

46. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 46(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100.00	1st through 14th day
\$250.00	15th through 30th day
\$500.00	31st day and beyond

b. Compliance Milestones: Paragraphs 11, 15, 16, 19, 20, and 36.

47. 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 11, 15, 16 19 and 20:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100.00	1st through 14th day
\$200.00	15th through 30th day
\$500.00	31st day and beyond

48. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 58 of Section XX, Respondent shall be liable for a stipulated penalty in the amount of \$100,000.00.

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 EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Division Director level or higher, under Paragraph 41 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

51. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

US Environmental Protection Agency
Fines and Penalties - Region 4
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number A4PA, the EPA Docket Number_____, and the name and address of the party 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 36.

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 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

54. If Respondent fails to pay stipulated penalties when due, 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 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 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 in this Section, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 58. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY 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, 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 receipt by EPA of the Future Response Costs due under Section XV of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Future Response Costs as required by Sections XV and XVIII of this Settlement Agreement. This

covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

56. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement 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.

57. The covenant not to sue set forth in Section XIX 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 Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definitions 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.

58. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in their performance of the Work, or is 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. Prior to taking over the Work, EPA will issue a written notice of default to the Respondent specifying the grounds upon which such notice was issued and providing Respondent with 30 days within which to commence actions to remedy the matters at default. Respondent may invoke the procedures set forth in Section XVI (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 Future Response Costs that Respondent shall pay pursuant to Section XV (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.

XXI. COVENANT NOT TO SUE BY RESPONDENT

59. 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 State of North Carolina 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 Work, or Future Response Costs.

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

61. Respondent agrees not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

62. The waiver in Paragraph 61 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

XXII. OTHER CLAIMS

63. 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 Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

64. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent 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.

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

XXIII. CONTRIBUTION

66.a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that 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 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 Respondent has, as of the Effective Date, resolved its liability to the United States for the Work, and Future Response Costs.

XXIV. INDEMNIFICATION

67. 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 attorney's 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.

68. 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.

69. 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. INSURANCE

70. At least 10 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 one million dollars, combined single limit, naming EPA as an additional insured. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement,

Respondent shall satisfy, or shall ensure that its 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 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 need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

71. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of \$300,000.00 in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

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

72. 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, Respondent 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 71, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost

increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

73. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Subparagraph 71(e) or 72(f) of this Settlement Agreement, Respondent shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of \$300,000.00 for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the Respondent or guarantor to EPA by means of passing a financial test.

74. 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 EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

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

XXVII. MODIFICATIONS

76. The OSC may make modifications to any plan or schedule or Statement 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.

77. If Respondent seeks permission to deviate from any approved work plan or schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 76.

78. 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 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.

XXVIII. ADDITIONAL REMOVAL ACTION

79. 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 Respondent 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, Respondent 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, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVII (Modifications).

XXIX. NOTICE OF COMPLETION OF WORK

80. 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 of Respondent required by this Settlement Agreement which shall solely include: payment of Future Response Costs; post-removal Site control (if applicable); covenant not to sue by Respondent; Respondent's indemnification obligation; and record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify 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 EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXXI. INTEGRATION/APPENDICES

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

- Appendix A - Action Memorandum
- Appendix B - Site Map
- Appendix C - Statement of Work

Appendix D - Work Plan Framework

XXXII. EFFECTIVE DATE

82. This Settlement Agreement shall be effective 5 days after the Settlement Agreement is signed by the Regional Administrator or his/her delegates.

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

Agreed this 3rd day of August, 2009.

For Respondent: **FORSHAW CHEMICALS, INC.**

By Thomas L. Loh III

Title President

It is so ORDERED and Agreed this 11 day of Aug, 2009.

BY: [Signature] DATE: 8/11/09
Name

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

EFFECTIVE DATE: 8-17-09

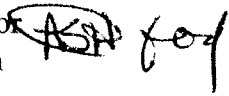
APPENDIX A
ACTION MEMORANDUM




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

ENFORCEMENT ACTION MEMORANDUM

SUBJECT: Request for Approval of an Enforcement Action Memorandum at the Forshaw Chemical Site, Charlotte, Mecklenburg County, North Carolina

FROM: Kenneth B. Rhame, On-Scene Coordinator 
Emergency Response & Removal Branch

THRU: Shane Hitchcock, Chief 
Emergency Response & Removal Branch

TO: Franklin E. Hill, Director
Superfund Division

I. PURPOSE

The purpose of this Enforcement Action Memorandum is to request and document approval of the proposed enforcement-lead time-critical removal action described herein for the Forshaw Chemical Site (the Site) located in Charlotte, Mecklenburg County, North Carolina. The release of hazardous substances at the Site poses a threat to public health and the environment pursuant to Section 104(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that meets the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) section 300.415(b)(2) criteria for removal actions. This removal is anticipated to be enforcement lead pursuant to an Administrative Settlement Agreement and Order on Consent (Settlement Agreement).

There are no significant or precedent-setting issues associated with the Site, and the Site is not currently on the National Priority List (NPL).

II. SITE CONDITIONS AND BACKGROUND

A. Site Description

CERCLIS ID Number: NCN000409865
Site ID Number: A4PA
Type: Time Critical Removal

1. Removal Site Evaluation

Forshaw Chemicals, Inc. is a former Pentachlorophenol (PCP) formulation facility. The Site occupies an approximately 5.25-acre parcel of land and consists of two former PCP formulating buildings, an office building, and a warehouse. The Forshaw Chemical Site was discovered by the North Carolina Department of Environment and Natural Resources (NCDENR) Superfund Section during a Site Investigation (SI) sampling event at an abandoned Clorox Chemical Plant located next to the Forshaw Chemical Site in March 2005. Results from sampling conducted during the March 7 - 8, 2005 SI for Clorox Chemical indicated the presence of several metals, semi-volatile, and pesticide contaminants along the surface water pathway at the Forshaw Chemicals, Inc. Site. Dioxins were also present in sediments along the surface water pathway at two of the sampling locations, including the storm sewer discharge into Stewart Creek. Sampling conducted during the December 5 - 6, 2005 and January 25, 2006 Expanded Site Investigation (ESI) for Clorox Chemical confirmed the presence of several metals, semi-volatiles, pesticides, and dioxins on site soils, along the overland flow pathway, and in the surface water pathway.

Sampling conducted during the SI/ESI and the 2007 Removal Site Evaluation (RSE) indicated elevated concentrations of PCP above the removal action level. Analytical results indicated the presence of PCP in soil at concentrations up to 1,700 parts per million (ppm). Arsenic was detected in the storm water pathway at a concentration of 287 ppm.

Forshaw Distribution conducted its own assessment in July 2008 and found concentrations of PCP near a former PCP plant and truck loading area at concentrations ranging from 47.2 ppm to 3,070 ppm. Arsenic was found in subsurface soils (4 to 6 feet below surface) at 1,490 ppm. The source of this arsenic has not been determined, as the facility states that they have never stored or used arsenic on site. Total Dioxin 2,3,7,8-TCDD Equivalence was found as high as 19.18 parts per billion (ppb). These findings are documented in a September 10, 2008 report from Hart & Hickman. The industrial removal action level for PCP is 900 ppm. The industrial removal action level for arsenic is 160 ppm. The industrial removal action level for dioxin is 5 ppb.

The Forshaw Chemical Site is currently used as a pesticide distribution facility by Forshaw Distribution, Inc. Forshaw Chemicals, Inc. previously formulated PCP in various locations on the property from 1970 to 1986. Wood Protection Products, Inc. formulated PCP in various locations on the property from 1986 to approximately 2004. PCP is a chlorinated hydrocarbon insecticide and fungicide. It was primarily used to protect timber from fungal rot and wood-boring insects, but may have also been used as a general pre-emergence herbicide. It was available in blocks, flakes, granules, liquid concentrates, wettable powders,

or ready-to-use petroleum solutions. PCP has historically contained dioxins as a manufacturing by-product.

The assessment activities yielded the following areas of concern:

1. The Site has been documented as having elevated levels of dioxin and PCP on site with the potential to migrate off site southeast into Stewart Creek. All storm water that runs through the Forshaw Chemical property is routed through a junction box located on the east side of the property and piped directly into Stewart Creek, approximately 150 feet east of the storm water junction box. Stewart Creek, as well as the entire 15-mile surface water pathway for the site, is considered a fishery. Locals have been sighted fishing in the creek.
2. Across the street to the south east of Forshaw are a community park, an elementary school, and residential housing surrounding Stewart Creek.

In summary, CERCLA hazardous substances (dioxin and PCP) exist and continue to migrate from the Forshaw facility to Stewart Creek and are a threat to public health and the environment. This Site meets the criteria for a removal action as outlined in 300.415(b).

2. Physical Location

The Forshaw Chemicals, Inc. Site is located at 650 State Street, approximately one mile west/northwest of downtown Charlotte, Mecklenburg County, North Carolina. The geographic coordinates for the site are 35.2405° north latitude and 80.8702° west longitude. The Site is located in a mixed industrial/residential area. The Site is bounded on the south by State Street, to the east by Stewart Creek, and to the north/northeast and west by CSX railroad spurs and commercial properties. A municipal park and elementary school are located on the opposite bank of Stewart Creek, just downstream of the Site.

3. Site Characteristics

All source areas are located outside the 100-year floodplain. The two-year, 24-hour rainfall near the site averages 3.5 inches. The Site includes two former PCP manufacturing buildings (Buildings 1 and 2), an office building (Building 3), and a warehouse (Building 4). The Site is located on two parcels of land totaling approximately 5.25 acres in size and is in a mixed industrial/residential area. The southern border of the property is State Street, to the east by Stewart Creek, and to the north/northeast and west by CSX railroad spurs and commercial properties. A municipal park and elementary school is

located on the opposite bank of Stewart Creek, immediately southeast of the Site. Access to the majority of the site is restricted, as observed during the on-site/off-site reconnaissance and the sampling events conducted for Clorox Chemical, which is adjacent to Forshaw Chemicals and shares the same surface water pathway.

Overland flow from the Site drains in an easterly direction. Storm water runoff from Forshaw Chemicals is collected in the on-site storm water system and is piped directly into Stewart Creek, approximately 75 feet north of State Street. The 15-mile surface water pathway begins with Stewart Creek. Stewart Creek flows in a southerly direction for approximately 1.25 miles, where it enters Irwin Creek.

4. Release or threatened release into the environment of a hazardous substance or pollutant or contaminant.

During the March 2005 SI for Clorox Chemical, two surface soil samples were collected along the west side of the original PCP manufacturing building adjacent to the loading dock area. Analytical results indicated the presence of PCP at a concentration of 250,000 micrograms per kilogram ($\mu\text{g/kg}$). Further sampling on June 6, 2007 indicated elevated concentrations of PCP and dioxin compounds above the removal action level. Analytical results indicated the presence of PCP at concentrations up to 1,700 ppm. In addition, arsenic was detected in the storm water pathway at 287 ppm. Forshaw Distribution conducted its own assessment in July 2008 and found concentrations of PCP near a former PCP plant and truck loading area at concentrations ranging from 47.2 ppm to 3,070 ppm. Dioxin was found in the same area as the PCP, analytical results for Total Dioxin 2,3,7,8-TCDD Equivalence were found as high as 19.18 ppb. Arsenic was found in subsurface soils (4 to 6 feet below surface) at 1,490 ppm. The Industrial Removal Action Levels (RAL) for PCP is 900 ppm, arsenic is 160 ppm and dioxin is 5 ppb. The source of the arsenic has not been determined as Forshaw claims to have never stored or used arsenic on site.

PCP was detected in the surface water at an average concentration of 160 micrograms per liter ($\mu\text{g/L}$) and in the sediment at a concentration as high as 900 $\mu\text{g/kg}$. There is a release or threatened release into the environment of a hazardous substance via the storm water conveyance system that traverses portions of the Forshaw Site and discharges to Stewart Creek. All storm water that runs through the Forshaw Chemical property is piped directly into Stewart Creek, Stewart Creek, as well as the entire 15-mile surface water pathway for the Site, is considered a fishery.

On June 6, 2007, the U.S. Environmental Protection Agency (EPA) collected analytical samples from around the Forshaw Facility. Sample locations

focused on the potential pathways of contaminant release offsite. A site reconnaissance was performed to locate the storm water pipe system to help determine sample locations. Samples were brought to the laboratory and analyzed for dioxins, PCP, pesticides and arsenic. Analytical results from the sampling event were reviewed and validated. Results showed contaminants above the Region 9 industrial and residential standards for arsenic, and several dioxin compounds. These results indicated contamination potentially leaving the Site.

5. NPL Status

This Site is not currently on the NPL.

6. Maps, pictures, and other graphic representations

All removal file information, including maps and aerial photos of the Site, will be maintained by the On-Scene Coordinator (OSC) and released to the EPA record center for inclusion in the Site file.

B. Other Actions to Date

1. Previous Actions

Other than the activities presented in the previous sections of this action memorandum, no other government, or private actions have been taken to investigate or mitigate the threats documented at the Site.

2. Current Actions

EPA Region 4 and Forshaw are negotiating an Administrative Settlement Agreement and Order on Consent for the removal action.

C. State and Local Authorities Role

1. State and Local Actions to Date

In December 2006, NCDENR requested EPA Emergency Response and Removal Branch (ERRB) evaluate the Site for consideration of a removal action.

2. Potential for continued State/Local Response

The NCDENR has referred this Site to EPA because they do not have available funds to implement this action.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

A. Threats to Public Health or Welfare

PCP, arsenic and dioxin are hazardous substances as defined by section 101(14) of the CERCLA. CERCLA contaminants, if released from the Site, have the capability of presenting a potential hazard to the general public. The threats come primarily from human exposure to these hazardous substances in the water. Direct contact and ingestion of PCP and arsenic are the primary pathways of exposure.

Site conditions meet the requirements for initiating a Time-Critical Removal Action according to the criteria listed in Section 300.415 (b)(2) of the NCP:

Section 300.415 (b)(2)(i): "Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants."

PCP, arsenic and dioxin has been released and continues to be discharged from the Forshaw Chemical Site via an outfall from the storm water conveyance system to Stewart Creek at levels above RALs. Due to the physical location of the Site, up-gradient from a public park and an elementary school, there is a potential for exposure to nearby human populations including sensitive human populations such as young children.

Section 300.415 (b)(2)(v): "Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released." It is not known what impacts that variable weather conditions such as flooding and drought may have on the concentrations currently being discharged to Stewart Creek from the storm water conveyance system (outfall). It is possible that the concentrations at the outfall could increase during drought conditions and that contaminants could spread to floodplain areas, such as the park or school yard during flood events.

Section 300.415 (b)(2)(vii): "The availability of other appropriate federal or state response mechanisms to respond to the release." There are no other appropriate federal or state response agencies to take responsibility for this Removal Action in a time-critical manner.

B. Threats to the Environment

Site conditions meet the requirements for initiating a time critical removal action according to criteria listed in Section 300.415 (b)(2) of the NCP:

Section 300.415 (b)(2)(i): "Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants."

PCP, arsenic and dioxin has been released and continues to be discharged from the Forshaw Chemical Site via an outfall from the storm water conveyance system to Stewart

Creek at levels above RALs. Fishing has been observed in Stewart Creek near the outfall where contamination has been released from the Site. There is a potential for impacts to fish down-gradient of the facility's outfall and exposures resulting from fishing activities.

Section 300.415 (b)(2)(vii): "The availability of other appropriate federal or state response mechanisms to respond to the release." There are no other appropriate federal or state response mechanisms to take responsibility for this Removal Action in a time-critical manner.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of the hazardous substances from this Site, if not addressed by implementing the Removal Action selected in this Action Memorandum, may present an imminent and substantial endangerment to the public health or welfare or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Install a "seamless" storm water conveyance pipe to prevent contamination (PCP, arsenic and dioxin) from entering the storm water system and discharging to Stewart Creek.
2. Remove on-site source areas of PCP and dioxin contaminants (arsenic contamination present in subsurface soils below 2 feet does not pose an exposure threat thus will not be removed. The "seamless" storm water pipe will prevent the arsenic from migrating off-site or impacting Stewart Creek).
3. Properly characterize, treat, and/or dispose of PCP and dioxin-contaminated soils that exceeds cleanup goals.
4. Perform PCP and dioxin confirmation sampling and analysis to insure cleanup objectives have been met.

2. Contribution to remedial performance

The proposed removal action will address the threats discussed in Section III, which meet the NCP Section 300.415(b)(2) removal criteria. Although future action under the remedial program is unlikely, the removal action contemplated in this Action Memorandum would be consistent with any future remedial action.

3. Description of alternative technologies

No alternative technologies have been determined at this time.

4. Environmental Evaluation/ Cost Analysis (EE/CA)

Due to the time critical nature of this Removal Action, an EE/CA is not required.

5. Applicable or relevant and appropriate requirements (ARAR)

This cleanup is being conducted as a time-critical removal action. A letter was sent to NCDENR on March 17, 2008, asking the State to identify ARARs. On site removal activities conducted under CERCLA are required to attain ARARs to extent practicable considering the exigencies of the situation. All wastes transferred off-site will comply with U.S. EPA's Off-Site Rule (40 CFR 300.440). Identified federal and state ARARs will be complied with to the extent practicable.

6. Proposed Schedule

Response actions at the Site will begin upon approval of this Action Memorandum. The removal action is expected to be completed within 12 months.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

If action is significantly delayed or not taken, there will be a continued release of hazardous substances into the environment increasing the possibility of exposure to the public.

VII. OUTSTANDING POLICY ISSUES

None

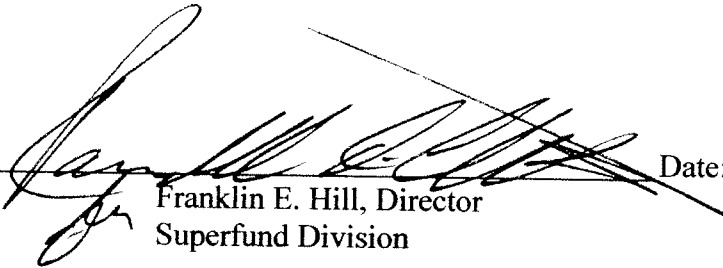
VIII. ENFORCEMENT

ERRB anticipates that this will be a potential responsible party (PRP)-lead response. The PRP for the Forshaw Chemicals, Inc. Site and EPA have concluded negotiations for the terms of the Administrative Settlement Agreement and Order on Consent for conducting this removal action. Should the PRP fail to implement the response, EPA may decide to issue a unilateral order or conduct a fund lead removal action.

IX. RECOMMENDATION

This decision document represents the selected removal action for the Forshaw Chemical Site located in Charlotte, Mecklenburg County, North Carolina. These response actions have been developed in accordance with CERCLA, as amended, and are not inconsistent with the NCP. This decision is based upon the Administrative Record for the Site. Conditions at the Site meet the NCP Section 300.415(b)(2) criteria for a removal action, and I recommend your approval of the proposed removal action.

Approval: _____


Franklin E. Hill, Director
Superfund Division

Date: _____

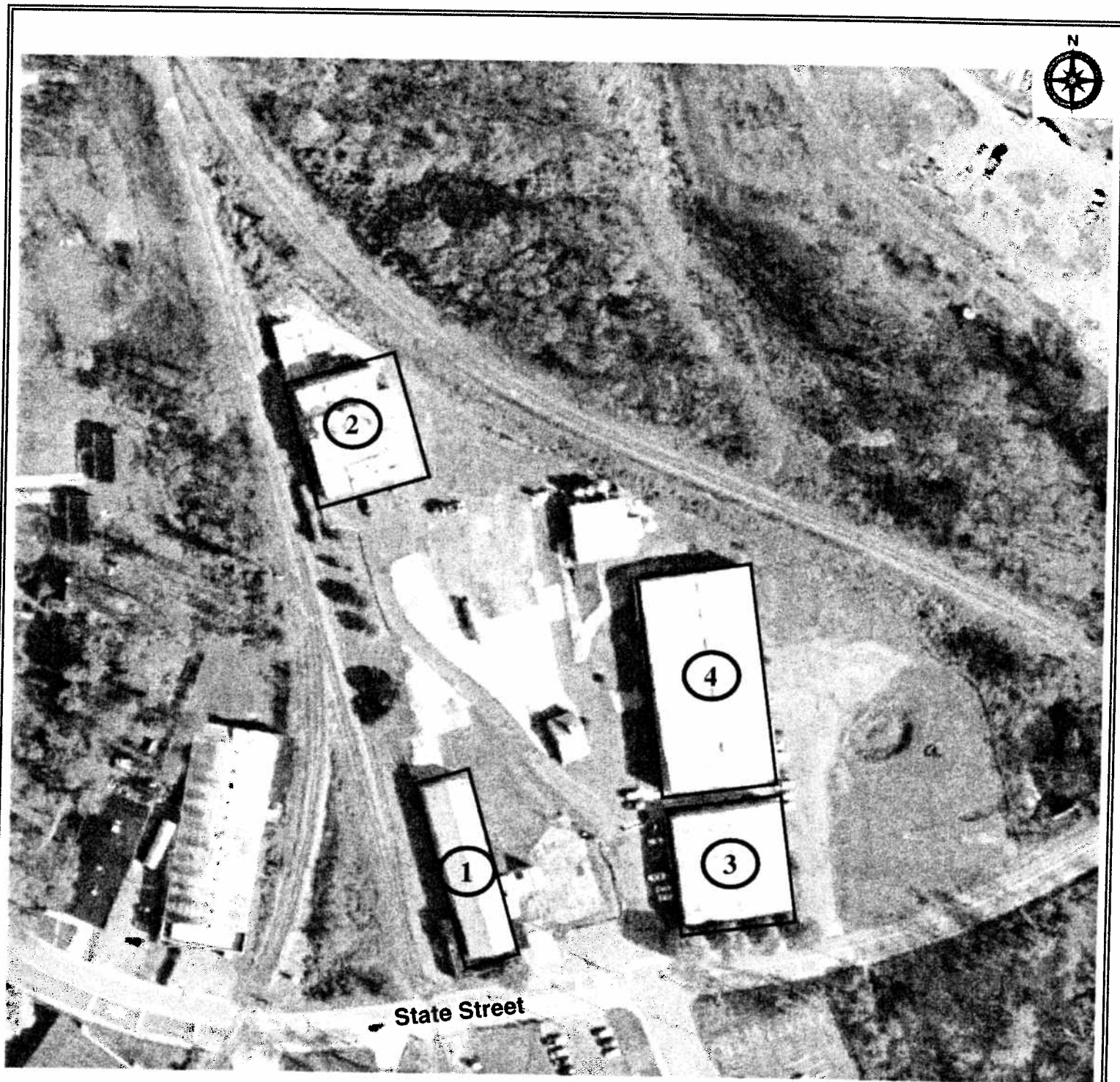
8/4/09

Disapproval: _____

Franklin E. Hill, Director
Superfund Division

Date: _____

Site Photo



m 25 50 75
yds 25' 50' 75'



Site: Forshaw Chemicals, Inc.

Figure 2

US EPA ID # NCN 000 409 865

Date: 6/12/06

Charlotte, Mecklenburg County

Drawn By: MDB

Approximate Scale: As Shown

Forshaw Chemicals, Inc. Property

APPENDIX B

SITE MAP

APPENDIX C
STATEMENT OF WORK

STATEMENT OF WORK

Forshaw Chemicals, Inc.

1. Prevent off-site migration via stormwater conveyance system of PCP, arsenic, and dioxin to Stewart Creek.
2. Remove source area of PCP and dioxin contaminants.
3. Properly treat in-situ or excavate and dispose of contaminated soils that exceed cleanup goals.
4. Perform confirmation sampling and analysis to ensure cleanup objectives have been met.
5. Assist with community involvement as deemed necessary by OSC.
6. Perform additional response actions as the Parties may mutually agree.

APPENDIX D
WORK PLAN FRAMEWORK

WORK PLAN FRAMEWORK

1. Remove the storm drain in the former PCP truck loading area near previous sample SB-7 and replace with unjointed pipe. Alternatively, the storm drain may be re-lined with unjointed pipe.
2. Excavate or treat in-situ the soil in the former PCP truck loading rack in the area of previous sample SB-7.
3. Remove surface soil in the area of previous NCDENR sample location CLX-002-SS near the catch basin west of the main warehouse where elevated levels of dioxins/furans were detected in surface soil.
4. Post-excavation and/or treatment composite soil samples will be collected to demonstrate that the removal goals have been met. A preliminary soil remedial goal of 300 mg/kg for PCP and 5 µg/kg for 2,3,7,8-TCDD equivalence will be used to determine when adequate soil has been removed. Alternatively, a site-specific risk assessment may be performed on the confirmation soil sample analytical results to demonstrate that the remaining soil impacts (if any) do not pose a risk greater than a lifetime incremental cancer risk of 1 in 10,000.
5. Flush and collect sediment from the storm drain upgradient and downgradient of the excavated areas to remove residual impacted sediment identified in previous EPA and NCDENR sampling.
6. Following the soil and sediment remedial activities, collect surface water samples at the outfall to Stewart Creek during a rainfall event of at least 0.1 inch. The performance goals for surface water discharge shall be within two times upgradient background concentrations or below the North Carolina surface water standards (whichever is greater) for PCP and dioxins.
7. Where excavation is performed, replace the overlying soil and pavement to minimize surface water infiltration. Following surface soil removal in the area of previous sample CLX-002-SS, inspect and repair the catch basin (if needed) and replace the surface pavement to minimize the potential for future migration of residual soil impacts into the drain system.
8. Conduct waste characterization sampling as needed to determine the appropriate means of managing the removed soil, sediment, and water. The method of waste management will be determined based upon the waste characterization sampling.
9. Respondent shall not be required to perform any Work or response activities in or related to Stewart Creek under this Settlement Agreement.
10. Assist with community involvement per the NCP as deemed necessary by the OSC.