

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 19-231
)	
AMEREN MISSOURI (formerly known as)	
UNION ELECTRIC COMPANY),)	
PHARMACIA LLC (formerly known as)	
MONSANTO CO.), SOLUTIA INC., and)	
AFTON CHEMICAL CORPORATION,)	
)	
Defendants.)	
_____)	

**CONSENT DECREE FOR REMEDIAL DESIGN/REMEDIAL ACTION
FOR SITE P OF OPERABLE UNIT 1 OF THE SAUGET AREA 2 SUPERFUND SITE**

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I. BACKGROUND

A. This Remedial Design/Remedial Action (“RD/RA”) consent decree between the United States and the Settling Defendants (“SDs”) Ameren Missouri, formerly known as Union Electric, Inc. (“Ameren”), Pharmacia LLC (“Pharmacia”), and Solutia Inc. (“Solutia”), Settling Non-Performing Owners Chicago Title & Trust Company Trust Nos. 1083190 & 1083191, and Settling Non-Participating Defendant Afton Chemical Corporation (“Afton”) implements the remedy set forth in EPA’s December 16, 2013 Record of Decision involving Operable Unit 1 (“OU 1”) of the Sauget Area 2 Superfund Site in Sauget and Cahokia, St. Clair County, Illinois, for Site P only. Site P of OU 1 of Sauget Area 2 is comprised of contaminated soils and groundwater contamination source areas. This consent decree does not address other sites within Sauget Area 2 or contaminated groundwater. EPA intends to address Sauget area-wide groundwater contamination in Sauget Areas 1 and 2 as a separate operable unit.

B. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (EPA), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9606 and 9607.

C. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice (DOJ) for response actions at Site P of the Sauget Area 2 – Operable Unit 1 Superfund Site in Sauget, Illinois (“Site”), together with accrued interest; and (2) performance of response actions by the defendants at Site P consistent with the National Contingency Plan, 40 C.F.R. Part 300 (NCP).

D. EPA and the State, through the Illinois Environmental Protection Agency (“IEPA”), have been investigating the Sauget Areas 1 and 2 Sites since the early 1980s. The Sauget Area 1 Site consists of three closed landfills (Sites G, H, and I); two former surface impoundments (Site L); one flooded borrow pit (Site M); one filled borrow pit (Site N); and a stream known as Dead Creek and its Creek Segments (“CS”) A through F. The Sauget Area 2 Site consists of five inactive disposal areas (Sites O, P, Q, R, and S). Of these five disposal sites, three are closed landfills (Sites P, Q, and R), one consists of four closed sludge lagoons (Site O), and one is a waste disposal site (Site S) associated with an abandoned solvent reclamation facility. Site P is the only site addressed in this Consent Decree.

E. In 2000, EPA entered into an Administrative Order on Consent (AOC) with a subset of potentially responsible parties (“PRPs”) in Sauget Area 2 to conduct a remedial investigation/feasibility study (RI/FS) at the five Sauget Area 2 waste disposal sites (Sites O, P, Q, R, and S) to investigate and assess the cleanup necessary to be completed at these sites. The PRPs conducted RI activities from June 2002 through October 2002 under the AOC, with EPA oversight. EPA’s review of the draft RI/FS report submitted in 2004 determined that supplemental investigation (SI) work was necessary to fill data gaps. The PRPs’ supplemental investigation work consisted of the following: additional field investigations, installation of monitoring well clusters, NAPL investigation, vapor intrusion investigation, principal threat

waste investigation, and completion of a regional fate and transport groundwater model to fill data gaps in the RI/FS. During the RI and SI from 2002 through 2007, the PRPs conducted extensive site investigations of disposal areas, groundwater, surface water, air, waste, and soil. EPA evaluated the results of these investigation studies in the Final Feasibility Study Report for the Sauget Area 2 Sites Group issued in May 2013.

F. The Sauget Area 2 site, including Site P, has been proposed for placement on the National Priorities List (“NPL”), 40 C.F.R. Part 300, Appendix B.

G. The decision by EPA on the remedial action to be implemented for OU 1 at Site P is embodied in a final Record of Decision (“ROD”), executed on December 16, 2013, on which the State had a reasonable opportunity to review and comment and on which the State has given its concurrence. The ROD includes EPA’s explanation for any significant differences between the final plan and the proposed plan, as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

H. In accordance with the National Contingency Plan, 40 C.F.R. Part 300 (“NCP”) and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Illinois (the “State”) on August 1, 2017, of negotiations with potentially responsible parties (“PRPs”) regarding the implementation of the RD/RA for Site P, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree. The State, through the IEPA, has not objected to this Consent Decree.

I. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Fish and Wildlife Service on August 1, 2017, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

J. EPA also notified the Illinois Department of Natural Resources and IEPA of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under state trusteeship and encouraged these trustees to participate in the negotiation of this Consent Decree.

K. SDs Pharmacia and Solutia have entered into a settlement agreement with Afton Chemical Corporation addressing its potential liabilities at Sauget Area 2, Site P. The settlement secures from Afton a reasonable allocated share of past and potential future response costs at Site P in exchange for indemnification from Pharmacia and Solutia.

L. The SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant that have entered into this Consent Decree do not admit any liability to the United States arising out of the transactions or occurrences alleged in the complaint.

M. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by SDs if conducted in accordance with this Consent Decree and its appendices.

N. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the Work to be performed by SDs shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

O. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of Site P and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over SDs. Solely for the purposes of this Consent Decree and the underlying complaint, SDs waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. SDs, Settling Non-Participating Defendant and Settling Non-Performing Owners shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, upon SDs and their successors and assigns, upon Settling Non-Performing Owners and their heirs, successors, and assigns, and upon Settling Non-Participating Defendant and its successors and assigns. Any change in ownership or corporate or other legal status of an SD, Settling Non-Performing Owner or Settling Non-Participating Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such SD's, Settling Non-Performing Owner's or Settling Non-Participating Defendant's responsibilities under this Consent Decree.

3. SDs shall provide a copy of this Consent Decree to each contractor hired to perform the Work and to each person representing any SD with respect to Site P or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. SDs or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work. SDs shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed

to be in a contractual relationship with SDs within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply solely for purposes of this Consent Decree:

- a. “Affected Property” shall mean all real property at Site P and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Action, including, but not limited to, the properties on which Site P is located.
- b. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.
- c. “Consent Decree” or “CD” shall mean this Consent Decree and all appendices attached hereto (listed in Section XXII). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.
- d. “Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.
- e. “DOJ” shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.
- f. “Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.
- g. “EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.
- h. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- i. “Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Consent Decree, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs,

travel costs, laboratory costs, the costs incurred pursuant to ¶ 11 (Emergencies and Releases), ¶ 12 (Community Involvement) (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), ¶ 25 (Access to Financial Assurance by EPA), Section VII (Remedy Review), Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including the amount of just compensation), and Section XIII (Dispute Resolution), future oversight costs, and all litigation costs. Future Response Costs shall also include all Interim Response Costs.

- j. “IEPA” shall mean the Illinois Environmental Protection Agency and any successor departments or agencies of the State.
- k. “Institutional Controls” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with Site P; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at or in connection with Site P.
- l. “Institutional Control Implementation and Assurance Plan” or “ICIAP” shall mean the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls set forth in the ROD, prepared in accordance with the SOW.
- m. “Interim Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with Site P between April 1, 2017 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.
- n. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.
- o. “Municipal Solid Waste” or “MSW” shall mean waste material: (a) generated by a household (including a single or multifamily residence); or (b) generated by a commercial, industrial, or institutional entity, to the extent that the waste material (1) is essentially the same as waste normally generated by a household; (2) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (3) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous

substances contained in waste material generated by a typical single-family household.

- p. “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.
- q. “Non-Settling Owner” shall mean any person, other than a SD, that owns or controls any Affected Property. The clause “Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by a Non-Settling Owner.
- r. “Operable Unit 1” or “OU 1” consists of the soil, sediments, and surface water, including the groundwater contamination source areas, at all of the sites within Sauget Area 2, including Site P, as defined in subparagraph 4.ii of this Consent Decree. Operable Unit 1 does not include groundwater contamination or Sauget Area 1.
- s. “Operation and Maintenance” or “O&M” shall mean all activities required to operate, maintain, and monitor the effectiveness of the Remedial Action as specified in the SOW or any EPA-approved O&M Plan.
- t. “Owner SD” shall mean any SD that owns or controls any Affected Property, including Ameren Missouri. The clause “Owner SD’s Affected Property” means Affected Property owned or controlled by Owner SD.
- u. “Paragraph” or “¶” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.
- v. “Parties” shall mean the United States, Settling Defendants, Settling Non-Performing Owners, and Settling Non-Participating Defendant.
- w. “Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with Site P through March 31, 2017, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.
- x. “Performance Standards” shall mean the cleanup levels and other measures of achievement of the remedial action objectives of the Remedial Action Alternative P3 for Site P, as set forth in the ROD and the SOW and any modified standards established pursuant to this Consent Decree.
- y. “Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and

- (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.
- z. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).
- aa. “Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to OU 1 at the Sauget Area 2 Site signed on December 16, 2013, by the Director of the Superfund Division, EPA Region 5, and all attachments thereto. The ROD is attached as Appendix B.
- bb. “Remedial Action” or “RA” shall mean the remedial action selected in the ROD; specifically Alternative P3 for Site P.
- cc. “Remedial Design” or “RD” shall mean those activities to be undertaken by SDs to develop final plans and specifications for the RA as stated in the SOW.
- dd. “Sauget Area 2 Site Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for Sauget Area 2 by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and in the consent decree entered in the United States District Court for the Southern District of Illinois on October 4, 2006, in *United States v. Afton Chem. Co., et al.*, Case No. 3:06-cv-00763.
- ee. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.
- ff. “Settling Defendants” or “SDs” shall mean Ameren, Pharmacia and Solutia, and their successors and assigns.
- gg. “Settling Non-Participating Defendant” shall mean Afton Chemical Corporation and its successors and assigns.
- hh. “Settling Non-Performing Owners” shall mean Chicago Title & Trust Company Trust Nos. 1083190 & 1083191. The phrase “Settling Non-Performing Owner’s Affected Property” means Affected Property owned or controlled by a Settling Non-Performing Owner.
- ii. “Site P” means the geographic area so named and identified by EPA, located within the corporate limits of the Village of Sauget, Illinois. Site P is depicted generally on the map attached hereto as Appendix A. It is located between the Illinois Central Gulf Railroad and the Terminal Railroad and north of Monsanto Avenue in the Village of Sauget. Site P is a former licensed solid waste landfill which occupies approximately 32 acres of land. It includes the areal extent of contamination in soils, sediment, surface water and groundwater released from Site P, except that, for the purposes of this Consent Decree, Site P does not

include groundwater and does not include the Sauget Area 1 Site, or soils, sediments, surface water, or groundwater of the Sauget Area 1 Site.

- jj. “State” shall mean the State of Illinois.
- kk. “Statement of Work” or “SOW” shall mean the document describing the activities SDs must perform to implement the RD, the RA, and O&M regarding Site P, which is attached as Appendix C to this Consent Decree and any modifications made in accordance with this Consent Decree.
- ll. “Supervising Contractor” shall mean the principal contractors retained by SDs to supervise and direct the implementation of the Work under this Consent Decree.
- mm. “Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.
- nn. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.
- oo. “Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
- pp. “Work” shall mean all activities and obligations SDs are required to perform under this Consent Decree, except the activities required under Section XIX (Retention of Records).

V. GENERAL PROVISIONS

5. **Objectives of the Parties.** The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by the design and implementation of response actions at Site P by SDs, and to resolve the claims of the United States against SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant with regard to Site P as provided in this Consent Decree.

6. **Commitments by Settling Defendants.**

a. SDs shall finance and perform the Work in accordance with this Consent Decree and all deliverables developed by SDs and approved or modified by EPA pursuant to this Consent Decree. SDs shall pay the United States for its response costs as provided in this Consent Decree.

b. SDs’ obligations to finance and perform the Work, including obligations to pay amounts due under this CD, are joint and several. In the event of the insolvency of any SD or the failure by any SD to implement any requirement of this CD, EPA shall be entitled and

obligated to access such SD's Financial Assurance under Section IX (Financial Assurance) and shall make such funds available to the remaining SDs to facilitate the completion of the Work as provided in Paragraph 26 and the remaining SDs shall complete all such requirements.

7. **Compliance with Applicable Law.** Nothing in this Consent Decree limits SDs' obligations to comply with the requirements of all applicable federal and state laws and regulations. SDs must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

8. **Permits.**

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work at Site P). Where any portion of the Work that is not on-site requires a federal or state permit or approval, SDs shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. SDs may seek relief under the provisions of Section XII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 8.a and required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK

9. **Coordination and Supervision.**

a. **Project Coordinators.**

(1) SDs' Project Coordinator must have sufficient technical expertise to coordinate the Work. SDs' Project Coordinator may not be an attorney representing any SDs in this matter and may not act as the Supervising Contractor. SDs' Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA shall designate and notify the SDs of EPA's Project Coordinator and Alternate Project Coordinator. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have

the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at Site P constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) SDs' Project Coordinator shall meet with EPA's Project Coordinator at least monthly unless EPA determines that less frequent meetings are appropriate.

b. **Supervising Contractor.** SDs' proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard).

c. **Procedures for Disapproval/Notice to Proceed.**

(1) SDs shall designate, and notify EPA, within 10 days after the Effective Date, of the name, title, contact information, and qualifications of the SDs' proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

(2) EPA, after a reasonable opportunity for review and comment by the State, shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, SDs shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. SDs may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of SDs' selection.

(3) SDs may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 9.c(1) and 9.c(2).

(4) Notwithstanding the procedures of ¶¶ 9.c(1) through 9.c(3), SDs have proposed, and EPA has authorized SDs to proceed, regarding the following Project Coordinator and Supervising Contractor: Michael J. Wagstaff, PE of Ameren Missouri is accepted by EPA as the Project Coordinator and Ron Frehner of GHD is accepted by EPA as the Supervising Contractor.

10. **Performance of Work in Accordance with SOW.** SDs shall: (a) develop the RD; (b) perform the RA; and (c) operate, maintain, and monitor the effectiveness of the RA; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified

deliverables as required by the SOW. All deliverables required to be submitted for approval under the CD or SOW shall be subject to approval by EPA in accordance with ¶ 6.6 (Approval of Deliverables) of the SOW.

11. **Emergencies and Releases.** SDs shall comply with the emergency and release response and reporting requirements under ¶ 4.3 (Emergency Response and Reporting) of the SOW. Subject to Section XV (Covenants by the United States), nothing in this CD, including ¶ 4.3 of the SOW, limits any authority of the United States: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from Site P, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from Site P. If, due to SDs' failure to take appropriate response action under ¶ 4.3 of the SOW, EPA takes such action instead, SDs shall reimburse EPA under Section X (Payments for Response Costs) for all costs of the response action.

12. **Community Involvement.** If requested by EPA, SDs shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section 2 (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator and implementation of a technical assistance plan. Costs incurred by the United States under this Section constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

13. **Modification of SOW or Related Deliverables.**

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy set forth in ¶ 1.3 of the SOW, then EPA may notify SDs of such modification. If SDs object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Section XIII.

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if SDs invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this CD, and SDs shall implement all work required by such modification. SDs shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this CD.

14. Nothing in this CD, the SOW, or any deliverable required under the SOW constitutes a warranty or representation of any kind by the United States that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards.

VII. REMEDY REVIEW

15. **Periodic Review.** SDs shall conduct, in accordance with ¶ 4.7 (Periodic Review Support Plan) of the SOW, studies and investigations to support EPA's reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the RA is protective of human health and the environment.

VIII. PROPERTY REQUIREMENTS

16. **Agreements Regarding Access and Non-Interference.** Settling Non-Performing Owners and Owner SD, with respect to their portions of the Affected Property, agree to, and SDs shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by SDs and by the United States, providing that Non-Settling Owner: (i) provide the United States and the other SDs, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the CD, including those listed in ¶ 16.a. (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the RA, including the restrictions listed in ¶ 16.b (Land, Water, or Other Resource Use Restrictions).

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations regarding contamination at or near Site P;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near Site P;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
- (7) Implementing the Work pursuant to the conditions set forth in ¶ 62 (Work Takeover);

- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by SDs or their agents, consistent with Section XVIII (Access to Information);
- (9) Assessing SDs' compliance with the CD;
- (10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the CD; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

b. **Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

- (1) Prohibiting the following activities that could interfere with the RA: Digging in, through or otherwise disturbing caps and covers installed at Site P without using appropriate protective equipment and repairing all caps and covers to original ROD specifications and with prior written notice to and approval by EPA;
- (2) Prohibiting use of contaminated groundwater;
- (3) Prohibiting the following activities that could result in exposure to contaminants in subsurface soils and groundwater: Digging in, through or otherwise disturbing caps and covers installed at Site P without using appropriate protective equipment and repairing all caps and covers to original ROD specifications and with prior written notice to and approval by EPA;
- (4) Ensuring that any new structures on Site P will not be constructed in the following manner which could interfere with the RA: constructing a structure that covers or otherwise interferes with Work; and
- (5) Ensuring that any new structures on Site P will be constructed in a manner which will minimize potential risk of inhalation of contaminants.

17. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of SDs would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of

money to secure access and/or use restriction agreements. If SDs are unable to accomplish what is required through “best efforts” in a timely manner, they shall notify the United States, and include a description of the steps taken to comply with the requirements. If the United States deems it appropriate, it may assist SDs, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

18. SDs or Settling Non-Performing Owners shall not Transfer their Affected Property without first securing EPA’s approval of, and transferee’s consent to, an agreement that: (i) is enforceable by SDs, Owner SD, and Settling Non-Performing Owners and the United States; and (ii) requires the transferee to provide access to and to refrain from using the Affected Property to the same extent as is provided under ¶ 16.

19. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, SDs, Owner SD, and Settling Non-Performing Owners shall continue to comply with their obligations under the CD, including their obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls, and to abide by such Institutional Controls.

20. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, SDs, Owner SD, and Settling Non-Performing Owners shall cooperate with EPA’s efforts to secure and ensure compliance with such Institutional Controls.

21. Notwithstanding any provision of the CD, the United States retains all of its access authorities and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

IX. FINANCIAL ASSURANCE

22. In order to ensure completion of the Work, SDs shall secure financial assurance, initially in the amount of \$2.9 million (“Estimated Cost of the Work”), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. SDs may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, and/or trust funds.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency; or

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

23. SDs have selected, and EPA has found satisfactory, as initial financial assurance, a surety bond totaling the Estimated Cost of the Work above. Within 30 days after the Effective Date, or 30 days after EPA's approval of the form and substance of SDs' financial assurance, whichever is later, SDs shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Financial Management Officer, to the United States, and to EPA as specified in Section XX (Notices and Submissions).

24. SDs shall diligently monitor the adequacy of the financial assurance. If any SD becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, SDs shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify SDs of such determination. SDs shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for SDs, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. SDs shall follow the procedures of ¶ 27 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. SDs' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

25. Access to Financial Assurance by EPA.

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 62.b., then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 25.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected SDs fail to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 25.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 62.b., EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. SDs shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 25 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Saugnet Area 2 Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with Site P, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under ¶ 25 must be reimbursed as Future Response Costs under Section X (Payments for Response Costs).

26. Access to Financial Assurance by SDs. In the event of the insolvency of any SD or the failure by any SD to implement any requirement of this Consent Decree in the absence of a Work Takeover, then, in accordance with any applicable financial assurance mechanism, EPA shall require that any funds guaranteed be paid will be deposited into a Special Account established for Saugnet Area 2 Site P within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with Saugnet Area 2 Site P, or to be transferred by EPA to the EPA Hazardous Substance Superfund. EPA shall disburse such funds from the Saugnet Area 2 Site P Special Account to any qualifying SD completing the Work at Site P on a periodic basis after receipt of adequate documentation as necessary to compensate for their costs incurred in completing the Work. At the same time, the

remaining SDs shall increase the amount of their Financial Assurance under Paragraph 22 in order to total the estimated cost of the Work remaining at that time.

27. **Modification of Amount, Form, or Terms of Financial Assurance.** SDs may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 23, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify SDs of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. SDs may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution). SDs may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by SDs pursuant to the dispute resolution provisions of this CD or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, SDs shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 23.

28. **Release, Cancellation, or Discontinuation of Financial Assurance.** SDs may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ 4.8 (Certification of Work Completion) of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution).

X. PAYMENTS FOR RESPONSE COSTS

29. **Payment by SDs for United States' Past Response Costs.** No payment of Past Response Costs is required under this Consent Decree. The United States intends to recover its Past Response Costs for all of Sauguet Area 2, including Site P, as part of an RD/RA Consent Decree for Sauguet Area 2 or through litigation. SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant shall not assert the United States' failure to recover some or all of its Past Response Costs in this CD as a basis for defending any action for recovery of Past Response Costs in Sauguet Area 2.

30. **Payments by SDs for Future Response Costs.** SDs shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills.** On a periodic basis, EPA will send SDs a bill requiring payment that includes an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. EPA will make reasonable efforts to send SDs this bill at least every 18 months. SDs shall make all payments within 45 days after SDs' receipt of each bill requiring payment, except as otherwise provided in ¶ 32, in accordance with ¶ 31.b (instructions for future response cost payments).

b. **Deposit of Future Response Costs Payments.** The total amount to be paid by SDs pursuant to ¶ 30.a. shall be deposited by EPA in the Sauget Area 2 Special Account to be retained and used to conduct or finance response actions at or in connection with Site P, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Sauget Area 2 Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with Site P. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by SDs pursuant to the dispute resolution provisions of this CD or in any other forum.

31. Instructions for SDs' Payment of Future Response Costs and Stipulated Penalties.

a. The Financial Litigation Unit (FLU) of the United States District Court for the Southern District of Illinois shall provide SDs, in accordance with Section XX (Notices and Submissions), with instructions regarding making payments to DOJ on behalf of EPA. The instructions must include a Consolidated Debt Collection System (CDCS) number to identify payments made under this CD.

b. For all payments subject to this ¶ 31.b, SDs shall make such payment by Fedwire EFT, referencing the Site/Spill ID number 05XX and DJ number 90-11-2-06089/6. The Fedwire EFT payment must be sent as follows:

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

c. For all payments made under this ¶ 31, SDs must include references to the Site/Spill ID and DJ numbers. At the time of any payment required to be made in accordance with ¶ 32, SDs shall send notices that payment has been made to the United States, EPA, and the

EPA Cincinnati Finance Center, all in accordance with Section XX. All notices must include references to the Site/Spill ID and DJ numbers.

32. **Contesting Future Response Costs.** SDs may submit a Notice of Dispute, initiating the procedures of Section XIII (Dispute Resolution), regarding any Future Response Costs billed under ¶ 30 (Payments by SDs for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the United States pursuant to Section XX (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If SDs submit a Notice of Dispute, SDs shall pay all uncontested Future Response Costs to the United States within 45 days after SDs' receipt of the bill requiring payment. Within 30 days after such payment, if informal dispute resolution has not resolved the dispute, SDs shall establish, in a duly chartered bank or trust company, an interest-bearing account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that account funds equivalent to the amount of the contested Future Response Costs. SDs shall send to the United States, as provided in Section XX (Notices and Submissions), a copy of the transmittal letter and check or evidence of the Fedwire EFT paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the account, including, but not limited to, information containing the identity of the bank and bank account under which the account is established as well as a bank statement showing the initial balance of the account. If the United States prevails in the dispute, SDs shall pay the sums due (with accrued interest) to the United States within 7 days after the resolution of the dispute. If SDs prevail concerning any aspect of the contested costs, SDs shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States within 7 days after the resolution of the dispute. SDs shall be disbursed any balance of the account. All payments to the United States under this Paragraph shall be made in accordance with ¶ 31.b (instructions for future response cost payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding SDs' obligation to reimburse the United States for its Future Response Costs.

33. **Interest.** In the event that any payment for Future Response Costs required under this Section is not made by the date required, SDs shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of SDs' 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 SDs' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to ¶ 49 (Stipulated Penalty Amounts – Work).

XI. INDEMNIFICATION AND INSURANCE

34. SDs' Indemnification of the United States.

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

b. The United States shall give SDs notice of any claim for which the United States plans to seek indemnification pursuant to this ¶ 34, and shall consult with SDs prior to settling such claim.

35. SDs covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between SDs and any person for performance of Work on or relating to Site P, including, but not limited to, claims on account of construction delays. In addition, SDs shall indemnify, save 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 SDs and any person for performance of Work on or relating to Site P, including, but not limited to, claims on account of construction delays.

36. **Insurance.** No later than 15 days before commencing any on-site Work, SDs shall secure, and shall maintain until the first anniversary after issuance of EPA's Certification of RA Completion pursuant to ¶ 4.6 (Certification of RA Completion) of the SOW commercial general liability insurance with limits of \$1 million, for any one occurrence, and automobile liability insurance with limits of \$1 million, combined single limit, together with an umbrella policy with limits of \$2 million, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of SDs pursuant to this CD. In addition, for the duration of this CD, SDs 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 SDs in furtherance of this CD. Prior to commencement of the Work, SDs shall provide to EPA certificates of such insurance and a copy of each insurance policy. SDs shall resubmit such certificates each year on the anniversary of the Effective Date, but need only submit copies of coverage changes to each insurance policy. If SDs demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, SDs need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. SDs shall ensure that all submittals to EPA under this Paragraph identify Site P of the Sauget Area 2 Superfund Site and the civil action number of this case.

XII. FORCE MAJEURE

37. “Force majeure,” for purposes of this CD, is defined as any event arising from causes beyond the control of SDs, of any entity controlled by SDs, or of SDs’ contractors that delays or prevents the performance of any obligation under this CD despite SDs’ best efforts to fulfill the obligation. The requirement that SDs exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

38. If any event occurs or has occurred that may delay the performance of any obligation under this CD for which SDs intend or may intend to assert a claim of force majeure, SDs shall notify EPA’s Project Coordinator orally or, in his or her absence, EPA’s Alternate Project Coordinator or, in the event both of EPA’s designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 48 hours of when SDs first knew that the event might cause a delay. Within ten (10) days thereafter, SDs shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; SDs’ rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of SDs, such event may cause or contribute to an endangerment to public health or welfare, or the environment. SDs shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. SDs shall be deemed to know of any circumstance of which SDs, any entity controlled by SDs, or SDs’ contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude SDs from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 37 and whether SDs has exercised its best efforts under ¶ 37, EPA may, in its unreviewable discretion, excuse in writing SDs’ failure to submit timely or complete notices under this Paragraph.

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

40. If SDs elect to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution) regarding EPA's decision, it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, SDs shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that SDs complied with the requirements of ¶¶ 37 and 38. If SDs carry this burden, the delay at issue shall be deemed not to be a violation by SDs of the affected obligation of this CD identified to EPA and the Court.

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

XIII. DISPUTE RESOLUTION

42. Unless otherwise expressly provided for in this CD, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this CD. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of SDs that have not been disputed in accordance with this Section.

43. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Any dispute regarding this CD shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

44. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, SDs invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting

documentation relied upon by SDs. The Statement of Position shall specify SDs' position as to whether formal dispute resolution should proceed under ¶ 45 (Record Review) or ¶ 46.

b. Within 30 days after receipt of SDs' Statement of Position, EPA will serve on SDs its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under ¶ 45 (Record Review) or ¶ 46. Within 30 days after receipt of EPA's Statement of Position, SDs may submit a Reply.

c. If there is disagreement between EPA and SDs as to whether dispute resolution should proceed under ¶ 45 (Record Review) or ¶ 46, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if SDs ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in ¶¶ 45 and 46.

45. **Record Review.** Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this CD, and the adequacy of the performance of response actions taken pursuant to this CD. Nothing in this CD shall be construed to allow any dispute by SDs regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in ¶ 45.a. This decision shall be binding upon SDs, subject only to the right to seek judicial review pursuant to ¶¶ 45.c and 45.d.

c. Any administrative decision made by EPA pursuant to ¶ 45.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by SDs with the Court and served on all Parties within 20 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this CD. The United States may file a response to SDs' motion.

d. In proceedings on any dispute governed by this Paragraph, SDs shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to ¶ 45.a.

46. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. The Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under ¶ 44. The Superfund Division Director's decision shall be binding on SDs unless, within 20 days after receipt of the decision, SDs file with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the CD. The United States may file a response to SDs' motion.

b. Notwithstanding ¶ N (CERCLA § 113(j) record review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

47. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of SDs under this CD, except as provided in ¶ 32 (Contesting Future Response Costs), as agreed by EPA, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in ¶ 55. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CD. In the event that SDs do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

XIV. STIPULATED PENALTIES

48. SDs shall be liable for stipulated penalties in the amounts set forth in ¶¶ 49 and 50 to the United States for failure to comply with the requirements of this CD specified below, unless excused under Section XII (Force Majeure). "Comply" as used in the previous sentence includes compliance by SDs with all applicable requirements of this CD, within the deadlines established under this CD. If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under ¶ 6.6(a) (Initial Submissions) or under ¶ 6.6(b) (Resubmissions) of the SOW due to such material defect, then the material defect shall constitute a lack of compliance for purposes of this Paragraph.

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

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in ¶ 49.b:

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

b. Compliance Milestones.

- (1) Failure to timely initiate Remedial Action Construction or to complete the Remedial Action;
- (2) Failure to timely implement the Operation and Maintenance Plan;
- (3) Failure to conduct performance monitoring as required by either the O&M Plan or the Periodic Review Support Plan;
- (4) Failure to timely implement the Institutional Control Implementation and Assurance Plan;
- (5) Failure to establish or maintain the required insurance pursuant to Section XI of this Consent Decree;
- (6) Failure to make best efforts to obtain or to provide access or to execute the required Institutional Controls and submit them to EPA pursuant to Section VIII of this Consent Decree;
- (7) Failure to establish and maintain financial assurance in compliance with the timelines and other substantive and procedural requirements of Section IX (Financial Assurance);
- (8) Failure to timely make payment of Future Response Costs pursuant to Section X of this Consent Decree; or
- (9) Failure to initiate or complete any further response actions EPA selects for Site P pursuant to this Consent Decree.

50. Stipulated Penalty Amounts - Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to the CD other than those specified in Paragraph 49.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$500
15th through 30th day	\$1,250
31st day and beyond	\$2,500

51. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 62 (Work Takeover), SDs shall be liable for a stipulated penalty in the amount of \$250,000. Stipulated penalties under this Paragraph are in addition to the remedies available under ¶¶ 25 (Access to Financial Assurance by EPA) and 62 (Work Takeover).

52. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ 6.6 (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies SDs of any deficiency; (b) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under ¶ 45.b or ¶ 46.a of Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the date that SDs' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this CD shall prevent the simultaneous accrual of separate penalties for separate violations of this CD.

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

54. All penalties accruing under this Section shall be due and payable to the United States within 30 days after SDs' receipt from EPA of a demand for payment of the penalties, unless SDs invokes the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 31.b (instructions for future response cost payments).

55. Penalties shall continue to accrue as provided in ¶ 52 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 30 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, SDs shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in ¶ 55.c;

c. If the District Court's decision is appealed by any Party, SDs shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the balance of the account shall be paid to EPA or to SDs to the extent that they prevail.

56. If SDs fail to pay stipulated penalties when due, SDs shall pay Interest on the unpaid stipulated penalties as follows: (a) if SDs have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 55 until the date of payment; and (b) if SDs fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 54 until the date of payment. If SDs fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

57. The payment of penalties and Interest, if any, shall not alter in any way SDs' obligation to complete the performance of the Work required under this CD.

58. Nothing in this CD shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of SDs' violation of this CD or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this CD, except in the case of a willful violation of this CD.

59. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CD.

XV. COVENANTS BY THE UNITED STATES

60. **Covenants for SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant by United States.** Except as provided in ¶ 61 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant pursuant to Sections 106 and 107(a) of CERCLA for the Work, and Future Response Costs with respect to Site P. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant of their obligations under this CD. These covenants extend only to SDs,

Settling Non-Performing Owners, and Settling Non-Participating Defendant and do not extend to any other person.

61. **General Reservations of Rights.** The United States reserves, and this CD is without prejudice to, all rights against SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant with respect to all matters not expressly included within the United States' covenants. Notwithstanding any other provision of this CD, the United States reserves all rights against SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant with respect to:

- a. liability for failure by SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant to meet a requirement of this CD;
 - b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of Site P;
 - c. liability based on the ownership of Site P by SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant when such ownership commences after signature of this CD by SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant;
 - d. liability based on the operation of Site P by SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant when such operation commences after signature of this CD by SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant and does not arise solely from SDs' performance of the Work;
 - e. liability based on SDs' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with Site P, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this CD by SDs;
 - f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
 - g. criminal liability;
 - h. liability for violations of federal or state law that occur during or after implementation of the Work;
 - i. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to ¶ 13 (Modification of SOW or Related Deliverables);
 - j. liability for additional operable units at Site P or the final response action;
- and

k. liability for costs that the United States will incur regarding Site P but that are not within the definition of Future Response Costs.

62. Work Takeover.

a. In the event EPA determines that SDs: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to SDs. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide SDs a period of 10 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 10-day notice period specified in ¶ 62.a, SDs have not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify SDs in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 62.b. Funding of Work Takeover costs is addressed under ¶ 25 (Access to Financial Assurance by EPA).

c. SDs may invoke the procedures set forth in ¶ 45 (Record Review), to dispute EPA’s implementation of a Work Takeover under ¶ 62.b. However, notwithstanding SDs’ invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 62.b until the earlier of (1) the date that SDs remedy, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with ¶ 45 (Record Review) requiring EPA to terminate such Work Takeover.

63. Notwithstanding any other provision of this CD, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XVI. COVENANTS BY SETTLING DEFENDANTS

64. Covenants by SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant. Subject to the reservations in ¶ 65, SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Work, past response actions regarding Site P, Future Response Costs, and this CD, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, past response actions regarding Site P, Future Response Costs, and this CD; or

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

65. Except as provided in ¶¶ 68 (Waiver of Claims by SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant) and 75 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XV (Covenants by the United States), other than in ¶¶ 61.a (claims for failure to meet a requirement of the CD), 61.g (criminal liability), and 61.h (violations of federal/state law during or after implementation of the Work), but only to the extent that SDs', Settling Non-Performing Owners', and Settling Non-Participating Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

67. Nothing in this CD 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).

68. Waiver of Claims by SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant.

a. SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) ***De Micromis Waiver.*** For all matters relating to Site P against any person where the person's liability to SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant with respect to Site P is based solely on having

arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at Site P, or having accepted for transport for disposal or treatment of hazardous substances at Site P, 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 Site P was less than 110 gallons of liquid materials or 200 pounds of solid materials;

(2) **Municipal Solid Waste (“MSW”) Waiver.** For all matters relating to Site P against any person where the person’s liability to SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant with respect to Site P is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of MSW at Site P, if the volume of MSW disposed, treated, or transported by such person to Site P did not exceed 0.2% of the total volume of waste at Site P.

b. **Exceptions to Waiver.**

(1) The waiver under this ¶ 68 shall not apply with respect to any defense, claim, or cause of action that a SDs, a Settling Non-Performing Owner, or a Settling Non-Participating Defendant may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to Site P against such SDs, Settling Non-Performing Owner, or Settling Non-Participating Defendant.

(2) The waiver under ¶ 68.a.(1) (*De Micromis* Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to Site P by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at Site P; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to Site P; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

(3) The waiver under ¶ 68.a.(2) (MSW Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing MSW contributed to Site P by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at Site P; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to Site P.

(4) The waivers under the ¶ 68 shall not apply with respect to any claim or cause of action of SDs against the insurers for Sauget & Company, Paul Sauget, and the Village of Sauget, or against Rogers Cartage Company, Afton Chemical Corporation, BASF Corporation, ExxonMobil Oil Corporation, Glidden/U.S. Paint, T H Agriculture & Nutrition, LLC, and their insurers and affiliated entities.

69. SDs agree not to seek judicial review of any final rule listing Site P on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing Site P.

XVII. EFFECT OF SETTLEMENT; CONTRIBUTION

70. Except as provided in ¶ 68 (Waiver of Claims by SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant), nothing in this CD shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this CD. Except as provided in Section XVI (Covenants by SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to Site P against any person not a Party hereto. Nothing in this CD diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

71. The Parties agree, and by entering this CD this Court finds, that this CD constitutes a judicially-approved settlement pursuant to which each SDs, Settling Non-Performing Owner, and Settling Non-Participating Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this CD. The “matters addressed” in this CD are the Work and Future Response Costs.

72. The Parties further agree, and by entering this CD this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this CD constitutes a judicially-approved settlement pursuant to which each SDs, Settling Non-Performing Owner, and Settling Non-Participating Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

73. SDs, and each Settling Non-Performing Owner and Settling Non-Participating Defendant shall, with respect to any suit or claim brought by it for matters related to this CD, notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

74. SDs, and each Settling Non-Performing Owner, and Settling Non-Participating Defendant shall, with respect to any suit or claim brought against it for matters related to this CD, notify in writing the United States within 10 days after service of the complaint on such SDs, Settling Non-Performing Owner, or Settling Non-Participating Defendant. In addition, SDs, and each Settling Non-Performing Owner, and Settling Non-Participating Defendant shall notify the United States within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

75. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to Site P, SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XV (Covenants by the United States).

XVIII. ACCESS TO INFORMATION

76. SDs shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within SDs’ possession or control or that of its contractors or agents relating to activities at Site P or to the implementation of this CD, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. SDs shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

77. **Privileged and Protected Claims.**

a. SDs may assert that all or part of a Record requested by the United States is privileged or protected as provided under federal law, in lieu of providing the Record, provided SDs comply with ¶ 77.b, and except as provided in ¶ 77.c.

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

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

78. **Business Confidential Claims.** SDs may assert that all or part of a Record provided to the United States under this Section or Section XXI (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). SDs shall segregate and clearly identify all Records or parts thereof submitted under this CD for which SDs asserts business confidentiality claims. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified SDs that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to SDs.

79. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this CD.

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

XIX. RETENTION OF RECORDS

81. Until 10 years after EPA's Certification of Work Completion under ¶ 4.8 (Certification of Work Completion) of the SOW, SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to Site P, provided, however, that SDs and Settling Non-Performing Owners who are potentially liable as owners or operators of Site P must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to Site P. SDs must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that SDs (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

82. At the conclusion of this record retention period, SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant shall notify the United States at least 90 days

prior to the destruction of any such Records, and, upon request by the United States, and except as provided in ¶ 77 (Privileged and Protected Claims), SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant shall deliver any such Records to EPA.

83. SDs certify that, to the best of their knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding Site P since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding Site P pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XX. NOTICES AND SUBMISSIONS

84. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this CD must be in writing unless otherwise specified. Whenever, under this CD, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to EPA, and not to the United States, should not be sent to the DOJ. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the CD regarding such Party.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-06089/6

As to EPA:

Douglas Ballotti
Acting Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

and:

Stephanie Linebaugh
EPA Project Manager
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd. (SR-6J)
Chicago, IL 60604-3590

As to the Regional Comptroller's
Office

Richard Hackley
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd. (MF-10J)
Chicago, Illinois 60604-3590

As to EPA Cincinnati Finance
Center:

EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

As to the State of Illinois:

Paul Lake
Remediation Specialist
Illinois Environmental Protection Agency
1201 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

and:

Michelle Ryan
Assistant Counsel
Illinois Environmental Protection Agency
1201 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

As to SD Ameren:

Michael J. Wagstaff, PE
Ameren Missouri
11149 Lindbergh Business Ct.
St Louis, MO 63123

and:

Joseph F. Madonia
Counsel for Ameren UE
Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago, IL 60606-2833
(312) 214-5611

As to SDs Pharmacia and Solutia:

Cathleen S. Bumb
Director, Remediation and Senior Environmental
Counsel
Solutia Inc.
575 Maryville Centre Drive
St. Louis, MO 63141

and: Jason A. Flower
Counsel for Pharmacia LLC and Solutia Inc.
Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105

As to Settling Non-Participating
Defendant Afton Chemical Corp.: Regina Harm
President, Afton Chemical Corporation
500 Spring Street
Richmond, VA 23219-4304

and: Kindra L. Kirkeby
Assistant Counsel, Law Department
Afton Chemical Corporation
330 South Fourth Street
Richmond, VA 23219-4304
kindra.kirkeby@newmarket.com

As to Settling Non-Performing
Owners Chicago Title & Trust Cos.
Trust Nos. 1083190 & 1083191 Jay Dinkelmann
Trustee
2041 Goose Lake Rd., Suite 2A
Sauget, IL 62206
(618) 274-2990

and: Thomas R. Ysursa
Becker, Hoerner, Thompson & Ysursa, P.C.
5111 West Main Street
Belleville, IL 62226
try@bhtylaw.com

XXI. RETENTION OF JURISDICTION

85. This Court retains jurisdiction over both the subject matter of this CD and SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant for the duration of the performance of the terms and provisions of this CD for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this CD, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIII (Dispute Resolution).

XXII. APPENDICES

86. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the description and/or map of Site P.

“Appendix B” is the ROD.

“Appendix C” is the SOW.

XXIII. MODIFICATION

87. Except as provided in ¶ 13 (Modification of SOW or Related Deliverables), material modifications to this CD, including the SOW, shall be in writing, signed by the United States and SDs, and shall be effective upon approval by the Court. Except as provided in ¶ 13, non-material modifications to this CD, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and SDs. A modification to the SOW shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

88. Nothing in this CD shall be deemed to alter the Court’s power to enforce, supervise, or approve modifications to this CD.

XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

89. This CD shall be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the CD disclose facts or considerations that indicate that the CD is inappropriate, improper, or inadequate. SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant consent to the entry of this CD without further notice.

90. If for any reason the Court should decline to approve this CD in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXV. SIGNATORIES/SERVICE

91. Each undersigned representative of a SD, Settling Non-Performing Owner, and Settling Non-Participating Defendant to this CD and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, or his or her delegee, certifies that he or she is fully authorized to enter into the terms and conditions of this CD and to execute and legally bind such Party to this document.

92. SDs, and each Settling Non-Performing Owner and Settling Non-Participating Defendant agrees not to oppose entry of this CD by this Court or to challenge any provision of this CD unless the United States has notified SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant in writing that it no longer supports entry of the CD.

93. SDs, and each Settling Non-Performing Owner, and Settling Non-Participating Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this CD. SDs and each Settling Non-Performing Owners, and Settling Non-Participating Defendant agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. SDs and Settling Non-Participating Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this CD.

XXVI. FINAL JUDGMENT

94. This CD and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the CD. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this CD.

95. Upon entry of this CD by the Court, this CD shall constitute a final judgment between and among the United States and SDs, Settling Non-Performing Owners, and Settling Non-Participating Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2019.

United States District Judge

Signature Page for Consent Decree regarding
Site P of Operable Unit 1 of the Sauget Area 2 Superfund Site


FOR THE UNITED STATES OF AMERICA:

2/21/2019

Date



KAREN S. DWORKIN
Deputy Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530



MICHAEL J. ZOELLER
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611




STEVEN D. WEINHOEFT
United States Attorney
Southern District of Illinois
9 Executive Dr.
Fairview Heights, IL 62208



NATHAN D. STUMP
Assistant United States Attorney
Southern District of Illinois
9 Executive Dr.
Fairview Heights, IL 62208
nathan.stump@usdoj.gov

Signature Page for Consent Decree regarding
Site P of Operable Unit 1 of the Sauget Area 2 Superfund Site


DOUGLAS BALLOTI
Acting Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604


THOMAS J. MARTIN
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Signature Page for Consent Decree regarding
Site P of Operable Unit 1 of the Sauget Area 2 Superfund Site

**FOR SETTLING DEFENDANT
AMEREN MISSOURI**



MICHAEL MOEHN
President, Ameren Missouri
1901 Chouteau Avenue
St. Louis, MO 63103

09/11/19
Date



Agent Authorized to Accept Service
on Behalf of Above-signed Party:

SUSAN B. KNOWLES
Director & Assistant General Counsel
Ameren Missouri
1901 Chouteau Avenue
St. Louis, MO 63103
Phone: (314) 554-3183
Email: sknowles@ameren.com

Signature Page for Consent Decree regarding
Site P of Operable Unit 1 of the Sauget Area 2 Superfund Site

**FOR SETTLING DEFENDANT
PHARMACIA LLC**

By: Solutia Inc., its Attorney-in-Fact

January 28, 2019

Date



EDWIN WILLIAMSON

Vice President and Assistant General Counsel

200 South Wilcox Drive

Kingsport, TN 37660

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

Name (print): Cathleen S. Bumb
Title: Director, Remediation and Senior
Address: Environmental Counsel
Phone: 575 Maryville Center Drive
Email: St. Louis, MO 63141
(314) 674-7240
csbumb@eastman.com

Signature Page for Consent Decree regarding
Site P of Operable Unit 1 of the Sauget Area 2 Superfund Site

**FOR SETTLING DEFENDANT
SOLUTIA INC.**

January 28, 2019

Date

Edwin Williamson

EDWIN WILLIAMSON
Vice President and Assistant General Counsel
200 South Wilcox Drive
Kingsport, TN 37660

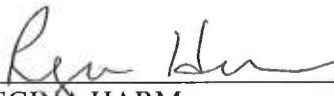
Agent Authorized to Accept Service
on Behalf of Above-signed Party:

Name (print): Cathleen S. Bumb
Title: Director, Remediation and Senior
Address: Environmental Counsel
Phone: 515 Maryville Center Drive
email: St. Louis, MO 63141
(314) 674-7240
csbumb@eastman.com

Signature Page for Consent Decree regarding
Site P of Operable Unit 1 of the Sauget Area 2 Superfund Site


**FOR SETTLING NON-PARTICIPATING
DEFENDANT AFTON CHEMICAL
CORPORATION**

Date



REGINA HARM
President, Afton Chemical Corporation
500 Spring Street
Richmond, VA 23219-4304

Agent Authorized to Accept Service
on Behalf of Above-signed Party:



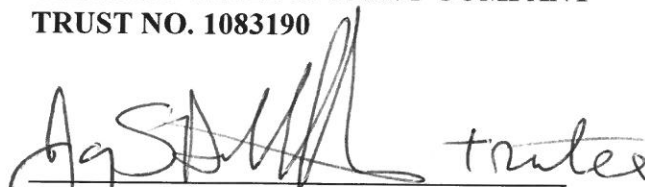
M. RUDOLPH WEST
General Counsel,
New Market Corporation

Signature Page for Consent Decree regarding
Site P of Operable Unit 1 of the Sauget Area 2 Superfund Site

**FOR SETTLING NON-PERFORMING OWNER
CHICAGO TITLE & TRUST COMPANY
TRUST NO. 1083190**

2/6/19

Date

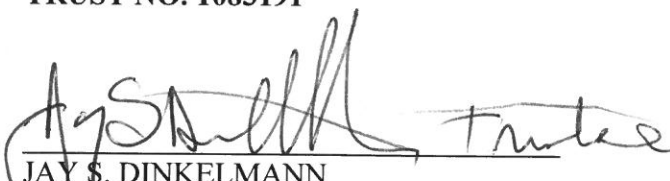


JAY S. DINKELMANN
Trustee, Vincent J. Sauget QTip Trust
U/W Beneficiary of Trust #1083190
2041 Goose Lake Road, Suite 2A
Sauget, IL 62206

**FOR SETTLING NON-PERFORMING OWNER
CHICAGO TITLE & TRUST COMPANY
TRUST NO. 1083191**

2/6/19

Date



JAY S. DINKELMANN
Trustee, Vincent J. Sauget QTip Trust
U/W Beneficiary of Trust #1083191
2041 Goose Lake Road, Suite 2A
Sauget, IL 62206