

UNITED STATES DISTRICT COURT
DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 1:91-cv-02014-BB

BROWARD COUNTY, FLORIDA, et al.,

Defendants.

**REMEDIAL ACTION
CONSENT DECREE**

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WHEREAS, 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 under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”).

WHEREAS, 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 the Petroleum Products Corporation Superfund Site in Pembroke Park, Broward County, Florida (“Site”), together with accrued interest; and (2) performance by the defendants of a response action at the Site consistent with the National Contingency Plan, 40 C.F.R. part 300 (“NCP”).

WHEREAS, in accordance with the NCP and section 121(f)(1)(F) of CERCLA, EPA notified the State of Florida (“State”) on April 28, 2022, of negotiations with potentially responsible parties (“PRPs”) regarding the implementation of the remedial action (“RA”) for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and to be a party to this Consent Decree (“Decree”).

WHEREAS, in accordance with section 122(j)(1) of CERCLA, EPA notified the Florida Department of Environmental Protection (“FDEP”) and the U.S. Fish and Wildlife Service (“USFWS”) on May 9, 2022, 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(s) to participate in the negotiation of this Decree.

WHEREAS, the defendants that have entered into this Decree – the Settling Defendants, the Owner Settling Defendants, and the De Minimis Parties - do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they admit or acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim or crossclaim asserted by Settling Defendants or any claim by the State.

WHEREAS, in accordance with section 105 of CERCLA, EPA listed the Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. part 300, Appendix B, by publication in the Federal Register on July 22, 1987, 52 Fed. Reg. 27620.

WHEREAS, in response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA completed a Remedial Investigation for the Site on January 1, 2016, and a Feasibility Study for the Site on May 31, 2019, in accordance with 40 C.F.R. § 300.430.

WHEREAS, in accordance with section 117 of CERCLA and 40 C.F.R § 300.430(f), EPA published notice of the completion of the Feasibility Study and of the proposed plan for remedial action on January 4, 2021, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action, including holding a public meeting. A copy of the transcript of the public

meeting and comments received are available to the public as part of the administrative record upon which the EPA Administrator based the selection of the response action.

WHEREAS, EPA selected a remedial action to be implemented at the Site, which is embodied in a final Record of Decision (“Record of Decision”), executed on August 12, 2021, on which the State had a reasonable opportunity to review and comment and which the State has given its concurrence. The Record of Decision includes a summary of responses to the public comments and a description of any significant changes to the proposed remedy. Notice of the final plan was published in accordance with section 117(b) of CERCLA.

WHEREAS, the FDEP, under its Early Detection Incentive (EDI) program, has funded and/or cleaned up certain historical releases of stored petroleum materials at the Site through its Inland Protection Trust Fund (IPTF) since 1990, when PPC was accepted into the EDI program. FDEP’s funding and clean-up of historical releases of petroleum materials at the Site has been subject to and consistent with FDEP’s obligation to fund remediation at the Site pursuant to the August 22, 1990, Administrative Order in *Petroleum Products Corp. v. State of Florida Department of Environmental Regulation*, OGC Case No. 87-0028 and DOAH Case No. 87-3124 (1990 WL 142708, Fla. Dept. Env. Reg.). Under the EDI and IPTF programs FDEP will fund at least \$30 million of the required Site Work through a specific State of Florida legislative appropriation approved and dated August 15, 2022.

WHEREAS, EPA, FDEP, Settling Defendants and Owner Settling Defendants have worked cooperatively to ensure that the implementation of the Remedial Action can be accommodated within the requirements of CERCLA and the NCP and FDEP’s regulatory process. In advancement of that goal, a subset of Settling Defendants entered into an Administrative Settlement Agreement and Order on Consent (ASAOC) dated December 5, 2022, Docket No. CERCLA-04-2023-2523, to expedite implementation of the Remedial Design (RD) by June 30, 2023, consistent with the August 12, 2021, Record of Decision (ROD) and to obtain reimbursement of approved costs associated with performance of the RD Work from the PPC Site Special Account.

WHEREAS, since the 100% Remedial Design was approved by EPA on November 17, 2023, Settling Defendants shall implement the Remedial Action with support from FDEP’s EDI and IPTF programs under which FDEP will select a contractor to conduct the Remedial Action with access provided by the Owner Settling Defendants consistent with the terms of access agreements entered into with FDEP within 30 days of FDEP’s request.

WHEREAS, FDEP and each of the Owner Settling Defendants must execute agreements that address access to the Site property, eligible FDEP remedial cleanup activities and funding obligations, and the future demolition of certain Site warehouse buildings.

WHEREAS, based on the information currently available, EPA has determined that the Work will be properly and promptly conducted by Settling Defendants, in conjunction with access provided by Owner Settling Defendants, if conducted in accordance with this Decree.

WHEREAS, the Parties recognize, and the Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith, that implementation of this Decree will

expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Decree is fair, reasonable, in the public interest, and consistent with CERCLA.

NOW, THEREFORE, it is hereby **ORDERED** and **DECREED** as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1345, and sections 106, 107, 113(b) and 122(g) of CERCLA, and personal jurisdiction over the Parties. Venue lies in this District under section 113(b) of CERCLA and 28 U.S.C. §§ 1391(b), and 1395(a), because the Site is located in this judicial district. This Court retains jurisdiction over the subject matter of this action and over the Parties for the purpose of resolving disputes arising under this Decree, entering orders modifying this Decree, or effectuating or enforcing compliance with this Decree. Settling Defendants may not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

II. PARTIES BOUND

2. This Decree is binding upon the United States, Settling Defendants, Owner Settling Defendants, De Minimis Parties and their successors. Unless the United States otherwise consents, (a) any change in ownership or corporate or other legal status of any Settling Defendant or Owner Settling Defendant, including any transfer of assets, or (b) any Transfer of the Site or any portion thereof, does not alter any of Settling Defendants' or Owner Settling Defendants' obligations under this Decree. Settling Defendants' or Owner Settling Defendants' responsibilities under this Decree cannot be assigned except under a modification executed in accordance with ¶ 80.

3. In any action to enforce this Decree, Settling Defendants may not raise as a defense the failure of any of their officers, directors, employees, agents, contractors, subcontractors, or any person representing Settling Defendants to take any action necessary to comply with this Decree. Settling Defendants shall provide notice of this Decree to each person representing Settling Defendants with respect to the Site or the Work. Settling Defendants shall provide notice of this Decree to each contractor performing any Work, including the FDEP's contractor, and shall ensure that notice of the Decree is provided to each subcontractor performing any Work.

III. DEFINITIONS

4. Subject to the next sentence, terms used in this Decree that are defined in CERCLA or the regulations promulgated under CERCLA have the meanings assigned to them in CERCLA and the regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Decree, the following definitions apply:

“Administrative Settlement Agreement and Order on Consent” or “ASAOC”, means the ASAOC dated December 5, 2022, EPA Docket No. CERCLA-04-2023-2523.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Consent Decree” or “Decree” means this consent decree, all appendices attached hereto (listed in Section XIX), and all deliverables incorporated into the Decree under ¶ [8.6] of the SOW. If there is a conflict between a provision in Sections I through XXV and a provision in any appendix or deliverable, the provision in Sections I through XXV controls.

“Day” or “day” means a calendar day. In computing any period under this Decree, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“De Minimis Parties” means the PRPs identified on Appendix F.

“DOJ” means the United States Department of Justice.

“EDI Program” means the Early Detection Incentive Program of the State of Florida administered by the FDEP and implemented through the Inland Protection Trust Fund Agreements between the FDEP and Owner Settling Defendants.

“Effective Date” means the date upon which the Court’s approval of this Decree is recorded on its docket.

“EPA” means the United States Environmental Protection Agency.

“Fund” means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 I.R.C. § 9507.

“Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States: (a) pays between May 25, 2023 and the Effective Date; and (b) pays after the Effective Date in implementing, overseeing, or enforcing this Decree, including: (i) in developing, reviewing and approving deliverables generated under this Decree; (ii) in overseeing Settling Defendants’ performance of the Work; (iii) in assisting or taking action to obtain access or use restrictions under ¶ 12.a; (iv) in securing, implementing, monitoring, maintaining, or enforcing Institutional Controls, including any compensation paid; (v) in taking action under ¶ 22 (Access to Financial Assurance); (vi) in taking response action described in ¶ 54 because of Settling Defendants’ failure to take emergency action under ¶ [5.5] of the SOW; (vii) in implementing a Work Takeover under ¶ 11; (viii) in implementing community involvement activities including the cost of any technical assistance grant provided under section 117(e) of CERCLA; (ix) in enforcing this Decree, including all costs paid under Section XI (Dispute Resolution) and all litigation costs; and (x) in conducting periodic reviews in accordance with section 121(c) of CERCLA. Future Response Costs also includes all Interest accrued after August 12, 2021, on EPA’s unreimbursed costs (including Past Response Costs) under section 107(a) of CERCLA. However, Remedial Design costs paid under the ASAOC are not Future Response Costs.

“Including” or “including” means “including but not limited to.”

“Institutional Controls” means Proprietary Controls (*i.e.*, easements or covenants running with the land that (i) limit land, water, or other resource use, provide access rights, or both and (ii) are created under common law or statutory law by an instrument that is recorded, or for which notice is recorded, in the appropriate land records office) 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 the Site; (b) limit land, water, or other resource use to implement, ensure noninterference with, or ensure the protectiveness of the Remedial Action; (c) provide information intended to modify or guide human behavior at or in connection with the Site; or (d) any combination thereof.

In the case of parcels owned by PPW and following review and approval by EPA of plans for future maintenance, construction or re-construction activities for infrastructure and utilities involving the drilling, excavating, or otherwise properly removing in-situ solidification and stabilization (ISS) soils and after PPW has a reasonable opportunity to submit comments to EPA, EPA may propose Institutional and/or engineering controls consistent with this definition; provided that the Institutional Controls and/or engineering controls do not preclude or prevent PPW from the construction or re-construction of warehouses or other facilities located on the Site property (or other similar non-residential redevelopment otherwise approved by the Town of Pembroke Park, Florida). After implementation of the remedy, PPW shall not be restricted from drilling, excavating or otherwise removing and properly disposing of in situ treated (solidified) soil as necessary to perform infrastructure (including utility) maintenance or redevelopment.

In the case of the AON 31st LLC Parcel, Institutional Controls also means that if the AON 31st LLC (K2) building is not demolished as part of the excavation and ISS Work during Remedial Action, but is demolished in the future, AON 31st LLC or its successor and assigns, shall be solely responsible for future CERCLA response activities required by EPA for contaminated soils beneath the AON 31st LLC (K2) building disturbed during future demolition, construction or re-construction activities. Any Operable Unit (OU) 3 groundwater work required in the future will remain the collective responsibility of the Settling Defendants.

“Interest” means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest will 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. As of the date of lodging of this Decree, rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“Owner Settling Defendants” means the following Settling Defendants who own or control all or a portion of the Site: (a) Pembroke Park Warehouses Holding Company, a Florida corporation as Trustee of the Land Trust No. 0846 dated March 7, 1978; Land Trust #EO-469 aka #EO-590, dated May 1, 1972; Land Trust #0622, dated February 25, 1974; Land Trust

#00029009, dated February 8, 1984; and Filmore Investors Corp. (collectively referred to herein as “PPW”); (b) AON 31st LLC, Park 31st Corp.; and (c) Parcel F, LLC.

“Paragraph” or “¶” means a portion of this Decree identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means the United States, Settling Defendants, Owner Settling Defendants, and De Minimis Parties.

“Past Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States paid in connection with the Site through May 25, 2023, plus all interest on such costs accrued under section 107(a) of CERCLA through such date.

“Performance Standards” means the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the Record of Decision.

“Plaintiff” means the United States.

“RCRA” means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k, (also known as the Resource Conservation and Recovery Act).

“Record of Decision” means the EPA decision document that memorializes the selection of the remedial action relating to Operable Units 1, 2 and 3 (Interim) at the Site signed on August 12, 2021, by the EPA Administrator, and all attachments thereto. The Record of Decision is attached as Appendix A.

“Remedial Action” means the remedial action selected in the Record of Decision.

“Remedial Design” means the 100% Remedial Design approved by EPA on November 17, 2023, and incorporated in Section 4 in the SOW.

“Scope of the Remedy” means the scope of the remedy set forth in ¶ [1.3] of the SOW.

“Section” means a portion of this Decree identified by a Roman numeral.

“Settling Defendants” means the defendants identified in Appendix D. As used in this Decree, this definition means all Settling Defendants, collectively, and each Settling Defendant, individually. Broward County is also an Owner Settling Defendant for purposes of its respective obligations under this Decree. Owner Settling Defendants are specifically referenced in certain paragraphs in this Decree to highlight some of their rights and obligations, including providing access, under this Decree. Each Owner Settling Defendant can independently exercise all of its rights associated with being designated a Settling Defendant and is entitled to all covenants, contribution protections, and rights to force majeure and dispute resolution afforded to the Settling Defendants under this Decree.

“Settling Defendants’ Past Response Costs” means those necessary costs of response that are consistent with the National Contingency Plan, as defined in 42 U.S.C. § 9601(25), paid by

the Settling Defendants for investigation and remediation of the Site before the Effective Date, including OU1 and OU2 costs.

“Settling Defendants’ Future Response Costs” means those necessary costs of response that are consistent with the National Contingency Plan, as defined in 42 U.S.C. § 9601(25), paid after the Effective Date by the Settling Defendants in performance of the Work or otherwise to satisfy their obligations under this Consent Decree or the ASAOC, but shall exclude any payment of penalties by Settling Defendants, including but not limited to any payment of penalties under Section XII (Stipulated Penalties).

“Settling Federal Agencies” means the United States Coast Guard acting by and through the Department of Homeland Security and the DoD acting by and through the United States Department of the Air Force, United States Defense Logistics Agency, and the United States Department of the Navy. DoD means the United States Department of Defense as described in 10 U.S.C. § 111.

“Site” means the Petroleum Products Corporation Superfund Site, comprising approximately seven (7) acres, located generally at 3150 Pembroke Road in Pembroke Park, Broward County, Florida, and depicted generally on the map attached as Appendix C.

“Special Account” means the special account, within the Fund, established for the Site by EPA under section 122(b)(3) of CERCLA.

“State” means the State of Florida.

“Statement of Work” or “SOW” means the document attached as Appendix B, which describes the activities Settling Defendants must perform to implement and maintain the effectiveness of the Remedial Action.

“Transfer” means 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.

“Trustee of the establishment of the PPC Trust Account” or “Trustee” is the trustee responsible for managing the PPC Trust Account. The PPC Trust Account will receive funds paid by Settling Defendants, Settling Federal Agencies, or De Minimis Parties for the remediation of the Site and other obligations to satisfy the requirements of this Decree.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA, and the Settling Federal Agencies.

“Waste Material” means (a) any “hazardous substance” under Section 101(14) of CERCLA; and (b) any pollutant or contaminant under section 101(33) of CERCLA; (c) any “solid waste” under section 1004(27) of RCRA.

“Work” means all obligations of Settling Defendants under Sections V (Performance of the Work) through VIII (Indemnification and Insurance).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 11.

IV. OBJECTIVES

5. The objectives of the Parties in entering into this Decree are to protect public health, welfare, and the environment through 1) the design, implementation, and maintenance of a response action at the Site by Settling Defendants, 2) access to be provided by Settling Defendants, with Owner Settling Defendants providing, as necessary, access and relocation of tenants in buildings owned by PPW, AON 31st LLC, and Park 31st Corp., 3) addressing response costs of Plaintiff and 4) resolving and settling the claims of Plaintiff against Settling Defendants, Owner Settling Defendants, and De Minimis Parties and the claims of the Settling Defendants, Owner Settling Defendants, and De Minimis Parties that were or could have been asserted against the United States with regard to this Site as provided in this Decree.

V. PERFORMANCE OF THE WORK

6. Settling Defendants shall perform all actions necessary to finance, develop, implement, operate, maintain, and monitor the effectiveness of the Remedial Action all in accordance with the SOW, any modified SOW and all EPA-approved, conditionally approved, or modified deliverables as required by the SOW or modified SOW.

7. Nothing in this Decree and no EPA approval of any deliverable required under this Decree constitutes a warranty or representation by EPA that completion of the Work will achieve the Performance Standards.

8. Settling Defendants’ obligations to finance and perform the Work and to pay amounts due under this Decree are joint and several. In the event of the insolvency of any Settling Defendant or the failure by any Settling Defendant to participate in the implementation of the Decree, the remaining Settling Defendants shall complete the Work and make the payments due under this Decree. Consistent with these obligations, some or all Settling Defendants may form a PRP Group to carry out the Work.

9. Modifications to the Remedial Action and Further Response Actions

a. Nothing in this Decree limits EPA’s authority to modify the Remedial Action or to select further response actions for the Site in accordance with the requirements of CERCLA and the NCP. Nothing in this Decree limits Settling Defendants’ and Owner Settling Defendants’ rights, under sections 113(k)(2) or 117 of CERCLA, to comment on any modified or further response actions proposed by EPA.

b. If EPA modifies the Remedial Action in order to achieve or maintain the Performance Standards, or both, or to carry out and maintain the effectiveness of the Remedial Action, and such modification is consistent with the Scope of the Remedy, then Settling Defendants shall implement the modification as provided in ¶ 9.d.

c. If EPA selects a further response action for the Site because a reopener condition in ¶ 52 is satisfied, then, subject to ¶ 81, Settling Defendants shall implement the further response action as provided in ¶ 9.d.

d. Upon receipt of notice from EPA that it has modified the Remedial Action as provided in ¶ 9.b or selected a further response action as provided in ¶ 9.c and requesting that Settling Defendants shall implement the modified Remedial Action or further response action, Settling Defendants shall implement the modification or further response action, subject to their right to initiate dispute resolution under Section XI within 30 days after receipt of EPA's notice. Settling Defendants shall modify the SOW, or related work plans, or both in accordance with the Remedial Action modification or further response action or, if Settling Defendants invoke dispute resolution, in accordance with the final resolution of the dispute. The Remedial Action modification or further response action, the approved modified SOW, and any related work plans will be deemed to be incorporated into and enforceable under this Decree.

10. **Compliance with Applicable Law.** Nothing in this Decree affects Settling Defendants' obligations to comply with all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements (ARARs) of all federal and state environmental laws as set forth in the Record of Decision and the SOW. The activities conducted in accordance with this Decree, if approved by EPA, will be deemed to be consistent with the NCP as provided under section 300.700(c)(3)(ii).

11. **Work Takeover**

a. If EPA determines that Settling Defendants (i) have ceased to perform any of the Work required under this Section; (ii) are seriously or repeatedly deficient or late in performing the Work required under this Section; or (iii) are performing the Work required under this Section in a manner that may cause an endangerment to human health or the environment, EPA may issue a notice of Work Takeover to Settling Defendants, including a description of the grounds for the notice and a period of time ("Remedy Period") within which Settling Defendants must remedy the circumstances giving rise to the notice. The Remedy Period will be 20 days, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be 10 days.

b. If, by the end of the Remedy Period, Settling Defendants do not remedy to EPA's satisfaction the circumstances giving rise to the notice of Work Takeover, EPA may notify Settling Defendants and, as it deems necessary, commence a Work Takeover.

c. EPA may conduct the Work Takeover during the pendency of any dispute under Section XI but shall terminate the Work Takeover if and when: (i) Settling Defendants remedy, to EPA's satisfaction, the circumstances giving rise to the notice of Work Takeover; or (ii) upon the issuance of a final determination under Section XI (Dispute Resolution) that EPA is required to terminate the Work Takeover.

VI. PROPERTY REQUIREMENTS

12. **Agreements Regarding Access and Noninterference**

a. As used in this Section, “Affected Property” means any real property, including the Site, where EPA determines, at any time, that access; land, water, or other resource use restrictions; Institutional Controls; or any combination thereof, are needed to implement the Remedial Action.

b. Settling Defendants shall use best efforts to secure from the owners, other than an Owner Settling Defendant whose property is part of the Site as defined herein, of all Affected Property, an agreement, enforceable by Plaintiff and Settling Defendants, requiring such owner to provide Plaintiff, FDEP and Settling Defendants and their respective representatives, contractors, and subcontractors with access at all reasonable times to such owner’s property to conduct any activity regarding the Decree, including the following:

- (1) implementing the Work and overseeing compliance with the Decree;
- (2) conducting investigations of contamination at or near the Site;
- (3) assessing the need for, planning, or implementing additional response actions at or near the Site;
- (4) determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Decree; and
- (5) implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

c. Further, each agreement required under ¶ 12.b must commit the owner to refrain from using its property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment as a result of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the following:

- (1) engaging in the following activities that could interfere with the Remedial Action: destruction or destabilization of stabilized material or tampering with the groundwater treatment system;
- (2) using contaminated groundwater;
- (3) engaging in the following activities that could result in human exposure to contaminants in soils and groundwater: destruction or destabilization of stabilized material or tampering with the groundwater treatment system;
- (4) constructing new structures that may interfere with the Remedial Action: destruction of stabilized material or the groundwater treatment system; and
- (5) constructing new structures that may cause an increased risk of inhalation of contaminants: destruction of stabilized material.

d. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Settling Defendants would use 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.

e. Settling Defendants shall provide to EPA a copy of each agreement required under ¶ 12.b. If Settling Defendants cannot accomplish what is required through best efforts in a timely manner, they shall notify EPA, and include a description of the steps taken to achieve the requirements. If the United States deems it appropriate, it may assist Settling Defendants, or take independent action, to obtain such access or use restrictions.

13. Access and Noninterference by Owner Settling Defendants. The Owner Settling Defendants shall: (a) provide Plaintiff, FDEP and Settling Defendants as needed, and their representatives, contractors, and subcontractors with access at all reasonable times to the Site and, as necessary, adjoining areas owned or controlled by them or their principals or an affiliated entity, to conduct any activity regarding the Decree, including those listed in ¶ 11.b; and (b) refrain from using the Site in any manner that EPA determines will pose an unacceptable risk to human health or to the environment because of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 12.c.

14. 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 appropriate, subject to qualifying language included in the definition of Institutional Controls, Settling Defendants shall cooperate with EPA’s efforts to secure and ensure compliance with such Institutional Controls.

15. Notice to Successors-in-Title

a. Owner Settling Defendants shall, within 30 days after the Effective Date, submit for EPA approval a notice to be recorded regarding its property at the Site in the appropriate land records. The notice must: (1) include a proper legal description of the property; (2) provide notice to all successors-in-title: (i) that the property is part of, or affected by, the Site; (ii) that EPA has selected a remedy for the Site; and (iii) that potentially responsible parties have entered into a Decree requiring implementation of such remedy; and (3) identify the U.S. District Court in which the Decree was filed, the name and civil action number of this case, and the Effective Date of the Decree. Owner Settling Defendants shall record the notice within 10 days after EPA’s approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Owner Settling Defendants shall, prior to entering into a contract to Transfer any of its property that is part of the Site, or 60 days prior to a Transfer of such property, whichever is earlier:

- (1) notify the proposed transferee that EPA has selected a remedy regarding the Site, that potentially responsible parties have entered into a Consent Decree requiring implementation of such remedy, and that the United

States District Court has entered the Decree (identifying the name and civil action number of this case and the date the Court entered the Decree); and

- (2) notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the notice that it provided to the proposed transferee.

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

VII. FINANCIAL ASSURANCE

17. To ensure completion of the Work required under Section V, Settling Defendants shall secure financial assurance, initially in the amount of \$250,000 (“Estimated Cost of the Work”), for the benefit of EPA. The financial assurance must: (i) be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA; and (ii) be satisfactory to EPA. As of the date of lodging of this Decree, the sample documents can be found under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Settling Defendants may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, insurance policies, or some combination thereof. The following are acceptable mechanisms:

- a. a surety bond guaranteeing payment, performance of the Work, or both, 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 EPA 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;

- c. a trust fund established for the benefit of EPA (i) that is administered by a trustee that has the authority to act as a trustee or by a PRP Group common counsel or other PRP Group representative and (ii) whose trust operations are maintained in a financial institution regulated and examined by a federal or state agency;

- d. a policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

- e. a demonstration by one or more Settling Defendants that they meet the relevant test criteria of ¶ 18, accompanied by a standby funding commitment that requires the affected Settling Defendants to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. a guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Settling Defendant or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Settling Defendant; and (2) demonstrates to EPA’s satisfaction that it meets the financial test criteria of ¶ 18.

18. Settling Defendants providing financial assurance by means of a demonstration or guarantee under ¶ 17.e or 17.f must, within 30 days after the Effective Date:

a. demonstrate that:

(1) the affected Settling Defendant or guarantor has:

- i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) the affected Settling Defendant or guarantor has:

- i. a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor’s or Aaa, Aa, A or Baa as issued by Moody’s; and
- ii. tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of

the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. submit to EPA for the affected Settling Defendant or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA. As of the date of lodging of this Decree, a sample letter and report is available under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

19. Settling Defendants providing financial assurance by means of a demonstration or guarantee under ¶ 17.e or 17.f must also:

a. annually resubmit the documents described in ¶ 18.b within 90 days after the close of the affected Settling Defendant's or guarantor's fiscal year;

b. notify EPA within 30 days after the affected Settling Defendant or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Settling Defendant or guarantor in addition to those specified in ¶ 18.b; EPA may make such a request at any time based on a belief that the affected Settling Defendant or guarantor may no longer meet the financial test requirements of this Section.

20. Settling Defendants have selected, and EPA has found satisfactory, a trust fund as an initial form of financial assurance. Within 60 days after the Effective Date, Settling Defendants shall secure all executed 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 DOJ, and to EPA in accordance with ¶ 78.

21. Settling Defendants shall diligently monitor the adequacy of the financial assurance. If any Settling Defendant 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, such Settling Defendant shall notify EPA of such information within seven 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 the affected Settling Defendant of such determination. Settling Defendants 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 the affected Settling Defendant, 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. Settling Defendants shall follow the procedures of ¶ 23 in seeking approval of,

and submitting documentation for, the revised or alternative financial assurance mechanism. Settling Defendants' inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Decree.

22. Access to Financial Assurance

a. If EPA issues a notice of a Work Takeover under ¶ 11.b, then, in accordance with any applicable financial assurance mechanism commitment, EPA may require that any funds guaranteed be paid in accordance with ¶ 22.d.

b. If EPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and the affected Settling Defendant fails 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 ¶ 22.d.

c. If, upon issuance of a notice of a Work Takeover under ¶ 11.b, either: (1) 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; or (2) the financial assurance is a demonstration or guarantee under ¶ 17.e or 17.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Settling Defendants shall, within 30 days after such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 22 must 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 Fund or into the Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Fund.

23. Modification of Amount, Form, or Terms of Financial Assurance. Beginning after the first anniversary of the Effective Date, and no more than once per calendar year, Settling Defendants may submit a request to change the form, terms, or amount of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 20, 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 Settling Defendants of its decision regarding the request. Settling Defendants may initiate dispute resolution under Section XI regarding EPA's decision within 30 days after receipt of the decision. Settling Defendants may modify the form, terms, or amount of the financial assurance mechanism only: (a) in accordance with EPA's approval; or (b) in accordance with any resolution of a dispute under Section XI. Settling Defendants shall submit to EPA, within 30 days after receipt of EPA's approval or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

24. **Release, Cancellation, or Discontinuation of Financial Assurance.** Settling Defendants may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ [5.10] 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 XI.

VIII. INDEMNIFICATION AND INSURANCE

25. **Indemnification**

a. Plaintiff does not assume any liability by entering into this Decree or by virtue of any designation of Settling Defendants as EPA's authorized representative under section 104(e)(1) of CERCLA. Settling Defendants shall indemnify and save and hold harmless Plaintiff and its officials, agents, employees, contractors, subcontractors, and representatives for or from any claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants and their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Settling Defendants' behalf or under their control, in carrying out activities under this Decree, including any claims arising from any designation of Settling Defendants as EPA's authorized representatives under section 104(e)(1) of CERCLA. Further, Settling Defendants agree to pay Plaintiff all costs it incurs including attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against Plaintiff based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control in carrying out activities under with this Decree. Plaintiff may not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities under this Decree. The Settling Defendants and any such contractor may not be considered an agent of Plaintiff.

b. Plaintiff shall give Settling Defendants notice of any claim for which Plaintiff plans to seek indemnification in accordance with this ¶ 25, and shall consult with Settling Defendants prior to settling such claim.

26. Settling Defendants covenant not to sue and shall not assert any claim or cause of action against Plaintiff for damages or reimbursement or for set-off of any payments made or to be made to Plaintiff, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants, Settling Federal Agencies and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, Settling Defendants shall indemnify and save and hold Plaintiff harmless with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants, Settling Federal Agencies, and any person for performance of work at or relating to the Site, including claims on account of construction delays.

27. **Insurance.** Settling Defendants shall secure, by no later than 15 days before commencing any on-site Work, the following insurance: (a) commercial general liability

insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name Plaintiff and the Owner Settling Defendants or the record title owner of any parcel to which access is sought in connection with Work at or relating to the Site as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Settling Defendants under this Decree. Settling Defendants shall maintain this insurance until the first anniversary after issuance of EPA's Certification of Remedial Action Completion under ¶ [5.8] of the SOW. In addition, for the duration of this Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Decree. Prior to commencement of the Work, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendants 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, Settling Defendants need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Settling Defendants shall ensure that all submittals to EPA under this Paragraph identify the PPC Site in Pembroke Park, Florida and the civil action number of this case.

IX. PAYMENTS FOR RESPONSE COSTS

28. **Payment for Past Response Costs.** Settling Defendants and Settling Federal Agencies shall not be responsible for paying Past Response Costs incurred in a manner not inconsistent with the NCP through May 25, 2023, in the amount of \$11,280,755, due to a credit based on Orphan Share Compensation calculated and applied pursuant to EPA's June 3, 1996, Interim Guidance on Orphan Share Compensation for Settlers of Remedial Design/Remedial Action and Non-Time-Critical Removals, for certain Site Response work and related costs.

29. **Payments by Settling Defendants for Future Response Costs**

a. **Periodic Bills.** On a periodic basis, EPA will send Settling Defendants and Settling Federal Agencies a bill for Future Response Costs, including an "e-Recovery Report" or other standard cost summary listing direct and indirect costs paid by EPA, its contractors, subcontractors, and DOJ. Settling Defendants may initiate a dispute under Section XI regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (i) whether EPA has made an arithmetical error; (ii) whether EPA has included a cost item that is not within the definition of Future Response Costs; or (iii) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Settling Defendants must specify in the Notice of Dispute the contested costs and the basis for the objection.

b. **Payment of Bill.** Settling Defendants shall pay the bill, or if they initiate dispute resolution, the uncontested portion of the bill, if any, within 30 days after receipt of the

bill. The payment shall exclude the first \$4,301,392 of Future Oversight Costs which equates to a credit for a portion of the Orphan Share Compensation calculated and applied to certain Site Response work and costs under the CD. Settling Defendants shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late, and; (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Settling Defendants shall make payment at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link, and including references to the Site/Spill ID and DJ numbers listed in ¶ 78 and the purpose of the payment. Settling Defendants shall send notices of this payment to DOJ and EPA in accordance with ¶ 78.

c. **Insolvency and Reapportionment of Allocation Shares.** In the event a Settling Defendant files for dissolution, is dissolved involuntarily, or petitions for bankruptcy and fails to pay its apportioned share of Settling Defendants’ Future Response Costs within 60 days after receipt of an invoice, the remaining Settling Defendants and the Settling Federal Agencies will meet and confer regarding whether and how to reapportion the insolvent Settling Defendant’s share of Settling Defendants’ Future Response Costs. If they are unable to reach agreement, they may petition the Court to modify the Consent Decree regarding the reapportionment of the insolvent Settling Defendant’s share, setting forth their respective positions. All payments or percentage shares identified in Paragraphs 31(b)(2) and 31(b)(4) are subject to this Paragraph 29(c).

30. **Deposit of Payments.** EPA may, in its unreviewable discretion, deposit the amounts paid under ¶¶ 28 and 29 in the Fund, in the Special Account, or both. EPA may, in its unreviewable discretion, retain and use any amounts deposited in the Special Account to conduct or finance response actions at or in connection with the Site, or transfer those amounts to the Fund.

31. **Payments by Settling Federal Agencies.**

a. **Payment of Settling Defendants’ Past Response Costs**

(1) As soon as reasonably practicable after the later of (1) the Effective Date and (2) notice to counsel for the Settling Federal Agencies from the Settling Defendants’ Trustee or common counsel to the Settling Defendants (to be identified by notice to the Settling Federal Agencies) of the establishment of the PPC Trust Account and its electronic funds transfer (“ETF”) information, the United States, on behalf of the Settling Federal Agencies, shall pay \$1,614,093 to the PPC Trust Account by EFT, representing the Settling Federal Agencies’ full and final payment of Settling Defendants’ Past Response Costs. If payment is not made within 90 days after the later of (1) the Effective Date and (2) notification from the Settling Defendants’ Trustee or common counsel to the Settling Defendants of the establishment of the PPC Trust Account and its ETF information, the United States, on behalf of the Settling Federal Agencies, shall pay Interest on the unpaid balance, with such Interest commencing on the 91st day after the later of (1) the Effective Date and (2) notification from the Settling Defendants’ Trustee of the establishment of the PPC Trust Account and its electronic funds transfer information.

b. Payment of Settling Defendants' Future Response Cost

(1) Removal of Structures from the PPW Parcel C

As soon as reasonably practicable after receipt by counsel for the Settling Federal Agencies of notice from the Settling Defendants' Trustee or common counsel to the Settling Defendants (to be identified by notice to the Settling Federal Agencies) or counsel for PPW that all structures (Parcels D, E, G, H, I, J, L as listed in Appendix C) necessary for implementation of the Remedial Action as set forth in the SOW were removed from the PPW Parcel C, the United States, on behalf of the Settling Federal Agencies, shall pay \$4,038,120 to the PPC Trust Account. If payment under this paragraph is not made within 90 days after receipt of the notice from Settling Defendants' Trustee or common counsel to the Settling Defendants or counsel for PPW, the United States, on behalf of the Settling Federal Agencies, shall pay Interest on the unpaid balance, with such Interest commencing on the 91st day after receipt of the notice.

(2) Removal of Structures from the AON 31st LLC Parcel

In the event that the building must be removed from the AON 31st LLC Parcel as part of the excavation and ISS Work during the Remedial Action, as soon as reasonably practicable after receipt by counsel for the Settling Federal Agencies of notice from the Settling Defendants' Trustee or common counsel to the Settling Defendants that all structures necessary for implementation of the Remedial Action as set forth in the SOW were removed from the AON 31st LLC Parcel, the United States, on behalf of the Settling Federal Agencies, shall pay \$1,862,814 to the PPC Trust Account as soon as reasonably practicable. If payment under this paragraph is not made within 90 days after receipt of the notice from the Settling Defendants' Trustee or common counsel to the Settling Defendants that all structures necessary for implementation of the Remedial Action as set forth in the SOW were removed, the United States, on behalf of the Settling Federal Agencies, shall pay Interest on the unpaid balance, with such Interest commencing on the 91st day after receipt of the notice.

In the event that the building on the AON 31st LLC Parcel is not removed, but adjacent structures on the exterior portion of the AON 31st LLC Parcel, including but not limited to parking areas, utilities, and drainage structures are damaged or removed, the Remedial Action requires replacement of any impacted contaminated soils with clean fill and restoration of the parking areas, utilities, and drainage structures.

(3) Removal of Structures from the Park 31st Corp. Parcel

The Remedial Action does not require demolition of the buildings on the Park 31st Corp. Parcel, but may require removal or alteration of adjacent structures on the exterior portion of the Park 31st Corp. Parcel, including but not limited to parking areas, utilities, and drainage structures. The Remedial Action will require replacement of any impacted contaminated soils with clean fill and restoration of the parking areas, utilities, and drainage structures.

(4) Payment of Settling Defendants' Future Response Costs-Payment Process

The following process shall apply to claims by the Trustee for payment by the Settling Federal Agencies of Settling Defendants' Future Response Costs, if any, under the Decree:

(a). The United States, on behalf of the Settling Federal Agencies, agrees to pay 62.51 percent of Settling Defendants' Future Response Costs. On an annual basis, the Settling Defendants' Trustee or common counsel for the non-Owner Settling Defendants may submit a written claim for reimbursement of Settling Defendants' Future Response Costs to counsel for the Settling Federal Agencies, identifying what the Settling Defendants' Trustee or common counsel believes to be the Settling Federal Agencies' share of Settling Defendants' Future Response Costs ("Claim for Reimbursement"). The Settling Defendants' Trustee or common counsel shall include with the Claim for Reimbursement a statement of all of Settling Defendants' Future Response Costs incurred by Settling Defendants in the prior calendar year, along with invoices and/or other back-up documentation that support the Claim for Reimbursement, as well as proof of payment by the PPC Trust of all costs composing the Claim for Reimbursement, and a certification from the Settling Defendants' Trustee or common counsel that such costs were properly incurred and consistent with Section 107(a)(4)(B) of CERCLA, 42 U.S.C. § 9607(a)(4)(B), and this Decree.

(b). Upon receipt of a Claim for Reimbursement, the United States, on behalf of the Settling Federal Agencies, shall have 90 days to review the claim and raise any objections related thereto. Any objection must be in writing and must identify any disputed costs and the basis for objection. In the event the United States raises an objection to a Claim for Reimbursement, the Settling Defendants' Trustee or common counsel and the United States agree to participate in informal negotiations to resolve the dispute. The period for informal negotiations shall be 45 days from the date the United States transmits its written objection, and may be extended upon mutual consent of the Settling Defendants' Trustee or counsel and the United States. If informal negotiations are unsuccessful, the Settling Defendants' Trustee or counsel and the United States will submit the dispute to the EPA Remedial Project Manager ("RPM") with their respective positions on the cost that should be paid. The EPA RPM shall choose the cost proffered by each party that the RPM regards as the most reasonable based on the facts presented to the RPM and shall communicate that decision to the United States and the Settling Defendants' Trustee or counsel. The cost chosen by the RPM shall represent the final resolution of the dispute and is binding without further review under this Consent Decree or otherwise.

(c). If the United States does not raise an objection to a Claim for Reimbursement, then the United States shall pay, on behalf of the Settling Federal Agencies, the full amount of the Claim for Reimbursement as soon as reasonably practicable after expiration of the 90 day review period. If the United States does raise an objection to a claim for reimbursement, then payment of the Settling Federal Agencies' share of the claim for reimbursement is due as soon as reasonably practicable after final resolution of the dispute.

(d). Payment by the United States will be deposited into the PPC Trust Account.

(e). In the event the United States' payment, on behalf of the Settling Federal Agencies, is not made within 90 days after the expiration of the 90 day review period or within 90 days after the final resolution of any dispute pursuant to Paragraph 31b(4)(b), then the United States, on behalf of the Settling Federal Agencies, shall pay Interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with such Interest commencing on the 91st day.

c. The Settling Federal Agencies' payments under this Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Decree constitutes a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

X. FORCE MAJEURE

32. "Force majeure," for purposes of this Decree, means any event arising from causes beyond the control of Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors that delays or prevents the performance of any obligation under this Decree despite Settling Defendants' best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Settling Defendants 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.

33. If any event occurs for which Settling Defendants will or may claim a force majeure, Settling Defendants shall notify EPA's Project Coordinator by email. The deadline for the initial notice is 2 days after the date Settling Defendants first knew or should have known that the event would likely delay performance. Settling Defendants shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Settling Defendants knew or should have known. Within 3 days thereafter, Settling Defendants shall send a further notice to EPA that includes: (i) a description of the event and its effect on Settling Defendants' completion of the requirements of the Decree; (ii) a description of all actions taken or to be taken to prevent or minimize the adverse effects or delay; (iii) the proposed extension of time for Settling Defendants to complete the requirements of the Decree; (iv) a statement as to whether, in the opinion of Settling Defendants, such event may cause or contribute to an endangerment to public health or welfare, or the environment; and (v) all available proof supporting their claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Settling Defendants from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 32 and whether Settling Defendants have exercised their best efforts under ¶ 32, EPA may, in its unreviewable discretion, excuse in writing Settling Defendants' failure to submit timely or complete notices under this Paragraph.

34. EPA will notify Settling Defendants of its determination whether Settling Defendants are entitled to relief under ¶ 33, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. 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. Settling Defendants may initiate dispute resolution under Section XI regarding EPA's determination within 15 days after receipt of the determination. In any such proceeding, Settling Defendants have the burden of proving that they are entitled to relief under ¶ 32 and that their proposed extension was or will be warranted under the circumstances.

35. The failure by EPA to timely complete any activity under the Decree or the SOW is not a violation of the Decree, provided, however, that if such failure prevents Settling Defendants from timely completing a requirement of the Decree, Settling Defendants may seek relief under this Section.

XI. DISPUTE RESOLUTION

36. Unless otherwise provided in this Decree, Settling Defendants must use the dispute resolution procedures of this Section to resolve any dispute arising under this Decree. Settling Defendants shall not initiate a dispute challenging the Record of Decision. The United States may enforce any requirement of the Decree that is not the subject of a pending dispute under this Section.

37. A dispute will be considered to have arisen when one or more Parties sends a written notice of dispute ("Notice of Dispute") in accordance with ¶ 78. Disputes arising under this Decree must in the first instance be the subject of informal negotiations between the Parties to the dispute. The period for informal negotiations may not exceed 30 days after the dispute arises, unless the Parties to the dispute otherwise agree. If the Parties cannot resolve the dispute by informal negotiations, the position advanced by EPA is binding unless Settling Defendants initiate formal dispute resolution under ¶ 38. By agreement of the Parties, mediation may be used during this informal negotiation period to assist the Parties in reaching a voluntary resolution or narrowing of the matters in dispute.

38. Formal Dispute Resolution

a. **Statements of Position.** Settling Defendants may initiate formal dispute resolution by serving on the Plaintiff, within 20 days after the conclusion of informal dispute resolution under ¶ 37, an initial Statement of Position regarding the matter in dispute. The Plaintiff's responsive Statement of Position is due within 45 days after receipt of the initial Statement of Position. All Statements of Position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within 10 days after receipt of the response. If appropriate, EPA may extend the deadlines for filing statements of position for up to 45 days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** The Director of the Superfund & Emergency Management Division, EPA Region 4, will issue a formal decision resolving the dispute ("Formal Decision") based on the statements of position and any replies and supplemental

statements of position. The Formal Decision is binding on Settling Defendants unless they timely seek judicial review under ¶ 39.

c. **Compilation of Administrative Record.** EPA shall compile an administrative record regarding the dispute, which must include all statements of position, replies, supplemental statements of position, and the Formal Decision.

39. Judicial Review

a. Settling Defendants may obtain judicial review of the Formal Decision by filing, within 20 days after receiving it, a motion with the Court and serving the motion on all Parties. The motion must describe the matter in dispute and the relief requested. The parties to the dispute shall brief the matter in accordance with local court rules.

b. **Review on the Administrative Record.** Judicial review of disputes regarding the following issues must be on the administrative record: (i) the adequacy or appropriateness of deliverables required under the Decree; (ii) the adequacy of the performance of the Remedial Action; (iii) whether a Work Takeover is warranted under ¶ 11; (iv) determinations about financial assurance under Section VII; (v) whether a reopener condition under ¶ 53 is satisfied, including whether the Remedial Action is not protective of human health and the environment; (vi) EPA's selection of modified or further response actions; (vii) any other items requiring EPA approval under the Decree; and (viii) any other disputes that the Court determines should be reviewed on the administrative record. For all of these disputes, Settling Defendants bear the burden of demonstrating that the Formal Decision was arbitrary and capricious or otherwise not in accordance with law.

c. Judicial review of any dispute not governed by ¶ 39.b shall be governed by applicable principles of law.

40. **Escrow Account.** For disputes regarding a Future Response Cost billing, Settling Defendants shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"); (b) remit to that escrow account funds equal to the amount of the contested Future Response Costs; and (c) send to EPA, in accordance with ¶ 78, copies of the correspondence and of the payment documentation (*e.g.*, the check) that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. EPA may, in its unreviewable discretion, waive the requirement to establish the escrow account. Settling Defendants shall cause the escrow agent to pay the amounts due to EPA under ¶ 29, if any, by the deadline for such payment in ¶ 29. Settling Defendants are responsible for any balance due under ¶ 29 after the payment by the escrow agent.

41. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Decree, except as EPA agrees, or as determined by the Court. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 44.

XII. STIPULATED PENALTIES

42. Unless the noncompliance is excused under Section X (Force Majeure), Settling Defendants are liable to the United States for the following stipulated penalties:

a. for any failure: (i) to pay any amount due under Section IX; (ii) to establish and maintain financial assurance in accordance with Section VII; (iii) to submit timely or adequate deliverables under Section [9] of the SOW; (iv) to secure and provide access to property necessary to implement the Work;

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

b. for any failure to submit timely or adequate deliverables required by this Decree other than those specified in ¶ 42.a:

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

43. **Work Takeover Penalty.** If EPA commences a Work Takeover, Settling Defendants are liable for a stipulated penalty in the amount of \$500,000. This stipulated penalty is in addition to the remedy available to EPA under ¶ 22 (Access to Financial Assurance) to fund the performance of the Work by EPA.

44. **Accrual of Penalties.** Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Decree prevents the simultaneous accrual of separate penalties for separate non-compliances with this Decree. Stipulated penalties accrue regardless of whether Settling Defendants have been notified of their noncompliance, and regardless of whether Settling Defendants have initiated dispute resolution under Section XI, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that EPA subsequently determines is deficient under ¶ [8.6] 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 Settling Defendants of any deficiency;

b. with respect to a matter that is the subject of dispute resolution under Section XI, during the period, if any, beginning on the 21st day after the later of the date that EPA's Statement of Position is received or the date that Settling Defendants' reply thereto (if any) is received until the date of the Formal Decision under ¶ 38.b; or

c. with respect to a matter that is the subject of judicial review by the Court under ¶ 39, 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.

45. **Demand and Payment of Stipulated Penalties.** EPA may send Settling Defendants a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Settling Defendants may initiate dispute resolution under Section XI within 30 days after receipt of the demand. Settling Defendants shall pay the amount demanded or, if they initiate dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. Settling Defendants shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late, and; (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. Settling Defendants shall make payment at <https://www.pay.gov> using the link for “EPA Miscellaneous Payments Cincinnati Finance Center,” including references to the Site/Spill ID and DJ numbers listed in ¶ 78, and the purpose of the payment. Settling Defendants shall send a notice of this payment to DOJ and EPA, in accordance with ¶ 78. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Settling Defendants under the Decree.

46. Nothing in this Decree limits the authority of the United States: (a) to seek any remedy otherwise provided by law for Settling Defendants’ failure to pay stipulated penalties or interest; or (b) to seek any other remedies or sanctions available by virtue of Settling Defendants’ noncompliance with this Decree or of the statutes and regulations upon which it is based, including penalties under section 122(l) of CERCLA, provided, however, that the United States may not seek civil penalties under section 122(l) of CERCLA for any noncompliance for which a stipulated penalty is provided for in this Decree, except in the case of a willful noncompliance with this Decree.

47. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Decree.

XIII. COVENANTS BY PLAINTIFF

48. **Covenants for Settling Defendants.** Subject to ¶¶ 52 and 53, the United States covenants not to sue or to take administrative action against Settling Defendants under sections 106 and 107(a) of CERCLA regarding the Work, Past Response Costs, and Future Response Costs covered by Orphan Share compensation.

49. **Covenants for Settling Federal Agencies.** Subject to ¶¶ 52 and 53, EPA covenants not to take administrative action against Settling Federal Agencies under sections 106 and 107(a) of CERCLA regarding the Work, Past Response Costs, and Future Response Costs covered by Orphan Share compensation.

50. **Covenants for De Minimis Party.** Except as specifically provided in ¶ 54, the United States covenants not to sue or take administrative action against any of the De Minimis

Parties pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, relating to the Work, Past Response Costs, and Future Response Costs. With respect to present and future liability, these covenants shall take effect for each De Minimis Party upon the Effective Date. With respect to each De Minimis Party, individually, these covenants are conditioned upon: (a) the satisfactory performance by De Minimis Party of all obligations under this Consent Decree; and (b) the veracity and completeness of the information provided to EPA by De Minimis Party relating to De Minimis Party's involvement with the Site. These covenants extend only to settling De Minimis Parties and do not extend to any other person.

51. The covenants under ¶ 48 and 49: (a) take effect upon the Effective Date, except with respect to future liability, for which these covenants take effect upon Certification of Remedial Action Completion by EPA under ¶ [5.8] of the SOW; (b) are conditioned, respectively, on the satisfactory performance by Settling Defendants, Owner Settling Defendants, and Settling Federal Agencies of the requirements of this Decree; (c) extend to the successors of each Settling Defendant but only to the extent that the alleged liability of the successor of the Settling Defendant is based solely on its status as a successor of the Settling Defendant; and (d) do not extend to any other person.

52. United States' Pre- and Post-certification Reservations

a. Notwithstanding any other provision of this Decree, the United States reserves, and this Decree is without prejudice to, the right to issue an administrative order or to institute proceedings in this action or in a new action seeking to compel Settling Defendants, and EPA reserves the right to issue an administrative order seeking to compel Settling Federal Agencies, to perform further response actions relating to the Site, to pay the United States for additional costs of response, or any combination thereof. The United States may exercise this reservation only if, at any time, conditions at the Site previously unknown to EPA are discovered, or information previously unknown to EPA is received, and EPA determines, based in whole or in part on these previously unknown conditions or information, that the Remedial Action is not protective of human health or the environment.

b. Before certification of Remedial Action Completion, the information and the conditions known to EPA include only that information and those conditions known to EPA as of the date the Record of Decision was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision.

c. After certification of Remedial Action Completion, the information and the conditions known to EPA include only that information and those conditions known to EPA as of the date of Certification of Remedial Action Completion and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-Record of Decision administrative record, or in any information received by EPA in accordance with the requirements of this Decree prior to Certification of Remedial Action Completion.

53. **General Reservations.** Notwithstanding any other provision of this Decree, the United States reserves, and this Decree is without prejudice to, all rights against Settling Defendants, and EPA and the federal natural resource trustee reserve, and this Decree is without prejudice to, all rights against Settling Federal Agencies, regarding the following:

- a. liability for failure by Settling Defendants or Settling Federal Agencies to meet a requirement of this Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based on Settling Defendants' ownership of the Site when such ownership commences after Settling Defendants' signature of this Decree;
- d. liability based on Settling Defendants' operation of the Site when such operation commences after Settling Defendants' signature of this Decree and does not arise solely from Settling Defendants' performance of the Work;
- e. liability based on Settling Defendants' or Settling Federal Agencies' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, after signature of this Decree by Settling Defendants and/or on behalf of Settling Federal Agencies, other than as provided in the Record of Decision, under this Decree, or ordered by EPA;
- f. 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 Remedial Action, but that are not covered by ¶ 9.b;
- g. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- h. criminal liability.

54. Subject to ¶ 48 and 49, nothing in this Decree limits any authority of Plaintiff to take, direct, or order 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 the Site, or to request a Court to order such action.

XIV. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES

55. Covenants by Settling Defendants

- a. Settling Defendants covenant not to sue and shall not assert any claim or cause of action against the United States under CERCLA, the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, or at common law regarding the Work, Past Response Costs, and Future Response Costs, Settling Defendants' Past Response Costs, and Settling Defendants' Future Response Costs.
- b. Settling Defendants covenant not to seek reimbursement from the Fund through CERCLA or any other law for costs regarding the Work, Past Response Costs, and

Future Response Costs, Settling Defendants' Past Response Costs, and Settling Defendants' Future Response Costs.

c. Settling Defendants covenant not to sue and shall not assert any claim or cause of action against other Parties under CERCLA.

d. In the event that excavation of contaminated media and ISS adjacent to buildings on the AON 31st LLC and Park 31st Corp. Parcels during the Remedial Action causes structural problems such that the building must be repaired or demolished, AON 31st LLC and Park 31st Corp. reserve their rights against all Parties to require such repairs or demolition work and any actions or claims associated with such structural problems are excluded from the provisions of Paragraphs 25 and 26.

56. **Settling Defendants' Reservation.** The covenants in ¶ 55 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 52, and 53.a through 53.h.

57. **De Minimis/Ability to Pay Waiver.** Settling Defendants shall not assert any claims and waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA) that they may have against any third party who enters or has entered into a *de minimis* or "ability-to-pay" settlement with EPA to the extent Settling Defendants' claims and causes of action are within the scope of the matters addressed in the third party's settlement with EPA, provided, however, that this waiver does not apply if the third party asserts a claim or cause of action regarding the Site against the Settling Defendants. Nothing in the Decree limits Settling Defendants' rights under section 122(d)(2) of CERCLA to comment on any *de minimis* or ability-to-pay settlement proposed by EPA.

58. **De Micromis Waiver.** Settling Defendants shall not assert any claims and waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials. This waiver does not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued under sections 104(e) or 122(e)(3)(B) of CERCLA or section 3007 of RCRA, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or (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. This waiver does

not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person otherwise covered by this waiver if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

59. **Covenant by Settling Federal Agencies.** Settling Federal Agencies shall not seek reimbursement from the Fund through CERCLA or any other law cited in ¶ 55.a. This covenant does not preclude demand for reimbursement from the Fund of costs incurred by a Settling Federal Agency in the performance of its duties (other than in accordance with this Decree) as lead or support agency under the NCP.

XV. EFFECT OF SETTLEMENT; CONTRIBUTION

60. The Parties agree and the Court finds that: (a) the complaint filed by the United States in this action is a civil action within the meaning of section 113(f)(1) of CERCLA; (b) this Decree constitutes a judicially approved settlement under which each Settling Defendant and each Settling Federal Agency has, as of the Effective Date, resolved its liability to the United States within the meaning of sections 113(f)(2) and 113(f)(3)(B) of CERCLA; and (c) each Settling Defendant and each Settling Federal Agency 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 Decree. The “matters addressed” in this Decree are the Work, Past Response Costs and Future Response Costs, provided, however, that if the United States exercises rights against Settling Defendants (or if EPA or the federal natural resource trustee assert rights against Settling Federal Agencies) under the reservations in ¶ 52 and ¶¶ 53.a through 53.h, the “matters addressed” in this Decree will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation. The “matters addressed” include also the matters covered in Paragraph 30 *supra*.

61. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Decree, notify DOJ and EPA no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Decree, notify DOJ and EPA within 10 days after service of the complaint on such Settling Defendant. In addition, each Settling Defendant shall notify DOJ and EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

62. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated against any Settling Defendant by Plaintiff for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (*res judicata*), issue preclusion (*collateral estoppel*), 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.

63. Nothing in this Decree diminishes the right of the United States under section 113(f)(2) and (3) of CERCLA to pursue any person not a party to this Decree 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).

XVI. RECORDS

64. **Settling Defendant Certification.** Each Settling Defendant certifies individually that: (a) it has implemented a litigation hold on documents and electronically stored information relating to the Site, including information relating to its potential liability under CERCLA regarding the Site, since the earlier of notification of potential liability by the United States or the State, the filing of suit against it regarding the Site or the date that it has accepted its allocation for the Site; and (b) it has fully complied with any and all EPA requests for information under sections 104(e) and 122(e) of CERCLA, and section 3007 of RCRA.

65. **Settling Federal Agency Acknowledgment.** The United States acknowledges that each Settling Federal Agency: (a) is subject to all applicable federal record retention laws, regulations, and policies; and (b) has certified that it has fully complied with any and all EPA and State requests for information regarding the Site under sections 104(e) and 122(e)(3)(B) of CERCLA, section 3007 of RCRA, and state law.

66. Retention of Records and Information

a. Settling Defendants shall retain, and instruct their contractors and agents, to retain, the following documents and electronically stored data (“Records”) until 10 years after the Certification Completion of the Work under SOW ¶ [5.8] (the “Record Retention Period”):

- (1) All records regarding Settling Defendants’ liability under CERCLA regarding the Site to the extent they have such records;
- (2) All reports, plans, permits, and documents submitted to EPA in accordance with this Decree, including all underlying research and data; and
- (3) All data developed by, or on behalf of, Settling Defendants in the course of performing the Remedial Action.

b. Owner Settling Defendants shall retain all Records regarding the liability of any person under CERCLA regarding the Site during the Record Retention Period.

c. At the end of the Record Retention Period, Settling Defendants shall notify EPA that it has 90 days to request the Settling Defendants’ Records subject to this Section. Settling Defendants shall retain and preserve their Records subject to this Section until 90 days after EPA’s receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

67. Settling Defendants shall provide to EPA, upon request, copies of all Records and information required to be retained under this Section not otherwise previously provided to EPA. Settling Defendants shall also make available to EPA, for purposes of investigation, information

gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

68. Privileged and Protected Claims

a. Settling Defendants may assert that all or part of a record requested by Plaintiff is privileged or protected as provided under federal law, in lieu of providing the record, provided that Settling Defendants comply with ¶ 68.b, and except as provided in ¶ 68.c.

b. If Settling Defendants assert a claim of privilege or protection, they shall provide Plaintiff 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, Settling Defendants shall provide the record to Plaintiff in redacted form to mask the privileged or protected portion only. Settling Defendants shall retain all records that they claim to be privileged or protected until Plaintiff has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Defendants' favor.

c. Settling Defendants shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any record that Settling Defendants are required to create or generate in accordance with this Decree.

69. Confidential Business Information (CBI) Claims. Settling Defendants may claim that all or part of a record provided to Plaintiff under this Section is CBI to the extent permitted by and in accordance with section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Settling Defendants shall segregate and shall clearly identify all records or parts thereof submitted under this Decree for which they claim is CBI by labeling each page or each electronic file "claimed as confidential business information" or "claimed as CBI." Records that Settling Defendants claim to be CBI will be afforded the protection specified in 40 C.F.R. part 2, subpart B. If no CBI claim accompanies records when they are submitted to EPA, or if EPA notifies Settling Defendants that the records are not entitled to confidential treatment 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 Settling Defendants.

70. In any proceeding under this Decree, validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA, if relevant to the proceeding, is admissible as evidence, without objection.

71. Notwithstanding any provision of this Decree, Plaintiff 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.

XVII. DE MINIMIS SETTLEMENT

72. EPA has determined the following;

a. prompt settlement with each De Minimis Party is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

b. the De Minimis Parties listed on Appendix F (“Appendix F, De Minimis Parties”) have resolved their liability to the United States by making a cash payment into the PPC Trust Account maintained by the Settling Defendants. The payment is based on the waste-in volume for each of De Minimis Party multiplied by a price per gallon of \$2.35, taking into account the prior payments made by each De Minimis Party for response costs incurred prior to the entry of this Consent Decree;

c. the payment to be made by each De Minimis party under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon EPA’s estimate that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by other persons is over \$60,000,000, and

d. the amount of hazardous substances contributed to the Site by each De Minimis party and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each De Minimis Party are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). This is because the amount of hazardous substances contributed to the Site by each De Minimis Party does not exceed 104,000 gallons of materials containing hazardous substances, and the hazardous substances contributed by each De Minimis Party to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

73. **De Minimis Settlement Statement of Purpose.** By entering into this Consent Decree, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows each De Minimis Party to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a significant number of De Minimis potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with each De Minimis Party for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by other persons, and to provide for full and complete contribution protection for each De Minimis party with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), or as otherwise may be provided by law.

74. **De Minimis Settlement Payment.** Within 30 days after the Effective Date, each De Minimis Party shall pay to Settling Defendants the amount set forth in Appendix F to this

Consent Decree. Payment resolves their liability to the United States and shall be made into the PPC Trust Account administered by a trustee that has the authority to act as a trustee and maintained by the remaining Settling Defendants. Payment shall be made to the PPC OU2/OU3 Trust Account, Citibank F.S.B., 201 S. Biscayne Blvd., Suite 3200, Miami, FL 33131, ABA#: 266086554, Account Number: 9146629636.

75. Each De Minimis Party's payment includes an amount for: (a) Past Response Costs incurred at or in connection with the Site; (b) projected future response costs to be incurred at or in connection with the Site; and (c) a premium to cover the risks and uncertainties avoided by participation in this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any other person, will exceed the estimated total response costs upon which Settling Defendants' payments are based.

76. **Interest.** In the event that a payment required by Paragraph 74 is not made within 60 days after the Effective Date, the De Minimis Party shall pay Interest on the unpaid balance, with such interest commencing on the 61st day after the Effective Date and accruing through the date of the payment.

77. **Failure to Make De Minimis Payment.** If any De Minimis Party fails to make full payment within the time required by Paragraph 74, that De Minimis party shall pay Interest on the unpaid balance, which shall accrue from the Effective Date until the date of payment. In addition, if any De Minimis Party fails to make full payment as required by Paragraph 74, the United States may, in addition to any other available remedies or sanctions, bring an action against that De Minimis Party seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to make timely payment.

XVIII. NOTICES AND SUBMISSIONS

78. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Decree must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Decree, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to DOJ: *via email to:*
eesdcopy.enrd@usdoj.gov
Re: DJ # _____

via regular or overnight mail to:
Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
Washington, D.C. 20044-7611
Re: DJ # _____

As to DOJ on behalf of Settling Federal Agencies: *via regular or overnight mail to:*
Chief, Environmental Defense Section
United States Department of Justice
Environment and Natural Resources Division
Post Office Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-763 _____

and

via email to:
Jeffrey Hughes,
jeffrey.hughes@usdoj.gov
Scott Spear,
scott.spear@usdoj.gov

As to EPA: *via email to:*
Caroline Freeman,
freeman.caroline@epa.gov

and

Marcia Nale
nale.marcia@epa.gov

As to the Regional Financial Management Officer: *via email to:*
Paula V. Painter
painter.paula@epa.gov
Re: Site/Spill ID # 0459

As to Settling *via email to:*
Defendants and John Barkett, jbarkett@shb.com
Owner Settling Franklin Zemel, franklin.zemel@saul.com
Defendants: John Stoviak, john.stoviak@saul.com
Bruce White, bruce.white@btlaw.com
Evan Goldenberg, egoldenberg@goldenbergpa.com
Michael Owens, mowens@broward.org
Michael Miller, m2@demaximis.com

XIX. APPENDICES

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

“Appendix A” is the Record of Decision.

“Appendix B” is the SOW.

“Appendix C” is the description/map of the Site.

“Appendix D” is the complete list of the Settling Defendants/Owner Settling Defendants.

“Appendix E” is the complete list of the Settling Federal Agencies.

“Appendix F” is the complete list of the De Minimis Parties.

“Appendix G” is the ASAOC dated December 5, 2022, EPA Docket No. CERCLA-04-2023-2523.

XX. MODIFICATIONS TO DECREE

80. Except as provided in ¶ 9 of the Decree and ¶ [8.6] of the SOW (Approval of Deliverables), nonmaterial modifications to Sections I through XXV and the Appendices must be in writing and are effective when signed (including electronically signed) by the Parties. Material modifications to Sections I through XXV and the Appendices must be in writing, signed (which may include electronically signed) by the Parties, and are effective upon approval by the Court. As to changes to the remedy, a modification to the Decree, including the SOW, to implement an amendment to the Record of Decision that “fundamentally alters the basic features” of the Remedial Action within the meaning of 40 C.F.R. § 300.435(c)(2)(ii) will be considered a material modification.

XXI. SIGNATORIES

81. The undersigned representatives of the United States and each undersigned representative of a Settling Defendant, Owner Settling Defendant, and De Minimis Party certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such Party to this document.

XXII. PRE-ENTRY PROVISIONS

82. If for any reason the Court should decline to approve this Decree in the form presented, this agreement, except for ¶ 83 and ¶ 84, is voidable at the sole discretion of any Party and its terms may not be used as evidence in any litigation between the Parties.

83. This Decree will be lodged with the Court for at least 30 days for public notice and comment in accordance with section 122(d)(2) of CERCLA and 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations that indicate that the Decree is inappropriate, improper, or inadequate.

84. Settling Defendants, Owner Settling Defendants, and De Minimis Parties agree not to oppose or appeal the entry of this Decree.

XXIII. INTEGRATION

85. This Decree constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Decree.

XXIV. TERMINATION OF THE OU1 CONSENT DECREE

86. Forty-five days prior to the start date for demolition Work, any remaining obligations to conduct and report on oil skimming collection activities from on-site wells shall be deemed completed and the United States will timely move to terminate the OU1 Consent Decree, Civil Action No. 91-2014 CIV Marcus, entered by this Court on December 11, 1991.

XXV. FINAL JUDGMENT

87. Upon entry of this Decree by the Court, this Decree constitutes a final judgment under Fed. R. Civ. P. 54 and 58 among the Parties.

SO ORDERED this ____ day of _____, 2024.

United States District Court Judge

Signature Page for RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR THE UNITED STATES:

TODD KIM
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources
Division 950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dated

PETER KRZYWICKI
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources
Division Environmental Enforcement
Section

JEFFREY HUGHES
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section

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Fla. Bar No. 0936693
Miami Division
99 N.E. 4th Street
Miami, FL 33132
(305) 961-9320
Fax: (305) 530-7139
E-mail: dexter.lee@usdoj.gov

Signature Page for RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

**FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY:**

CAROLINE Y. FREEMAN
Director, Superfund & Emergency
Management Division
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

RUDOLPH C. TANASIJEVICH
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 4

Signature Page for RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR:

_____ Dated Name: _____

Title:

Address:

*Check if participating in the De Minimis Settlement _____

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: _____

Title: _____

Company: _____

Address: _____

Phone: _____

email: _____

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR:

AA/Miami Group, Ltd
By: AA/Miami, Inc., Sole GA

3-5-2024
Dated


Name: Thomas G. Abraham

Title: President

Address: 6150 SW 76th Street, 2nd Floor
South Miami, FL. 33143

*Check if participating in the De Minimis Settlement

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: Thomas G. Abraham

Title: President

Company: AA/Miami, Inc., Sole G.P. of AA/Miami Group Ltd

Address: 6150 SW 76th Street, 2nd Floor
South Miami, FL. 33143

Phone: (305) 665-2222

email: t.abraham@anthonyabrahamenterprises.com

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al,*
Petroleum Products Corporation Superfund Site

FOR: AVIS RENT A CAR SYSTEM, LLC

24-Apr-2024

Dated

DocuSigned by:



FCBDC782567D486

Name: JEFFREY LUNA
VICE PRESIDENT

Title:
379 INTERPACE PARKWAY

Address: PARSIPPANY, NEW JERSEY 07054

*Check if participating in the De Minimis Settlement yes

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: JEFFREY LUNA
VICE PRESIDENT

Title:
AVIS RENT A CAR SYSTEM, LLC

Company: C/O AVIS BUDGET GROUP, INC.
379 INTERPACE PARKWAY

Address:
PARSIPPANY, NEW JERSEY 07054

608-385-6549

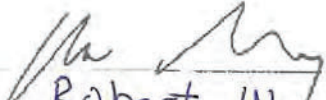
Phone:
Jeffrey.luna@avisbudget.com

email:

Signature Page for RD RA Consent Decree in *U.S. v. Broward County, Florida, et al*
Petroleum Products Corporation Superfund Site

FOR: Bill Ussery Motors, Inc

2-20-24
Dated

Name: 
Title: CEO
Address: 300 Sevilla Ave. Suite 300
Coral Gables FL 33134

*Check if participating in the De Minimis Settlement

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service. This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name:

Title:

Company:

Address:

Phone:

email:

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR: Bridgestone Americas Tire Operations, LLC

15-Jan-2024



Dated

Name: John A. Mugnano

Title: General Counsel - Litigation

200 4th Avenue South

Address: Nashville, TN 37201

*Check if participating in the De Minimis Settlement _____

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: John A. Mugnano

General Counsel - Litigation

Title:

Bridgestone Americas, Inc.

Company:

200 4th Avenue South

Address: Nashville, TN 37201

615-937-4356

Phone:

Mugnanojohn@bfusa.com

email:

Signature Page for RA Consent Decree in *U.S. v. Broward County, Florida, et al.*
Petroleum Products Corporation Superfund Site

FOR: Broward County, Florida

6/12/24

Dated

Nan Rich

Digitally signed by NAN H. RICH
Date: 2024.06.12 14:37:44 -04'00'

Name: Nan H. Rich

Title: Mayor

Address: 115 South Andrews Avenue, Room 421
Fort Lauderdale, FL 33301



*Check if participating in the De Minimis Settlement _____

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: Michael C. Owens

Title: Senior Assistant County Attorney

Company: Broward County Office of the County Attorney

Address: 115 South Andrews Avenue, Room 423
Fort Lauderdale, FL 33301

Phone: 954-357-7614

email: mowens@broward.org

Approved as to form by
Andrew J. Meyers, Broward County Attorney

Michael C.
By Owens
Digitally signed by Michael C Owens
Date: 2024.06.11 16:15:37 -04'00'

Michael C. Owens (Date)
Senior Assistant County Attorney

MAITE
By AZCOITIA
Digitally signed by MAITE AZCOITIA
Date: 2024.06.11 16:39:21 -04'00'

Maite Azcoitia (Date)
Deputy County Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. _____

BROWARD COUNTY, FLORIDA, et al.,

Defendants.

**REMEDIAL ACTION
CONSENT DECREE**

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR: RYDER TRUCK RENTAL, INC.

7/9/2024

Dated

DocuSigned by:
Sanford J. Hodes
FFE4237C561E4F5...

Name: Sanford J. Hodes

Title: SVP

Address: 2333 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134

*Check if participating in the De Minimis Settlement _____

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: John M. Barkett

Company: Shook, Hardy & Bacon LLP

Address: Citigroup Center; 201 S. Biscayne Blvd., Suite 3200; Miami, FL 33131

Telephone Number: 305-358-5171

Facsimile Number: 305-358-7470

E-Mail Address: jbarkett@shb.com

Name: Attn: Ryder Legal Department

Title: Ryder General Counsel

Company: Corporate Creations Network Inc.

Address: 801 US Highway 1; North Palm Beach, FL 33408

Phone: 561-694-8107

E-Mail Address: N/A

Signature Page for RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR:

6/24/2024
Dated



Name: Jimmy Morales
Title: Chief Operating Officer

Address: 111 NW 1st Street, 29th Floor
Miami, FL 33128

*Check if participating in the De Minimis Settlement _____

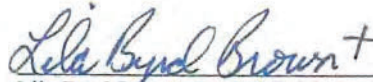
If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: _____
Title: _____
Company: _____
Address: _____
Phone: _____
email: _____

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR: CBC Trust #1, f/k/a as Connor Brown
Cadillac

12/21/2023
Dated



Name: Lila Byrd Brown
Title: Managing Trustee
2358 Riverside Avenue
Address: #704
Jacksonville, FL 32204

*Check if participating in the De Minimis Settlement _____

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: Lila Byrd Brown
Title: Managing Trustee
Company: CBC Trust #1, f/k/a as Connor Brown Cadillac
2358 Riverside Avenue
Address: #704
Jacksonville, FL 32204
Phone: (904)388-3325
email: saintbyrd@aol.com

Signature Page for RA Consent Decree in *U.S. v. Broward County, Florida, et al.*
Petroleum Products Corporation Superfund Site

FOR: CITY OF MIAMI

5/20/24
Dated

Name: Arthur Noriega ✓

Title: City Manager

Address: 444 Southwest 2nd ave.
Miami, Florida 33130

Authorized via resolution R-23-0003

*Check if participating in the De Minimis Settlement X


If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: George K. Wysong, III.
Title: City Attorney KRI 5/20/24
Company: City of Miami
Address: City Attorney's Office
Ste. 945
444 Southwest 2nd ave.
Miami, FL 33130
Phone: _____
email: krjones@miamigov.com; Jmdeloro@miamigov.com

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al.*
Petroleum Products Corporation Superfund Site

FOR:
Cliff Berry, Inc

3/19/24
Dated

Name: Cliff Berry, Inc. 

Title: Chief Executive Officer / President
851 Eller Drive
Address: Fort Lauderdale, FL 33316

*Check if participating in the De Minimis Settlement X

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: Kelly Brandenburg
Title: Director, Corporate Compliance
Company: Cliff Berry, Inc.
Address: PO Box 13079
Fort Lauderdale, FL 33316
Phone: 954-763-3390
email: compliance@cliffberryinc.com

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR:

CSX Transportation, Inc.

12/20/2023

Dated

Name: Raghunath S. Chatrathi
Sr. Director, PSHE

Title:

500 Water St., J-275, Jacksonville, FL 32202

Address:

*Check if participating in the De Minimis Settlement _____

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: Daniel E. Schmitt

Title: Assistant General Counsel

Company: CSX Transportation, Inc.

Address: 500 Water Street, Jacksonville, FL, 32202

Phone: 904-359-1126

email: Daniel_Schmitt@csx.com

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

**FOR: El Paso CGP Company, L.L.C. for
Coastal Fuels Marketing, Inc.**

12/12/2023
Dated

Name:


Vince W. Blout

Title:

Director EHS

Address:

1001 Louisiana Street
Houston, Texas 77002

*Check if participating in the De Minimis Settlement _____

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Name: Mary Clair Lyons

Title: General Counsel

Company: Kinder Morgan, Inc.

Address: 1001 Louisiana Street Houston, TX 77002

Phone: 713-420-4313

Email: Mary_Lyons@kindermorgan.com


Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR:

1-18-2024

Dated

Name:

 / Frank Messina

Title:

AGENT & ATTORNEY IN FACT

Address:

38 JAMES STREET
BROOKLYN NY 11222

*Check if participating in the De Minimis Settlement X

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Name:

 / Frank Messina

Title:

AGENT & ATTORNEY IN FACT

Company:

Exxon Mobil Corporation & Exxon Mobil Oil Corporation

Address:

38 JAMES STREET
BROOKLYN NY 11222

Phone:

718-404-0652

email:

frank.j.messina@exxonmobil.com

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al.*
Petroleum Products Corporation Superfund Site

FOR:

3-26-24
Dated

Name: Katharine Macgregor

Title: VP Environmental Services

Address: Florida Power & Light Co.
700 Universe Blvd.
Juno Beach, Florida, 33408

*Check if participating in the De Minimis Settlement _____

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Name: Billi Jo Huddleston

Title: Manager, Environmental Services

Company: Florida Power & Light Co.

Address: 700 Universe Blvd

Juno Beach, Florida 33408

Phone: 561-691-7050

email: billi.huddleston@fpl.com

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR: The Goodyear Tire & Rubber Company

3/14/2024
Dated

Name:  Darcy Robison

Title: VP & Chief Sustainability Officer

Address: 200 Innovation Way, Akron OH 44316

*Check if participating in the De Minimis Settlement _____

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Name: Steven Bordenkircher

Title: Sr. Legal Counsel, Environmental & Sustainability

Company: The Goodyear Tire & Rubber Company

Address: 200 Innovation Way

Akron, OH 44316

Phone: (330) 796-6738

email: steven_bordenkircher@goodyear.com

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR: Greyhound Lines, Inc.

1/3/2024

Dated

Name:  _____
Tricia Martinez

Title: General Counsel and Secretary

Address: 315 Continental Ave., Dallas TX 75207

*Check if participating in the De Minimis Settlement _____

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Name: _____

Title: _____

Company: _____

Address: _____

Phone: _____

email: _____

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR:

2/19/24
Dated

Name: Ali Ahmed

Title: Manager

Address: 5875 NW 163rd St.
: Suite 105
Miami Lakes, FL 33014

*Check if participating in the De Minimis Settlement yes

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Name: Ali Ahmed

Title: Manager

Company: Hollywood Chrysler Plymouth

Address: 5875 NW 163rd st. Suite 105
Miami Lakes, FL 33014

Phone: 305 779 9160

email: Counsel: Abbigail@dodgemiami.com

Signature Page for RA Consent Decree in U.S. v. Broward County, Florida, et al,
Petroleum Products Corporation Superfund Site

FOR: HOLMAN AUTOMOTIVE, INC.
(FOR FT. LAUDERDALE LINCOLN MERCURY, INC.)

03/21/24
Dated

Name: William Abate

Title: CORPORATE RISK + SAFETY MANAGER

Address: 4001 Leadenhall Rd.
PO Box 5004
Mount Laurel, NJ 08054

*Check if participating in the De Minimis Settlement X Yes

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service. This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: William Abate

Title: CORPORATE RISK + SAFETY MANAGER

Company: HOLMAN

Address: 4001 Leadenhall Rd.
PO Box 5004
mt. Laurel, NJ 08054

Phone: 856-266-3604 (cell) 856-663-5200 (office)

email: Bill.Abate@Holman.com

Signature Page for RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR: Hollywood Lincoln, INC

03/21/24
Dated

Name: William Abate

Title: Corporate Risk + Safety Manager

Address: 4001 Leadenhall Rd.
PO Box 5004
Mount Laurel, NJ 08054

*Check if participating in the De Minimis Settlement X - Yes

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service. This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: William Abate

Title: Corporate Risk + Safety Manager

Company: Holman

Address: 4001 Leadenhall Rd.
PO Box 5004
Mt. Laurel, NJ 08054

Phone: 856-266-3604 (cell) 856-663-5200 (office)

email: Bill.Abate@Holman.com

Signature Page for RA Consent Decree in *U.S. v. Broward County, Florida, et al,*
Petroleum Products Corporation Superfund Site

FOR: HOLMAN AUTOMOTIVE, INC. dba MIAMI
LINCOLN MERCURY

03/21/24
Dated

Name: William Abate

Title: Corporate Risk & Safety Manager

Address: 4001 Leadenhall Rd.
PO Box 5004
MOUNT LAUREL, NJ 08054

*Check if participating in the De Minimis Settlement X-YES

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service. This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: William Abate
Title: CORPORATE RISK & SAFETY MANAGER
Company: HOLMAN
Address: 4001 Leadenhall Rd.
PO Box 5004
MOUNT LAUREL, NJ 08054
Phone: 856-266-3604 (cell) 856-663-5200 (office)
email: Bill.Abate@Holman.Com

Signature Page for RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR: Pompano Ford Lincoln, Inc. F/k/A Pompano
Lincoln Mercury, Inc.

03/21/24
Dated

Name: William Abate

Title: CORPORATE RISK + SAFETY MANAGER

Address: 4001 Leadenhall Rd.
PO Box 5004
MOUNT LAUREL, NJ 08054

*Check if participating in the De Minimis Settlement X-Yes

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service. This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: William Abate

Title: CORPORATE RISK + SAFETY MANAGER

Company: Holman

Address: 4001 Leadenhall Rd.
PO Box 5004
MOUNT LAUREL, NJ 08054

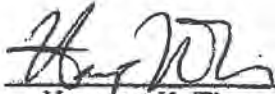
Phone: 856-266-3604 (cell) 856-663-5200 (office)

email: Bill.Abate@Holman.com

Signature Page for RA Consent Decree in *U.S. v. Broward County, Florida, et al.*
Petroleum Products Corporation Superfund Site

FOR:

April 4, 2024
Dated



Name: Harpreet K. Tiwana
Keweenaw Industries, Inc.
Title: Assistant Secretary

Address: 6001 Bollinger Canyon Rd., San Ramon, CA 94583

*Check if participating in the De Minimis Settlement X

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: _____
Title: _____
Company: _____
Address: _____

Phone: _____
email: _____

Signature Page for RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR: Morse Operations, Inc.,
dba Ed Morse Chevrolet,
a Florida Corporation

May 17, 2024
Dated

DocuSigned by:
Randy Hoffman
4422457385E144B

Name: Randy Hoffman

Title: Chief Operating Officer
Executive Vice President

Address: 2850 South Federal Highway
Delray Beach, Florida 33483

*Check if participating in the De Minimis Settlement x

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: Randy Hoffman
Title: Chief Operating Officer
Executive Vice President
Company: Morse Operations, Inc., dba Ed Morse
Chevrolet, a Florida Corporation
Address: 2850 South Federal Highway
Delray Beach, Florida 33483
Phone: 561-455-1111
email: RandyHoffman@EdMorse.com

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR: SAFETY-KLEEN SYSTEMS, INC.

1/2/24

Dated



Name: Michael McDonald

Title: Senior Vice President & General Counsel

Address: 42 Longwater Drive, Norwell, MA 02061

*Check if participating in the De Minimis Settlement _____

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: CT Corporation System

Title: _____

Company: _____

155 Federal Street Ste 700

Address: _____

Boston, MA 02110

Phone: _____

email: _____

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR: South Motor of Dade County

5/6/2024
Dated

Name:  Jonathan B. Chariff

Title: Mgr

Address: 18010 SW Dixie Hwy

*Check if participating in the De Minimis Settlement X

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: Kerri L. Barsh

Title: Shareholder

Company: Greenberg Traurig, P.A.

Address: 333 SE. 2nd Avenue, Suite 4400
Miami, FL 33131

Phone: 305-579-0772

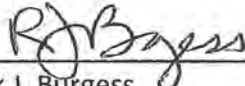
email: barshk@gtlaw.com

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al,*
Petroleum Products Corporation Superfund Site

FOR:

2-14-24

Dated



Name: Rick J. Burgess

Title: Attorney for Steve Moore Chevrolet, LLC.
Gunster Law Firm

Address: 450 E. Las Olas Boulevard, Suite 1400
For Lauderdale, FL 33301

✓

*Check if participating in the De Minimis Settlement _____

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Name: Rick J. Burgess

Title: Attorney for Steve Moore Chevrolet, LLC.

Company: Gunster Law Firm

Address: 450 E. Las Olas Boulevard, Suite 1400

Fort Lauderdale, FL 33301

Phone: 954-468-1363

email: rburgess@gunster.com

Signature Page for RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR: Tropical Chevrolet

9/8/24
Dated

[Signature]
Name: Ari Wildstein

Title: SECRETARY

Address: 8880 Biscayne Blvd.
MIAMI Shores FL 33138

*Check if participating in the De Minimis Settlement 56,103 ✓

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: Ari Wildstein

Title: SECRETARY

Company: Tropical Chevrolet

Address: 8880 BISCAYNE Blvd.
MIAMI Shores FL 33138

Phone: 305-586-4764

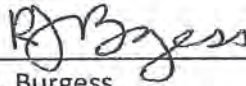
email: Ari.W@TropicalChevrolet.com

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al,*
Petroleum Products Corporation Superfund Site

FOR:

2-14-24

Dated



Name: Rick J. Burgess

Title: Attorney for Wallace Ford, LLC.

Gunster Law Firm

Address: 450 E. Las Olas Boulevard, Suite 1400
For Lauderdale, FL 33301

✓

*Check if participating in the De Minimis Settlement _____

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Name: Rick J. Burgess

Title: Attorney for Wallace Ford, LLC.

Company: Gunster Law Firm

Address: 450 E. Las Olas Boulevard, Suite 1400

Fort Lauderdale, FL 33301

Phone: 954-468-1363

email: rburgess@gunster.com

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al.*
Petroleum Products Corporation Superfund Site

FOR:

Park 31st Corp

3/14/2024

Dated

Name: Angela M. Kelsey

Title: President

Address: 1812 SW 31st Ave Pembroke Park FL 33009

*Check if participating in the De Minimis Settlement _____

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: Evan Goldenberg

Title: President

Company: Goldenberg P.A.

Address: 650 NE 32nd Street, Unit 701
Miami, FL 33137

Phone: 786-642-0030

email: egoldenberg@goldenbergpa.com

Signature Page for RD/RA Consent Decree in *U.S. v. Broward County, Florida, et al*,
Petroleum Products Corporation Superfund Site

FOR:

AON 31st LLC

3/14/2024

Dated



Name: Angela M. Kelsey

Title: Managing Member

Address: 1812 SW 31st Ave Pembroke Park FL 33009

*Check if participating in the De Minimis Settlement _____

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Name: Evan Goldenberg

Title: President

Company: Goldenberg P.A.


Address: 650 NE 32nd Street, Unit 701
Miami, FL 33137

Phone: 786-642-0030

email: egoldenberg@goldenbergpa.com

Signature Page for RA Consent Decree in *U.S. v. Broward County, Florida, et al.*
Petroleum Products Corporation Superfund Site

FOR:

6/3/2024
Dated _____ Name: 
Title: Authorized Agent
Address: 3850 Hollywood Boulevard, 33021

*Check if participating in the De Minimis Settlement _____

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: 
Title: Authorized Agent
Company: Parcel F, LLC
Address: 3850 Hollywood Blvd, FLA 33021
Phone: 954-668-8873
email: RMC@CornfeldGroup.com

Signature Page for RA Consent Decree in *U.S. v. Broward County, Florida, et al.*
Petroleum Products Corporation Superfund Site

FOR:

2/11/2024 Franklin L. Zemel, Esq.
Dated Name:

Title: President

Address: 3850 Hollywood Blvd., Suite 400
Hollywood, Florida 33021

*Check if participating in the De Minimis Settlement _____

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that it does not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Franklin L. Zemel, Esq.
Name: _____
Title: Attorney
_____ Company: Saul Ewing LLP
Address: 200 East Las Olas Blvd., Suite 1000
_____ Fort Lauderdale, Florida 33301
Phone: 954-713-7610
_____ email: franklin.zemel@saul.com

CERTIFICATE OF SERVICE

I certify that on October 17, 2024, I electronically filed the foregoing document and all attachments with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all counsel of record.

I also met and conferred with counsel. I am providing all counsel an electronic copy by email. Per the request of Miami-Dade County, I have mailed a physical copy of these documents to:

Dale Clarke
Stephen P. Clark Center
111 NW 1st Street,
29th Floor
Miami, FL 33128

s/ Peter Krzywicki

Peter Krzywicki

APPENDICES

Appendix A” is the OU1/OU2/OU3 (Interim) Record of Decision

<https://semspub.epa.gov/work/04/11160959.pdf>

“Appendix B” is the OU1/OU2/OU3 (Interim) Statement of Work (SOW)

REMEDIAL ACTION

STATEMENT OF WORK

OPERABLE UNITS - OU1, OU2 and OU3 (Interim)

PETROLEUM PRODUCTS CORPORATION SUPERFUND SITE

Pembroke Park, Broward County, State of Florida

EPA Region 4

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1. INTRODUCTION

Preamble. The Petroleum Products Corporation (PPC) Superfund Site for Operable Unit (OU) 1, OU2, and OU3 (Interim) is designated for cleanup based on the liability of the Settling Defendants and the Settling Federal Agencies. The Florida Department of Environmental Protection (FDEP), under its Early Detection Incentive (EDI) program, has funded and/or cleaned up certain historical releases of stored petroleum materials at the Site since PPC was accepted into the EDI program in 1990. To expedite the cleanup of the Site consistent with the August 12, 2021, Record of Decision (ROD), EPA, through the PPC Site Special Account, is currently funding, pursuant to an administrative settlement dated December 5, 2022, the Remedial Design work was conducted by select Settling Defendants in coordination with EPA and the FDEP. EPA reimbursed these Settling Defendants for approved Remedial Design work conducted by transferring special account funds to a trust account maintained by the Settling Defendants. The Final (100%) Remedial Design was approved by the EPA on November 17, 2023, and is incorporated in this SOW for the implementation of the Remedial Action.

The following Statement of Work (SOW) sets forth the tasks that will be undertaken to complete the Remedial Design and Remedial Action for the PPC Site OU1/OU2/OU3 (Interim) ROD.

1.1 Purpose of SOW. This SOW sets forth the procedures and requirements for implementing the Work.

1.2 Structure of the SOW

- Section 2 (Community Involvement) sets forth EPA's and Settling Defendants' (SDs) responsibilities for community involvement.
- Section 3 (Coordination and Supervision) contains the provisions for selecting the Supervising Contractor and Project Coordinators regarding the Work.
- Section 4 (Remedial Design) is the Final (100%) Remedial Design and associated approved plans in accordance with the Administrative Settlement Agreement and Order on Consent (ASAOC) dated December 5, 2022, Docket No. CERCLA-04-2023-2523.
- Section 5 (Remedial Action) sets forth requirements regarding the completion of the Remedial Action, including primary deliverables related to completion of the Remedial Action.
- Section 6 (Contingency Remedy) sets forth Settling Defendants' obligations regarding implementation of contingency remedies.
- Section 7 (Reporting) sets forth Settling Defendants' reporting obligations.
- Section 8 (Deliverables) describes the contents of the supporting deliverables and the general requirements regarding Settling Defendants' submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- Section 9 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the Remedial Action.
- Section 10 (State Participation) addresses State participation.
- Section 11 (References) provides a list of references, including URLs.

The Scope of the Remedy includes the actions described in the Selected Remedy Section (XVI) of the PPC Site OU1/OU2/OU3 (Interim) Record of Decision signed on September 12, 2021, including:

- OU1 Unsaturated Zone: In-Situ Stabilization/Solidification with Limited Soil Excavation and Off-Facility Disposal
- OU2 Main Source Area: In-Situ Stabilization/Solidification with Large Diameter Augers (LDAs)
- OU3 Extended Plume: Groundwater Recovery and Treatment (GR&T)

Common Elements of the Selected Remedy are:

- Bamboo Mobile Home Park excavation and temporary relocation of residents
- Building demolition overlying the Main Source Area and relocation of businesses and tenants
- Shallow (0-5 ft bgs) excavation under select buildings and ISS to 26 ft bgs
- Institutional Controls
- Long-term groundwater monitoring in OU3 to assess remedy performance
- Site reviews at a minimum of every five years to assess the protectiveness of the remedy

A copy of the Declaration Statement and Decision Summary of this ROD is attached hereto; the complete ROD, including appendices, can be found online at:

<https://semspub.epa.gov/work/04/11160959.pdf>)

- 1.3 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Consent Decree (“Decree”), have the meanings assigned to them in CERCLA, in such regulations, or in the Decree, except that the term “Paragraph” or “¶” means a paragraph of the SOW, and the term “Section” means a section of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

- 2.1 As requested by EPA, Settling Defendants shall conduct community involvement activities under EPA’s oversight as provided for in, and in accordance with this Section. Such activities must include designation of a Community Involvement Coordinator (“CI Coordinator”).

2.2 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. Previously during the Remedial Investigation and Feasibility Study (“RI/FS”) phase, EPA developed a Community Involvement Plan (“CIP”) for the Site. In accordance with 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP.
- (b) **Settling Defendants’ CI Coordinator.** As requested by EPA, Settling Defendants shall, within 15 days, designate and notify EPA of Settling

Defendants' CI Coordinator (Settling Defendants' CI Coordinator). Settling Defendants may hire a contractor for this purpose. Settling Defendants' notice must include the name, title, and qualifications of the Settling Defendants' CI Coordinator. Settling Defendants' CI Coordinator shall coordinate his/her activities with EPA's CI Coordinator, provide support regarding EPA's community involvement activities, and, as requested by EPA's CI Coordinator, provide draft responses to the public's inquiries including requests for information or data about the Site. The Settling Defendants' CI Coordinator has the responsibility to ensure that when they communicate with the public, the Settling Defendants protect any "Personally Identifiable Information" ("PII") (e.g. sample results from residential properties) in accordance with "EPA Policy 2151.0: Privacy Policy."

- (c) As requested by EPA, Settling Defendants shall participate in community involvement activities, including participation in: (1) public meetings and presentations that may be held or sponsored by EPA to explain activities at or relating to the Site (with interpreters present for community members with limited English proficiency). Settling Defendants' support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to: (1) any Community Advisory Groups and (2) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP Settling Defendants' responsibilities for community involvement activities. All community involvement activities conducted by Settling Defendants at EPA's request are subject to EPA's oversight. Upon EPA's request, Settling Defendants shall establish, as early as is feasible, a community information repository at or near the Site, as provided in the CIP, to house one copy of the administrative record.
- (d) **Information for the Community.** As requested by EPA, Settling Defendants shall develop and provide to EPA information about the design and implementation of the remedy including: (1) any validated data from monitoring of impacts to communities as provided in the Community Impacts Mitigation Plan under ¶ 8.7(f); (2) results from unvalidated sampling as provided under ¶ 8.7(e)(7); (3) a copy of the Community Impacts Mitigation Plan required under ¶ 8.7(f); (4) schedules prepared under Section 9; (5) dates that Settling Defendants completed each task listed in the schedules; and (6) digital photographs of the Work being performed, together with descriptions of the Work depicted in each photograph, the purpose of the Work, the equipment being used, and the location of the Work. The EPA Project Coordinator may use this information for communication to the public via EPA's website, social media, or local and mass media. The information provided to EPA should be suitable for sharing with the public and the education levels of the community as indicated in EJ Screen. Translations should be in the dominant language(s) of community members with limited English proficiency.

3. COORDINATION AND SUPERVISION

3.1 Project Coordinators (Settling Defendants and FDEP)

- (a) Settling Defendants' and FDEP's proposed Project Coordinators must have sufficient technical expertise to coordinate the Work. Settling Defendants' Project Coordinator may not be an attorney representing any Settling Defendant in this matter and may not act as the Supervising Contractor. Settling Defendants' and FDEP's Project Coordinators may assign other representatives, including other contractors, to assist in coordinating the Work.
- (b) EPA shall designate and notify the Settling Defendants and FDEP of EPA's Project Coordinators and Alternate Project Coordinators. 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 National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). This includes the authority to halt the Work and/or to conduct or direct any necessary response action when it is determined that conditions at the Site 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.
- (c) The Settling Defendants and FDEP shall designate and notify EPA of its Project Coordinators and Alternate Project Coordinators. The Settling Defendants and FDEP may designate other representatives, including its employees, contractors and/or consultants to oversee the Work. For any meetings and inspections in which EPA's Project Coordinator participates, the FDEP's Project Coordinator also may participate. Settling Defendants shall notify the FDEP reasonably in advance of any such meetings or inspections.
- (d) Settling Defendants' and FDEP's Project Coordinators shall communicate with EPA's Project Coordinators at least monthly.

3.2 Supervising Contractor. Settling Defendants' and FDEP's proposed Supervising Contractors must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with the most recent version of *Quality Systems for Environmental Data and Technology Programs -- Requirements with Guidance for Use* (American National Standard), ANSI/ASQC E4 (Feb. 2014).

3.3 Procedures for Disapproval/Notice to Proceed

- (a) Settling Defendants and FDEP shall designate, and notify EPA, within 14 days after the Effective Date, of the name[s], title[s], contact information, and qualifications of the Settling Defendants' and FDEP's proposed Project Coordinators and Supervising Contractors, 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.

- (b) EPA shall issue notices of disapproval and/or authorizations to proceed regarding any proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Settling Defendants and FDEP 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. Settling Defendants and FDEP may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of Settling Defendants' and FDEP's selection.
- (c) EPA may disapprove the proposed Project Coordinator, the Supervising Contractor, or both, based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise), if they have a conflict of interest regarding the project, or any combination of these factors.
- (d) Settling Defendants and FDEP may change their Project Coordinator and/or Supervising Contractor, or both, by following the procedures of §§ 3.3(a) and 3.3(b).
- (e) Notwithstanding the procedures of §§ 3.3(a) through 3.3(d), Settling Defendants have proposed, and EPA has authorized Settling Defendants to proceed to conduct the Remedial Design Work using the following Project Coordinator and Supervising Contractor: Michael Miller, de maximis, inc., m2@demaximis.com.

4. REMEDIAL DESIGN

4.1 The EPA approved a Final (100%) Remedial Design on November 17, 2023, pursuant to Administrative Settlement Agreement and Order on Consent (ASAOC) dated December 5, 2022, Docket No. CERCLA-04-2023-2523. The Final (100%) Remedial Design is included in the PPC Site Administrative Record.

4.2 **Institutional Controls Implementation and Assurance Plan (“ICIAP”).** The EPA approved an ICIAP on November 17, 2023, as part of the Final (100%) Remedial Design, pursuant to the ASAOC. The ICIAP is included in the PPC Site Administrative Record.

5. REMEDIAL ACTION

The Settling Defendants will identify their Remedial Action contractor to conduct remedial action activities under the EPA's regulations and regulatory oversight. That contractor is referred to below as the “Settling Defendants' contractor.”

The FDEP will also identify its Remedial Action contractor to conduct remedial action activities under the EPA's and FDEP's regulations and regulatory oversight. That contractor is referred to below as the “FDEP's Contractor.” If the selection of the FDEP's Contractor requires

compliance with the FDEP procurement process for retention of a contractor, then FDEP will engage in that process in as timely a manner as is practicable under applicable State regulations.

5.1 Remedial Action Work Plan (“RAWP”). Settling Defendants and FDEP shall submit a RAWP for EPA approval that includes:

- (a) A proposed Remedial Action Construction Schedule in the Gantt chart format;
- (b) An updated health and safety plan that covers activities during the Remedial Action;
- (c) Plans for satisfying permitting requirements, including obtaining permits for off-site activity and for satisfying substantive requirements of permits for on-site activity;
- (d) A Relocation Plan to be implemented by the Owner Settling Defendants for the on-Site tenants and a contingency Relocation Plan for tenants on adjacent properties to be implemented by the Settling Defendants at their sole expense;
- (e) A Demolition Plan whereby FDEP through its contractor will be responsible for demolition of buildings identified in the Final Remedial Design for demolition. Owner Settling Defendants that own buildings scheduled for demolition are responsible for ensuring that there are no occupants in buildings on property that each owns at least one week before the date set for demolition, and that any materials or equipment remaining in the buildings has been removed as of that same date. To the extent that tenants need to be relocated from a building being demolished, the Owner Settling Defendant that owns the building shall be responsible for effecting the relocation of such tenants before demolition is scheduled to begin and is solely responsible for any costs associated with the relocation. Further, the final determination of whether the building on the AON 31st LLC parcel must be demolished will be made during the ISS component of the Remedial Action;
- (f) A Soil Excavation Plan for the Park 31st Corp. (K1) property and a Barrier Wall Construction Plan for the AON 31st LLC (K2) property identified on the Remedial Design and Remedial Action Site figures;
- (g) A Stormwater Management Plan for the Site that implements the design and construction considerations outlined in the Final Remedial Design; and
- (h) In the event that the Remedial Action damages or removes adjacent structures on the exterior portions of the AON 31st LLC and Park 31st Corp. Parcels, including but not limited to parking areas, utilities, and drainage structures, the Remedial Action Work Plan will require replacement of any impacted contaminated soils with clean fill and restoration of the parking areas, utilities, and drainage structures.

5.2 Meetings and Inspections

- (a) **Preconstruction Conference.** The Settling Defendants' and FDEP's contractors shall hold a preconstruction conference with EPA, FDEP, representatives of the Settling Defendants, and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). Settling Defendants shall prepare minutes of the conference and shall distribute the minutes to all Parties.
- (b) **Periodic Communications.** During the construction portion of the Remedial Action (Remedial Action Construction), the Settling Defendants' and FDEP's contractors shall communicate regularly and will meet weekly with EPA, FDEP, representatives of the Settling Defendants, and others as directed or determined by EPA, to discuss construction issues. The Settling Defendants' and FDEP's contractors shall distribute an agenda and list of attendees to all Parties prior to each meeting or telephone call, and prepare minutes of the meetings or calls and shall distribute the minutes to all Parties.
- (c) **Inspections**
 - (1) EPA or its representative shall conduct periodic inspections of or have an on-site presence during the Work. At EPA's request, the Settling Defendants' and FDEP's contractors or other designee shall accompany EPA, FDEP or their representatives, during inspections.
 - (2) The Settling Defendants' and/or FDEP's contractors shall provide on-site office space for EPA personnel to perform their oversight duties. The minimum office requirements are a private office with at least 150 square feet of floor space, an office desk with chair, a four-drawer file cabinet, and a telephone with a private line, access to facsimile, reproduction, and personal computer equipment, wireless internet access, and sanitation facilities.
 - (3) The Settling Defendants' and FDEP's contractors shall provide personal protective equipment needed for EPA personnel or other oversight officials to perform their oversight duties.
 - (4) Upon notification by EPA of any deficiencies in the Remedial Action Construction, the Settling Defendants' and FDEP's contractors shall take all necessary steps to correct the deficiencies and/or bring the Remedial Action Construction into compliance with the approved Final Remedial Design, any approved design changes, and/or the approved RAWP within 30 days of notification. If applicable, the Settling Defendants' and FDEP's contractors shall comply with any schedule provided by EPA in its notice of deficiency.
 - (5) The Owner Settling Defendants' designees, including Pembroke Park Warehouses Holding Company's (PPW's) technical representative and counsel, shall be permitted access at all times to inspect the Work.

5.3 Permits

- (a) As provided in CERCLA § 121(e), and Section 300.400(e) of the NCP, no permit is 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). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.
- (b) Settling Defendants may seek relief under the provisions of Section X (Force Majeure) of the Decree 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 ¶ 5.3(a) and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.
- (c) Nothing in the Decree or this SOW constitutes a permit issued under any federal or state statute or regulation.

5.4 Emergency Response and Reporting

- (a) **Emergency Action.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, the Settling Defendants' and FDEP's contractors shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer and the Owner Settling Defendants (as specified in ¶ 5.4(c)) orally; and (3) take such actions in consultation with the authorized EPA officers and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.
- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that the Settling Defendants' and FDEP's contractors are required to report under CERCLA § 103 or Section 304 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), the Settling Defendants' and FDEP's contractors shall immediately notify the authorized EPA officer and the Owner Settling Defendants orally.
- (c) The "authorized EPA officer" for purposes of immediate oral notifications and consultations under ¶ 5.4(a) and ¶ 5.4(b) is the EPA Project Coordinator, the EPA Alternate Project Coordinator (if the EPA Project Coordinator is unavailable), or the EPA Emergency Response Unit, Region 4 (if neither EPA Project Coordinator is available). The authorized FDEP officer is the FDEP Project Manager for the

PPC Site (Ginger Shirah). PPW may be contacted via counsel Franklin Zemel, Esq. and PPW's technical representative William Cutler.

- (d) For any event covered by ¶ 5.4(a) and ¶ 5.4(b), the Settling Defendants' and FDEP's contractors shall: (1) within 14 days after the onset of such event, submit a report to EPA (and a copy to a representative of Settling Defendants) describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA and FDEP (and a copy to a representative of Settling Parties including the Owner Settling Defendants) describing all actions taken in response to such event.
- (e) The reporting requirements under ¶ 5.4 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304 or the laws of the State of Florida.

5.5 Off-Site Shipments

- (a) The Settling Defendants' and FDEP's contractors may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if it complies with CERCLA § 121(d)(3), and 40 C.F.R. § 300.440. The Settling Defendants' and FDEP's contractors will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if the Settling Defendants' and FDEP's contractors obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
- (b) The Settling Defendants' and FDEP's contractors may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. The Settling Defendants' and FDEP's contractors also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. The Settling Defendants' and FDEP's contractors shall provide the notice after the award of the contract for Remedial Action construction and before the Waste Material is shipped.
- (c) The Settling Defendants' and FDEP's contractors may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if it complies with CERCLA § 121(d)(3), 40 C.F.R. § 300.440, *EPA's Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Record of Decision. Wastes shipped off-

Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

5.6 Remedial Action Construction Completion

- (a) For purposes of this ¶ 5.6, “Remedial Action Construction” comprises, for any Remedial Action that involves the construction and operation of a system to achieve Performance Standards (for example, groundwater or surface water restoration remedies), the construction of such system and the performance of all activities necessary for the system to function properly and as designed.
- (b) **Inspection of Constructed Remedy.** Settling Defendants shall schedule an inspection to review the construction and operation of the system and to review whether the system is functioning properly and as designed. The inspection must be attended by Settling Defendants, EPA, FDEP and/or their representatives. A reinspection must be conducted if requested by EPA.
- (c) **Shakedown Period.** There shall be a shakedown period of up to three years for EPA to review whether the remedy is functioning properly and performing as designed. Settling Defendants shall provide such information as EPA requests for such review.
- (d) **Remedial Action Report.** Following the shakedown period, Settling Defendants shall submit a “Remedial Action Report” requesting EPA’s determination that Remedial Action Construction has been completed. The Remedial Action Report must: (1) include statements by a registered professional engineer and by Settling Defendants’ Project Coordinator that the construction of the system is complete and that the system is functioning properly and as designed; (2) include a demonstration, and supporting documentation, that construction of the system is complete and that the system is functioning properly and as designed; (3) include as-built drawings signed and stamped by a registered professional engineer; (4) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA’s *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); and (5) be certified in accordance with ¶ 8.5 (Certification).
- (e) If EPA determines that Remedial Action Construction is not complete, EPA shall so notify Settling Defendants. EPA’s notice must include a description of, and schedule for, the activities that Settling Defendants must perform to complete Remedial Action Construction. EPA’s notice may include a schedule for completion of such activities or may require Settling Defendants to submit a proposed schedule for EPA approval. Settling Defendants shall perform or secure the performance of all activities described in the EPA notice in accordance with the schedule.

- (f) If EPA determines, based on the initial or any subsequent Remedial Action Report, that Remedial Action Construction is complete, EPA shall so notify Settling Defendants.

5.7 Certification of Remedial Action Completion

- (a) **Remedial Action Completion Inspection.** The Remedial Action is “Complete” for purposes of this ¶ 5.7 when all phases of the remedial action have been fully performed and the Performance Standards for all phases have been achieved. The Settling Defendants’ contractor shall schedule an inspection for the purpose of obtaining EPA’s Certification of Remedial Action Completion. The inspection must be attended by the Settling Defendants, EPA, FDEP and/or their representatives.
- (b) **Remedial Action Report/Monitoring Report.** Following the inspection, the Settling Defendants’ contractor shall submit a Remedial Action Report/Monitoring Report to EPA requesting EPA’s Certification of Remedial Action Completion. The report must: (1) include certifications by a registered professional engineer and by the Settling Defendants’ contractor that the Remedial Action is complete; (2) include as-built drawings signed and stamped by a registered professional engineer; (3) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA’s *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); (4) contain monitoring data to demonstrate that Performance Standards have been achieved; and (5) be certified in accordance with ¶ 8.5 (Certification).
- (c) If EPA concludes that the Remedial Action is not Complete, EPA shall so notify Settling Defendants’ contractor. The notice must include a description of any deficiencies. The notice may include a schedule for addressing such deficiencies or may require the Settling Defendants’ contractor to submit a schedule for EPA approval. The Settling Defendants’ contractor shall perform or secure performance of all activities described in the notice in accordance with the schedule.
- (d) If EPA concludes, based on the initial or any subsequent Remedial Action Report/Monitoring Report requesting Certification of Remedial Action Completion, that the Remedial Action is Complete, EPA shall so certify to the Settling Defendants’ contractor. This certification will constitute the Certification of Remedial Action Completion for purposes of the Decree, including Section XIII of the Decree (Covenants by Plaintiffs). Certification of Remedial Action Completion will not affect Settling Defendants’ remaining obligations under the Decree.

- 5.8 **Periodic Review Support Plan (“PRSP”).** The Settling Defendants’ contractor shall submit the PRSP for EPA approval. The PRSP addresses the studies and investigations that the Settling Defendants’ contractor shall conduct to support EPA’s reviews of

whether the Remedial Action is protective of human health and the environment in accordance with CERCLA § 121(c) (also known as “Five-Year Reviews”). The Settling Defendants’ contractor shall develop the plan in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidances.

5.9 Certification of Work Completion

- (a) **Work Completion Inspection.** Settling Defendants shall schedule an inspection for the purpose of obtaining EPA’s Certification of Work Completion. The inspection must be attended by Settling Defendants, EPA, FDEP and/or their representatives.
- (b) **Work Completion Report.** Following the inspection, Settling Defendants shall submit a report to EPA requesting EPA’s Certification of Work Completion. The report must: (1) include certifications by a registered professional engineer and by Settling Defendants’ Project Coordinator that the Work, including all O&M activities, is complete; and (2) be certified in accordance with ¶ 8.5 (Certification). If the Remedial Action Report/Monitoring Report submitted under ¶ 5.7(b) includes all elements required under this ¶ 5.9(b), then the Remedial Action Report/Monitoring Report suffices to satisfy all requirements under this ¶ 5.9(b).
- (c) If EPA concludes that the Work is not complete, EPA shall so notify Settling Defendants. EPA’s notice must include a description of the activities that Settling Defendants must perform or secure performance of to complete the Work. EPA’s notice must include specifications and a schedule for such activities or must require Settling Defendants to submit specifications and a schedule for EPA approval. Settling Defendants shall perform or secure performance of all activities described in the notice or in the EPA-approved specifications and schedule.
- (d) If EPA concludes, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, EPA shall so certify in writing to Settling Defendants. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) activities under the Periodic Review Support Plan; (2) obligations under Sections VI (Property Requirements), and XVI (Records) of the Decree; (3) Institutional Controls obligations as provided in the ICIAP; and (4) reimbursement of EPA’s Future Response Costs under Section IX (Payments for Response Costs) of the Decree.

6. CONTINGENCY REMEDY

- 6.1 **Testing/Investigations.** If testing and/or investigations are needed for EPA to make a determination whether the contingency remedy component identified in Section 10.1 of the Record of Decision or a change to this component needs to be implemented, Settling Defendants shall submit a plan for implementing such testing and/or investigations, shall

implement such testing and/or investigations in accordance with EPA's approval and/or modification of such plan, and shall submit reports to EPA regarding the results of such testing and/or investigations.

- 6.2 Reports Regarding Performance of Selected Remedy.** If the Record of Decision provides for implementation of a contingency remedy component to achieve desired performance levels, Settling Defendants shall submit such reports as EPA requests regarding the implementation and performance of the selected remedy component.
- 6.3 Invocation of Contingency Remedy.** If EPA determines that the contingency remedy component selected in the Record of Decision or a change to this component needs to be implemented, EPA shall so notify Settling Defendants, and shall include a copy of EPA's decision document invoking the contingency remedy.
- 6.4 Implementation of Contingency Remedy.** Settling Defendants shall implement the contingency remedy component or a change to this component in accordance with the EPA notification and consistent with the requirements of Section 4 and Section 5 of this SOW.
- 6.5 Other Modifications.** If EPA determines that implementation of the contingency remedy component selected in the Record of Decision or a change to this component will require modifications to any deliverable submitted under this SOW, Settling Defendants shall modify those deliverables.

7. REPORTING

- 7.1 Progress Reports.** Commencing 30 days following lodging of the Decree and until EPA approves the Remedial Action Construction Completion for the last phase completed, Settling Defendants' or FDEP's Contractor shall submit progress reports to EPA on a monthly basis on the 15th day of the following month, or as otherwise requested by EPA. The reports must cover all activities that took place during the prior reporting period, including:
- (a) The actions that have been taken toward achieving compliance with the Decree;
 - (b) A summary of all results of sampling, tests, and all other data received or generated by Settling Defendants or FDEP;
 - (c) A description of all deliverables that Settling Defendants or FDEP submitted to EPA;
 - (d) A description of all activities relating to Remedial Action Construction that are scheduled for the next 45 days, as well as a brief description of activities relating to RD, IC, O&M, or monitoring planned to be conducted in the next 45 days;
 - (e) An updated Remedial Action Construction Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may

affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;

- (f) A description of any modifications to the work plans or other schedules that Settling Defendants or FDEP have proposed or that have been approved by EPA;
- (g) A description of all activities undertaken in support of the Community Involvement Plan (“CIP”) during the reporting period and those to be undertaken in the next 30 days; and
- (h) A description of any remedy change proposed or required to the Record of Decision’s Remedial Action Objectives (RAOs).

7.2 Notice of Progress Report Schedule Changes. If the schedule for any activity described in the Progress Reports, including activities required to be described under ¶ 7.1(d), changes, Settling Defendants’ or FDEP’s contractor shall notify EPA of such change at least seven days before performance of the activity.

8. DELIVERABLES

8.1 Applicability. Settling Defendants’ and FDEP’s contractors shall submit deliverables for EPA approval or comment as specified in the SOW. If neither is specified, the deliverable does not require EPA’s approval or comment. Paragraphs 8.2 (In Writing) through 8.4 (Technical Specifications) apply to all deliverables. Paragraph 8.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 8.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.

8.2 In Writing. As provided in ¶ 78 of the Decree, all deliverables under this SOW must be in writing unless otherwise specified.

8.3 General Requirements for Deliverables. All deliverables must be submitted by the deadlines in the Remedial Design Schedule or Remedial Action Schedule, as applicable. Settling Defendants’ and FDEP’s contractors shall submit all deliverables to EPA in electronic form and, if requested, with paper copies. Technical specifications for sampling and monitoring data and spatial data are addressed in ¶ 8.4. All other deliverables shall be submitted to EPA in the electronic form specified by the EPA Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5” by 11”, Settling Defendants and FDEP shall also provide EPA with paper copies of such exhibits. All deliverables by Settling Defendants’ and FDEP’s contractors shall be copied to the Settling Defendants’ Project Coordinator.

8.4 Technical Specifications

- (a) Sampling and monitoring data should be submitted in standard Region 4 Electronic Data Deliverable (“EDD”) format, which can be found at <https://www.epa.gov/superfund/region-4-superfund-electronic-data-submission>.

Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

- (b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (“NAD83”) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (“FGDC”) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (“EME”), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
- (c) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (d) Spatial data submitted by Settling Defendants’ contractor does not, and is not intended to, define the boundaries of the Site.

8.5 Certification. All deliverables that require compliance with this paragraph must be signed by Settling Defendants’ or FDEP’s Project Coordinator, or other responsible official of either, and must contain the following statement:

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

8.6 Approval of Deliverables

(a) Initial Submissions

- (1) After review of any deliverable that is required to be submitted for EPA approval in writing under the Decree or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon

specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

- (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

- (b) **Resubmissions.** Upon receipt of a notice of disapproval under ¶ 8.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 8.6(a), Settling Defendants' or FDEP's contractor shall, within 21 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Settling Defendants' or FDEP's contractor to correct the deficiencies; or (5) any combination of the foregoing.
- (c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under ¶ 8.6(a) (Initial Submissions) or ¶ 8.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Decree; and (2) Settling Defendants' or FDEP's contractor shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 8.6(a) or ¶ 8.6(b) does not relieve Settling Defendants of any liability for stipulated penalties under Section XII (Stipulated Penalties) of the Decree.
- (d) If: (1) an initially submitted deliverable contains a material defect and the conditions are met for modifying the deliverable under ¶ 8.6(a)(2); or (2) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

8.7 Supporting Deliverables. Settling Defendants' or FDEP's contractor shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. Settling Defendants' or FDEP's contractor shall develop the deliverables in accordance with all applicable regulations, guidances, and policies (see Section 11 (References)). Settling Defendants or FDEP shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.

- (a) **Health and Safety Plan ("HASP").** The HASP describes all activities to be performed to protect on-site personnel, on-Site and off-site business tenants, and area residents from physical, chemical, and all other hazards posed by the Work.

Settling Defendants' or FDEP's contractor shall develop the HASP in accordance with EPA's *Emergency Responder Health and Safety Manual* and Occupational Safety and Health Administration ("OSHA") requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should cover Remedial Design activities and should be, as appropriate, updated to cover activities during the Remedial Action and updated to cover activities after Remedial Action completion. EPA does not approve the HASP but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.

- (b) **Emergency Response Plan ("ERP").** The ERP must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment system failure, slope failure, noxious odors, etc.). The ERP must include:
- (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures ("SPCC") Plan (if applicable), consistent with the regulations under 40 C.F.R. part 112, describing measures to prevent, and contingency plans for, spills and discharges;
 - (4) Notification activities in accordance with ¶ 5.4(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under CERCLA § 103 or EPCRA § 304 or applicable State law; and
 - (5) A description of all necessary actions to ensure compliance with ¶ 5.4 of the SOW in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (c) **Field Sampling Plan ("FSP").** The FSP addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. Settling Defendants' or FDEP's contractor shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).
- (d) **Quality Assurance Project Plan ("QAPP").** The QAPP must include a detailed explanation of Settling Defendants' and FDEP's quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. Settling Defendants' or FDEP's contractor shall develop

the QAPP in accordance with EPA Directive CIO 2105.1 (Environmental Information Quality Policy, 2021), the most recent version of *Quality Management Systems for Environmental Information and Technology Programs – Requirements with Guidance for Use*, ASQ/ANSI E-4 (Feb. 2014), and *Guidance for Quality Assurance Project Plans*, EPA QA/G-5, EPA Office of Environmental Information (Dec. 2002). Settling Defendants' and FDEP's contractors shall collect, produce, and evaluate all environmental information at the Site in accordance with the approved QAPP.

- (e) **Site Wide Monitoring Plan (“SWMP”)**. The purpose of the SWMP is to obtain baseline information regarding the extent of contamination in affected media at the Site; to obtain information, through short- and long- term monitoring, about the movement of and changes in contamination throughout the Site, before and during implementation of the Remedial Action; to obtain information regarding contamination levels to determine whether Performance Standards are achieved; and to obtain information to determine whether to perform additional actions, including further Site monitoring. The SWMP must include:
- (1) Description of the environmental media to be monitored;
 - (2) Description of the data collection parameters, including existing and proposed monitoring devices and locations, schedule and frequency of monitoring, analytical parameters to be monitored, and analytical methods employed;
 - (3) Description of how performance data will be analyzed, interpreted, and reported, and/or other Site-related requirements;
 - (4) Description of verification sampling procedures;
 - (5) Description of deliverables that will be generated in connection with monitoring, including sampling schedules, laboratory records, monitoring reports, and monthly and annual reports to EPA and State agencies;
 - (6) Description of proposed additional monitoring and data collection actions (such as increases in frequency of monitoring, and/or installation of additional monitoring wells and devices in the affected areas) in the event that results from monitoring wells and devices indicate changed conditions (such as higher or lower than expected concentrations of the contaminants of concern or groundwater contaminant plume movement);
 - (7) A plan to immediately provide to EPA any unvalidated sampling data from Community Areas as defined in ¶ 8.7(f) affected by the remedy that exceed removal management levels or three times remedial cleanup levels, whichever is lower; and
 - (8) A plan to expedite sampling and analysis in Community Areas as defined in ¶ 8.7(f) affected by the remedy (particularly in situations where EPA

determines that unvalidated sampling data indicates substantial exceedances of cleanup standards), including procedures for expedited analysis, validation, and communication of sampling results to affected communities.

- (f) **Community Impacts Mitigation Plan (“CIMP”).** The CIMP describes all activities including any to address concerns of Environmental Justice and disadvantaged communities, to be performed: (1) to reduce and manage the impacts from remedy implementation (*e.g.*, air emissions, traffic, noise, odor, temporary or permanent relocation) to residential areas, schools, playgrounds, healthcare facilities, or recreational or impacted public areas (“Community Areas”) from and during remedy implementation, (2) to conduct monitoring in Community Areas of impacts from remedy implementation, (3) to expeditiously communicate validated remedy implementation monitoring data, (4) to make adjustments during remedy implementation in order to further reduce and manage impacts from remedy implementation to affected Community Areas, (5) to expeditiously restore community resources damaged during remediation such as roads and culverts, and (6) to mitigate the economic effects that the Remedial Action will have on the community by structuring remediation contracts to allow more local business participation. The CIMP should contain information about impacts to Community Areas that is sufficient to assist EPA’s Project Coordinator in performing the evaluations recommended under the *Superfund Community Involvement Handbook*, OLEM 9230.0-51 (March 2020), pp. 53-56.
- (g) **Construction Quality Assurance Plan (“CQAP”) and Construction Quality Control Plan (“CQCP”).** The purpose of the CQAP is to describe planned and systemic activities that provide confidence that the Remedial Action construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the CQCP is to describe the activities to verify that Remedial Action construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQAP/CQCP (“CQA/CP”) must:
- (1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/CP;
 - (2) Describe the Performance Standards required to be met to achieve Completion of the Remedial Action;
 - (3) Describe the activities to be performed: (i) to provide confidence that Performance Standards will be met; and (ii) to determine whether Performance Standards have been met;
 - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/CP;
 - (5) Describe industry standards and technical specifications used in implementing the CQA/CP;

- (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
 - (7) Describe procedures for documenting all CQA/CP activities; and
 - (8) Describe procedures for retention of documents and for final storage of documents.
- (h) **Transportation and Off-Site Disposal Plan (“TODP”).** The TODP describes plans to ensure compliance with ¶ 5.5 (Off-Site Shipments). The TODP must include:
- (1) Proposed times and routes for off-site shipment of Waste Material;
 - (2) Identification of communities, including underserved communities referred to in Executive Order 14008, § 222(b) (Feb. 1, 2021), affected by shipment of Waste Material; and
 - (3) Description of plans to minimize impacts (*e.g.*, noise, traffic, dust, odors) on affected communities.
- (i) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the Remedial Action. Settling Defendants’ or FDEP’s contractor shall develop the O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:
- (1) Description of Performance Standards required to be met to implement the Record of Decision;
 - (2) Description of activities to be performed: (i) to provide confidence that Performance Standards will be met; (ii) to determine whether Performance Standards have been met; and (iii) provide schedules for the activities to be performed.
 - (3) **O&M Reporting.** Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, reports of inspection, maintenance, and restoration activities, and monthly and annual reports to EPA;
 - (4) Description of corrective action in case of systems failure, including:
 - (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve Performance Standards;
 - (ii) analysis of vulnerability and additional resource requirements should a failure occur;
 - (iii) notification and reporting requirements should O&M systems fail or

be in danger of imminent failure; and (iv) community notification requirements; and

(5) Description of corrective action to be implemented in the event that Performance Standards are not achieved; and a schedule for implementing these corrective actions.

(j) **O&M Manual.** The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy. Settling Defendants’ or FDEP’s contractor shall develop the O&M Manual in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017).

9. SCHEDULES

9.1 Applicability and Revisions. All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the Remedial Design and Remedial Action Schedules set forth below. Settling Defendants may submit proposed revised Remedial Design Schedules or Remedial Action Schedules for EPA approval. Upon approval, the revised Remedial Design and/or Remedial Action Schedules supersede the Remedial Design and Remedial Action Schedules set forth below, and any previously-approved Remedial Design and/or Remedial Action Schedules. To the extent that design and construction of the remedy is phased, the deadlines or time durations listed in the Remedial Design and/or Remedial Action Schedules, set forth below, or revised as approved, will apply on an individual phase basis of the deliverables or tasks listed in the following Remedial Design and Remedial Action schedules.

9.2 Remedial Design Schedule

	Description of Deliverable, Task	¶ Ref.	Deadline
1	Final (100%) Remedial Design	4.1	Completed November 17, 2023
2	ICIAP	4.2	Completed November 17, 2023

9.3 Remedial Action Schedule

	Description of Deliverable / Task	¶ Ref.	Deadline
1	Commence to Implement ICIAP		30 days after EPA Notice of Authorization to Proceed with ICIAP
2	Award Remedial Action contract		30 days after EPA Notice of Authorization to Proceed with Remedial Action
3	RAWP	5.1	30 days after EPA Notice of Authorization to Proceed with Remedial Action
4	Pre-Construction Conference	5.2(a)	14 days after Approval of RAWP
5	Start of Construction		30 days after Approval of RAWP
6	Completion of Construction	5.6	
7	Pre-final Inspection	5.6(b)	30 days after completion of construction
8	Pre-final Inspection Report	5.6(d)	30 days after completion of Pre-final Inspection
9	Final Inspection		30 days after Completion of Work identified in Pre-final Inspection Report
10	Remedial Action Report	5.6(d)	30 days after Final Inspection
11	Monitoring Report	5.7(b)	
12	Work Completion Report	5.9(b)	
13	Periodic Review Support Plan	5.8	Five years after Start of Remedial Action Construction

10. STATE PARTICIPATION

10.1 Copies. The Settling Defendants shall, at any time they send a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to Settling Defendants’ and FDEP’s contractors, send a copy of such document to the State.

10.2 Review and Comment. The State will have a reasonable opportunity for review and comment prior to:

- (a) Any EPA notice to proceed under ¶ 3.3 (Procedures for Disapproval/Notice to Proceed);
- (b) Any EPA approval or disapproval under ¶ 8.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
- (c) Any approval or disapproval of the Construction Phase under ¶ 5.6 (Remedial Action Construction Completion), any disapproval of, or Certification of Remedial Action Completion under ¶ 5.7 (Certification of Remedial Action Completion), and any disapproval of, or Certification of Work Completion under ¶ 5.9 (Certification of Work Completion).

11. REFERENCES

11.1 The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the three EPA web pages listed in ¶ 11.2:

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (c) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).
- (d) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (e) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G90/001 (Apr. 1990).
- (f) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
- (g) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
- (h) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (i) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).
- (j) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. part 300 (Oct. 1994).
- (k) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
- (l) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (m) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (n) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, EPA/540-R-01-007 (June 2001).

- (o) Guidance for Quality Assurance Project Plans, EPA QA/G-5, EPA Office of Environmental Information (Dec. 2002) <https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5>.
- (p) Institutional Controls: Third-Party Beneficiary Rights in Proprietary Controls, OECA (Apr. 2004).
- (q) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (r) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (s) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2005), <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (t) Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, OSWER 9283.1-33 (June 2009).
- (u) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (v) Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements, Interim (Sep. 2009).
- (w) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (x) **Groundwater Road Map: Recommended Process for Restoring Contaminated Groundwater at Superfund Sites**, OSWER 9283.1-34 (July 2011).
- (y) Recommended Evaluation of Institutional Controls: Supplement to the “Comprehensive Five-Year Review Guidance,” OSWER 9355.7-18 (Sep. 2011).
- (z) Plan EJ 2014: Legal Tools, EPA Office of General Counsel (Dec. 2011), <https://www.epa.gov/environmentaljustice/plan-ej-2014-legal-tools>.
- (aa) Construction Specifications Institute’s MasterFormat (specify 2020 or a later edition), available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
- (bb) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach, OSWER 9200.2-125 (Sep. 2012)
- (cc) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), <https://semspub.epa.gov/work/HQ/175446.pdf>.

- (dd) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012), <https://semspub.epa.gov/work/HQ/175449.pdf>.
- (ee) EPA's Emergency Responder Health and Safety Manual, [OSWER 9285.3-12](https://www.epaosc.org/_HealthSafetyManual/manual-index.htm) (July 2005 and updates), https://www.epaosc.org/_HealthSafetyManual/manual-index.htm.
- (ff) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (gg) Guidance for Evaluating Completion of Groundwater Restoration Remedial Actions, OSWER 9355.0-129 (Nov. 2013).
- (hh) Groundwater Remedy Completion Strategy: Moving Forward with the End in Mind, OSWER 9200.2-144 (May 2014).
- (ii) Quality Management Systems for Environmental Information and Technology Programs -- Requirements with Guidance for Use, ASQ/ANSI E-4 (February 2014), available at <https://webstore.ansi.org/>.
- (jj) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.
- (kk) Advanced Monitoring Technologies and Approaches to Support Long-Term Stewardship (July 20, 2018), <https://www.epa.gov/enforcement/use-advanced-monitoring-technologies-and-approaches-support-long-term-stewardship>.
- (ll) Superfund Community Involvement Handbook, OLEM 9230.0-51 (March 2020). More information on Superfund community involvement is available on the Agency's Superfund Community Involvement Tools and Resources web page at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources>.
- (mm) EPA directive CIO 2105.1 (Environmental Information Quality Policy, 2021), https://www.epa.gov/sites/production/files/2021-04/documents/environmental_information_quality_policy.pdf.

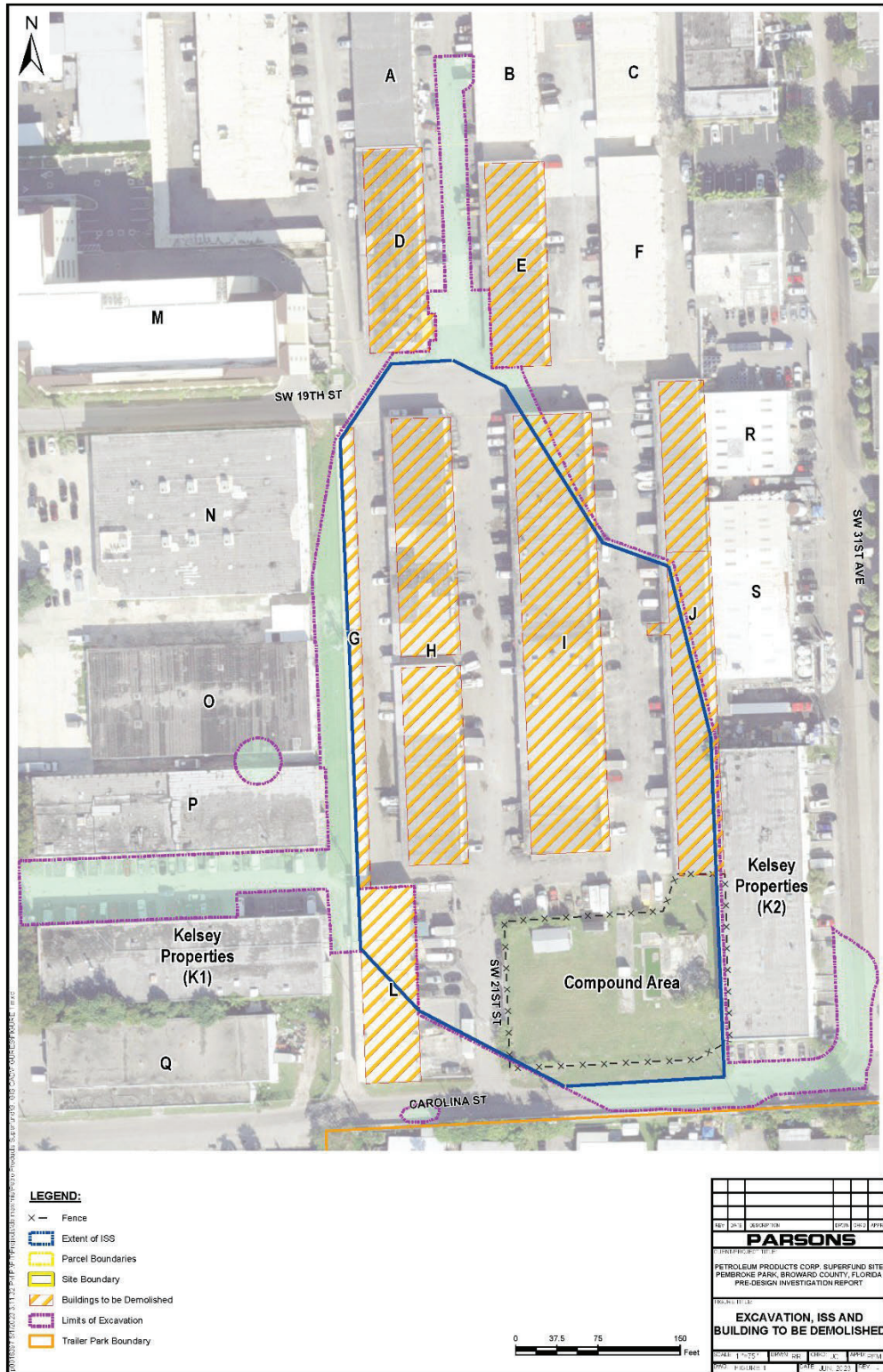
11.2 A more complete list may be found on the following EPA web pages:

- (a) Laws, Policy, and Guidance at <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>;
- (b) [Search Superfund Documents at https://www.epa.gov/superfund/search-superfund-documents](https://www.epa.gov/superfund/search-superfund-documents); and

(c) Test Methods Collections at: <https://www.epa.gov/measurements/collection-methods>.

11.3 For any regulation or guidance referenced in the Decree or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Settling Defendants receive notification from EPA of the modification, amendment, or replacement.

“Appendix C” is the description/map of the PPC Site



“Appendix D” is the complete list of the Settling Defendants/Owner Settling Defendants

Bridgestone Americas Tire Operations, LLC

Broward County, Florida

El Paso CGP Company, L.L.C. for Coastal Fuels Marketing, Inc.

CBC Trust #1 f/k/a Connor Brown Company

CSX Transportation, Inc.

Florida Power & Light Company

The Goodyear Tire & Rubber Company

Greyhound Lines, Inc.

Miami-Dade County

Ryder Truck Rental, Inc.

Safety-Kleen Systems, Inc.

AON 31st LLC

Park 31st Corp.

Pembroke Park Warehouses Holding Company/Filmore Investors Corp.

(a Florida corporation as Trustee of the Land Trust No. 0846 dated March 7, 1978; Land Trust #EO-469 aka #EO-590, dated May 1, 1972; Land Trust #0622, dated February 25, 1974; Land Trust #00029009, dated February 8, 1984; and Filmore Investors Corp. (collectively referred to herein as “PPW”))

Parcel F, LLC

“Appendix E” is the complete list of the Settling Federal Agencies

U.S. Department of the Navy

U.S. Department of the Air Force

U.S. Coast Guard

U.S. Defense Logistics Agency

“Appendix F” is the complete list of De Minimis Parties

Petroleum Products Superfund Site

De Minimis Schedule (Final)

Party	Vol.	@ \$2.35/gal.	Credits	Amount Due
Bill Ussery Motors, Inc.	104,000	\$244,400	\$71,582	\$172,818
Morse Operations, Inc., dba Ed Morse Chevrolet	103,200	\$242,520	\$67,565	\$174,955
Holman Automotive, Inc. (for Ft. Lauderdale Lincoln Mercury, Inc.)	91,900	\$215,965	\$32,512	\$183,453
The City of Miami	83,055	\$195,179	\$40,514	\$154,666
Holman Automotive, Inc. dba Miami Lincoln Mercury	75,660	\$177,801	\$26,781	\$151,020
Chevron U.S.A. Inc.	69,717	\$163,835	\$39,796	\$124,039
Pompano Ford Lincoln, Inc. f/k/a Pompano Lincoln Mercury	60,075	\$141,176	\$21,268	\$119,908
AA/Miami Group, Ltd., a Florida limited partnership by AA/Miami, Inc. a Florida corporation	60,000	\$141,000	\$81,301	\$59,699
Hollywood Lincoln, Inc.	58,200	\$136,770	\$20,594	\$116,176
Tropical Chevrolet, Inc	47,925	\$112,624	\$56,319	\$56,305
Exxon Mobil Corporation	47,160	\$110,826	\$24,610	\$86,216
Cliff Berry, Inc.	44,250	\$103,988	\$48,449	\$55,539
Avis Rent A Car System, LLC	27,915	\$65,600	\$40,733	\$24,867
Wallace Ford, LLC	25,130	\$59,056	\$1,316	\$57,740
South Motor Company of Dade County	15,080	\$35,438	\$13,680	\$21,758
Hollywood Chrysler Plymouth, Inc. f/k/a Northside Motors, Inc.	8,880	\$20,868	\$9,279	\$11,589
Steve Moore Chevrolet, LLC	7,600	\$17,860	\$66,526	-\$48,666

“Appendix G” is the ASAOC for Remedial Design dated December 5, 2022,

EPA Docket No. CERCLA-04-2023-2523

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

_____)	
IN THE MATTER OF:)	CERCLA-04-2023-2523
)	
Petroleum Products Corporation Site,)	
Pembroke Park, Florida)	
)	
)	
)	
Respondents, (Appendix D))	
)	
Proceeding Under Sections 104 and)	ADMINISTRATIVE SETTLEMENT
122 of the Comprehensive, Environmental)	AGREEMENT AND ORDER ON
Response, Compensation, and Liability Act,)	CONSENT FOR REMEDIAL DESIGN
42 U.S.C. §§ 9604 and 9622)	
_____)	

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR
REMEDIAL DESIGN**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (“Settlement”) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and the Respondents listed in Appendix “D” (“Respondents”). This Settlement provides for the performance of a Remedial Design (RD) by Respondents and the reimbursement of certain RD response costs incurred by the Respondents at or in connection with the “Petroleum Products Corporation Site” (the “Site”) generally located at 3150 Pembroke Road in Pembroke Park, Broward County, Florida.

This Settlement is issued under the authority vested in the President of the United States by Sections 104 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (CERCLA), as amended. This authority was delegated to the EPA Administrator on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions Through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). These authorities were further redelegated by the Regional Administrator of EPA, Region 4 through the Director, Superfund Division, through the Deputy Director, Superfund Division, to the Chiefs of the Federal Facilities Branch, Emergency Response and Removal Branch, Superfund Remedial and Site Evaluation Branch, Superfund Remedial Branch, Superfund Support Branch and Superfund Enforcement and Information Management Branch, by Region 4 Delegation 14-14-C.

2. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Florida Department of Environmental Protection (FDEP) on April 30, 2021, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Settlement.

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

II. PARTIES BOUND

4. This Settlement is binding upon EPA and upon Respondents and their heirs and successors. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent’s responsibilities under this Settlement.

5. Respondents are jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any Respondent to

implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements.

6. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondents to this Settlement.

7. Respondents shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondents with respect to the Site or the Work and shall condition all contracts entered into under this Settlement on performance of the Work in conformity with the terms of this Settlement. Respondents or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

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

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the RD, including, but not limited to, the following properties, 3150 Pembroke Road, Pembroke Park, Florida and 2006 SW 31st Avenue, Pembroke Park, Florida.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

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

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXVI.

“EPA” shall mean the United States Environmental Protection.

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

“FDEP” shall mean the Florida Department of Environmental Protection and any successor departments or agencies of the State.

“Future Oversight Costs” shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Respondents’ performance of the Work to determine whether such performance is consistent with the requirements of this Settlement, including costs incurred in reviewing deliverables submitted pursuant to this Settlement, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by EPA pursuant to Section VIII (Property Requirements), ¶ 15 (Emergencies and Releases), and ¶ 64 (Work Takeover), or the costs incurred by the United States in enforcing the terms of this Settlement, including all costs incurred in connection pursuant to Section XIV (Dispute Resolution) and all litigation costs.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section VIII (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, including, but not limited to, the amount of just compensation), ¶ 64 (Work Takeover), ¶ 15 (Emergencies and Releases), and the costs incurred by the United States in enforcing the terms of this Settlement, including all costs incurred in connection with Dispute Resolution pursuant to Section XIV (Dispute Resolution) and all litigation costs. Future Response Costs shall also include all Interim Response Costs.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“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.

“Non-Settling Owner” shall mean any person, other than a Respondent, that owns or controls any Affected Property, including Pembroke Park Warehouses Holding Company, Filmore Investors Corp., AON 31st LLC, Park 31st Corp, and Broward County, Florida. The clause “Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by Non-Settling Owner.

“Paragraph” or “¶” shall mean a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” shall mean EPA and Respondents.

“Performance Standards” or “PS” shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the ROD.

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

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Operable Units 1, 2, 3 (Interim) at the Site, signed on August 12, 2021 by the EPA Administrator and all attachments thereto. The ROD is attached as Appendix A.

“Records” shall mean the documents generated by the Project Coordinator or Supervising Contractor or their subcontractors that are submitted to EPA as part of RD.

“Remedial Action” or “RA” shall mean the remedial action selected in the ROD.

“Remedial Design” or “RD” shall mean those activities to be undertaken by Respondents to develop the final plans and specifications for the RA as stated in the SOW.

“Respondents” shall mean those Parties identified in Appendix D.

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

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

“Site” shall mean the Petroleum Products Corporation Superfund Site, encompassing approximately 7 acres, located at 3150 Pembroke Road, Pembroke Park, Broward County, Florida and depicted generally on the map attached as Appendix C.

“Petroleum Products Corporation Site Special Account” shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and a past de minimis settlement for the PPC Site at U.S. EPA Docket No. 99-06-C.

“State” shall mean the State of Florida.

“Statement of Work” or “SOW” shall mean the document describing the activities Respondents must perform to implement the RD, which is attached as Appendix B.

“Supervising Contractor” shall mean the principal contractor retained by Respondents to supervise and direct the implementation of the Work under this Settlement.

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

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

“Waste Material” shall mean (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).

“Work” shall mean all activities and obligations Respondents are required to perform under this Settlement, except those required by Section X (Record Retention).

IV. FINDINGS OF FACT

9. Based on available information and investigation, EPA has found:

a. The Petroleum Products Corporation (PPC) Superfund Site is on the National Priorities List (NPL) and is located in a mixed-use area in Pembroke Park, Broward County, Florida. It is located just east of I-95 approximately three miles west of the Atlantic Ocean just southwest of Fort Lauderdale. The Site is bordered on the north by Pembroke Road, on the south by Carolina Street, on the west by Park Road and on the east by SW 31st Avenue. The Site is approximately 7 acres and consists of multiple small-bay warehouse buildings.

b. PPC operated a waste oil recycling and re-refining facility from 1958 to 1983, that processed over 15 million gallons of used oil. Using an acid-clay process, the facility generated over 50,000 cubic yards of contaminated soil and sludges that were disposed in two large pits on the property. An additional 100,000 gallons of waste oil were released from the facility storage tanks and operations over the years to further contaminate the area. After complaints and lawsuits from neighbors and local and state enforcement activities, PPC shut down the bulk of its operations in 1970, partially remediated the facility property and constructed multiple warehouse buildings throughout the 1970s. PPC related entities sold the property containing these warehouses during the 1970s to a private real estate ownership group that still owns these parcels today.

c. The waste oil and waste solvent liquids processed by the PPC facility contained numerous hazardous substances found at the Site including lead, arsenic, benzene, toluene and PAHs in concentrations exceeding soil and groundwater cleanup standards.

d. These hazardous substances were released at the PPC Site through historical sloppy process operations, spills and leaks from above ground and underground storage tanks, several facility fires and the spillage of materials during the transport of waste oil upon arrival to and departure from the PPC facility.

e. Immediately adjacent to the PPC Site are a number of commercial and industrial operations, single story office buildings, a multi-level storage business and several large mobile home parks.

f. The PPC Site was listed on the National Priorities List (NPL) by EPA pursuant to CERCLA § 105, 42 U.S.C. § 9605, on July 22, 1987, 52 Fed. Reg. 27620.

g. The PPC Site potentially responsible parties (PRPs) and Respondents comprise a mix of corporations, partnerships, sole proprietors, trusts, individuals and federal,

state, or local government entities, liable as owner/operators, arrangers and transporters under CERCLA § 107(a).

h. A number of local, state and federal enforcement activities have been taken at the Site since the 1960s. Most recently, EPA completed the Remedial Investigation (RI) for the Site on January 1, 2016, and the Feasibility Study (FS) on May 31, 2019, and issued the current ROD on August 12, 2021.

i. The Site soils and groundwater are designated for cleanup under CERCLA and the NCP and FDEP's Early Detection Incentive (EDI) Program.

j. EPA, FDEP and Respondents have worked cooperatively to ensure that the implementation of the remedial action can be accommodated within the requirements of CERCLA and the NCP and FDEP's regulatory process. In advancement of that goal, EPA seeks to facilitate the reimbursement of certain costs associated with as well as the completion of the RD that will be conducted under this Settlement by Respondents working collaboratively with EPA and FDEP.

k. EPA, FDEP and Respondents' goal is to complete the RD by June 30, 2023, at the latest, to assist FDEP in its procurement of an RA Contractor by February 1, 2024. To achieve this goal, there is insufficient time to conduct both the RD and RA after entry of the RD/RA Consent Decree currently being negotiated by EPA and the Site PRPs and still meet the February 1, 2024 deadline. As a result, this Settlement is being executed to expedite completion of the RD and to facilitate the disbursement of funds from the PPC Site Special Account to reimburse certain costs associated with performance of the RD Work. EPA and the Respondents acknowledge that it is the intent of the parties to enter into an RD/RA CD prior to February 1, 2024 to further facilitate cooperation among EPA, FDEP, and Respondents to complete work at the Site.

l. EPA acknowledges that Respondents, which have on a collective basis less than a 15% allocation share, have entered into this Settlement solely to expedite initiation of the RD and to facilitate the reimbursement of certain costs associated with performance of the RD Work to the Respondents from the PPC Site Special Account for Work required to complete the RD by June 30, 2023.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

(1) Respondents arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

e. The conditions described in ¶ 10 of the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

VI. SETTLEMENT AGREEMENT AND ORDER

11. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. PERFORMANCE OF THE WORK

12. Coordination and Supervision

a. Project Coordinators.

(1) Respondents have identified Mike Miller, a principal at de maximis, inc., at m2@demaximis.com, as their Project Coordinator. EPA has approved Mike Miller as the Project Coordinator. Respondents’ Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA has designated Marcia Nale as EPA’s Project Coordinator who is also the PPC Site Remedial Project Manager (RPM). EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA’s 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 the Site 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. All deliverables, notices, notifications, proposals,

reports, and requests specified in this Settlement must be in writing, unless otherwise specified, and be submitted by email to Marcia Nale, nale.marcia@epa.gov.

(3) Respondents' Project Coordinator shall meet in person or remotely with EPA's Project Coordinator as needed, but at least monthly.

b. **Supervising Contractor.** Respondents' proposed Supervising Contractor is de maximis, inc. EPA acknowledges that the Supervising Contractor has sufficient technical expertise to supervise the Work and a quality assurance system that complies with ASQ/ANSI E4:2014, "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014).

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

(1) Respondents may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 13.c(2) and 13.c(3).

(2) Respondents shall designate, and notify EPA, within 10 days after the Effective Date, of the name[s], title[s], contact information, and qualifications of Respondents' proposed new 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.

(3) EPA shall issue notices of disapproval and/or authorizations to proceed regarding the proposed new Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Respondents shall, within 15 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. Respondents may select any coordinator/contractor covered by an authorization to proceed and shall, within 7 days, notify EPA of Respondents' selection.

13. **Performance of Work in Accordance with SOW.** Respondents shall develop the RD 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 Settlement or SOW shall be subject to approval by EPA in accordance with ¶ [6.5] (Approval of Deliverables) of the SOW.

14. **Emergencies and Releases.** Respondents shall comply with the emergency and release response and reporting requirements under ¶ [3.9] (Emergency Response and Reporting) of the SOW. Subject to Section XVII (Covenants by EPA), nothing in this Settlement, including ¶ [3.9] of the SOW, limits any authority of EPA: (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 the Site, or (b) to direct or order such 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 the Site. If, due to Respondents' failure to take appropriate response action under ¶ [3.9] of the SOW, EPA takes such action instead, Respondents shall reimburse EPA for all costs of the response action.

15. 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 carry out the RD, then EPA may notify Respondents of such modification. If Respondents object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Section XIV (Dispute Resolution).

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

VIII. PROPERTY REQUIREMENTS

16. Agreements Regarding Access and Non-Interference. Respondents 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 Respondents and the EPA, providing that such Non-Settling Owner shall, with respect to Non-Settling Owner's Affected Property: (i) provide EPA, the State, Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in ¶ 17.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 that interferes with or adversely affects the implementation or integrity of the RD. Respondents shall provide a copy of such access and use restriction agreement(s) to EPA.

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 the Site;
- (4) Obtaining samples;

- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as provided in the SOW;
- (7) Implementing the Work pursuant to the conditions set forth in ¶ 64 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section IX (Access to Information);
- (9) Assessing Respondents' compliance with the Settlement;
- (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 Settlement; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

17. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents 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, as required by this Section. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, 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.

18. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

19. **Notice to Successors-in-Title.** Owner Respondent shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier: (a) Notify the proposed transferee that EPA has determined that an RD must be performed at the Site, that potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of such RD, (identifying the name, docket number, and the effective date of this Settlement); and (b) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

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

IX. ACCESS TO INFORMATION

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

22. Privileged and Protected Claims

a. Respondents may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with ¶ 23.b, and except as provided in ¶ 23.c.

b. If Respondents assert such a privilege or protection, they shall provide EPA [and the State] 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, Respondents shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

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

23. **Business Confidential Claims.** Respondents may assert that all or part of a Record provided to EPA under this Section or Section X (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records claimed as confidential business information 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 Respondents 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 Respondents.

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

X. RECORD RETENTION

25. Until 10 years after EPA provides notice pursuant to ¶ [3.11] of the SOW (Notice of Work Completion), that all work has been fully performed in accordance with this Settlement, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to their liability under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

26. At the conclusion of the document retention period, Respondents shall have no further obligation to retain records and shall deliver any such Records to EPA.

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

XI. COMPLIANCE WITH OTHER LAWS

28. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondents 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 Settlement, if approved by EPA, shall be considered consistent with the NCP.

29. **Permits.** As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(c)(3) 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). Where any portion of the Work that is not on-site requires a federal, state, or local permit or approval,

Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

30. Respondents may seek relief under the provisions of Section XV (Force Majeure) for any delay in performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 30 (Permits) and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XII. PAYMENT OF RESPONSE COSTS

31. **Payments for Future Response Costs.** Respondents agree to pay to EPA all Future Response Costs not inconsistent with the NCP that will be incurred under this Settlement. However, these costs will be billed pursuant to the Remedial Design/Remedial Action (RD/RA) Consent Decree, following entry, that all of the PPC Site PRPs are currently negotiating with EPA and under which all Consent Decree Signatories shall be jointly and severally liable for Future Response Costs incurred under this Settlement, subject to the terms of that Consent Decree.

XIII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

32. **Creation of the Disbursement Special Account and Agreement to Disburse Funds to Respondents.** Within 30 days after the Effective Date, EPA will establish the PPC Disbursement Special Account (“Disbursement Special Account”) and shall transfer \$1.1 million dollars from the Special Account to the Disbursement Special Account. Subject to the terms and conditions set forth in this Section, EPA agrees to make the funds in the Disbursement Special Account, including Interest Earned on the funds in the Disbursement Special Account, available for disbursement to Respondents as partial reimbursement for performance of the RD Work. EPA shall disburse funds from the Disbursement Special Account to Respondents in accordance with the procedures and milestones for phased disbursement set forth in this Section. For purposes of this Paragraph, “Interest Earned” means interest earned on amounts in the PPC Disbursement Special Account, which will be computed monthly at a rate based on the annual return on investments of the EPA Hazardous Substance Superfund. The applicable rate of interest will be the rate in effect at the time the interest accrues.

33. **Timing and Amount of Disbursements.** Within 60 days after EPA’s receipt of each monthly milestone of work invoice covering the work performed that equates to a Cost Summary and Certification, as defined by ¶ 35.b, or if EPA has requested additional information under ¶ 35.c or a revised Cost Summary and Certification under ¶ 35.d, and subject to the conditions set forth in this Section, EPA shall disburse the funds from the Disbursement Special Account at the completion of the following milestones, and in the amounts set forth below:

Milestone	Funds to be Disbursed
EPA monthly review and approval of RD Costs Submitted by Respondents	Amount requested and approved in monthly request, up to a total of \$1,100,000, plus Interest Earned

EPA shall disburse the funds from the Disbursement Special Account to Respondents in the following manner: PPC OU2/OU3 Trust Account, Citibank F.S.B., 201 S. Biscayne Blvd., Suite 3100, Miami, FL 33131, ABA #: 266086554, Account Number: 9146629636

34. Requests for Disbursement of Special Account Funds

a. Within 5 days after issuance of EPA's written confirmation that a monthly milestone of the Work, as defined in ¶ 34, has been satisfactorily completed, Respondents shall submit to EPA a Cost Summary and Certification, as defined in ¶ 35.b, covering the Work performed up to the date of completion of that milestone, unless this information is already contained in the monthly milestone of work invoice. Respondents shall not include in any submission costs included in a previous Cost Summary and Certification following completion of an earlier milestone of the Work if those costs have been previously sought or reimbursed in accordance with ¶ 34.

b. Each Cost Summary and Certification must include a complete and accurate written cost summary and certification of the necessary costs incurred or paid by Respondents for the Work covered by the particular submission, excluding costs not eligible for disbursement under ¶ 36. Each Cost Summary and Certification must contain the following statement signed by the Chief Financial Officer of Supervising Contractor:

To the best of my knowledge, after thorough investigation and review of documentation of costs incurred or paid for Work performed in accordance with the completion of work each month until the termination of this Settlement, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.

c. The Chief Financial Officer of Supervising Contractor shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, Respondents shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification. To ensure completion of RD by June 30, 2023, the RD will be a collaborative process whereby EPA, Respondents and Supervising Contractor will be in frequent communication, and it is the expectation of EPA and Respondents that EPA will be knowledgeable of the RD Work activities and associated costs which will facilitate timely review of each submitted Cost Summary and Certification.

d. If EPA finds that a Cost Summary and Certification includes a arithmetical error, costs excluded under ¶ 36, costs that are inadequately documented, or costs submitted in a prior Cost Summary and Certification, it will notify Respondents and provide them an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Respondents fail to cure the deficiency within 14 days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Respondents' costs eligible for disbursement for that submission and disburse the corrected amount to Respondents in accordance with the procedures in ¶ 34. Respondents may dispute EPA's recalculation under this Paragraph in accordance with Section XIII. In no event may Respondents be disbursed funds

from the Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

35. **Costs Excluded from Disbursement.** The following costs are excluded from, and may not be sought by Respondents for, disbursement from the Disbursement Special Account: (a) response costs paid in accordance with Section XII; (b) any other payments made by Respondents to the United States in accordance with this Settlement, including any Interest or stipulated penalties paid in accordance with Sections XII or XVI; (c) attorneys' fees and costs, except for reasonable attorneys' fees and costs necessarily related to as obtaining access as required by Section VIII; (d) costs of any response activities Respondents perform that are not required under, or approved by EPA under, this AOC; (e) costs related to Respondents' litigation, settlement, development of potential contribution claims, or identification of defendants; (f) internal costs of Respondents, including salaries, travel, or in-kind services, except for those costs that represent the work of employees of Respondents directly performing the Work; (g) any costs incurred by Respondents before the Effective Date except for approved Work completed in accordance with this Settlement; or (h) any costs incurred by Respondents under Section XIV.

36. **Termination of Disbursements.** EPA's obligation to disburse funds from the Disbursement Special Account under this Settlement terminates upon EPA's determination that Respondents: (a) have knowingly submitted a materially false or misleading Cost Summary and Certification; (b) have submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within 5 days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification as required by ¶ 35 within 5 days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements under this Section because of Respondents' failure to submit the Cost Summary and Certification as required by ¶ 35. EPA's obligation to disburse funds from the Disbursement Special Account also terminates upon EPA's assumption of performance of any portion of the Work in accordance with ¶ 64, when such assumption of performance of the Work is not challenged by Respondents or, if challenged, is upheld under Section XIV. Respondents may dispute EPA's termination of special account disbursements under Section XIV.

37. **Recapture of Disbursements.** Upon termination of disbursements from the Disbursement Special Account under ¶ 35, if EPA has previously disbursed funds from the Disbursement Special Account for activities specifically related to the reason for termination, e.g., discovery of a materially false or misleading submission after disbursement of funds based on that submission, EPA shall submit a bill to Respondents for those amounts already disbursed from the Disbursement Special Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by Respondents. Within 14 days after receipt of EPA's bill, Respondents shall reimburse the Fund for the total amount billed. Payment must be made in accordance with ¶ 32. Upon receipt of payment, EPA may, in its sole discretion, deposit all or any portion thereof in the Special Account, the Disbursement Special Account, or the Fund.

38. **Balance of Special Account Funds.** After EPA issues its written Certification of RA Completion pursuant to this CD, and after EPA completes all disbursement to Respondents in accordance with this Section, if any funds remain in the PPC Disbursement Special Account, EPA shall transfer such funds to the PPC Special Account or to the Fund. Any transfer of funds to the PPC Special Account or the Fund shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.

XIV. DISPUTE RESOLUTION

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

40. **Informal Dispute Resolution.** If Respondents object to any EPA action taken pursuant to this Settlement, they shall send EPA a written Notice of Dispute describing the objection(s) within 14 days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 45 days from EPA's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

41. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 20 days after the end of the Negotiation Period, submit a statement of position to EPA. EPA may, within 30 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

42. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement.

43. Except as provided in ¶ 54, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

XV. FORCE MAJEURE

44. "Force Majeure" for purposes of this Settlement is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this

Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

45. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify the EPA 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 Waste Management Division, EPA Region 4, within two days of when Respondents first knew that the event might cause a delay. Within five days thereafter, Respondents 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; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents 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 ¶ 45 and whether Respondents have exercised their best efforts under ¶ 45, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

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

47. If Respondents elect to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents 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 Respondents complied with the requirements of ¶¶ 45 and 46. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

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

XVI. STIPULATED PENALTIES

49. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in ¶¶ 51.a and 52 for failure to comply with the obligations specified in ¶¶ 51.a and 52, unless excused under Section XV (Force Majeure). “Comply” as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement. If (i) an initially submitted or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under ¶ [6.5(a)(2)] of the SOW; or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

50. Stipulated Penalty Amounts: Payments, Major Deliverables, and Other Milestones.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with any obligation identified in ¶ 51.b:

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

b. Obligations

- (1) Submit timely or adequate Deliverables under Section 6 of the SOW.
- (2) Secure and provide access to property necessary to implement the Work.

51. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement, other than those specified in ¶ 51.b:

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

52. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 64 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of 100,000.

53. 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. Penalties shall continue to accrue during any dispute resolution period and shall be paid within 15 days after the agreement or the receipt of EPA’s decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ [6.5] (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 Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Branch Chief level or higher, under Section XIV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

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

55. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents’ receipt from EPA of a demand for payment of the penalties unless Respondents invoke the Dispute Resolution procedures under Section XIV (Dispute Resolution) within the 30-day period. Respondents shall make all payments at <https://www.pay.gov> using the link for “EPA Miscellaneous Payments Cincinnati Finance Center,” including references to the Site Name, docket number, Site/Spill ID Number, and the purpose of the payment. Respondents shall send to EPA, in accordance with ¶ 13.a(2), a notice of this payment including these references.

56. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents 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 ¶ 52 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 54 until the date of payment. If Respondents 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 Respondents' obligation to complete performance of the Work required under this Settlement.

58. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement 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), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 64 (Work Takeover).

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

XVII. COVENANTS BY EPA

60. Except as provided in Section XVIII (Reservation of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondents pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606 for the Work. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XVIII. RESERVATIONS OF RIGHTS BY EPA

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

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

- a. liability for failure by Respondents to meet a requirement of this Settlement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the Work;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

63. Work Takeover

- a. In the event EPA determines that Respondents: (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 Respondents. Any Work Takeover Notices issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents 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 ¶ 64.a Respondents 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 Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 64.b.
- c. Respondents may invoke the procedures set forth in ¶ 42 (Formal Dispute Resolution) to dispute EPA’s implementation of a Work Takeover under ¶ 64.b. However, notwithstanding Respondents’ 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 ¶ 64.b until the earlier of (1) the date that Respondents remedy, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover

Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with ¶ 42 (Formal Dispute Resolution).

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

XIX. COVENANTS BY RESPONDENTS

64. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work and this Settlement, including, but not limited to:

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

b. any claim under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Work and this Settlement; or

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States 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 expressly provided in ¶ 69 (Waiver of Claims by Respondents), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVIII (Reservations of Rights by EPA), other than in ¶ 61.a (liability for failure to meet a requirement of the Settlement), 61.d (criminal liability), or 61.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

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

68. **Waiver of Claims by Respondents**

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

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

b. **Exceptions to Waivers**

(1) The waiver[s] under this ¶ 69 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waiver[s] if such person asserts a claim or cause of action relating to the Site against such Respondent.

(2) The waiver under ¶ 69.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) that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise.

XX. OTHER CLAIMS

69. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by

Respondents or their directors, officers, employees, agents, successors, representatives, contractors, or consultants in carrying out actions pursuant to this Settlement.

70. Except as expressly provided in ¶ 69 (Waiver of Claims by Respondents) and Section XVII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XXI. EFFECT OF SETTLEMENT/CONTRIBUTION

72. Except as provided in ¶ 69 (Waiver of Claims by Respondents), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XIX (Covenants by Respondents), 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 the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

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

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

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

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

XXII. INDEMNIFICATION

77. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, employees, 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 Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents 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 Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into, by, or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

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

XXIII. INSURANCE

80. No later than 14 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Work Completion pursuant to ¶ [3.11] of the SOW, commercial general liability insurance with limits of liability of \$1 million per occurrence, and automobile insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the Petroleum Products Corporation Site, Pembroke Park, Florida and the EPA docket number for this action.

XXIV. INTEGRATION/APPENDICES

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

- a. Appendix A is the ROD.
- b. Appendix B is the SOW.
- c. Appendix C is the description and/or map of the Site.
- d. "Appendix D" is the complete list of Respondents.

XXV. MODIFICATION

82. The EPA Project Coordinator may modify any plan, schedule, or SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly but shall have as its effective date the date of the EPA Project Coordinator's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

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

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

XXVI. EFFECTIVE DATE

85. This Settlement shall be effective the day after the Settlement is signed by the Regional Administrator or his designee.

IT IS SO AGREED AND ORDERED;

U.S. ENVIRONMENTAL PROTECTION AGENCY:

12/05/2022

Dated

Maurice L. Horsey, IV, Chief
SEMD Enforcement Branch

Signature Page for Settlement regarding the Petroleum Products Corporation Superfund Site

Administrative Settlement Agreement and Order on Consent for Remedial Design

FOR _____ :

[Name of Respondent]

12/05/2022

Dated _____

[Name]

[Title]

[Company]

[Address]

Appendix A

OU1/OU2/OU3 (Interim) Record of Decision

<https://sempub.epa.gov/work/04/11160959.pdf>

Appendix B
Statement of Work (SOW)

REMEDIAL DESIGN
STATEMENT OF WORK
OPERABLE UNITS 1, 2, 3 (Interim)
PETROLEUM PRODUCTS CORPORATION SUPERFUND SITE
Pembroke Park, Broward County, Florida
EPA Region 4
CERCLA-04-2023-2523

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1. INTRODUCTION

Preamble. The Petroleum Products Corporation (PPC) Superfund Site (Site) for Operable Unit (OU) 1, OU2, and OU3 (Interim) is designated for cleanup pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (CERCLA), as amended. The Florida Department of Environmental Protection (FDEP), under its Early Detection Incentive (EDI) program, has funded and/or cleaned up certain historical releases of stored petroleum materials at the Site since PPC applied to and was accepted into the EDI program in 1990. To expedite the cleanup of the Site consistent with the August 12, 2021 Record of Decision (ROD), EPA, through use of the PPC Site Special Account, seeks to fund the Remedial Design (RD) Work that will be conducted by Respondents working with EPA and the FDEP. Once the RD is completed, Remedial Action (RA) response activities will be implemented through a Remedial Design/Remedial Action Consent Decree currently being negotiated.

The following Statement of Work (SOW) sets forth the tasks that will be undertaken to complete the RD for the PPC Site OU1/OU2/OU3 (Interim) ROD. Respondents have obtained a budget for the RD from the designated RD Supervising Contractor and submitted it to EPA for review and it has been approved. The Respondents shall only use these funds to pay for the approved RD response activities. Respondents' Supervising Contractor will submit monthly milestone invoices for the cost of the completed RD Work to EPA, and after review and approval of the invoices, EPA will reimburse Respondents for the costs of such approved RD response activities from the PPC Site Special Account pursuant to the Administrative Settlement Agreement and Order on Consent ("Settlement").

1.1 Purpose of the SOW. This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work.

1.2 Structure of the SOW.

- Section 2 (Community Involvement) sets forth EPA's and Respondents' responsibilities for community involvement.
- Section 3 (Remedial Design) sets forth the process for developing the RD, which includes the submission of specified primary deliverables.
- Section 4 (Contingency Remedy) sets forth Respondents' obligations during the RD for testing and/or investigations needed for EPA to make a determination whether the contingency remedy selected in the ROD needs to be implemented.
- Section 5 (Reporting) sets forth Respondents' reporting obligations.
- Section 6 (Deliverables) describes the content of the supporting deliverables and the general requirements regarding Respondents' submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- Section 7 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the RD.
- Section 8 (State Participation) addresses State participation.

- Section 9 (References) provides a list of references, including URLs.

1.3 The Selected Remedy for OU1 and OU2 (Unsaturated Zone and Main Source Area) and the selected interim remedy for OU3 (Extended Plume) of the PPC Site includes the actions described in Section 12.0 of the ROD. This SOW includes actions for all remedies described in the ROD. The Selected Remedy is as follows:

- OU1: In-Situ Stabilization/Solidification (ISS) with Limited Soil Excavation and Off-Facility Disposal
- OU2: ISS with Large Diameter Augers (LDAs)
- OU3: Groundwater Recovery and Treatment (GR&T)

Common Elements of the Selected Remedy are:

- Bamboo Mobile Home Park soil excavation/temporary relocation of residents
- Building demolition and relocation of businesses and tenants overlying the Main Source Area
- Shallow (0-5 ft bgs) excavation under buildings and ISS down to 26 feet
- Institutional Controls
- Long-term groundwater monitoring to assess remedy performance
- Site reviews at a minimum of every five years to assess the protectiveness of the remedy

1.4 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Settlement, have the meanings assigned to them in CERCLA, in such regulations, or in the Settlement, except that the term “Paragraph” or “¶” means a paragraph of the SOW, and the term “Section” means a section of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

2.1 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. Previously during the RI/FS phase, EPA developed a Community Involvement Plan (CIP) for the Site. Pursuant to 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP.
- (b) If requested by EPA, Respondents shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. EPA may describe in its CIP Respondents’ responsibilities for community involvement activities. All community involvement activities conducted by Respondents at

EPA's request are subject to EPA's oversight. Upon EPA's request, Respondents shall establish a community information repository at or near the Site to house one copy of the administrative record.

- (c) **Respondents' CI Coordinator.** If requested by EPA, Respondents shall, within 45 days, designate and notify EPA of Respondents' Community Involvement Coordinator (Respondents' CI Coordinator). Respondents may hire a contractor for this purpose. Respondents' notice must include the name, title, and qualifications of the Respondents' CI Coordinator. Respondents' CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the Site.

3. REMEDIAL DESIGN

3.1 RD Work Plan. Respondents shall submit a Remedial Design (RD) Work Plan (RDWP) for EPA approval. The RDWP must include:

- (a) Plans for implementing all RD activities identified in this SOW, in the RDWP, or required by EPA to be conducted to develop the RD;
- (b) A description of the overall management strategy for performing the RD, including a proposal for phasing of design and construction, if applicable;
- (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the Remedial Action (RA) as necessary to implement the Work;
- (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;
- (e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);
- (f) Description of any proposed pre-design investigation;
- (g) Description of any proposed treatability study;
- (h) Descriptions of any applicable permitting requirements and other regulatory requirements;
- (i) Description of plans for obtaining access in connection with the Work, such as agreements, property acquisition, property leases, and/or easements; and
- (j) The following supporting deliverables described in ¶ 6.6 (Supporting Deliverables): Health and Safety Plan; Field Sampling Plan; Quality Assurance Plan; and Emergency Response Plan.

3.2 Respondents shall meet regularly with EPA to discuss design issues as necessary, as directed or determined by EPA.

3.3 **Pre-Design Investigation.** The purpose of the Pre-Design Investigation (PDI) is to address data gaps identified in the RI/FS by conducting additional field investigations.

(a) **PDI Work Plan.** If EPA requests, Respondents shall submit a PDI Work Plan (PDIWP) for EPA approval. The PDIWP must include:

- (1) An evaluation and summary of existing data and description of data gaps;
- (2) A sampling plan including media to be sampled, contaminants or parameters for which sampling will be conducted, location (areal extent and depths), and number of samples; and
- (3) Cross references to quality assurance/quality control (QA/QC) requirements set forth in the Quality Assurance Project Plan (QAPP) as described in ¶ 6.6(d).

(b) Following the PDI, Respondents shall submit a PDI Evaluation Report. This report must include:

- (1) Summary of the investigations performed;
- (2) Summary of investigation results;
- (3) Summary of validated data (i.e., tables and graphics);
- (4) Data validation reports and laboratory data reports;
- (5) Narrative interpretation of data and results;
- (6) Results of statistical and modeling analyses;
- (7) Photographs documenting the Work conducted; and
- (8) Conclusions and recommendations for RD, including design parameters and criteria.

(c) EPA may require Respondents to supplement the PDI Evaluation Report and/or to perform additional pre-design studies.

3.4 **Treatability Study**

(a) Respondents shall perform a Treatability Study (TS) for the purpose of determining the requisite In-situ Solidification and Stabilization (ISS) slurry.

(b) Respondents shall submit a TS Work Plan (TSWP) for EPA approval. Respondents shall prepare the TSWP in accordance with EPA's *Guide for*

Conducting Treatability Studies under CERCLA, Final (Oct. 1992), as supplemented for RD by the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995).

- (c) Following completion of the TS, Respondents shall submit a TS Evaluation Report for EPA comment.
- (d) EPA may require Respondents to supplement the TS Evaluation Report and/or to perform additional treatability studies.

3.5 Preliminary (30%) RD. Respondents shall submit a Preliminary (30%) RD for EPA's comment. The Preliminary RD must include:

- (a) A design criteria report, as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995);
- (b) Preliminary drawings and specifications;
- (c) Descriptions of permit requirements, if applicable;
- (d) Preliminary Operation and Maintenance (O&M) Plan and O&M Manual;
- (e) A description of how the Remedial Action (RA) will be implemented in a manner that minimizes environmental impacts in accordance with EPA's *Principles for Greener Cleanups* (Aug. 2009);
- (f) A description of monitoring and control measures to protect human health and the environment, such as air monitoring and dust suppression, during the RA; and
- (g) Updates of all supporting deliverables required to accompany the RDWP and the following additional supporting deliverables described in ¶ 6.6 (Supporting Deliverables): Site Wide Monitoring Plan; Construction Quality Assurance/Quality Control Plan; Transportation and Off-Site Disposal Plan; O&M Plan; O&M Manual; and Institutional Controls Implementation and Assurance Plan.

3.6 Pre-Final (95%) RD. Respondents shall submit the Pre-final (95%) RD for EPA's comment. The Pre-final RD must be a continuation and expansion of the previous design submittal. The Pre-final RD will serve as the approved Final (100%) RD if EPA approves the Pre-final RD without comments. The Pre-final RD must include:

- (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's MasterFormat, current edition, See <https://www.csiresources.org/home>;
- (b) A survey and engineering drawings showing existing Site features, such as elements, property borders, easements, and Site conditions;

- (c) Pre-Final versions of the same elements and deliverables as are required for the Preliminary RD;
- (d) A specification for photographic documentation of the RA; and
- (e) Updates of all supporting deliverables required to accompany the Preliminary (30%) RD.

3.7 Final (100%) RD. Respondents shall submit the Final (100%) RD for EPA approval. The Final RD must address EPA’s comments on the Pre-final RD and must include final versions of all Pre-final RD deliverables.

3.8 Emergency Response and Reporting

- (a) **Emergency Response and Reporting.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 3.8(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.
- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately notify the authorized EPA officer orally.
- (c) The “authorized EPA officer” for purposes of immediate oral notifications and consultations under ¶ 3.8(a) and ¶ 3.8(b) is the EPA Project Coordinator.
- (d) For any event covered by ¶ 3.8(a) and ¶ 3.8(b), Respondents shall: (1) within 14 days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under ¶ 3.8 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

3.9 Off-Site Shipments

- (a) Respondents may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be

deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

- (b) Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the notice as soon as practicable after the award of the contract and before the Waste Material is shipped.
- (c) Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, *EPA's Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the ROD. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

3.10 Notice of Work Completion

- (a) When EPA determines, after EPA's review of the Final 100% RD under ¶ 3.7 (Final (100%) RD), that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations as provided in ¶ 3.10(c), EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RD Work Plan if appropriate in order to correct such deficiencies.
- (b) Respondents shall implement the modified and approved RD Work Plan and shall submit a modified Final 100% Report for EPA approval in accordance with the EPA notice. If approved, EPA will issue the Notice of Work Completion.
- (c) Issuance of the Notice of Work Completion does not affect the following continuing obligations: (1) obligations under Sections [VIII] (Property Requirements), [IX] (Access to Information), and [X] (Record Retention of the

Settlement; and (2) reimbursement of EPA's Future Response Costs under Section XIII (Payment of Response Costs) of the Settlement.

4. CONTINGENCY REMEDY

- 4.1 **Testing/Investigations.** If testing and/or investigations are needed for EPA to make a determination whether the contingency remedy selected in the ROD needs to be implemented, Respondents shall submit a plan for implementing such testing and/or investigations, shall implement such testing and/or investigations in accordance with EPA's approval and/or modification of such plan, and shall submit reports to EPA regarding the results of such testing and/or investigations.

5. REPORTING

- 5.1 **Progress Reports.** Respondents shall submit progress reports to EPA on a monthly basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the RD Work Plan until issuance of Notice of Work Completion pursuant to ¶ 3.10, unless otherwise directed in writing by EPA's Project Coordinator. The reports must cover all activities that took place during the prior reporting period, including:

- (a) The actions that have been taken toward achieving compliance with the Settlement;
- (b) A summary of all results of sampling, tests, and all other data received or generated by Respondents;
- (c) A description of all deliverables that Respondents submitted to EPA;
- (d) A description of all activities scheduled for the next 30 days;
- (e) Information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) A description of any modifications to the work plans or other schedules that Respondents have proposed or that have been approved by EPA; and
- (g) A description of all activities undertaken in support of the Community Involvement Plan (CIP) during the reporting period and those to be undertaken in the next 30 days.

- 5.2 **Notice of Progress Report Schedule Changes.** If the schedule for any activity described in the Progress Reports, including activities required to be described under ¶ 5.1(d), changes, Respondents shall notify EPA of such change at least seven days before performance of the activity.

6. DELIVERABLES

- 6.1 Applicability.** Respondents shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 6.2 (In Writing) through 6.4 (Technical Specifications) apply to all deliverables. Paragraph 6.5 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.
- 6.2 In Writing.** All deliverables under this SOW must be in writing unless otherwise specified.
- 6.3 General Requirements for Deliverables**
- (a) Except as otherwise provided in this Order, Respondents shall direct all deliverables required by this Order to the EPA Project Coordinator, Marcia Nale, 61 Forsyth Street, Atlanta, Georgia 30303, 404-562-8442, nale.marcia@epa.gov.
 - (b) All deliverables provided to the State in accordance with ¶ 8 (State Participation) shall be directed to Ginger Shirah, 2600 Blair Stone Road, MS #4500, Tallahassee, FL 32399-2400, 850-245-8899, Ginger.K.Shirah@floridadep.gov.
 - (c) All deliverables must be submitted by the deadlines in the RD Schedule, as applicable. Respondents shall submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in ¶ 6.4. All other deliverables shall be submitted to EPA in the electronic form specified by the EPA Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondents shall also provide EPA with paper copies of such exhibits.
- 6.4 Technical Specifications**
- (a) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
 - (b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://www.epa.gov/geospatial/epa-metadata-editor>.

- (c) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (d) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

6.5 Approval of Deliverables

(a) Initial Submissions

- (1) After review of any deliverable that is required to be submitted for EPA approval under the Settlement or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

- (b) **Resubmissions.** Upon receipt of a notice of disapproval under ¶ 6.5(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 6.5(a), Respondents shall, within 7 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (5) any combination of the foregoing.

- (c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under ¶ 6.5(a) (Initial Submissions) or ¶ 6.5(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (2) Respondents shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 6.5(a) or ¶ 6.5(b) does not relieve Respondents of any liability for stipulated penalties under Section XVIII (Stipulated Penalties) of the Settlement.

6.6 Supporting Deliverables.

Respondents shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. Respondents shall develop the deliverables in accordance with all applicable regulations, guidances, and policies (see Section 9 (References)). Respondents shall update each of these supporting

deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.

- (a) **Health and Safety Plan.** The Health and Safety Plan (HASP) describes all activities to be performed to protect on site personnel and area residents from physical, chemical, and all other hazards posed by the Work. Respondents shall develop the HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP required by this RD SOW should cover RD activities and should be, as appropriate, updated to cover activities during the RA and updated to cover activities after RA completion. (Updates may be needed for RA activities and after RA completion.) EPA does not approve the HASP, but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.
- (b) **Emergency Response Plan.** The Emergency Response Plan (ERP) must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:
 - (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for, spills and discharges;
 - (4) Notification activities in accordance with ¶ 3.8(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004; and
 - (5) A description of all necessary actions to ensure compliance with ¶ 3.8 (Emergency Response and Reporting) of the SOW in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (c) **Field Sampling Plan.** The Field Sampling Plan (FSP) addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field

information required. Respondents shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).

- (d) **Quality Assurance Project Plan.** The Quality Assurance Project Plan (QAPP) augments the FSP and addresses sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of Respondents' quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. Respondents shall develop the QAPP in accordance with *EPA Requirements for Quality Assurance Project Plans*, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006); *Guidance for Quality Assurance Project Plans*, QA/G-5, EPA/240/R 02/009 (Dec. 2002); and *Uniform Federal Policy for Quality Assurance Project Plans*, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005). The QAPP also must include procedures:
- (1) To ensure that EPA and the State and their authorized representative have reasonable access to laboratories used by Respondents in implementing the Settlement (Respondents' Labs);
 - (2) To ensure that Respondents' Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
 - (3) To ensure that Respondents' Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)) or other methods acceptable to EPA;
 - (4) To ensure that Respondents' Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;
 - (5) For Respondents to provide EPA and the State with notice at least 28 days prior to any sample collection activity;
 - (6) For Respondents to provide split samples and/or duplicate samples to EPA and the State upon request;
 - (7) For EPA to take any additional samples that it deems necessary;
 - (8) For EPA to provide to Respondents, upon request, split samples and/or duplicate samples in connection with EPA's oversight sampling; and

- (9) For Respondents to submit to EPA and the State all sampling and tests results and other data in connection with the implementation of the Settlement.
- (e) **Site Wide Monitoring Plan.** The purpose of the Site Wide Monitoring Plan (SWMP) is to obtain baseline information regarding the extent of contamination in affected media at the Site; to obtain information, through short- and long- term monitoring, about the movement of and changes in contamination throughout the Site, before and during implementation of the RA; to obtain information regarding contamination levels to determine whether Performance Standards (PS) are achieved; and to obtain information to determine whether to perform additional actions, including further Site monitoring. The SWMP must include:
- (1) Description of the environmental media to be monitored;
 - (2) Description of the data collection parameters, including existing and proposed monitoring devices and locations, schedule and frequency of monitoring, analytical parameters to be monitored, and analytical methods employed;
 - (3) Description of how performance data will be analyzed, interpreted, and reported, and/or other Site-related requirements;
 - (4) Description of verification sampling procedures;
 - (5) Description of deliverables that will be generated in connection with monitoring, including sampling schedules, laboratory records, monitoring reports, and monthly and annual reports to EPA and State agencies; and
 - (6) Description of proposed additional monitoring and data collection actions (such as increases in frequency of monitoring, and/or installation of additional monitoring devices in the affected areas) in the event that results from monitoring devices indicate changed conditions (such as higher than expected concentrations of the contaminants of concern or groundwater contaminant plume movement).
- (f) **Construction Quality Assurance/Quality Control Plan (CQA/QCP).** The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQA/QCP must:
- (1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/QCP;

- (2) Describe the PS required to be met to achieve Completion of the RA;
 - (3) Describe the activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;
 - (5) Describe industry standards and technical specifications used in implementing the CQA/QCP;
 - (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
 - (7) Describe procedures for documenting all CQA/QCP activities; and
 - (8) Describe procedures for retention of documents and for final storage of documents.
- (g) **Transportation and Off-Site Disposal Plan.** The Transportation and Off-Site Disposal Plan (TODP) describes plans to ensure compliance with ¶ 3.9 (Off-Site Shipments). The TODP must include:
- (1) Proposed routes for off-site shipment of Waste Material;
 - (2) Identification of communities affected by shipment of Waste Material; and
 - (3) Description of plans to minimize impacts on affected communities.
- (h) The O&M Plan describes the requirements for inspecting, operating, and maintaining the RA. Respondents shall develop the draft O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:
- (1) Description of PS required to be met to implement the ROD;
 - (2) Description of activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (3) **O&M Reporting.** Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;
 - (4) Description of corrective action in case of systems failure, including:
 - (i) alternative procedures to prevent the release or threatened release of

Waste Material which may endanger public health and the environment or may cause a failure to achieve PS; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and

- (5) Description of corrective action to be implemented in the event that PS are not achieved; and a schedule for implementing these corrective actions.
- (i) **O&M Manual.** The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy. Respondents shall develop the draft O&M Manual in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017).
- (j) **Institutional Controls Implementation and Assurance Plan.** The Institutional Controls Implementation and Assurance Plan (ICIAP) describes plans to implement, maintain, and enforce the Institutional Controls (ICs) at the Site. Respondents shall develop the ICIAP in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). The ICIAP must include the following additional requirements:
 - (1) Locations of recorded real property interests (e.g., easements, liens) and resource interests in the property that may affect ICs (e.g., surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and
 - (2) Legal descriptions and survey maps that are prepared according to current American Land Title Association (ALTA) Survey guidelines and certified by a licensed surveyor.

7. SCHEDULES

- 7.1 Applicability and Revisions.** All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the RD Schedule set forth below. Respondents may submit proposed revised RD Schedules for EPA approval. Upon EPA's approval, the revised RD Schedules supersede the RD Schedules set forth below, and any previously-approved RD Schedules.

7.2 RD Schedule

	Description of Deliverable, Task	¶ Ref.	Deadline
3	RDWP	3.1	60 days after EPA’s Authorization to Proceed regarding Supervising Contractor under Settlement ¶ [13.c]
4	PDIWP	3.3(a)	60 days after EPA’s Authorization to Proceed regarding Supervising Contractor under Settlement ¶ [13.c]
5	Preliminary (30%) RD	3.5, 3.3(a)	120 days after EPA approval of Final RDWP
7	Pre-final (95%) RD	3.6	150 days after EPA comments on Preliminary RD
8	Final (100%) RD	3.7	60 days after EPA comments on Pre-final RD

8. STATE PARTICIPATION

8.1 Copies. Respondents shall, at any time they send a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, or disapproval to Respondents, send a copy of such document to the State.

8.2 Review and Comment. The State will have a reasonable opportunity for review and comment prior to:

- (a) Any EPA approval or disapproval under ¶ 6.5 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
- (b) Any disapproval of, or Notice of Work Completion under, ¶ 3.10 (Notice of Work Completion).

9. REFERENCES

9.1 The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in ¶ 9.2:

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (c) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).
- (d) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).

- (e) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr.1990).
- (f) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
- (g) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
- (h) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (i) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).
- (j) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).
- (k) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
- (l) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (m) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (n) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, 540-R-01-007 (June 2001).
- (o) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).
- (p) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).
- (q) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).
- (r) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (s) Superfund Community Involvement Handbook SEMS 100000070 (January 2016), <https://www.epa.gov/superfund/community-involvement-tools-and-resources>.

- (t) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (u) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (v) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (w) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).
- (x) USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2 (amended Apr. 2007).
- (y) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), <https://www.epa.gov/geospatial/geospatial-policies-and-standards> and <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (z) Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, OSWER 9283.1-33 (June 2009).
- (aa) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (bb) **[If Technical Assistance Plan provided for in SOW: Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements, Interim (Sep. 2009).]**
- (cc) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).
- (dd) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (ee) Groundwater Road Map: Recommended Process for Restoring Contaminated Groundwater at Superfund Sites, OSWER 9283.1-34 (July 2011).
- (ff) Recommended Evaluation of Institutional Controls: Supplement to the “Comprehensive Five-Year Review Guidance,” OSWER 9355.7-18 (Sep. 2011).
- (gg) Construction Specifications Institute’s MasterFormat [**specify current edition**], available from the Construction Specifications Institute, <https://www.csinet.org/masterformat>.
- (hh) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach, OSWER 9200.2-125 (Sep. 2012).

- (ii) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).
- (jj) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).
- (kk) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), http://www.epaossc.org/_HealthSafetyManual/manual-index.htm.
- (ll) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (mm) Guidance for Evaluating Completion of Groundwater Restoration Remedial Actions, OSWER 9355.0-129 (Nov. 2013).
- (nn) Groundwater Remedy Completion Strategy: Moving Forward with the End in Mind, OSWER 9200.2-144 (May 2014).
- (oo) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.

9.2 A more complete list may be found on the following EPA Web pages:

Laws, Policy, and Guidance <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>

Test Methods Collections <https://www.epa.gov/measurements/collection-methods>

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

Appendix C

Description and/or Map of the Site

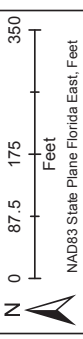


Legend

- X - Fence
- Former Tank Farm
- Surface Extent of PSP
- Presumed Location of SSP
- Former Lake/Pond (1969)
- Site Boundary
- Bamboo Paradise Trailer Park
- Assigned Building ID

Appendix C

Site Layout Map
 Petroleum Products Corp. Superfund Site
 Pembroke Park, Broward County, Florida



Appendix D

List of Respondents

Greyhound Lines, Inc.

Ryder Truck Rental, Inc.

Connor Brown Cadillac

Safety-Kleen Systems Inc.

Signature Page for Settlement regarding the Petroleum Products Corporation Superfund Site

Administrative Settlement Agreement and Order on Consent for Remedial Design

11-15-22

Dated

FOR: Greyhound Lines, Inc.



Patrick E. Griffin

Associate General Counsel

Greyhound Lines, Inc.

350 N. St. Paul, Dallas, Texas 75201

Signature Page for Settlement regarding the Petroleum Products Corporation Superfund Site
Administrative Settlement Agreement and Order on Consent for Remedial Design

FOR: Ryder Truck Rental, Inc.

Sanford Hodes

11/19/2022
Dated

Name: Sanford J. Hodes
Title: Senior Vice-President
Company: Ryder Truck Rental, Inc.
Address: 11690 N.W. 105 Street
Miami, Florida 33178

Signature Page for Settlement regarding the Petroleum Products Corporation Superfund Site

Administrative Settlement Agreement and Order on Consent for Remedial Design

FOR: Connor Brown Cadillac

Dated: November 21, 2022

/s/ Dominick Graziano

Dominick Graziano, Esq. on behalf of
Connor Brown Cadillac
Bush Graziano Rice & Platter, P.A.
100 S. Ashley Drive, Suite 1400
Tampa, FL 33602

Signature Page for Settlement regarding the Petroleum Products Corporation Superfund Site
Administrative Settlement Agreement and Order on Consent for Remedial Design

FOR Safety-Kleen Systems Inc.:

Respondent



Dated:12-1-2022

Michael R. McDonald
Assistant Secretary
Safety-Kleen Systems Inc.
42 Longwater Drive
Norwell, MA 02061