UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

Civil Action No. 3:22-cv-132

v.

RESPONSIBLE ENVIRONMENTAL SOLUTIONS ALLIANCE II ("RESA II")
(as listed on Appendix D)

Defendants.

REMEDIAL DESIGN/REMEDIAL ACTION CONSENT DECREE

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I. BACKGROUND

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

B. The United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice (DOJ) for response actions at the Tremont City Barrel Fill Superfund Site in Clark County, Ohio ("Site"), together with accrued interest; and (2) performance of response actions by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (NCP).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Ohio (the "State") on December 12, 2011 and on July 17, 2019, of negotiations with potentially responsible parties (PRPs) regarding the implementation of the remedial design and remedial action (RD/RA) for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree (CD). The State notified EPA on March 26, 2020 that it will not be a party to this CD.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified on December 12, 2011 and on July 17, 2019, the appropriate federal and state natural resource trustees from the Department of Interior of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this CD.

E. The defendants that have entered into this CD ("Settling Defendants" or SDs) do not admit any liability arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

F. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, certain SDs and other PRPs commenced on October 3, 2002, a Remedial Investigation and Feasibility Study (RI/FS) for the Site pursuant to 40 C.F.R. § 300.430.

G. Certain SDs completed a Remedial Investigation (RI) Report on October 1, 2006 and completed a Feasibility Study (FS) Report in July 2008. In January 2009, those SDs submitted a revised FS Addendum that included an additional containment remedial alternative. EPA issued a notice of completion for the RI/FS on July 2, 2010.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on June 16, 2010 in the *Springfield News-Sun*, a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the

administrative record upon which the Director of the Superfund Emergency and Management Division, EPA Region 5, based the selection of the response action.

I. The decision by EPA on the remedial action to be implemented at the Site was initially embodied in a Record of Decision executed on September 28, 2011, on which the State had a reasonable opportunity to review and comment, and which includes EPA's documentation of any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b). On February 12, 2018, EPA published an Explanation of Significant Differences (ESD) documenting two significant changes to certain components of its selected remedy, in accordance with Section 117(c) of CERCLA, 42 U.S.C. § 9617(c) and the NCP at 40 C.F.R. 300.435(c)(2)(i). The State gave its concurrence on the modification of the remedy selected in the 2011 Record of Decision on August 18, 2017 and on the 2018 ESD on January 22, 2018.

J. **Bankruptcy Settlements**. During the performance of the RI/FS, one of the signatories– General Motors Corporation (GM) – declared bankruptcy and ceased performance of response actions at the Site and other sites across the country. As a result, the United States, acting on behalf of EPA, filed a proof of claim in the GM bankruptcy and ultimately resolved its claim by a negotiated settlement under which EPA received, among other things, an Allowed General Unsecured Claim for the Site ("Allowed Tremont Claim") in the amount of $7,500,000.00. In re Motors Liquidation Company, et al., Case No. 09-50026 (Bankr. S.D.N.Y.) at Dkt. No. 9604 (Exh. A, Paragraph 7) (March 4, 2011) (hereinafter "GM Settlement"). Consistent with the terms of the GM Settlement, all distributions received by EPA on account of the Allowed Tremont Claim have been deposited in an interest-bearing special account within the Superfund to be retained and used to fund response actions at the Site. Id. at Paragraph 48, Dkt. No. 9943 (March 29, 2011) (Order approving GM Settlement). In addition to the GM bankruptcy, two other PRPs declared bankruptcy and have resolved EPAs claims by negotiated settlement. Those parties are Owens Corning ($200,000) and Delphi Holdings Corporation ($559,292.95). Consistent with the terms of the settlements with those parties, all distributions received by EPA have been deposited in an interest-bearing special account within the Superfund to be retained and used to fund response actions at the Site. *See generally* In re DPH Holdings Corporation, et al., Case No. 05-44481 (Bankr. S.D.N.Y) (2013); In re Owens Corning, et al., Case No. 00-03837 (Bankr. D. Del) (2003).

K. This Consent Decree is structured to allow participation by Settling Defendants ("SDs") falling into two classes: (1) Settling Work Parties or "SWPs" listed on Appendix D (RESA II) and (2) Other Settling Parties listed on Appendix E. The Settling Work Parties are agreeing to perform the Work at the Site and reimburse certain government costs, as specified herein. The Other Settling Parties have made (or may voluntarily at a future date make) payments toward the costs associated with the Site under settlements with Settling Work Parties. The Settling Work Parties and the Other Settling Parties are together referred to as "Settling Defendants."

L. The Site is owned by Tremont Landfill Company, which has no known officers or directors who may act on the owner's behalf. In about 2007, certain SDs had a receiver appointed and on May 5, 2008 entered into and the receiver subsequently recorded a Declaration of Restrictive Covenant for the Site that provides EPA and the SWPs with unrestricted access to

the Site, authorizes implementation of the Work, and imposes future use restrictions. That Declaration has not expired and remains in effect and is attached to this Consent Decree as **Appendix H**.

M. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted in accordance with this CD and its appendices by the Settling Work Parties.

N. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the Record of Decision issued on September 28, 2011 as modified by the ESD and the Work to be performed by Settling Work Parties shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

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

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

II. JURISDICTION

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

III. PARTIES BOUND

2. This CD is binding upon the United States and upon SDs and their successors and assigns. Any change in ownership or corporate or other legal status of a SD including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such SD's responsibilities under this CD.

3. SWPs shall provide a copy of this CD to each contractor hired to perform the Work and to each person representing any SWP 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 CD. SWPs or their contractors shall provide written notice of the CD to all subcontractors hired to perform any portion of the Work. SWPs shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this CD. With regard to the activities undertaken pursuant to this CD, each contractor and subcontractor shall be deemed to be in a contractual relationship with SWPs within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this CD, terms used in this CD 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 CD or its appendices, the following definitions shall apply solely for purposes of this CD:

"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, and/or Institutional Controls are needed to implement the Remedial Action, including, but not limited to, the property located at 3108 Snyder Domer Road, German Township, Clark County, Ohio.

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

"Consent Decree" or "CD" shall mean this consent decree and all appendices attached hereto (listed in Section XXIII (Appendices)). In the event of conflict between this CD and any appendix, this CD shall control.

"Day" or "day" shall mean a calendar day. In computing any period of time under this CD, 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.

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Effective Date" shall mean the date upon which the approval of this CD is recorded on the Court's docket.

"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.

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Settling Work Parties' performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including all direct and indirect costs incurred by the United States in reviewing or developing deliverables submitted pursuant to this Consent Decree, as well as all direct and indirect costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*, the costs incurred by the United States pursuant to Paragraph 12 (Emergencies and Releases), Section VII (Remedy Review), Section VIII (Property Requirements), Paragraph 30 (Access to Financial Assurance), or the costs incurred by the United States in enforcing this CD, including all costs incurred pursuant to Section XIV (Dispute Resolution), and all litigation costs.

"Future Response Costs" shall mean all costs, including, but not limited to, Future Oversight Costs and all other direct and indirect costs, that the United States and the State of

Ohio incur in reviewing or developing deliverables submitted pursuant to this CD, in overseeing implementation of the Work, or otherwise in implementing, overseeing, or enforcing this CD, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 12 (Emergencies and Releases), Paragraph 13 (Community Involvement) (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), Paragraph 30 (Access to Financial Assurance), Section VII (Remedy Review), Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including the amount of just compensation), and Section XIV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Settling Work Parties have agreed to pay under this CD that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from July 1, 2019 to the Effective Date. The United States agrees not to bill the SWPs for costs incurred by the State of Ohio conducting document review, or comment thereon.

"Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the RA; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

"Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with the Site between July 1, 2019 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

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

"Interest Earned" shall mean interest earned on amounts in the Tremont City Barrel Fill Disbursement Special Account, which shall be computed monthly at a rate based on the annual return on investments of the EPA Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time the interest accrues.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Non-Settling Owner" shall mean any person, other than a SD, that owns or controls any Affected Property, including Tremont Landfill Company. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.

"OEPA" shall mean the Ohio Environmental Protection Agency and any successor departments or agencies of the State.

"Operation and Maintenance" or "O&M" shall mean all activities required to operate, maintain, and monitor the effectiveness of the RA as specified in the SOW or any EPA-approved O&M Plan.

"Other Settling Party" shall mean a party who, as of the Effective Date, or as described in Paragraph 6, has entered (or may at a future date enter) into a settlement relating to the Site with one or more of the Settling Work Parties, provided that each such party: (l) is identified in **Appendix E** (or is the successor in interest to or otherwise liable for a party listed in **Appendix E**), and (2) at any given time before or after entry of this Consent Decree, executes the prescribed form of Consent Decree signature page for an Other Settling Party, and such signature page is filed with the Court as an amendment to the Consent Decree, consistent with the procedure described in Paragraph 6 in this action and served on the Plaintiff and the Settling Work Parties in accordance with Section XXI (Notices and Submissions).

"Paragraph" shall mean a portion of this CD identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States and SDs.

"Past Response Costs" shall mean $3,836,084.58, which constitutes all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through June 30, 2019, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date. EPA has determined that its net unreimbursed Past Response Costs total $3,836,084.58.

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

"Plaintiff" shall mean the United States.

"Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

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

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Tremont City Barrel Fill Site signed on September 28, 2011, by the Regional Administrator, EPA Region 5, or his/her delegate, and all attachments thereto, as modified by the Explanation of Significant Differences ("ESD") signed on February 12, 2018, by the Acting Director of the Superfund Division, EPA Region 5. The Record of Decision issued on September 28, 2011 is attached as **Appendix A**. The ESD is attached as **Appendix B**.

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

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

"Section" shall mean a portion of this CD identified by a Roman numeral.

"Settling Defendants" or "SDs" shall mean those Settling Work Parties and Other Settling Parties, as defined in Paragraph K above and listed in **Appendix D and Appendix E**, respectively.

"Site" shall mean the Tremont City Barrel Superfund Site, encompassing approximately 8.524 acres, located at 3108 Snyder Domer Road, German Township, Clark County, Ohio, and depicted generally on the map attached as **Appendix F**, including all areas where hazardous substances, pollutants or contaminants related thereto have been released or come to be located.

"State" shall mean the State of Ohio.

"Statement of Work" or "SOW" shall mean the document describing the activities SWPs must perform to implement the RD, the RA, and O&M regarding the Site, which is attached as **Appendix C**.

"Supervising Contractor" shall mean the principal contractor retained by SWPs to supervise and direct the implementation of the Work under this CD.

"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.

"Tremont City Barrel Fill Disbursement 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 Paragraph 38 (Creation of Tremont City Barrel Fill Disbursement Special Account) for the disbursement of funds obtained by EPA for use at the Site and held in the Tremont City Barrel Fill Special Account.

"Tremont City Barrel Fill Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site (ID B5 B1) by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3). The balance of the Tremont City Barrel Fill Special Account as of February 1, 2020 is $5,807,634.01. Of that amount, $3,754,472 will be made available by EPA to the Settling Work Parties for conducting the Work at the Site, as provided herein.

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

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any similar State statutory definitions.

"Work" shall mean all activities and obligations SWPs are required to perform under this CD, except the activities required under Section XX (Retention of Records).

V. GENERAL PROVISIONS

5. **Objectives of the Parties**. The objectives of the Parties in entering into this CD are to protect public health or welfare or the environment by the design and implementation of

response actions at the Site by Settling Work Parties, to pay for certain response costs of Plaintiff, and to resolve the claims of Plaintiff against SDs, as provided in this CD.

6. **Future Settlements.** Nothing in this Consent Decree prejudices the right of the Settling Work Parties to enter into settlement agreements with other entities or individuals in the future pursuant to which a new settling party would pay to Settling Work Parties funds to resolve potential liability relating to the Site. Such payment would be for the sole benefit of the Settling Work Parties for remedial purposes at the Site.

Other Settling Parties shall be added to this Consent Decree through the following procedure: (1) the Other Settling Party must be listed in **Appendix E** or be a successor in interest to or otherwise liable for a party listed in **Appendix E**, (2) the party must execute a signature page identical to the signature pages executed by the Settling Defendants, and (3) the executed signature page must be filed with the Court for approval as an amendment to the Consent Decree. Parties may not be added to **Appendix E** without prior written approval from EPA.

7. **Commitments by Settling Work Parties**

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

b. Settling Work Parties' obligations to finance and perform the Work, including obligations to pay amounts due under this CD, are joint and several. In the event of the insolvency of any SWP or the failure by any SWP to implement any requirement of this CD, the remaining SWPs shall complete all such requirements.

c. Any settlement agreements between the Settling Work Parties and Other Settling Parties are not abrogated by this CD and remain enforceable in accordance with their terms. Settling Work Parties' obligations under this CD shall be independent of and unaffected by any nonperformance by Other Settling Parties of obligations under such settlement agreements and shall remain in full force and effect regardless of any actions taken, or not taken, by one or more of the Other Settling Parties.

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

9. **Permits**

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling

Work Parties shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Work Parties may seek relief under the provisions of Section XIII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in Paragraph 9.a and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

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

VI. PERFORMANCE OF THE WORK

10. **Coordination and Supervision**

a. **Project Coordinators**

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

(2) EPA shall designate and notify the Settling Work Parties of EPA's Project Coordinators and Alternate Project Coordinators. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action, consistent with this Consent Decree and the NCP, when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) Settling Work Parties' Project Coordinators shall meet with EPA's Project Coordinator at least monthly, or as requested by EPA (including through telephonic conference call or online virtual meeting).

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

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

(1) Settling Work Parties shall designate, and notify EPA, within 10 days after the Effective Date, of the names, titles, contact information, and

qualifications of the Settling Work Parties' proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

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

(3) Settling Work Parties may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of Paragraphs 10.c(1) and 10.c(2).

(4) Notwithstanding the procedures of Paragraphs 10.c(1) through 10.c(3), Settling Work Parties have proposed, and EPA has authorized Settling Work Parties to proceed, regarding the following Project Coordinator and Supervising Contractor: de maximis, inc.

11. **Performance of Work in Accordance with SOW**. Settling Work Parties shall: (a) develop the RD; (b) perform the RA; and (c) operate, maintain, and monitor the effectiveness of the RA; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the CD or SOW shall be subject to approval by EPA in accordance with Paragraph 6.6 (Approval of Deliverables) of the SOW.

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

13. **Community Involvement**. If requested by EPA, SWPs shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section 2 (Community Involvement) of the SOW. Such activities may include, but are not

limited to, designation of a Community Involvement Coordinator and implementation of a technical assistance plan. Costs incurred by the United States under this Section constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

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

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

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

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

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

VII. REMEDY REVIEW

16. **Periodic Review**. Settling Work Parties shall conduct, in accordance with Paragraph 4.6 (Periodic Review Support Plan) of the SOW, studies and investigations to support EPA's reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the RA is protective of human health and the environment.

17. **EPA Selection of Further Response Actions**. If EPA determines, at any time, that the RA is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

18. **Opportunity to Comment**. Settling Work Parties and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

19. **Settling Work Parties' Obligation to Perform Further Response Actions**. If EPA selects further response actions relating to the Site, EPA may require Settling Work Parties to perform such further response actions, but only to the extent that the reopener conditions in Paragraphs 72, 73 (United States' Pre- and Post-Certification Reservations) are satisfied. Settling Work Parties may invoke the procedures set forth in Section XIV (Dispute Resolution) to dispute

(a) EPA's determination that the reopener conditions of Paragraphs 72, 73 are satisfied, (b) EPA's determination that the RA is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes regarding EPA's determination that the RA is not protective or EPA's selection of further response actions shall be resolved pursuant to Paragraph 56 (Record Review).

20. **Submission of Plans**. If Settling Work Parties are required to perform further response actions pursuant to Paragraph 19 (Settling Work Parties' Obligation to Perform Further Response Actions), they shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work). Settling Work Parties shall implement the approved plan in accordance with this CD.

VIII. PROPERTY REQUIREMENTS

21. **Agreements Regarding Access and Non-Interference.**

a. The Site is subject to Environmental Covenants, attached to this Consent Decree as **Appendix G**. SDs shall not undertake any action to remove, modify, or in any manner alter the terms of the Environmental Covenants without the express prior written approval of EPA.

b. With respect to any Affected Property owned by any party that has not entered into this CD ("Non-Settling Owner") and is not addressed by Paragraph 21.a, the Settling Work Parties shall use best efforts to secure, execute and record from such Non-Settling Owner an agreement, enforceable by Settling Work Parties and by Plaintiff, providing that such Non-Settling Owner shall: (i) provide Plaintiff and the Settling Work Parties, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the CD, including those listed in Paragraph 21.c (Access Requirements) that are included with the EPA-approved Institutional Control Implementation and Assurance Plan ("ICIAP"); 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 Remedial Action, including the restrictions listed in Paragraph 21.d (Land, Water, or Other Resource Use Restrictions) that are included with the EPA-approved ICIAP. Settling Work Parties shall provide a copy of such access and use restriction agreement(s) to EPA.

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

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States;

(3) Conducting investigations regarding contamination at the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 76 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Work Parties or their agents, consistent with Section XIX (Access to Information);

(9) Assessing Settling Work Parties' compliance with the CD;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the CD; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

d. **Land, Water, or Other Resource Use Restrictions**. The following is a list of land, water, or other resource use restrictions which Settling Work Parties shall use best efforts to secure regarding the Affected Property(ies), in accordance with the ICIAP:

(1) Prohibiting activities that could interfere with the RA;

(2) Prohibiting use of Site-related contaminated groundwater;

(3) Prohibiting any activities that could result in exposure to contaminants in subsurface soils and groundwater;

(4) Ensuring that any new structures on the Site will not be constructed in any manner that could interfere with the RA; and

(5) Ensuring that any new structures on the Affected Property will be constructed in a manner that will minimize potential risk of inhalation of Site-related contaminants.

(6) Ensuring there is no interference with cap (the "cap" is described by Paragraph 1.3 of the SOW and detailed in the ROD). Except as provided in a plan approved in writing by EPA, the following activities are prohibited in any cap installed pursuant to the requirements of the Consent Decree: 1) any excavation or other intrusive activity that could affect the integrity of the cap; and 2) any disturbance of the materials underneath the cap.

(7) Ensuring that fences and signs to secure the Property shall be maintained until the written consent of the EPA is obtained to modify such features.

22. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Settling Work Parties would use so as to achieve the goal in

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

23. 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, Settling Work Parties shall cooperate with EPA's and the State of Ohio's efforts to secure and ensure compliance with such Institutional Controls.

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

IX. FINANCIAL ASSURANCE

25. In order to ensure completion of the Work, Settling Work Parties shall secure financial assurance, initially in the amount of $27.7 million ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Settling Work Parties 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 a Settling Work Party that it meets the relevant test criteria of Paragraph 27, accompanied by a standby funding commitment, which obligates the affected Settling Work Party to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Settling Work Party or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Settling Work Party; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of Paragraph 27.

26. Settling Work Parties have selected, and EPA has found satisfactory, the initial forms of financial assurance as listed on Appendix I. Within 30 days after the Effective Date, Settling Work Parties shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the EPA as specified in Section XXI (Notices and Submissions). The financial assurance mechanisms or other documents may be submitted as business confidential or privileged information.

27. Settling Work Parties seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 25.e or 25.f must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) the affected Settling Work Party or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Settling Work Party or guarantor has:

i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

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

28. Settling Work Parties providing financial assurance by means of a demonstration or guarantee under Paragraph 25.e or 25.f must also:

a. Annually resubmit the documents described in Paragraph 27.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

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

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in Paragraph 27.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

29. Settling Work Parties shall diligently monitor the adequacy of the financial assurance. If any Settling Work Party becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Settling Work Party shall notify EPA of such information within 14 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Settling Work Party of such determination. Settling Work Parties shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to

EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Settling Work Party, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Settling Work Parties shall follow the procedures of Paragraph 31 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Settling Work Parties' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

30. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraphs 76.a and 76.b, then, in accordance with any applicable financial assurance mechanism and/or related standby funding commitment, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 30.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Settling Work Party 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 30.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 76.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraph 25.e or 25.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Settling Work Parties shall, within 45 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under Paragraph 30 (Access to Financial Assurance) 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 Tremont City Barrel Fill 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.

e. All EPA Work Takeover costs not paid under Paragraph 30 must be reimbursed as Future Response Costs under Section X (Payments for Response Costs).

31. **Modification of Amount, Form, or Terms of Financial Assurance**. Settling Work Parties 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 26, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Settling Work Parties of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Settling Work Parties may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIV (Dispute Resolution). Settling Work Parties may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Settling Work Parties pursuant to the dispute resolution provisions of this CD or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Settling Work Parties shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 26.

32. **Release, Cancellation, or Discontinuation of Financial Assurance**. Settling Work Parties may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under Paragraph 4.7 (Certification of Work Completion) of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIV (Dispute Resolution).

X. PAYMENTS FOR RESPONSE COSTS

33. **Payment by Settling Work Parties for United States Past Response Costs**.

a. Within 30 days after the Effective Date, Settling Work Parties shall pay to EPA $500,000 in payment for Past Response Costs. Payment shall be made in accordance with Paragraph 35.a (Payment Instructions, Past Response Cost Payments).

b. **Deposit of Past Response Costs Payment**. The total amount to be paid by Settling Work Parties pursuant to Paragraph 33.a shall be deposited by EPA in the Tremont City Barrel Superfund Site Special Account (Site ID B5 B1) to be retained and used to conduct or finance response actions at or in connection with the Site.

34. **Payments by Settling Work Parties for Future Response Costs**. Settling Work Parties shall pay to EPA all Future Response Costs not inconsistent with the NCP, excluding the first $4,020,000 million of Future Response Costs.

a. **Periodic Bills**. On a periodic basis, but no less than annually, EPA will send Settling Work Parties a bill requiring payment that includes an itemized cost summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the DOJ. Settling Work Parties shall make all payments within 30 days after Settling Work Parties' receipt of each bill requiring payment, except as otherwise provided in Paragraph 36 (Contesting Future Response Costs), in accordance with Paragraph 35.b (Future Response Costs Payments and Stipulated Penalties).

b. **Deposit of Future Response Costs Payments**. The total amount to be paid by Settling Work Parties pursuant to Paragraph 34.a (Periodic Bills) shall be deposited by EPA in the Tremont City Barrel Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, 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 Tremont City Barrel Superfund 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 Settling Work Parties pursuant to the dispute resolution provisions of this CD or in any other forum.

35. **Payment Instructions**

a. **Past Response Costs Payments**

(1) The Financial Litigation Unit (FLU) of the United States Attorney's Office for the Southern District of Ohio shall provide Settling Work Parties, in accordance with Paragraph 98, with instructions regarding making payments to the DOJ on behalf of EPA. The instructions must include a Consolidated Debt Collection System (CDCS) number to identify payments made under this CD.

(2) For all payments subject to Paragraph 35.a, Settling Work Parties shall make such payment by Fedwire Electronic Funds Transfer (EFT) at https://www.pay.gov to the U.S. DOJ account, or in accordance with the instructions provided under Paragraph 35.a(1), and including references to the CDCS Number, Site/Spill ID Number B5 B1 and DJ Number 90-11-3-643.

For each payment made under Paragraph 35.a, Settling Work Parties shall send notices, including references to the CDCS, Site/Spill ID, and DJ numbers, to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with Paragraph 98.

b. **Future Response Costs Payments and Stipulated Penalties:** Payments may be made using one of the methods described in (1)-(4):

(1) For all payments subject to this Paragraph, Settling Work Parties shall make such payment by Fedwire EFT, referencing the Site/Spill ID and DJ numbers. The Fedwire EFT payment must be sent as follows:

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

(2) For all payments subject to this Paragraph, Settling Work Parties shall make such payment by Automated Clearinghouse (ACH) payment as follows:

500 Rivertech Court
Riverdale, Maryland 20737
Contact – John Schmid 202-874-7026 or REX, 1-866-234-5681
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

(3) For all payments subject to this Paragraph, Settling Work Parties shall make such payment at https://www.pay.gov to the U.S. EPA account in accordance with instructions to be provided to Settling Work Parties by EPA following lodging of the CD.

(4) For all payments subject to this Paragraph35.b, Settling Work Parties shall make such payment by official bank check(s) made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment. Settling Work Parties shall send the check(s) to:

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

(5) For all payments made under this Paragraph, Settling Work Parties must include references to the Site/Spill ID and DJ numbers. At the time of any payment required to be made in accordance with this Paragraph, Settling Work Parties shall send notices that payment has been made to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with Paragraph 98. All notices must include references to the Site/Spill ID and DJ numbers.

36. **Contesting Future Response Costs**. Settling Work Parties may submit a Notice of Dispute, initiating the procedures of Section XIV (Dispute Resolution), regarding any Future Response Costs billed under Paragraph 34 (Payments by Settling Work Parties for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such Notice of Dispute shall be submitted in writing within 60 days after receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) pursuant to Section XXI (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Settling Work Parties submit a Notice of Dispute, Settling Work Parties shall within the 60-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to the United States, and (b) 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. Settling Work Parties shall send to the United States, as provided in Section XXI (Notices and Submissions), 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 the United States prevails in the dispute, Settling Work Parties shall pay the sums due (with accrued interest) to the United States within 14 days after the resolution of the dispute. If Settling Work Parties prevail concerning any aspect of the contested costs, Settling Work Parties shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States within 14 days after the resolution of the dispute. Settling Work Parties shall be disbursed any balance of the escrow account as quickly as possible but no later than 130 days after resolution of the dispute. All payments to the United States under this Paragraph shall be made in accordance with Paragraph 35.b (Future Response Costs Payments and Stipulated Penalties). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Work Parties' obligation to reimburse the United States for its Future Response Costs.

37. **Interest**. In the event that any payment for Past Response Costs or for Future Response Costs required under this Section is not made by the date required, Settling Work Parties shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Settling Work Parties' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Work Parties' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XV (Stipulated Penalties).

XI. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

38. **Creation of Tremont City Barrel Superfund Site Disbursement Special Account and Agreement to Disburse Funds to Settling Work Parties.** Within 30 days after the Effective Date, EPA shall establish the Tremont City Barrel Superfund Site Disbursement Special Account and shall transfer $3,754,472 from the Tremont City Barrel Superfund Site Special Account to the Tremont City Barrel Superfund Site Disbursement Special Account. Subject to the terms and conditions set forth in this Section, EPA agrees to make the funds in the Tremont City Barrel Superfund Site Disbursement Special Account, including Interest Earned on the funds in the Tremont City Barrel Superfund Site Disbursement Special Account, available for disbursement to Settling Work Parties as partial reimbursement for performance of the Work. EPA shall disburse funds from the Tremont City Barrel Superfund Site Disbursement Special Account to Settling Work Parties in accordance with the procedures and milestones for phased disbursement set forth in this Section.

39. **Timing, Amount, and Method of Disbursing Funds from the Tremont City Barrel Superfund Site Disbursement Special Account**. Using best efforts to disburse as quickly as possible but no later than 130 days after EPA's receipt of a Cost Summary and

Certification, as defined by Paragraph 40.b, or if EPA has requested additional information under Paragraph 40.b or a revised Cost Summary and Certification under Paragraph 40.c, using best efforts to disburse as quickly as possible but no later than 130 days after receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Section, EPA shall disburse the funds from the Tremont City Barrel Superfund Site Disbursement Special Account at the completion of the following milestones, and in the amounts set forth below:

Milestone	Disbursement of Funds
EPA approval of 100% RD	25% from the Tremont City Barrel Superfund Site Disbursement Special Account
Twelve (12) months after Start of Construction	50% from the Tremont City Barrel Superfund Site Disbursement Special Account
EPA Certification of RA Completion	Remainder of funds in the Tremont City Barrel Superfund Site Disbursement Special Account

EPA shall disburse the funds from the Tremont City Barrel Superfund Site Disbursement Special Account to SWPs by Electronic Funds Transfer in accordance with instructions provided to EPA by Settling Work Parties.

40. **Requests for Disbursement of Special Account Funds**

a. Within 60 days after issuance of EPA's written confirmation that a milestone of the Work, as defined in Paragraph 39 (Timing, Amount, and Method of Disbursing Funds from the Tremont City Barrel Superfund Site Disbursement Special Account), has been satisfactorily completed, Settling Work Parties shall submit to EPA a Cost Summary and Certification, as defined in Paragraph 40.b, covering the Work performed up to the date of completion of that milestone. Settling Work Parties shall not include in any submission costs included in a previous Cost Summary and Certification following completion of an earlier milestone of the Work if those costs have been previously sought or reimbursed pursuant to Paragraph 39 (Timing, Amount, and Method of Disbursing Funds from the Tremont City Barrel Superfund Site Disbursement Special Account).

b. Each Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid by Settling Work Parties for the Work covered by the particular submission, excluding costs not eligible for disbursement under Paragraph 41 (Costs Excluded from Disbursement). Each Cost Summary and Certification shall contain the following statement signed by the company "de maximis, inc." as the authorized representative of the Settling Work Parties:

> To the best of my knowledge, after thorough investigation and review of Settling Work Parties' documentation of costs incurred and paid for Work performed pursuant to this CD, [insert as appropriate "up to the date of EPA Approval of 100% RD;" "between the date of EPA Approval of 100% RD and twelve (12) months from Start of Construction;" or "twelve (12) months from Start of Construction date and EPA Certification of RA

> Completion"] I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.

The company "de maximus, inc." as the authorized representative of the Settling Work Parties or Independent Certified Public Accountant shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, Settling Work Parties shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.

c. If EPA finds that a Cost Summary and Certification includes a mathematical error, costs excluded under Paragraph 41 (Costs Excluded from Disbursement), costs that are inadequately documented, or costs submitted in a prior Cost Summary and Certification, it will notify Settling Work Parties and provide them an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Settling Work Parties fail to cure the deficiency within 15 days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Settling Work Parties' costs eligible for disbursement for that submission and disburse the corrected amount to Settling Work Parties in accordance with the procedures in Paragraph 39 (Timing, Amount, and Method of Disbursing Funds from the Tremont City Barrel Superfund Site Disbursement Special Account). Settling Work Parties may dispute EPA's recalculation under this Paragraph pursuant to Section XIV (Dispute Resolution). In no event shall Settling Work Parties be disbursed funds from the Tremont City Barrel Superfund Site Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

41. **Costs Excluded from Disbursement**. The following costs are excluded from, and shall not be sought by Settling Work Parties for, disbursement from the Tremont City Barrel Superfund Site Disbursement Special Account: (a) response costs paid pursuant to Section X (Payments for Response Costs); (b) any other payments made by Settling Work Parties to the United States pursuant to this CD, including, but not limited to, any Interest or stipulated penalties paid pursuant to Section X (Payments for Response Costs) or XV (Stipulated Penalties); (c) attorneys' fees and costs, except for reasonable attorneys' fees and costs necessarily related to obtaining access or establishing institutional controls, as required by Section VIII (Property Requirements); (d) costs of any response activities Settling Work Parties perform that are not required under, or approved by EPA pursuant to, this CD; (e) costs related to Settling Work Parties' litigation, settlement, development of potential contribution claims, or identification of defendants; (f) internal costs of Settling Work Parties, including but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of Settling Work Parties directly performing the Work; (g) any costs incurred by Settling Work Parties prior to the Effective Date: except for approved Work completed pursuant to this CD; or (h) any costs incurred by Settling Work Parties pursuant to Section XIV (Dispute Resolution).

42. **Termination of Disbursements from the Special Account**. EPA's obligation to disburse funds from the Tremont City Barrel Superfund Site Disbursement Special Account under this CD shall terminate upon EPA's determination that Settling Work Parties: (a) have knowingly submitted a materially false or misleading Cost Summary and Certification; (b) have

submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within 45 days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification as required by Paragraph 40 (Requests for Disbursement of Special Account Funds) within 30 days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Section because of Settling Work Parties' failure to submit the Cost Summary and Certification as required by Paragraph 40 (Requests for Disbursement of Special Account Funds). EPA's obligation to disburse funds from the Tremont City Barrel Superfund Site Disbursement Special Account shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to Paragraph 76 (Work Takeover), when such assumption of performance of the Work is not challenged by Settling Work Parties or, if challenged, is upheld under Section XIV (Dispute Resolution). Settling Work Parties may dispute EPA's termination of special account disbursements under Section XIV (Dispute Resolution).

43. **Recapture of Special Account Disbursements**. Upon termination of disbursements from the Tremont City Barrel Superfund Site Disbursement Special Account under Paragraph 42 (Termination of Disbursements from the Special Account), if EPA has previously disbursed funds from the Tremont City Barrel Superfund Site Disbursement Special Account for activities specifically related to the reason for termination, e.g., discovery of a materially false or misleading submission after disbursement of funds based on that submission, EPA shall submit a bill to Settling Work Parties for those amounts already disbursed from the Tremont City Barrel Superfund Site Disbursement Special Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by Settling Work Parties. Within 60 days after receipt of EPA's bill, Settling Work Parties shall reimburse the EPA Hazardous Substance Superfund for the total amount billed. Payment shall be made in accordance with Paragraph 35.b (Future Response Costs Payments and Stipulated Penalties). Upon receipt of payment, EPA may deposit all or any portion thereof in the Tremont City Barrel Superfund Site Special Account, the Tremont City Barrel Superfund Site Disbursement Special Account, or the EPA Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by Settling Work Parties pursuant to the dispute resolution provisions of this CD or in any other forum. Settling Work Parties may dispute EPA's determination as to recapture of funds pursuant to Section XIV (Dispute Resolution).

44. **Balance of Special Account Funds**. After EPA issues its written Certification of RA Completion pursuant to this CD, and after EPA completes all disbursement to Settling Work Parties in accordance with this Section, if any funds remain in the Tremont City Barrel Superfund Site Disbursement Special Account, EPA may transfer such funds to the Tremont City Barrel Superfund Site Special Account or to the EPA Hazardous Substance Superfund. Any transfer of funds to the Tremont City Barrel Superfund Site Special Account or the EPA Hazardous Substance Superfund shall not be subject to challenge by Settling Work Parties pursuant to the dispute resolution provisions of this CD or in any other forum.

XII. INDEMNIFICATION AND INSURANCE

45. **Settling Work Parties' Indemnification of the United States**

a. The United States does not assume any liability by entering into this CD or by virtue of any designation of Settling Work Parties as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling Work Parties shall indemnify, save, and hold harmless the United States and their 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 Settling Work Parties, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Settling Work Parties' behalf or under their control, in carrying out activities pursuant to this CD, including, but not limited to, any claims arising from any designation of Settling Work Parties as EPA's authorized representatives under Section 104(e) of CERCLA. Further, Settling Work Parties agree to pay the United States all costs they incur 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 Settling Work Parties, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this CD. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Work Parties in carrying out activities pursuant to this CD. Neither Settling Work Parties nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Work Parties notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 45, and shall consult with Settling Work Parties prior to settling such claim.

46. Settling Work Parties covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Work Parties 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, Settling Work Parties shall indemnify, save and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Work Parties and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

47. **Insurance**. No later than 15 days before commencing any on-site Work, Settling Work Parties shall secure, and shall maintain until the first anniversary after issuance of EPA's Certification of RA Completion pursuant to Paragraph 4.5 (Certification of RA Completion) of the SOW, commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Settling Work Parties pursuant to this CD. In addition, for the duration of this CD, Settling Work Parties shall satisfy, or shall ensure that their contractors or subcontractors satisfy,

all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Work Parties in furtherance of this CD. Prior to commencement of the Work, Settling Work Parties shall provide to EPA certificates of such insurance and, upon request, a copy of each insurance policy. Settling Work Parties shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Work Parties demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Work Parties need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Settling Work Parties shall ensure that all submittals to EPA under this Paragraph identify the Tremont City Barrel Superfund Site, Clark County, Ohio and the civil action number of this case.

XIII. FORCE MAJEURE

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

49. If any event occurs or has occurred that may delay the performance of any obligation under this CD for which Settling Work Parties intend or may intend to assert a claim of force majeure, Settling Work Parties shall notify EPA's Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund and Emergency Management Division, EPA Region 5, within 10 days of when Settling Work Parties first knew that the event might cause a delay. Within 20 days thereafter, Settling Work Parties 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; Settling Work Parties' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Settling Work Parties, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Work Parties shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Settling Work Parties shall be deemed to know of any circumstance of which Settling Work Parties, any entity controlled by Settling Work Parties, or Settling Work Parties' contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Work Parties 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 48 and whether Settling Work Parties have exercised their best

efforts under Paragraph 48, EPA may, in its unreviewable discretion, excuse in writing Settling Work Parties' failure to submit timely or complete notices under this Paragraph.

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

51. If Settling Work Parties elect to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution) regarding EPA's decision, they shall do so no later than 30 days after receipt of EPA's notice. In any such proceeding, Settling Work Parties 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 Settling Work Parties complied with the requirements of Paragraphs 48 and 49. If Settling Work Parties carry this burden, the delay at issue shall be deemed not to be a violation by Settling Work Parties of the affected obligation(s) of this CD identified to EPA and the Court.

52. The failure by EPA to timely complete any obligation under the CD or under the SOW is not a violation of the CD, provided, however, that if such failure prevents Settling Work Parties from meeting one or more deadlines in the SOW, the deadlines shall be extended for a period of time commensurate to such delay.

XIV. DISPUTE RESOLUTION

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

54. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Any dispute regarding this CD shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless such period is modified by written agreement of the parties to the dispute.

55. **Statements of Position**

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Settling Work Parties invoke the formal dispute resolution procedures of this Section by serving

on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any available supporting documentation relied upon by Settling Work Parties. The Statement of Position shall specify Settling Work Parties' position as to whether formal dispute resolution should proceed under Paragraph 56 (Record Review) or 57.

b. Within 30 days after receipt of Settling Work Parties' Statement of Position, EPA will serve on Settling Work Parties its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 56 (Record Review) or 57. Within 21 days after receipt of EPA's Statement of Position, Settling Work Parties may submit a Reply.

c. If there is disagreement between EPA and Settling Work Parties as to whether dispute resolution should proceed under Paragraph 56 (Record Review) or 57, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if Settling Work Parties ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 56 (Record Review) and 57.

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

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

b. The Director of the Superfund Emergency and Management Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 56.a. This decision shall be binding upon Settling Work Parties, subject only to the right to seek judicial review pursuant to Paragraphs 56.c and 56.d.

c. Any administrative decision made by EPA pursuant to Paragraph 56.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Work Parties with the Court and served on all Parties within 30 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this CD. The United States may file a response to Settling Work Parties' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Work Parties shall have the burden of demonstrating that the decision of the Superfund and Emergency Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 56.a.

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

a. The Director of the Superfund and Emergency Management Division, EPA Region 5, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under Paragraph 55 (Statements of Position). The Superfund and Emergency Management Division Director's decision shall be binding on Settling Work Parties unless, within 30 days after receipt of the decision, Settling Work Parties file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the CD. The United States may file a response to Settling Work Parties' motion.

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

58. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Settling Work Parties under this CD, except as provided in Paragraph 36 (Contesting Future Response Costs), as agreed by EPA, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in Paragraph 66. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CD. In the event that Settling Work Parties do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Stipulated Penalties).

XV. STIPULATED PENALTIES

59. Settling Work Parties shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 60 (Stipulated Penalty Amounts – Payments, Financial Assurance, Major Deliverables, and Other Milestones) and 61 (Stipulated Penalty Amounts – Material Defects and Other Deliverables) for failure to comply with the obligations specified in Paragraphs 60 (Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones) and 61 (Stipulated Penalty Amounts – Material Defects and Other Deliverables), unless excused under Section XIII (Force Majeure). "Comply" as used in the previous sentence includes compliance by Settling Work Parties with all applicable requirements of this CD, within the deadlines established under this CD. If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under Paragraphs 6.6 (a) (Initial Submissions) or 6.6 (b) (Resubmissions) of

the SOW due to such material defect, then the material defect shall constitute a lack of compliance for purposes of this Paragraph.

60. **Stipulated Penalty Amounts – Payments, Financial Assurance, Major Deliverables, and Other Milestones**

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

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	$1,000
15th through 30th day	$1,750
31st day and beyond	$3,500

b. **Compliance Milestones**

(1) Timely submit or resubmit the Final Remedial Design;

(2) timely submit or resubmit the Remedial Action Work Plan;

(3) timely initiate Remedial Action Construction;

(4) complete construction of RA;

(5) timely submit the ICIAP as required by Paragraph 6.7 (j) of the SOW;

(6) timely pay Past Response Costs within 30 days after the Effective Date, as required under Paragraph 33;

(7) timely pay Future Response Costs as required under Paragraph 34, except as otherwise provided in Paragraph 36; and

(8) establish and maintain financial assurance in accordance with Section IX (Financial Assurance).

61. **Stipulated Penalty Amounts – Material Defects and Other Deliverables**.

a. Material Defects. If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under Paragraph 6.6(a) (Initial Submissions) or 6.6(b) (Resubmissions) of the SOW due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Paragraph 60, unless the defect is timely cured pursuant to Paragraph 6.6(b) (Resubmissions) of the SOW. The provisions of Section XIV (Dispute Resolution) and Section XV (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Settling Work Parties' submissions under this Consent Decree.

b. In addition to those deliverables specified in Paragraph 60, the following stipulated penalties shall accrue per violation per day for failure to submit timely or acceptable deliverables pursuant to the CD and its Appendices:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	$ 750
15th through 30th day	$1500
31st day and beyond	$3000

62. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 76 (Work Takeover), Settling Work Parties shall be liable for a stipulated penalty in the amount of $1 million. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 30 (Access to Financial Assurance) and 76 (Work Takeover).

63. 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 6.6 (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Work Parties of any deficiency; (b) with respect to a decision by the Director of the Superfund and Emergency Management Division, EPA Region 5, under Paragraph 56.b or 57.a of Section XIV (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that SWPs' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIV (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this CD shall prevent the simultaneous accrual of separate penalties for separate violations of this CD.

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

65. All penalties accruing under this Section shall be due and payable to the United States within 45 days after Settling Work Parties' receipt from EPA of a demand for payment of the penalties, unless Settling Work Parties invoke the Dispute Resolution procedures under Section XIV (Dispute Resolution) within the 45-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 35.b (Future Response Costs Payments and Stipulated Penalties).

66. Penalties shall continue to accrue as provided in Paragraph 63 during any dispute resolution period, but need not be paid until the following:

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

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Work Parties shall pay all accrued penalties determined by the Court to

be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in Paragraph 66.c;

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

67. If Settling Work Parties fail to pay stipulated penalties when due, Settling Work Parties shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Work Parties have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 66 until the date of payment; and (b) if Settling Work Parties fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 65 until the date of payment. If Settling Work Parties fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

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

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

XVI. COVENANTS BY PLAINTIFF

71. **Covenants for SDs by United States**

In consideration of the Remedial Action that will be performed and the payments that will be made by Settling Work Parties (on their behalf and on behalf of the Other Settling Parties) under this CD, and except as provided in Paragraphs 72, 73 (United States' Pre- and Post-Certification Reservations), and 75 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against SDs pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants shall take effect upon (i) the Effective Date of this Consent Decree, for the Settling Work Parties; and (ii) the later of the Effective Date or the date on which an Other Settling Party's Consent Decree signature page is filed with the Court in this action for such Other Settling Party. With respect to future liability, these covenants shall take effect upon Certification of RA Completion by EPA pursuant to Paragraph 4.7 (Certification of RA Completion) of the SOW. These covenants are conditioned upon the satisfactory performance by Settling Work Parties of their obligations under this CD. These covenants extend only to SDs and do not extend to any other person.

72. **United States' Pre-Certification Reservations**. Notwithstanding any other provision of this CD, the United States reserves, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel SDs to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) prior to Certification of RA Completion, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the RA is not protective of human health or the environment.

73. **United States' Post-Certification Reservations**. Notwithstanding any other provision of this CD, the United States reserves, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel SDs to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) subsequent to Certification of RA Completion, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the RA is not protective of human health or the environment.

74. For purposes of Paragraph 72 (United States' Pre-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the ROD for the Site and the administrative record supporting the ROD. For purposes of Paragraph 73 (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of RA Completion and set forth in the ROD, the administrative record supporting the ROD, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this CD prior to Certification of RA Completion.

75. **General Reservations of Rights**.

a. Reservations as to Settling Work Parties. The United States reserves, and this CD is without prejudice to, all rights against Settling Work Parties with respect to all matters not expressly included within Plaintiff's covenants. Notwithstanding any other provision of this CD, the United States reserves all rights against Settling Work Parties with respect to:

(1) liability for failure by the Settling Work Parties to meet a requirement of this CD;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

(3) liability based on the ownership of the Site by Settling Work Parties when such ownership commences after signature of this CD by Settling Work Parties;

(4) liability based on the operation of the Site by Settling Work Parties when such operation commences after signature of this CD by Settling Work Parties and does not arise solely from Settling Work Parties' performance of the Work;

(5) liability based on Settling Work Parties' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this CD by Settling Work Parties;

(6) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(7) criminal liability;

(8) liability for violations of federal or state law that occur during or after implementation of the Work;

(9) liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to Paragraph 14 (Modification of SOW or Related Deliverables); and

(10) previously incurred costs of response above the amounts paid pursuant to Paragraph 33.a (Payment by Settling Work Parties for United States Past Response Costs),

b. Reservations as to Other Settling Parties. The United States reserves, and this Consent Decree is without prejudice to, all rights against Other Settling Parties with respect to all matters not expressly included within Plaintiff's covenants. Notwithstanding any other provision of this Consent Decree the United States reserves all rights against Other Settling Parties with respect to:

(1) liability for failure to meet their obligations under this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

(3) liability based on the ownership of the Site when such ownership of the Site by an Other Settling Party commences after signature of this Consent Decree by Settling Work Parties;

(4) liability based on the operation of the Site when such operation of the Site by an Other Settling Party commences after signature of this CD by Settling Work Parties and does not arise solely from Settling Work Parties' performance of the Work;

(5) liability based on Other Settling Parties' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this CD by Settling Work Parties;

(6) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and

(7) criminal liability.

76. **Work Takeover**

a. In the event EPA determines that Settling Work Parties: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Settling Work Parties. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Work Parties a period of 30 days within which to remedy, or begin to remedy, the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 30-day notice period specified in Paragraph 76.a, Settling Work Parties have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Settling Work Parties in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph. Funding of Work Takeover costs is addressed under Paragraph 30 (Access to Financial Assurance).

c. Settling Work Parties may invoke the procedures set forth in Paragraph 56 (Record Review), to dispute EPA's implementation of a Work Takeover under Paragraph 76.b. However, notwithstanding Settling Work Parties' 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 76.b until the earlier of (1) the date that Settling Work Parties remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, (2) the date that a final decision is rendered in accordance with Paragraph 56 (Record Review) requiring EPA to terminate such Work Takeover, or (3) the date of a temporary restraining order or preliminary injunction issued by a Court requiring EPA to terminate such Work Takeover.

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

XVII. COVENANTS BY SDs

78. **Covenants by SDs**. Subject to the reservations in Paragraph 75 and 80, SDs covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site and this CD, including but not limited to:

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

b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Site and this CD; or

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Ohio 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

d. any direct or indirect claim for disbursement from the Tremont City Barrel Superfund Site Special Account or Tremont City Barrel Superfund Site Disbursement Special Account, except as provided in Section XI (Disbursement of Special Account Funds).

79. Except as provided in Paragraph 82 (Waiver of Claims by SDs) and 89 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XVI (Covenants by Plaintiff), other than in Paragraphs 75.a.(1) and 75.b.(1) (claims for failure to meet a requirement of the CD), 75.a(7) and 75.b(7) (criminal liability), and 75.a (8) (violations of federal/state law during or after implementation of the Work), but only to the extent that SDs' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

EPA's selection of response actions, or the oversight or approval of Settling Work Parties' deliverables or activities.

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

82. **Waiver of Claims by SDs**

a. SDs agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) **De Micromis Waiver**. For all matters relating to the Site against any person where the person's liability to SDs 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 into a final CERCLA § 122(g) *de minimis* settlement or a final settlement based on limited ability to pay with EPA with respect to the Site.

b. **Exceptions to Waivers**

(1) The waivers under Paragraph 82 shall not apply with respect to any defense, claim, or cause of action that a SD may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against such SD.

(2) The waiver under Paragraph 82.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)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to 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.

83. SDs agree 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.

XVIII. EFFECT OF SETTLEMENT; CONTRIBUTION

84. Except as provided in Paragraph 82 (Waiver of Claims by SDs), nothing in this CD shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this CD. Except as provided in Section XVII (Covenants by SDs), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this CD diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

85. The Parties agree, and by entering this CD this Court finds, that this CD constitutes a judicially-approved settlement pursuant to which each SD has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this CD.

The "matters addressed" in this CD are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person; provided, however, that if the United States exercises rights under the reservations in Section XVI (Covenants by Plaintiff), other than in Paragraphs 75.a(1) and 75.b(1) (claims for failure to meet a requirement of the CD), 75.a(7) and 75.b(7) (criminal liability), or 75(a)(8) (violations of federal/state law during or after implementation of the Work), the "matters addressed" in this CD will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

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

87. Each SD shall, with respect to any suit or claim brought by it for matters related to this CD, notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

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

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

XIX. ACCESS TO INFORMATION

90. Settling Work Parties shall provide to EPA and the State of Ohio, upon request, copies of all non-privileged records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Settling Work Parties' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this CD, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Settling Work Parties shall also make available to EPA and the State of Ohio – in the State's role as support agency for RD/RA oversight – for purposes of investigation, information gathering, testimony, or overseeing the Work, Settling Work Parties' employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

91. **Privileged and Protected Claims**

a. Settling Work Parties may assert that all or part of a Record requested by Plaintiff is privileged or protected as provided under federal law, in lieu of providing the Record, provided Settling Work Parties comply with Paragraph 91.b, and except as provided in Paragraph 91.c.

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

c. Settling Work Parties 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 Settling Work Parties are required to create or generate pursuant to this CD.

92. **Business Confidential Claims**. Settling Work Parties may assert that all or part of a Record provided to Plaintiff under this Section or Section XX (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of

CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Settling Work Parties shall segregate and clearly identify all Records or parts thereof submitted under this CD for which Settling Work Parties assert business confidentiality claims. Records that Settling Work Parties claim to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Work Parties 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 Settling Work Parties.

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

94. Notwithstanding any provision of this CD, Plaintiff retains 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.

XX. RETENTION OF RECORDS

95. Until 10 years after EPA's Certification of Work Completion under Paragraph 4.7 (Certification of Work Completion) of the SOW, each SD shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that SDs who are potentially liable as owners or operators 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. Each Settling Work Party must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Work Party (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. Each Settling Work Party may preserve and retain such records generated during the performance of the Work in a single, combined repository with the Records of other Settling Work Parties provided that each Settling Work Party retains possession and control of all Records that it stores at the repository and each Settling Work Party ensures that its Records are marked, indexed and maintained at the repository in such a manner that any person can identify and collect those Records and data.

96. At the conclusion of this record retention period, SDs shall notify the United States at least 90 days prior to the destruction of any such Records, and, upon request by the United States, and except as provided in Paragraph 91 (Privileged and Protected Claims), Settling Work Parties shall deliver any such Records to EPA or the State with no further obligation for Records storage or retention.

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

XXI. NOTICES AND SUBMISSIONS

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

As to the United States:	EES Case Management Unit U.S. Department of Justice Environment and Natural Resources Division P.O. Box 7611 Washington, D.C. 20044-7611 eescdcopy.enrd@usdoj.gov Re: DJ # 90-11-3-10605
and:	Thomas Mariani Chief U.S. Department of Justice Environment and Natural Resources Division Environmental Enforcement Section Washington, D.C. 20044-7611 Re: DJ # 90-11-3-10605
As to EPA:	Douglas Ballotti Director, Superfund and Emergency Management Division U.S. Environmental Protection Agency Region 5 77 W. Jackson Blvd. Chicago, IL 60604-3590 ballotti.douglas@epa.gov

and:	Jenny Polster EPA Project Coordinator U.S. Environmental Protection Agency Region 5 77 W. Jackson Blvd. Chicago, IL 60604-3590 polster.jenny@epa.gov 312-886-0184
As to the Regional Comptroller Branch:	Justin Abrams, Accountant USEPA Region 5 MSD, CB/PAAS-MC-10J 77 West Jackson Blvd. Chicago, IL 60604
At to EPA Cincinnati Finance Center:	EPA Cincinnati Finance Center 26 W. Martin Luther King Drive Cincinnati, Ohio 45268 cinwd_acctsreceivable@epa.gov
As to State of Ohio EPA:	Chuck Mellon, Site Coordinator Ohio EPA DERR SWDO 401 East Fifth Street Dayton OH 45402 (937) 285-6056
As to Settling Work Parties:	Settling Work Parties' Project Coordinator de maximis, inc. 450 Montbrook Lane Knoxville, TN 37919 865-691-5052

XXII. RETENTION OF JURISDICTION

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

XXIII. APPENDICES

100. The following appendices are attached to and incorporated into this CD:

"Appendix A" is the Record of Decision issued on September 28, 2011.

"Appendix B" is the ESD.

"Appendix C" is the SOW.

"Appendix D" is the list of RESA II members also known as Settling Work Parties.

"Appendix E" is the list of parties eligible to join this Consent Decree as an Other Settling Party (as may be amended).

"Appendix F" is the description and/or map of the Site.

"Appendix G" is the Environmental Covenants.

"Appendix H" is the Declaration of Restrictive Covenant.

"Appendix I" is the Settling Work Parties' initial form of financial assurance.

XXIV. MODIFICATION

101. Except as provided in Paragraph 14 (Modification of SOW or Related Deliverables), material modifications to this CD, including the SOW, shall be in writing, signed by the United States and Settling Work Parties, and shall be effective upon approval by the Court. Except as provided in Paragraph 14, non-material modifications to this CD, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and Settling Work Parties. A modification to the SOW shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

102. Consent Decree modifications that do not affect the rights or obligations of an Other Settling Party may be executed without the signatures of the Other Settling Party or Parties.

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

XXV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

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

XXVI. SIGNATORIES/SERVICE

106. Each undersigned representative of a SD to this CD and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this CD and to execute and legally bind such Party to this document.

107. Each SD agrees not to oppose entry of this CD by this Court or to challenge any provision of this CD unless the United States has notified SDs in writing that it no longer supports entry of the CD.

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

XXVII. FINAL JUDGMENT

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

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

SO ORDERED THIS __ DAY OF _____, 2022.

_____
United States District Judge

Signature Page for CD regarding the Tremont City Barrel Fill Superfund Site

FOR THE UNITED STATES OF AMERICA:

May 16 2022
Dated

/s/ Todd Kim
Todd Kim
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Washington, D.C. 20530

/s/ Elizabeth L. Loeb
Lila C. Jones
Trial Attorney
Elizabeth L. Loeb
Senior Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Signature Page for CD regarding the Tremont City Barrel Fill Superfund Site

Digitally signed by DOUGLAS BALLOTTI
Date: 2022.05.13 10:07:54 -05'00'

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

SUSAN PROUT

Digitally signed by SUSAN PROUT
Date: 2022.05.13 10:33:26 -05'00'

Susan Prout
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Polster Jenny

Digitally signed by Polster Jenny
Date: 2022.05.13 13:11:14 -05'00'

Jenny Polster
Remedial Project Manager
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Signature Page for REMEDIAL DESIGN/REMEDIAL ACTION CONSENT DECREE regarding the Tremont City Barrel Fill Superfund Site.

CHEMICAL WASTE MANAGEMENT, INC.

By: _____

Chad M. Moose

[print name]

Its: Area Director - ELMG

Dated: April 29, 2022 _____, 2022

Signature Page for CD regarding the Tremont City Barrel Fill Superfund Site

FOR Franklin International, Inc
Name of Settling Defendant

May 2, 2022
Dated

Name (print): Forest Driggs
Title: SVP and CFO
Address: 2020 Bruck Street
Columbus, Ohio 43207

Signature Page for CONSENT DECREE regarding the Tremont City Barrel Fill Superfund Site.

INTERNATIONAL PAPER COMPANY

By: Brian E. Herm

Brian E. Herm
[print name]

Its: General Counsel, EHS & Intellectual Property

Dated: May 5, 2022

Signature Page for CONSENT DECREE regarding the Tremont City Barrel Fill Superfund Site.

PPG INDUSTRIES, INC.

By: _____

MARK A. CANCILLA
[print name]

Its: VICE PRESIDENT, EHS

Dated: MAY 11, 2022

Signature Page for CONSENT DECREE regarding the Tremont City Barrel Fill Superfund Site.

THE PROCTER & GAMBLE COMPANY

By: _____

Timothy A. Eckstein

[print name]

Its: Associate General Counsel

Dated: April 26, 2022

Signature Page for CONSENT DECREE regarding the Tremont City Barrel Fill Superfund Site.

STREBOR, INC.

By: _____

LORRAINE CANRO
[print name]

Its: _____

Dated: 3 May, 2022

Signature Page for CD regarding the Tremont City Barrel Fill Superfund Site

FOR Worthington Cylinder Corporation :
Name of Settling Defendant

April 29, 2022
Dated

Name (print): Patrick J. Kennedy
Title: Vice President - Secretary
Address: 200 Old Wilson Bridge Road
Columbus, OH 43085