

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Behr Dayton Thermal VOC Plume Site  
Dayton, Montgomery County, Ohio

MAHLE Behr Dayton LLC,

Respondent

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

U.S. EPA Docket No.

CERCLA Docket No.

**V-W-16-C-003**

**ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION**

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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 MAHLE Behr Dayton LLC ("Respondent"). This Settlement provides for the performance of a removal action by Respondent and the payment of certain response costs incurred by the United States at or in connection with an area of impacted groundwater (the "Area of Interest") located in a saturated zone at or near the southern boundary of the MAHLE Behr Dayton LLC property at 1600 Webster Street in Dayton, Montgomery County, Ohio (the "Behr Property"). The Behr Property is part of the Behr Dayton Thermal VOC Plume Site (the "Site").

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). These authorities were further redelegated by the Regional Administrator of EPA Region 5 to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-C and 14-14-D on May 2, 1996.

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

4. EPA and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and 9 (Conclusions of Law and Determinations) of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms.

## II. PARTIES BOUND

5. This Settlement is binding upon EPA and upon Respondent and its successors, and assigns. 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 Respondent's responsibilities under this Settlement.

6. Respondent is 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.

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

“Action Memorandum” shall mean the EPA Action Memorandum relating to the Site signed on the date he/she signs this Settlement, by the Regional Administrator, EPA Region 5, or his/her delegate, and all attachments thereto. The “Action Memorandum” is attached as Appendix A.

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions are needed to implement the removal action, including, but not limited to, the property at 1600 Webster Street in Dayton, Montgomery County, Ohio (the “Behr Property”).

“Area of Interest” shall mean an area of impacted groundwater located in the saturated zone at or near the southern boundary of the Behr Property at 1600 Webster Road in Dayton, Ohio (the Behr Property), and depicted generally on the map attached as Appendix B.

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

“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 XXX.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

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

“Ohio EPA” shall mean the Ohio Environmental Protection Agency and any successor departments or agencies of the State.

“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 IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure access, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 70 (Work Takeover), Paragraph 93 (Access to Financial Assurance), Paragraph 22 (Community Involvement Plan) (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Area of Interest.

“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 [http://www.epa.gov/ocfopage/finstatement/superfund/int\\_rate.htm](http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm).

“Non-Settling Owner” shall mean any person, other than a Respondent, that owns or controls any Affected Property. The clause “Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by Non-Settling Owner.

“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.

“Owner Respondent” shall mean any Respondent that owns or controls any Affected Property, including MAHLE Behr Dayton LLC. The clause “Owner Respondent’s Affected Property” means Affected Property owned or controlled by Owner Respondent.

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

“Parties” shall mean EPA and Respondent.

“Post-Removal Site Control” shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Settlement

consistent with Sections 300.415(l) and 300.5 of the NCP and "Policy on Management of Post-Removal Site Control" (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

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

"Respondent" shall mean MAHLE Behr Dayton LLC.

"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 XXIX (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement and the attached Action Memorandum, shall control.

"Site" shall mean the Behr Dayton Thermal VOC Plume Superfund Site, which EPA approximates to encompass 550 acres, located at 1600 Webster Road, 1287 Air City Drive, and 1200 Webster Road in Dayton, Montgomery County, Ohio and any areas where hazardous substances, pollutants or contaminants from those properties or from former operations at those properties have, may have, or will come to be in Dayton, Montgomery County, Ohio and depicted generally on the map attached as Appendix C.

"Behr Dayton Thermal VOC Plume 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 the Settlement Agreement Between the Old Carco Liquidation Trust and the United States on October 21, 2010 in *In re Old Carco LLC*, Case No. 09-50002, United States Bankruptcy Court S.D.N.Y.

"State" shall mean the State of Ohio.

"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 (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any "hazardous waste" under Ohio Admin. Code §§ 3745-50-10(A)(48) and 3745-51-03.

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

#### IV. FINDINGS OF FACT

9. Based on the available information, including the Administrative Record in this matter, EPA hereby finds, and for purposes of enforceability of this Settlement Agreement, Respondent stipulates that the factual statutory prerequisites under CERCLA necessary for issuance of this Settlement Agreement have been met. EPA's findings and Respondent's stipulation include the following:

a. The Site includes the Behr Property located at 1600 Webster Street in Dayton, Ohio and all surrounding areas affected by the plume of contaminated groundwater associated with the Site.

b. Chrysler Corporation (Chrysler) manufactured vehicle air conditioning and engine-cooling systems at its facility on the Behr Property from about 1937 until April of 2002, when it sold the facility and the Behr Property to Behr Dayton Thermal Products LLC, whose successor MAHLE Behr Dayton LLC is the current owner and operator of the Behr Property. There was contamination at the Site before Behr Dayton Thermal Products LLC acquired the Behr Property.

c. Contamination in the groundwater at the Site resulted from the facility on the Behr Property, in addition to other possible sources. The full extent of the contamination is not yet determined, but the contamination has, at a minimum, migrated into the saturated zone below the mixed residential and commercial neighborhood to the south and southwest of the Behr Property.

d. The chemicals of concern ("COC") in the groundwater associated with the Site include a mixture of several volatile organic compounds ("VOCs"), but the primary contaminants of concern include trichloroethylene ("TCE"), tetrachloroethylene ("PCE"), and the various compounds that result from the degradation of these two compounds ("breakdown products").

e. TCE and PCE are hazardous substances within the meaning of Section 101 (14) of CERCLA. Each is a "listed hazardous substance" as that term is defined at 40 CFR § 302.4, and is included in Table 302.4 as a hazardous substance designated under Section 102(a) of CERCLA.

f. TCE at a concentration of 0.5 mg/L (500 ug/L), using the Toxicity Characteristic Leaching Procedure (TCLP) test, exhibits the characteristic of toxicity and is considered a RCRA hazardous waste under 40 C.F.R. § 261.24, and given hazardous waste number D040.

g. PCE at a concentration of 0.7 mg/L (700 ug/L), using the TCLP test, exhibits the characteristic of toxicity and is considered a RCRA hazardous waste under 40 C.F.R. § 261.24, and given hazardous waste number D039.

h. The impacted groundwater associated with the Site has migrated to areas with residences and businesses where volatilization of vapors and migration into the indoor air has resulted in potential unacceptable exposure to human health.

i. EPA conducted negotiations with Respondent's predecessor and Chrysler in 2006 to address the threat posed by vapor intrusion at the Site, and entered into an Administrative Settlement Agreement and Order on Consent for Removal Action (Docket No. V-W-07-C-859) ("the 2006 Removal AOC") with Chrysler on December 19, 2006. The 2006 Removal AOC required Chrysler to conduct subsurface gas extent of contamination sampling at the Site and install vapor abatement systems in structures impacted by TCE subsurface migration to meet applicable indoor air screening levels.

j. In 2008, Chrysler installed a 1 square block residential soil vapor extraction system 1 block south of the Behr Property along Daniel Street to address vapor intrusion into certain residences whose vapor abatement mitigation systems were not lowering TCE below screening levels (the 2008 SVE System).

k. After conducting negotiations, EPA initiated a fund-lead Remedial Investigation/Feasibility Study (RI/FS) at the Site in 2008.

l. The Site was added to the National Priorities List in April 2009. As such, the Site is required to go through the Superfund remedial cleanup process, as described in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended ("NCP").

m. After Chrysler's successor filed for Bankruptcy and stopped conducting the work under the 2006 Removal AOC, EPA issued a unilateral order on July 17, 2009, requiring Respondent's predecessor to operate and maintain the 2008 SVE system, conduct performance sampling of vapor abatement mitigation systems, modify and/or update vapor abatement mitigation systems that do not achieve screening criteria, conduct vapor intrusion sampling at locations identified by EPA and install vapor abatement mitigation systems and conduct performance samples at locations exceeding screening levels. (the 2009 UAO).

n. In 2009, EPA contracted CH2M Hill, Inc. to conduct the RI/FS at the Site that is ongoing. During the course of this investigation, the Area of Interest was identified.

o. Multiple groundwater samples from monitoring wells located at or near the Area of Interest on the Behr Property have shown groundwater impact that exceeds all other groundwater samples taken in association with the Site. This groundwater in the Area of Interest is likely to flow downgradient into the saturated zone below the neighborhoods to the south and southwest of the Behr Property.

p. Results from groundwater samples taken by contractors for MAHLE Behr Dayton LLC's predecessor dating back to at least 2003 show similarly high concentrations of TCE, PCE, and their breakdown products.

q. For the purposes of this Settlement Agreement and the response actions required by this Settlement Agreement, the impacted groundwater in the Area of Interest at the southern edge of the Behr Property potentially originated from historical operations at the Behr Property.

r. On September 27, 2013, EPA entered into an Administrative Settlement Agreement and Order on Consent for Engineering Evaluation/Cost Analysis (the EECA AOC) with Respondent's predecessor that required it to conduct an Engineering Evaluation and Cost Analysis (EE/CA) Report of the alternative response actions to address environmental concerns with the Area of Interest.

s. RI/FS sampling from March 2014 show PCE levels as high as 2,800 ug/L, and TCE levels as high as 11,000 ug/L in the Area of Interest.

t. On January 15, 2015, after public notice and comment, EPA approved an EE/CA Report dated November 11, 2014, submitted by Respondent under the EECA AOC (the EE/CA Report).

u. Based on the EE/CA Report, EPA is selecting the response action of Air Sparging/Soil Vapor Extraction (AS/SVE) to address the elevated COCs in the Area of Interest. This response action involves injecting clean air into groundwater to vaporize volatile organic compounds (VOCs); treating extracted vapors using carbon filters; and conducting groundwater performance monitoring to evaluate the effectiveness of the AS/SVE system in reducing the concentrations of VOCs.

v. EPA is issuing an Action Memorandum concurrent with this Settlement that selects AS/SVE as detailed in Section VIII below, as the remedy to address the elevated COC levels in the Area of Interest.

w. In that Action Memorandum, EPA discusses its determinations on release, threat, and endangerment. The Action Memorandum is incorporated into this Settlement as Appendix A.

## 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 Behr Dayton Thermal VOC Plume Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The Behr Property is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

c. The contamination found at the Site and at the Behr Property, 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).

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

e. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site. Respondent is the "owner" and/or "operator" of a facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). Actions taken at Respondent's facility contributed to the groundwater impact at the Site.

f. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from Respondent's facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

g. The removal action 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 foregoing Findings of Fact, Conclusions of Law, Determinations, and the administrative record, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement, including, but not limited to, all attachments to this Settlement and all documents incorporated by reference into this Settlement.

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

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

13. Within ten days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator,

Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within twenty days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent.

14. With respect to any proposed contractor or Project Coordinator, Respondent shall demonstrate that the proposed contractor or proposed Project Coordinator has a quality management system that is in compliance with ANSI/ASQC E-4-2004, "Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use" (American National Standard), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002, March 2001, reissued May 2006), or equivalent documentation as required by EPA.

15. EPA has designated Erik Hardin of the Remedial Response Branch, Region 5, as its On-Scene Coordinator ("OSC") and Remedial Project Manager ("RPM"). EPA and Respondent shall have the right, subject to Paragraph 13, to change its respective designated OSC or Project Coordinator. Respondent shall notify EPA at least ten days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

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

#### VIII. WORK TO BE PERFORMED

17. Respondent shall perform, at a minimum, all actions necessary to implement the Action Memorandum. The actions to be implemented generally include, but are not limited to, the following:

- a. Develop and implement Site plans including a Site-specific Health and Safety Plan, a Quality Assurance Project Plan, a Site Emergency Contingency Plan, a Design Plan, and a detailed Work Plan to accomplish the Work, including but not limited to any investigation activities or pilot study, in the most effective, efficient, and safe manner.
- b. Establish and maintain Site security. Security must encompass work areas.
- c. Conduct any additional site assessment to complete the design and implementation of the Work in the Area of Interest. Additional site assessment activities may include, among other things, predesign subsurface investigation activities, and an AS/VE pilot study.
- d. Design and install, as approved by EPA, a series of air sparging wells to introduce clean air into the aquifer just upgradient and just below the Area of Interest to vaporize

volatile organic compounds (VOCs). Installation activities may be conducted in a phased approach to allow for system optimization based on field observations.

e. Design and install, as approved by EPA, a series of soil vapor extraction wells to capture the soil gas vapors released from the air sparging wells and remove the vapors from the subsurface. Installation activities may be conducted in a phased approach to allow for system optimization based on field observations.

f. Operate the AS/SVE system to address the elevated contamination in the Area of Interest in a manner specified by EPA. Respondent shall operate the AS/SVE system until one of the following events occurs:

(1) EPA determines the system removal rates have reached asymptotic levels. Asymptotic shall be defined using the following procedures:

- (a) Operate the AS/SVE system for a period of no less than 6 months. At the end of this 6 month period, determine the daily TCE removal rate by measuring the flow rate of and the TCE concentration in the soil gas vapors captured by the SVE system (the 6 month daily TCE removal rate or "6MDTRR").
- (b) Continue to monitor the daily TCE removal rate using the procedures in 17(f)(1)(a) at a frequency determined by Respondent.
- (c) After the initial 6 months of operation and when the measured daily TCE removal rate is equal to or less than either 10 percent of the 6MDTRR or 0.35 pound per day (lb/day), shut down the AS/SVE system for 3 months.
- (d) Restart the system after the 3 month shutdown.
  - 1) If the measured daily TCE removal rate is still less than or equal to either 10 percent of the 6MDTRR or 0.35 lb/day within 24 to 72 hours after restart, shut down the AS/SVE system for 6 months and proceed to 17.f.(1)(e).
  - 2) If the measured daily TCE removal rate is greater than the larger of 10 percent of the 6MDTRR or 0.35 lb/day within 24 to 72 hours after restart, return to 17(f)(1)(b).
- (e) Restart the system after the 6 month shutdown.

- 1) If the measured daily TCE removal rate is still less than or equal to either 10 percent of the 6MDTRR or 0.35 lb/day within 24 to 72 hours after restart, the system can be shut down.
  - 2) If the measured daily TCE removal rate is greater than the larger of 10 percent of the 6MDTRR or 0.35 lb/day within 24 to 72 hours after restart, return to 17(f)(1)(b).
- (f) The RPM shall have the authority to approve an alternative representation of asymptotic conditions based on actual operation of the system.
  - (g) The RPM shall have the authority to require confirmatory sampling.
- (2) A remedial action selected in a Record of Decision for the Site is implemented and EPA determines it eliminates the need to operate the AS/SVE system;
  - (3) EPA approves shutdown of the AS/SVE system after
    - (a) Five years have elapsed;
    - (b) Respondent submits a comprehensive evaluation of the potential environmental implications of the proposed shutdown of the system; and
    - (c) Respondent demonstrates that such a shutdown would not create an unacceptable risk to human health and the environment; or
  - (4) The parties agree in writing that continued operation is not required.

“Shutdown” or “shut down” shall only mean a ceasing of the operation of the AS/SVE system. The equipment shall not be removed or otherwise rendered inoperable without written approval to do so from EPA.

g. Evaluate the potential emissions of air pollutants (as defined by the Clean Air Act) that will result from the implementation of AS/SVE. Submit a plan for EPA approval that discusses adding any air pollution controls, such as carbon absorption units, and the need thereof to address potential air emissions.

h. Treat soil gases collected using activated carbon systems or equivalent or better technology, as approved by EPA, to ensure the cumulative emissions of air pollutants to the atmosphere from this action is less than either a) the “de minimis” threshold in the State of

Ohio's permitting regulations at Ohio Admin. Code § 3745-15-05; or b) a "permit by rule" threshold established for the Site pursuant to Ohio Admin. Code § 3745-15-05. Work shall not be delayed on the basis that a permit by rule threshold has not been established.

i. Demonstrate that emission of hazardous air pollutants, including but not limited to TCE and PCE, stay below the "de minimis" threshold or a "permit by rule" threshold prior to operation and every 6 months of operation thereafter, utilizing sampling and analytical procedures prescribed by EPA. Work shall not be delayed on the basis that a permit by rule threshold has not been established.

j. Develop and implement a performance monitoring plan, as approved by EPA, that requires monitoring of groundwater, soil gases (e.g. to insure TCE introduced into the vadose zone by the air sparging system is captured by the soil vapor extraction system), and atmospheric air pollutant emissions pursuant to a schedule approved by EPA.

k. Implement the AS/SVE system, including required monitoring and any necessary air pollution emission controls, as specified by EPA and in a manner that addresses the entire area of interest.

l. Develop and implement a plan to be approved by EPA for disposal of wastes, including spent carbon, generated from the construction and implementation and operation of this action.

18. Work Plan Implementation

a. Within 60 days after the Effective Date, in accordance with Paragraph 19 (Submission of Deliverables), Respondent shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan") generally described in Paragraph 17 above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Removal Work Plan within 30 days after receipt of EPA's notification of the required revisions. Respondent shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of the Removal Work Plan Respondent shall commence implementation of the Work in accordance with the schedule included therein. Respondent shall not commence any Work except in conformance with the terms of this Settlement.

d. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under this Settlement or the Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

19. Submission of Deliverables.

a. General Requirements for Deliverables.

(1) Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the OSC/RPM at Erik Hardin, U.S. EPA Region 5 (SR-6J), 77 W. Jackson Blvd., Chicago, Illinois 60604, (312) 886-2402, [hardin.erik@epa.gov](mailto:hardin.erik@epa.gov). Respondent shall submit all deliverables required by this Settlement, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondent shall submit all deliverables in electronic form. If any deliverable includes maps, drawings, or other exhibits are larger than 8.5" by 11", Respondent shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Deliverables.

(1) 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.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) 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/>.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <http://www.epa.gov/geospatial/policies.html> for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

20. Health and Safety Plan.

a. Within 45 days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at <http://www.epaossc.org/HealthSafetyManual/manual-index.htm>. In addition, the plan shall

comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action. Respondent can submit a Health and Safety Plan previously approved for this Site that meets the requirements of this Paragraph and apply to and address the Work covered by this ASAOC for review and approval.

21. Quality Assurance, Sampling, and Data Analysis.

a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. Prior to the commencement of any monitoring project under this Settlement, Respondent shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan (QAPP) that is consistent with the NCP, "U.S. EPA Requirements of Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001), "U.S. EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-02/009, December 2002), and the Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP) Manual (EPA/505/B-04/900A, March 2005). The QAPP may include Field-Based Analytical Methods, if appropriate and scientifically defensible. Respondent shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with EPA's "Field Operations Group Operational Guidelines for Field Activities" (<http://www.epa.gov/region8/qa/FieldOperationsGroupOperationalGuidelinesForFieldActivities.pdf>) and "EPA QA Field Activities Procedure" (<http://www.epa.gov/irmpoli8/policies/2105-p-02.pdf>). Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" (<http://www.epa.gov/fem/pdfs/fem-lab-competency-policy.pdf>) and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (<http://www.epa.gov/superfund/programs/clp/>), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (<http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm>), "Standard Methods for the Examination of Water and Wastewater" (<http://www.standardmethods.org/>), 40 C.F.R.

Part 136, "Air Toxics - Monitoring Methods" (<http://www.epa.gov/ttnamti1/airtox.html>)," and any amendments made thereto during the course of the implementation of this Settlement. However, upon approval by EPA, after a reasonable opportunity for review and comment by the State, Respondent may use other appropriate analytical method(s), as long as (a) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (b) the analytical method(s) are at least as stringent as the methods listed above, and (c) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ANSI/ASQC E-4-2004, "Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use" (American National Standard, 2004, and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs (<http://www.epa.gov/fem/accredit.htm>) as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA. Respondent can submit a QAPP previously approved for this Site that meets the requirements of this Paragraph and applies to and addresses the work covered by this ASAOC for review and approval.

c. Upon request, Respondent shall provide split or duplicate samples to EPA and the State or their authorized representatives. Respondent shall notify EPA and the State not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall provide to Respondent split or duplicate samples of any samples they take as part of EPA's oversight of Respondent's implementation of the Work.

d. Respondent shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the "Area of Interest and/or the implementation of this Settlement.

e. Respondent waives any objections to any data gathered, generated, or evaluated by EPA, the State or Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the Work, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 30 days after the progress report containing the data.

f. Notwithstanding any provision of this Settlement, the United States and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes and regulations.

22. Community Involvement Plan. EPA has prepared a community involvement plan, in accordance with EPA guidance and the NCP. As requested by EPA, Respondent shall provide information supporting EPA's community involvement plan and shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

23. Post-Removal Site Control. In accordance with the Removal Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for any Post-Removal Site Control needed, to be approved by EPA. Upon EPA approval, Respondent shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondent shall provide EPA with documentation of all Post-Removal Site Control commitments.

24. Progress Reports. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement on a monthly basis, or as otherwise requested or approved by EPA, from the date of receipt of EPA's approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVIII, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

25. Final Report. Within 60 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 101 (Notice of Completion of Work), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in 40 C.F.R. § 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Respondent or Respondent's Project Coordinator: "I certify under penalty of law 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 am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

26. Off-Site Shipments.

a. Respondent may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains 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). Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if Respondent complies with EPA’s “Guide to Management of Investigation Derived Waste,” OSWER 9345.3-03FS (Jan. 1992).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility’s state and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written 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. Respondent also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

IX. PROPERTY REQUIREMENTS

27. Agreements Regarding Access and Non-Interference. Respondent 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 Respondent and the United States, providing that such Non-Settling Owner and Owner Respondent shall, with respect to Owner Settling Respondent’s Affected Property: (i) provide the United States, the State, Respondent, 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 Paragraph 27.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action.

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

- (1) Monitoring the Work;

- the State;
- (2) Verifying any data or information submitted to the United States or
- Site;
- (3) Conducting investigations regarding contamination at or near the
- (4) Obtaining samples;
- response actions;
- (5) Assessing the need for, planning, implementing, or monitoring
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as defined in the approved QAPP;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 70 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section X (Access to Information);
- (9) Assessing Respondent's 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.

28. Owner Respondent shall not Transfer its Affected Property without first securing EPA's approval of, and transferee's consent to, an agreement that: (i) is enforceable by EPA and the State; and (ii) requires the transferee to provide access to and to refrain from using the Affected Property to the same extent as is provided under Paragraph 27 (Agreements Regarding Access and Non-Interference).

29. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent 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 agreements, as required by this Section. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent or take independent action, in obtaining such access. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid,

constitute Future Response Costs to be reimbursed under Section XIV (Payment of Response Costs).

30. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondent shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such institutional controls.

31. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, Respondent shall continue to comply with its obligations under the Settlement, including its obligation to provide and/or secure access.

32. Notwithstanding any provision of the Settlement, EPA and the State retain all of their access authorities and rights, as well as all of their 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.

#### X. ACCESS TO INFORMATION

33. Respondent shall provide to EPA and the State, 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 Respondent's possession or control or that of its 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 regarding the Work. Respondent shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

##### 34. Privileged and Protected Claims.

a. Respondent may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 34.b., and except as provided in Paragraph 34.c.

b. If Respondent asserts such a privilege or protection, it 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, Respondent shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

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

35. Business Confidential Claims. Respondent may assert that all or part of a Record provided to EPA and the State under this Section or Section XI (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). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified Respondent 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 Respondent.

36. Notwithstanding any provision of this Settlement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## XI. RECORD RETENTION

37. Until six (6 ) years after EPA provides Respondent with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with regard to the Site, provided, however, that Respondent who is potentially liable as an owner or operator of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. 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 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.

38. At the conclusion of the document retention period, Respondent shall notify EPA and the State at least 90 days prior to the destruction of any such Records, and, upon request by EPA or the State, and except as provided in Paragraph 34 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA or the State.

39. The Respondent certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (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.

## XII. COMPLIANCE WITH OTHER LAWS

40. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Removal Work Plan subject to EPA approval.

41. No local, state, or federal 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), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondent may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

## XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

42. Emergency Response. 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 that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the OSC and the Regional Duty Officer, Region 5, Emergency Response Branch at (312) 353-2318 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of

the response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

43. Release Reporting. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC and the Regional Duty Officer, Region 5, Emergency Response Branch at (312) 353-2318, and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

#### XIV. PAYMENT OF RESPONSE COSTS

44. Payments for Future Response Costs. Respondent shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. On a periodic basis, EPA will send Respondent a bill requiring payment that includes an Itemized Cost Summary which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within 30 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 46 (Contesting Future Response Costs), and in accordance with Paragraphs 44.b and 44.c.

b. Respondent shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

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

and shall reference Site/Spill ID Number B5FH and the EPA docket number for this action.

c. At the time of payment, Respondent shall send notice that payment has been made to Erik Hardin at 77 West Jackson Boulevard (SR-6J), Chicago, Illinois 60604-3507 and Maria Gonzalez at 77 West Jackson Boulevard (C-14J), Chicago, Illinois 60604-3507, and to the EPA Cincinnati Finance Office by email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov), or by mail to

EPA Cincinnati Finance Office  
26 W. Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number B5FH and the EPA docket number for this action.

d. Deposit of Future Response Costs Payments. The total amount to be paid by Respondent pursuant to Paragraph 44.a. shall be deposited by EPA in the Behr Dayton Thermal VOC Plume Site 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 EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Behr Dayton Thermal VOC Plume Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

45. Interest. In the event that any payment for Future Response Costs is not made by the date required, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondent's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

46. Contesting Future Response Costs. Respondent may submit a Notice of Dispute, initiating the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 44 if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the OSC. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 44. Simultaneously, Respondent shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 30 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 44. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in

Paragraph 44. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

## XV. DISPUTE RESOLUTION

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

48. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within 20 days after such action. EPA and Respondent shall have 20 days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through formal 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.

49. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, the Director of the Superfund Division, EPA Region 5, will issue a written decision on the dispute to Respondent. 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, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

50. Except as provided in Paragraph 46 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 60. 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 Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

## XVI. FORCE MAJEURE

51. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent 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, increased cost of performance, the lack of a permit by rule threshold, or a failure to attain performance standards set forth in the Action Memorandum.

52. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 24 hours of when Respondent first knew that the event might cause a delay. Within 7 calendar days thereafter, Respondent 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; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent 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 Paragraph 51 and whether Respondent has exercised its best efforts under Paragraph 51, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

53. 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 Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

54. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent 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 Respondent complied with the requirements of Paragraphs 51 and 52. If

Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

55. 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 Respondent from meeting one or more deadlines under the Settlement, Respondent may seek relief under this Section.

## XVII. STIPULATED PENALTIES

56. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 57 and 58 for failure to comply with the requirements of this Settlement specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Respondent shall include completion of all activities and obligations, including payments, required under this Settlement, or any deliverable approved under this Settlement, in accordance with all applicable requirements of law, this Settlement, and any deliverables approved under this Settlement and within the specified time schedules established by and approved under this Settlement.

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

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 57.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500/day for the	1st through 21st day
\$1,500/day for the	22nd through 44th day
\$2,500/day for the	45th day and beyond

b. Compliance Milestones.

Designation of Respondent's Contractor  
Designation of Respondent's Project Coordinator  
Submission of Health and Safety Plan  
Submission of Emergency Contingency Plan  
Submission of QAPP  
Submission of Work Plan(s)  
Initiation of Work  
Completion of any necessary Post-Removal Site Controls  
Payment of Future Response costs pursuant to Paragraph 45  
Establishment and maintenance of financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XXV (Financial Assurance).  
Provision and maintenance of Insurance pursuant to Section XXIV

58. Stipulated Penalty Amounts – Deliverables Not listed in 57.b. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250/day	1st through 21st day
\$500/day	22nd day and beyond

59. In the event that EPA assumes performance of all or any portion(s) of the Work pursuant to Paragraph 70 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of \$300,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 70 (Work Takeover) and 93 (Access to Financial Assurance).

60. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 18 (Work Plan Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under Paragraph 49 of Section XV (Dispute Resolution), during the period, if any, beginning the 21<sup>st</sup> 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. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 30 days after the agreement or the receipt of EPA's decision or order.

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

62. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 44 (Payments for Future Response Costs).

63. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has 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 Paragraph 60 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 62 until the

date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

64. The payment of penalties and Interest, if any, shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement.

65. 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 Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 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 Paragraph 70 (Work Takeover).

66. 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.

#### XVIII. COVENANTS BY EPA

67. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs (as defined in this Settlement). These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement. These covenants extend only to Respondent and do not extend to any other person.

#### XIX. RESERVATIONS OF RIGHTS BY EPA

68. 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 Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

69. The covenants set forth in Section XVIII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is

without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. liability for failure by Respondent to meet a requirement of this Settlement;
- b. liability for costs not included within the definition of Future Response Costs in this Settlement;
- 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.

70. Work Takeover.

a. In the event EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is 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 Respondent. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued; and will provide Respondent a period of 3 days within which to remedy the circumstances giving rise to EPA's issuance of such notice where EPA determines Respondent is implementing the Work in a manner that may cause an endangerment as set forth in (3) above, or 7 days if EPA does not make that determination.

b. If, after expiration of the notice period specified in Paragraph 70.a, Respondent has 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 Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 70.b. Funding of Work Takeover costs is addressed under Paragraph 93 (Access to Financial Assurance).

c. Respondent may invoke the procedures set forth in Paragraph 49 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 70.b. However, notwithstanding Respondent's 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 Paragraph 70.b until the earlier of (1) the date that Respondent remedies, 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 Paragraph 49 (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.

## XX. COVENANTS BY RESPONDENT

71. Respondent covenants 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, Future Response Costs, 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 claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Future Response Costs, and this Settlement;

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

72. Except as provided in Paragraph 76 (Waiver of Claims by Respondent), 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 XIX (Reservations of Rights by EPA), other than in Paragraph 69.a (liability for failure to meet a requirement of the Settlement), 69.d (criminal liability), or 69.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

73. 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).

74. Respondent reserves, 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 Respondent's deliverables or activities.

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

76. Waiver of Claims by Respondent.

a. Respondent agrees 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 it may have:

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

(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 Section 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 waivers under this Paragraph 76 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 waivers if such person asserts a claim or cause of action relating to the Site against such Respondent.

(2) The waiver under Paragraph 76.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to 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 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 the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

## XXI. OTHER CLAIMS

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

78. Except as expressly provided in Paragraphs 76 (Waiver of Claims by Respondent) and Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent 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.

79. 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).

## XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

80. Except as provided in Paragraphs 76 (Waiver of Claims by Respondent), 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 XX (Covenants by Respondent), 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 which 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).

81. 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 and Future Response Costs as defined in this Settlement.

82. 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).

83. The 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. The 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, the 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.

84. 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, Respondent 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 XVIII (Covenants by EPA).

### XXIII. INDEMNIFICATION

85. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent 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). Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent's behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondent agrees 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 Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

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

#### XXIV. INSURANCE

88. No later than 7 calendar days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability insurance with limits of \$ 2 million, for any one occurrence, and automobile insurance with limits of \$ 2 million, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent 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, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

#### XXV. FINANCIAL ASSURANCE

89. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of \$ 3 million ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at <http://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondent may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

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

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

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

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 Respondent that Respondent meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for 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

f. A guarantee to fund or perform the Work executed in favor of EPA by one of the following: (1) a direct or indirect parent company of a Respondent; or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; provided, however, that any company providing such a guarantee must demonstrate to EPA's satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for 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.

90. Respondent has selected, and EPA has found satisfactory, as an initial financial assurance an irrevocable letter of credit prepared in accordance with Paragraph 89. Within 30 days after the Effective Date, or 30 days after EPA's approval of the form and substance of Respondent's financial assurance, whichever is later, Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to Dale Meyer, Regional Comptroller, Mail Code MF-10J, Resource Management Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago Illinois 60604, with a copy to Justin Abrams, Accountant, Program Accounting and Analysis Section, Mail Code MF-10J, Resource Management Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604

91. If Respondent provides financial assurance by means of a demonstration or guarantee under Paragraph 89.e or 89.f, the affected Respondent shall also comply and shall ensure that its guarantors comply with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including, but not limited to: (a) the initial submission to EPA of required documents from the affected entity's chief financial officer and independent certified public accountant no later than 30 days after the Effective Date; (b) the annual resubmission of such documents within 90 days after the close of each such entity's fiscal year; and (c) the notification of EPA no later than 30 days, in accordance with Paragraph 92, after any such entity determines that it no longer satisfies the relevant financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). Respondent agrees that EPA may also, based on a belief that an affected entity may no longer meet the financial test requirements of Paragraph 89.e or 89.f,

require reports of financial condition at any time from such entity in addition to those specified in this Paragraph. For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms “current closure cost estimate,” “current post-closure cost estimate,” and “current plugging and abandonment cost estimate” include the Estimated Cost of the Work; (2) the phrase “the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates” includes the sum of all environmental obligations (including obligations under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work under this Settlement; (3) the terms “owner” and “operator” include each Respondent making a demonstration or obtaining a guarantee under Paragraph 89.e or 89.f; and (4) the terms “facility” and “hazardous waste management facility” include the Site.

92. Respondent shall diligently monitor the adequacy of the financial assurance. If the Respondent 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, the Respondent shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the Respondent of such determination. Respondent 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 Respondent, 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. Respondent shall follow the procedures of Paragraph 94 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent’s inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Settlement, including, without limitation, the obligation of Respondent to complete the Work in accordance with the terms of this Settlement.

93. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 70.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 93.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected Respondent 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 Paragraph 93.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 70, 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 provided under Paragraph 89.e or 89.f, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondent shall, within 45 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 93 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Behr Dayton Thermal VOC Plume Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 93 must be reimbursed as Future Response Costs under Section XIV (Payments for Response Costs).

94. Modification of Amount, Form, or Terms of Financial Assurance. Respondent may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 90, 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 Respondent of its decision to accept or reject a requested reduction or change pursuant to this Paragraph. Respondent may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 90.

95. Release, Cancellation, or Discontinuation of Financial Assurance. Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXVIII (Notice of Completion of Work); (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 to Section XV (Dispute Resolution).

## XXVI. MODIFICATION

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

97. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 96.

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

## XXVII. ADDITIONAL REMOVAL ACTION

99. If EPA determines that additional removal actions not included in the Removal Work Plan or other approved plan are necessary to protect public health, welfare, or the environment, and such additional removal actions are consistent with the attached Action Memorandum addressing the threats in the Area of Interest, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a work plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the plan pursuant to Paragraph 18 (Work Plan Implementation), Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modification).

## XXVIII. NOTICE OF COMPLETION OF WORK

100. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including Post-Removal Site Controls, land, water, or other resource use restrictions, payment of Future Response Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Removal Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Removal

Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Removal Work Plan shall be a violation of this Settlement.

#### XXIX. INTEGRATION/APPENDICES

101. 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 Action Memorandum.
- b. "Appendix B" is the description and/or map of the Area of Interest
- c. "Appendix C" is the description and/or map of the Site.

#### XXX. EFFECTIVE DATE

102. This Settlement shall be effective 5 days after the Settlement is signed by the Regional Administrator or his/her delegatee.

**IN THE MATTER OF:**

**Behr Dayton Thermal VOC Plume Site**

**Dayton, Montgomery County, Ohio**

**Administrative Settlement Agreement and Order on Consent for Removal Action**

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

Agreed this 17 day of December, 2015.

For Respondent MAHLE Behr Dayton LLC

By: Angelique Strong Marks  
Angelique Strong Marks  
General Counsel & Corporate Secretary  
MAHLE Industries, Incorporated

**IN THE MATTER OF:**

**Behr Dayton Thermal VOC Plume Site**

**Dayton, Montgomery County, Ohio**

**Administrative Settlement Agreement and Order on Consent for Removal Action**

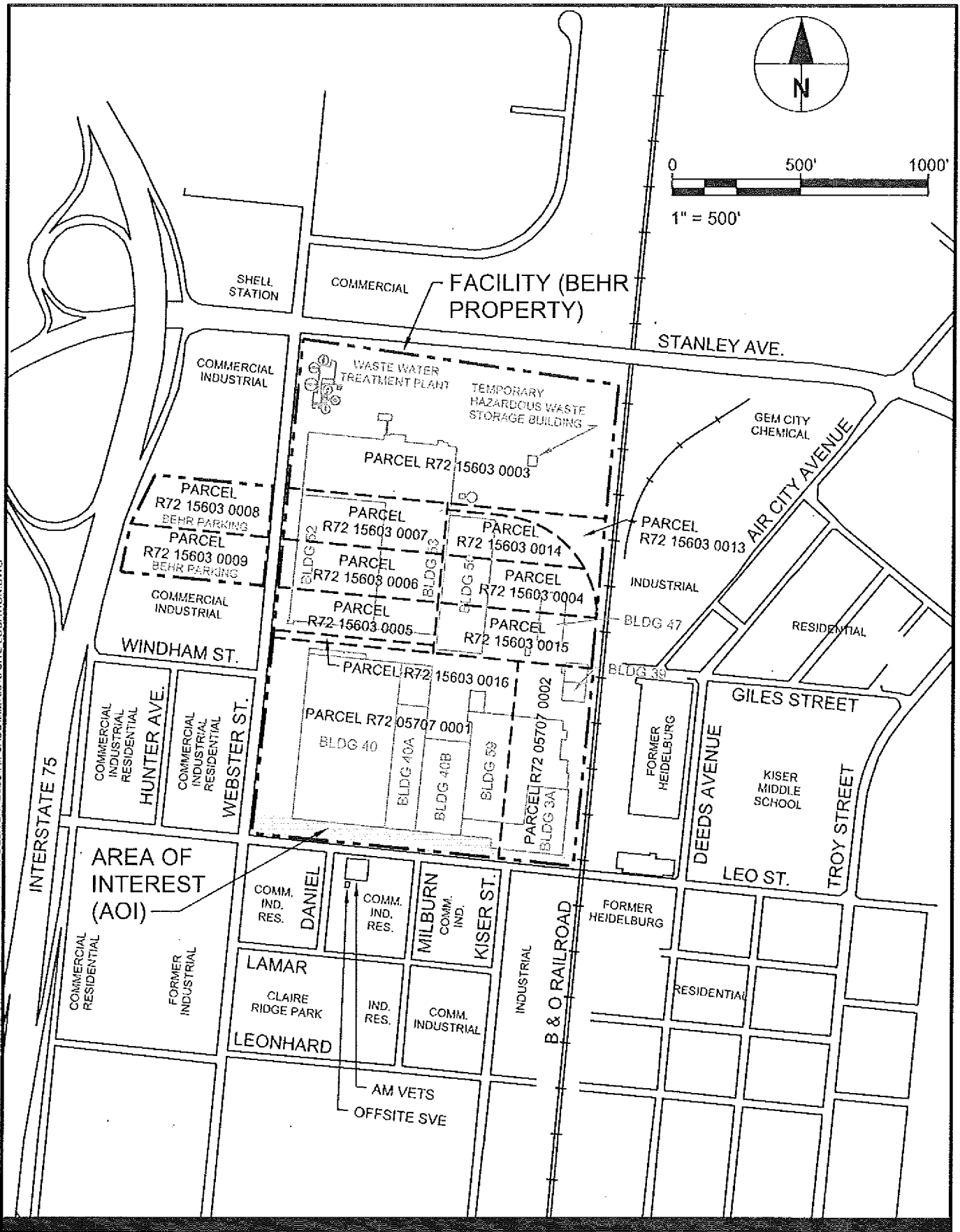
It is so ORDERED and Agreed this 22 day of DECEMBER, 2015.

By:



Richard C. Karl, Director  
Superfund Division  
United States Environmental Protection Agency  
Region 5

Last saved by: WILZBACH-HERN (2014-07-01) Last Plotted: 2014-07-03  
 File name: \\USBLT1\PEP001\DATA\WORK\CAD\60275515-BEHR DAYTON\7.0 DELIVERABLES\7.2 CAD\60275515 SITE LOCATION.DWG  
 Project Management Initials: Designer: NLW Checked: RFR Approved: \_\_\_\_\_ ANSI A 8.5" x 11"



BEHR PROPERTY  
 DAYTON, OHIO

AOI LOCATION MAP

**AECOM**

Project No.: 60275515 Date: 2014-07-03

Figure: 2