

WILLIAMS MULLEN

Email Scanned
PM Copy

Ethan R. Ware, Esquire
Direct Dial: 803.567.4610
eware@williamsmullen.com

January 18, 2018

RECEIVED

JAN 22 2018

VIA U.S. Mail

Matthew Huyser
On-Scene Coordinator
United States Environmental Protection Agency
61 Forsyth Street
Atlanta, Georgia 30303

**SITE ASSESSMENT,
REMEDIATION &
REVITALIZATION**

Re: Notice of Administrative Settlement Agreement and Order on
Consent for Removal Action
Burlington Industries Cheraw Site,
CERCLA Docket No. 04-2017-3759 (October 23, 2017)

Dear Mr. Huyser:

Pursuant to Paragraph 49 of the above-referenced settlement, please find enclosed a certified copy of the Notice of Administrative Settlement Agreement and Order on Consent for Removal Action for the above referenced site, which was recorded at the Chesterfield County Register of Deeds on January 16, 2018. Please feel free to call if you have questions.

Sincerely,
Williams Mullen

Ethan R. Ware
Ethan R. Ware

cc (w/o enclosures): Greg Luetscher, Esq.

NOTICE OF ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

NOTICE IS HEREBY GIVEN by Highland Industries, Inc. that potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent for Removal Action with the United States Environmental Protection Agency, effective October 23, 2017, as provided by Sections 104, 106(a), 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606(a), 9607, 9022 as amended and relating to the environmental conditions at the Burlington Industries Cheraw Site ("Site"), Cheraw, Chesterfield County, South Carolina, CERCLA Docket No. 04-2017-3759. The Affected Property herein described is part of, or related, to the Site. EPA selected a removal action for the Site and the Administrative Settlement Agreement and Order on Consent for Removal Action requires implementation of that removal action. The Administrative Settlement Agreement and Order on Consent for Removal Action requires property owners of Affected Properties record this Notice on the property record.

A True Copy Attest

DESCRIPTION OF AFFECTED PROPERTY

Faye H. Williams
REGISTER OF DEEDS
CHESTERFIELD COUNTY, SC

(1) For reference see TMS No: 258-014-004-001:

ALL that certain piece, parcel or tract of land lying and being situate on S.C. Highway #9 in the Town of Cheraw, County of Chesterfield, State of South Carolina, measuring and containing 51.75 acres, shown and delineated on a map of property of Burlington Industries, Inc. made February 2, 1988 by J.H. Whitley, P.E. & L.S., and recorded in the Office of the Clerk of Court for Chesterfield County in Plat Book 36 at page 160, and being more particularly described as follows: Beginning at an iron located 485 feet from West Greene Street at the northern edge of the right-of-way of S.C. Highway #9, the Southeastern corner of the property being described, and running thence North 69°44' West a distance of 1799.1 feet to an iron; thence North 41°24' East a distance of 747.0 feet to a concrete marker; thence North 31°15' East a distance of 175.6 feet to an iron; thence North 42°30' East a distance of 168.2 feet to an iron; thence North 73°05' East a distance of 300.0 feet to an iron; thence North 49°14' East a distance of 336.0 feet to an iron; thence South 69°44' East a distance of 1031.0 feet to an iron; thence South 20°16' West a distance of 1500.0 feet to an iron, the point of beginning, all of which will more fully appear by reference to the above-mentioned plat which is incorporated herein and made a part and parcel hereof by reference.

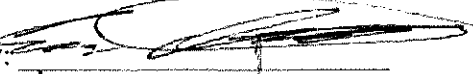
SAVING, EXCEPTING AND RESERVING from the within described property the following:

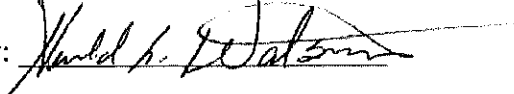
(a) ALL that certain piece, parcel or tract of land lying and being in the Town of Cheraw, Chesterfield County, State of South Carolina, not designated as the northwest portion of the Highland Plant in the definition of "Site" in Paragraph 8 of the Administrative Settlement Agreement and Order on Consent for Removal Action, a portion of that parcel designated as BIC Highland Plant on those certain Appendices A and B to the Administrative Settlement Agreement and Order on Consent for Removal Action, attached hereto and incorporated herein;

This being a portion of the property conveyed to Highland Industries, Inc. by Burlington Industries, Inc. by Deed dated March 16, 1988 and recorded March 21, 1988 in Deed Book 306, pages 117-120, in the Office of the Clerk of Court of Chesterfield County, South Carolina.

In witness whereof,

HIGHLAND INDUSTRIES, INC.

By: 

By: 

The foregoing instrument was acknowledged before me by its Maker.

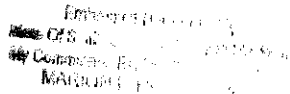
SWORN and subscribed to before me

This 2nd day of January, 2018.



Notary Public for 50474 Carolina

My Commission Expires: 08/01/2020



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IV

IN THE MATTER OF:)

The Burlington Industries Cheraw Site,)
Cheraw, Chesterfield County,)
South Carolina)

Highland Industries, Inc.,)

Respondent)

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

CERCLA Docket No. 04-2017-3759

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

TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS.....	3
II.	PARTIES BOUND	3
III.	DEFINITIONS.....	4
IV.	EPA'S FINDINGS OF FACT.....	7
V.	EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS.....	10
VI.	SETTLEMENT AGREEMENT AND ORDER.....	10
VII.	DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR	11
VIII.	WORK TO BE PERFORMED	12
IX.	PROPERTY REQUIREMENTS	19
X.	ACCESS TO INFORMATION.....	21
XI.	RECORD RETENTION.....	23
XII.	COMPLIANCE WITH OTHER LAWS.....	23
XIII.	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES	24
XIV.	PAYMENT OF RESPONSE COSTS.....	24
XV.	DISPUTE RESOLUTION	26
XVI.	FORCE MAJEURE	27
XVII.	STIPULATED PENALTIES	28
XVIII.	COVENANTS BY EPA	31
XIX.	RESERVATIONS OF RIGHTS BY EPA	31
XX.	COVENANTS BY RESPONDENT.....	32
XXI.	OTHER CLAIMS	34
XXII.	EFFECT OF SETTLEMENT/CONTRIBUTION	35
XXIII.	INDEMNIFICATION	36
XXIV.	INSURANCE	36
XXV.	FINANCIAL ASSURANCE	37
XXVI.	MODIFICATION	41
XXVII.	NOTICE OF COMPLETION OF WORK.....	41
XXVIII.	INTEGRATION/APPENDICES	42
XXIX.	EFFECTIVE DATE.....	42

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Highland Industries, Inc. ("Respondent"). This Settlement provides for the performance of a removal action by Respondent and the payment of certain response costs incurred by the United States at or in connection with the "Burlington Industries Cheraw Site" (the "Site") generally located at 650 Chesterfield Highway, of Cheraw, Chesterfield County, South Carolina.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). This authority was further redelegated by the Regional Administrator of EPA Region 4 to the Chief of the Emergency Response, Removal, and Prevention Branch by Regional Delegation 14-14-A (Determinations of Imminent and Substantial Endangerment), to the Chiefs of the Emergency Response, Removal, and Prevention Branch and the Superfund Enforcement and Community Engagement Branch by Regional Delegation 14-14-C (Administrative Actions through Consent Orders), and to the Chief of the Superfund Enforcement and Community Engagement Branch by Regional Delegation 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders).

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

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

II. PARTIES BOUND

5. This Settlement is binding upon EPA and upon Respondent and its successors, and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement.

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

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

III. DEFINITIONS

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

"Action Memorandum-Enforcement" shall mean the EPA Enforcement Action Memorandum relating to the Site dated September 20, 2017, by the Regional Administrator, EPA Region 4, or his/her delegate, and all attachments thereto.

"Affected Property" shall mean all real property at the Site.

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

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

"Effective Date" shall mean the effective date of this Settlement as provided in Section XXX (*Effective Date*).

"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 Response Costs" shall mean all costs not inconsistent with the National Contingency Plan, including, but not limited to, direct and indirect costs that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (*Property Requirements*) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, or land, water, or other resource use restrictions, including, but not limited to, the amount of just compensation), Section XIII (*Emergency Response and Notification of Releases*),

Paragraph 90 (*Work Takeover*), Paragraph 114 (*Access to Financial Assurance*), community involvement (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XV (*Dispute Resolution*), and all litigation costs.

"*Huckleberry Park*" shall mean the public park located on Huckleberry Drive, owned by the Town of Cheraw, South Carolina, Parcel ID Number 258 008 005 002, as depicted in the map attached herewith as Appendix B.

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

"*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*" for purposes of Section IX (Property Requirements) shall mean any person, other than Respondent, that owns or controls any Affected Property. The clause "*Non-Settling Owner's Affected Property*" means Affected Property owned or controlled by a Non-Settling Owner.

"*Owner Respondent*" shall mean Respondent Highland Industries, Inc. The clause "*Owner Respondent's Affected Property*" means Affected Property owned or controlled by Owner Respondent.

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

"*Parties*" shall mean EPA and Respondent.

"*Post-Removal Site Control*" shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed by Respondent pursuant to this Settlement consistent with Sections 300.415(l) and 300.5 of the NCP and "Policy on Management of Post-Removal Site Control" (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

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

"*Residential Properties*" shall mean those properties fronting Pecan Drive with the following Parcel ID Numbers: 258 014 003 008, 258 014 003 009, 258 014 003 010, 258 014 003 011, 258 014 003 012, 258 014 003 013, 258 014 003 022, 258 014 003 015, 258 014 003 016, 258 014 003 017, 258 014 003 018, 258 014 003 019, 258 014 003 020, and 258 014 003 021, and shall mean those properties fronting Robin Hood Drive with the following Parcel ID Numbers: 258 014 004 022, 258 014 0440 012, 258 014 0440 011, 258 014 0440 010, 258 014

0440 009, and 258 014 044 019 as depicted on a map attached herewith as Appendix A.

"Respondent" shall mean Highland Industries, Inc.

"SCDHEC" shall mean the South Carolina Department of Health and Environmental Control and any successor departments or agencies of the State.

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

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

"Site" shall mean the Burlington Industries Cheraw Superfund Site, located in Cheraw, Chesterfield County, South Carolina that includes the northwest portion of Highland Plant, located at 650 Chesterfield Highway, the Residential Properties, Huckleberry Park, the Town Lot, and the Western Ditch, which flows into an unnamed intermittent creek, and the various other properties situated along and including the roughly three and two tenths (3.2) mile-long drainage corridor beginning at the unnamed intermittent creek, which flows into wetlands and flows in an easterly direction to Wilson Branch, which flows in a northeasterly direction for about one half (0.5) mile to Huckleberry Branch, which then flows east/southeast for about one and one half (1.5) miles, and flows into the Great Pee Dee River, and the areal extent of contamination. The Site is depicted generally on the map attached herewith as Appendix B.

"State" shall mean the State of South Carolina.

"Town Lot" shall mean property located on Jersey Street, Cheraw, South Carolina, north of Long Middle School that is owned by the Town of Cheraw, South Carolina, Parcel ID Number 258 015 003 003, depicted on the map attached herewith as Appendix B.

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

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

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA 42 U.S.C. § 6903(27); and (d) any "hazardous material" under Section 44-56-310(B) of the South Carolina Hazardous Waste Management Act.

"Western Ditch" shall mean a drainage ditch that originates at 34.69700610 degrees' north latitude and 79.91551837 degrees' west longitude and flows downgradient in a northerly direction for about one thousand nine hundred (1,900) feet where it approaches the northeastern corner of Parcel ID Number 258 014 003 021 and meets an easterly-flowing unnamed intermittent creek at approximately 34.70098479 degrees' north latitude and 79.91238320 degrees' west longitude. The Western Ditch is located partially on and partially adjacent to the

western boundary of the Highland Plant, located at 650 Chesterfield Road, Cheraw, South Carolina, and is also located partially on and adjacent to seventeen (17) residential properties fronting Pecan Drive, in Cheraw, South Carolina with Parcel ID Numbers 258 014 003 006, 258 014 003 014, 258 014 003 007, 258 014 003 008, 258 014 003 009, 258 014 003 010, 258 014 003 011, 258 014 003 012, 258 014 003 013, 258 014 003 022, 258 014 003 015, 258 014 003 016, 258 014 003 017, 258 014 003 018, 258 014 003 019, 258 014 003 020, and 258 014 003 021, and is also located partially on and adjacent to six (6) properties fronting Robin Hood Drive, Cheraw, South Carolina, with Parcel ID Numbers 258 014 004 019, 258 014 004 009, 258 014 004 010, 258 014 004 011, 258 014 004 012, and 258 014 004 022, and includes mounds of dirt that are situated on and/or adjacent to the Western Ditch. The Western Ditch is depicted on a map included in Appendices A and B and further described in Appendix C, attached herewith.

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

IV. EPA'S FINDINGS OF FACT

9. Respondent Highland Industries, Inc. is a Delaware corporation doing business at 650 Chesterfield Highway, Cheraw, South Carolina.

10. The Site, which lies within a sub-basin of the Great Pee Dee River in Cheraw, Chesterfield, County, South Carolina, includes the north west portion of the Highland Plant, located at 650 Chesterfield Road in Cheraw, South Carolina, the Residential Properties, Huckleberry Park, the Town Lot, and the Western Ditch, which flows into an unnamed intermittent creek, and the various other properties situated along and including the roughly three and two tenths (3.2) mile-long drainage corridor beginning at the unnamed intermittent creek, which flows into wetlands and flows in an easterly direction to Wilson Branch, which flows in a northeasterly direction for about one half (0.5) mile to Huckleberry Branch, which then flows east/southeast for about one and one half (1.5) miles, and flows into the Great Pee Dee River and the areal extent of contamination.

11. Several ponds are located along the surface water pathway near the intersection of the unnamed intermittent creek and Wilson Branch. The extent to which Wilson Branch may interact with these ponds has not yet been fully documented. Nevertheless, a tributary of Wilson Branch is known to flow directly through at least one of the ponds and portions of the surface water pathway from Wilson Branch are interspersed with wetlands. Further downstream beyond the ponds is Huckleberry Park, which is situated adjacent to Wilson Branch. Records indicate that the entire drainage corridor from the Western Ditch may have historically experienced flooding, particularly in the Huckleberry Park area along Wilson Branch and at many of the estimated 344 residences located within one hundred (100) yards of the corridor.

12. Beginning in the 1960s, Burlington Industries, Inc. (Burlington) operated a plant known as the James Fabrics Plant #0154 (James Fabrics Plant), located at 650 Chesterfield Road, Cheraw, South Carolina, that was part of its Industrial Fabrics Division. The James Fabrics Plant manufactured woven commercial fiberglass and industrial fabrics. In March 1970, the Chesterfield County Health Department received complaints concerning the discharge of wastes from the James Fabric Plant into an open ditch. An inspection by the State Board of

Health on March 10, 1970, confirmed that Burlington was discharging "a green fluid from the James Fabrics plant" into an open ditch, which is presumed to be the Western Ditch.

13. By March 1970, records indicate that Burlington's James Fabrics Plant had established a system whereby liquid wastes from its dyeing operation were piped to a clarifier behind the main building. From there, lighter liquids were pumped into the town's sewer system and the remainder of the waste then pumped to a series of six (6) nearby settling ponds (a/k/a "drying beds") located on a parcel of land owned by Burlington that was close to the James Fabrics Plant. The solid dye wastes which remained suspended in the liquids were expected to settle-out in these ponds; at the time, it was presumed that the liquid wastes would then either be absorbed into the soil or simply evaporate. Ultimately, Burlington excavated the residues of the solidified dye waste from the drying beds and transported it to the local county landfill.

14. In March 1988, Respondent purchased 51.7 acres of the property located at 650 Chesterfield Road, Cheraw, South Carolina from Burlington that included what was then the James Fabrics Plant (the "Highland Plant") and began operating a textile manufacturing plant. Respondent did not acquire the portion of the property Burlington used for the drying beds. Instead, Burlington retained ownership of the property on which the drying beds were located.

15. In 1989, Burlington excavated the remainder of the solidified sludge from the drying beds and sent the waste to a local landfill. The excavated material was sampled and shown to have not been a characteristic hazardous waste based on toxicity, but no samples were analyzed for PCBs.

16. In 1990, Burlington sold the property on which the drying-beds were located and several other nearby parcels of land to a developer who subsequently subdivided the property into twenty (20) large lots; to date, eleven (11) residences have been constructed on these parcels. Some of these parcels are included among the Residential Properties that are within the Site.

17. In October 2015, a resident contacted SCDHEC to inquire about what the resident described as "an unidentified wastewater unit." The resident's inquiry led to an investigation which revealed that the area in question was the parcel of land upon which the six (6) aforementioned former drying beds had been located.

18. An expanded investigation by SCDHEC found several pieces of a "dark green or dark-gray rubbery material" of various sizes in or near the area of the former drying beds. An analysis of the soil and sediment samples SCDHEC collected revealed that these media contained polychlorinated biphenyls (PCB) Aroclor 1248 in concentrations ranging from 300 µg/kg (i.e., parts per billion, or "ppb") up to about 14,000 ppb, which is equivalent to 14.0 parts per million (ppm). The EPA Region 4 Regional Screening level ("RSL") for PCB Aroclor 1248 is 230 ppb, which is equivalent to 0.23 ppm.

19. In August 2016, SCDHEC initiated a Site Inspection designed to more fully characterize the scope and extent of the PCB contamination. Additional samples of surface and subsurface soil were collected from around the former drying beds, in the yards of residences fronting Pecan Drive and Robin Hood Drive, and at the Highland Plant; sediment samples were

also collected from the Western Ditch and the associated system of downstream creeks.

20. The EPA Region 4 Regional Screening Level ("RSL") for PCB Aroclor 1254 is 240 ppb, which is equivalent to 0.24 ppm, while the RSL for PCB Aroclor 1248 is 230 ppb,

which is the equivalent to 0.23 ppm. For total PCBs, the preliminary "cleanup criteria concentration" is 1 mg/kg (i.e., 1 ppm).

21. Analysis of soil samples collected from the northwestern corner of the Highland Plant revealed PCB Aroclor 1248 at concentrations as high as 1,500 ppm and PCB Aroclor 1254 at concentrations as high as 1,300 ppm.

22. Analysis of samples of sediments collected from the Western Ditch, located on or adjacent to the Highland Plant, revealed concentrations of PCB Aroclor 1248 at 1,900 ppm and PCB Aroclor 1254 at 880 ppm. For all the soil samples collected from the Highland Plant, concentrations of both PCB Aroclors were found to be highest at the western property boundary near the Western Ditch and generally within about one hundred fifty (150) feet of the ditch. Contamination in the sediment samples taken from the Western Ditch in that area were relatively uniform, with concentrations of both PCB Aroclors tending to be in excess of 10 ppm.

23. At Huckleberry Park, analysis of soil samples taken from a generally grassy area revealed PCB Aroclor 1248 at a concentration of 1.4 ppm; analysis of soil samples taken from under swing sets at the park revealed concentrations of PCB Aroclor 1248 ranging from 5.2 ppm to 16 ppm and PCB Aroclor 1254 ranging from 4.7 ppm to 13 ppm. In light of these data, the Town of Cheraw removed the swings and officially closed Huckleberry Park to the public.

24. An analysis of soil excavated as part of a town storm water project located on the Town Lot revealed concentrations of PCB Aroclor 1248 and Aroclor 1254 in excess of 10 ppm.

25. The analysis of soil samples collected from the yards of residences located on parcels in the Pecan Drive community bordering the Western Ditch, including the Residential Properties fronting Pecan Drive, revealed elevated concentrations of PCBs. Soil samples from at least six (6) of these residential parcels were found to contain concentrations of PCB Aroclor 1248 or PCB Aroclor 1254 in excess of 100 ppm; an additional three (3) parcels contained concentrations exceeding 10 ppm. The analysis of one (1) soil sample taken from a residential yard fronting Pecan Drive revealed concentrations of PCB Aroclor 1248 at 2,100 ppm and PCB Aroclor 1254 at 1,600 ppm.

26. The analysis of soil samples taken from the yards of two (2) residences fronting Robin Hood Drive and bordering the eastern boundary of the Western Ditch in the Sherwood Forest community revealed PCB concentrations above 1 ppm. In addition, small portions of a "dark gray rubbery material" closely resembling the material that had been observed at or near the six (6) drying beds were found on parcels of undeveloped residential property fronting Robin Hood Drive in the Sherwood Forest community. Analysis of these "dark gray rubbery materials" revealed the presence of PCB Aroclor 1248 at concentrations approaching 750 ppm. The parcels along the Western Ditch fronting Robin Hood drive where elevated concentrations of PCBs were found are included among the "Residential Properties."

V. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

d. Respondent Highland Industries, Inc. is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and is an "owner" and/or "operator" of a portion of the facility as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

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

f. EPA determined in the Action Memorandum-Enforcement dated September 20, 2017, that the conditions at the Site described in paragraphs 18-26 of the EPA's Finding of Facts" above, may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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

VI. SETTLEMENT AGREEMENT AND ORDER

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

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

29. Respondents shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within twenty (20) days after the Effective Date. Respondents shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least twenty (20) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent and will notify and provide Respondent with the reason for such disapproval in writing. If EPA disapproves of a selected contractor or of a subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name and qualifications within ten (10) days after EPA's disapproval. With respect to any contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "*Quality management systems for environmental information and technology programs – Requirements with guidance for use*" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "*EPA Requirements for Quality Management Plans (QA/R-2)*" (EPA/240/B-01/002, reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

30. Within ten (10) days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 29 and will notify and provide Respondent with the reason for such disapproval in writing. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, email address, and qualifications within seven (7) days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent.

31. EPA has designated Matthew Huyser of the Emergency Response, Removal, and Prevention Branch, Region 4, as its On-Scene Coordinator (OSC). EPA and Respondent shall have the right, subject to Paragraph 30, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA fifteen (15) days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

32. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement. The OSC shall have the authority vested in an OSC by the NCP, including the

authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other removal action undertaken at the Site, but cannot require Respondent to perform any removal action not part of the Work set forth in this AOC. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

VIII. WORK TO BE PERFORMED

33. Respondent shall perform, at a minimum, all actions necessary to implement the Work set forth below. The actions to be implemented generally include but are not limited to the following:

a. Perform a complete assessment and delineation of surface and subsurface soils and sediments to determine the presence of total PCBs above a preliminary "cleanup criteria concentration" of 1 ppm at the following locations:

- i. The northwest portion of the Highland Plant;
- ii. Huckleberry Park;
- iii. The Western Ditch and the property located between the cut bank of the Western Ditch and the boundary marker described for each parcel of property in Appendix C.

b. For the locations described in Paragraph 33(a)(i)-(iii), all soils/sediments exceeding the preliminary "cleanup criteria concentration" shall be subject to excavation and/or dredging to a depth of up-to 24 inches (i.e., two feet) including all vegetation (e.g., bushes, shrubs and trees) provided, however, that dismantling of permanent structures will not also be required, in accordance with the following:

- i. Soils/sediments that exceed a preliminary "cleanup criteria concentration" of 25 ppm for total PCBs shall be removed.
- ii. Soils/sediments with a concentration of total PCBs greater than the preliminary "cleanup criteria concentration" for total PCBs of 1 ppm but less than 25 ppm may be left in place *provided* that EPA determines that such location satisfies the definition of "Low Occupancy Area" set forth at 40 CFR § 761.3.
- iii. Soils/sediments that exceed a preliminary "cleanup criteria concentration" of 1 ppm for total PCBs but do not satisfy the definition of "Low Occupancy Area" set forth at 40 CFR § 761.3 shall be removed.

c. Engineered controls will be designed and installed to prevent the transport of any PCBs from the excavated and/or dredged areas via surface runoff, infiltration, wind, direct contact, or otherwise, and subject to a demonstration of effectiveness deemed suitable and appropriate by EPA.

d. All waste materials removed by Respondent from the Site will undergo proper treatment, recycling, and/or disposal.

e. Areas impacted by the removal action will be restored to necessary and appropriate pre-removal conditions or, if determined by EPA to be acceptable, to reasonable and suitable conditions consistent with existing use of the Site.

f. If PCBs at concentrations between 1 ppm and 25 ppm remain in any areas designated as a "Low Occupancy Area" after Respondent conducts the Work, Respondent shall design and implement Post-Removal Site Controls to prevent exposure and migration of the contaminant.

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

35. Work Plan and Implementation.

a. Within forty-five (45) days after the Effective Date, in accordance with Paragraph 36 (*Submission of Deliverables*), Respondent shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan") generally set forth in Paragraph 33, above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

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

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

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

36. Submission of Deliverables.

a. General Requirements for Deliverables.

- i. Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the OSC at:

Matthew Huyser
U.S. EPA
61 Forsyth Street
Atlanta, GA, 30303
(404) 562-8934
Huyser.Matthew@epa.gov

Respondent shall submit all deliverables required by this Settlement or any approved work plan to EPA in accordance with the schedule set forth in such plan.

- ii. Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 36.b. All other deliverables shall be submitted to EPA in the form specified by the OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondent shall also provide EPA with paper copies of such exhibits, unless otherwise directed by the OSC.

b. Technical Specifications for Deliverables.

- i. Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. EPA Region 4 ERRPB utilizes EPA Environmental Response Team (ERT) Scribe Software; EDD templates for Scribe Software are publicly available at <https://response.epa.gov/Scribe>. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

- ii. Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as un-projected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.

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

37. Health and Safety Plan. Within thirty (30) days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <http://www.epa.gov/nscep/index.html>, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at <http://www.epaosc.org/HealthSafetyManual/manual-index.htm>. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

38. Quality Assurance, Sampling, and Data Analysis.

a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. Sampling and Analysis Plan. Within thirty (30) days after the Effective Date, Respondent shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the Removal Work Plan, the NCP and applicable guidance documents, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" EPA 240/B-01/003 (March 2001, reissued May 2006), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Respondent shall ensure that EPA and SCDHEC personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance

criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with EPA's "Operating Procedure for Field Sampling Quality Control" (SESDPROC-011-R4) (<https://www.epa.gov/sites/production/files/2015-06/documents/field-sampling-quality-control.pdf>) and "Operating Procedure for Field Sampling and Measurement Procedures and Procedure Validation" (SESDPROC-012-R4) (<https://www.epa.gov/sites/production/files/2016-07/documents/field-samp-meas-proc-proc-val012-af.r4.pdf>). Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" (Agency Policy Directive Number FEM-2011-01) (https://www.epa.gov/sites/production/files/2016-11/documents/fem-lab-competency-policy_policy_updated_nov2016.pdf) and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (<http://www.epa.gov/superfund/programs/clp/>), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (<https://www.epa.gov/hw-sw846/sw-846-compendium>), "Standard Methods for the Examination of Water and Wastewater" (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (<http://www.epa.gov/ttnamti1/airtox.html>).

d. However, upon approval by EPA, Respondent may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERL/N) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e. Upon three (3) day advance request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent shall notify EPA not less than three (3) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon three (3) day request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA's oversight of Respondent's implementation of the Work.

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

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

use of the data. The report must be submitted to EPA within fifteen (15) days after the monthly progress report containing the data.

39. Community Involvement Plan. EPA has prepared a community involvement plan, in accordance with EPA guidance and the NCP. If requested by EPA, Respondent shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondent's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any community advisory groups, (2) any technical assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondent at EPA's request are subject to EPA's oversight. Upon EPA's request, Respondent shall establish a community information repository at or near the Site to house one copy of the administrative record.

40. Post-Removal Site Control. If the Work performed by Respondent results in PCBs above 1 ppm remaining on property deemed to be a "Low Occupancy Area" by the EPA, Respondent shall submit a proposal for Post- Removal Site Controls in accordance with the Removal Work Plan schedule, which shall include, but not be limited to: 1) amending the Removal Work Plan to describe the design of the Post-Removal Site Control program and include institutional, engineering, and administrative controls with timeframes for each; 2) formal notification to SCHDEC of the Post-Removal Site Controls that will be implemented; and, 3) filing of deed restriction with Chesterfield County providing details of impacted area. Upon EPA approval, Respondent shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondent shall provide EPA with documentation of all Post-Removal Site Control commitments.

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

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

42. Final Report. Within thirty (30) days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 120 (*Notice of Completion*), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Respondent or Respondent's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

43. Off-Site Shipments.

a. Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

c. Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Action Memorandum-Enforcement. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

IX. PROPERTY REQUIREMENTS

44. Agreements Regarding Access and Non-Interference. Respondent shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondent and the EPA, providing that such Non-Settling Owner, and Owner Respondent shall, with respect to its Affected Property: (i) provide the EPA, Respondent, and its representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 44.a (*Access Requirements*); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action including the restrictions listed in Paragraph 44.b (*Land, Water, or Other Resource Use Restrictions*).

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

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to the United States;
- iii. Conducting investigations regarding contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, implementing, or monitoring response actions;
- vi. Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as defined in the approved QAPP;
- vii. Implementing the Work pursuant to the conditions set forth in Paragraph 90 (*Work Takeover*);
- viii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section X (*Access to Information*);

- ix. Assessing Respondent's compliance with the Settlement;
- x. Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and
- xi. Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Work related to the Affected Property.

b. Land, Water, or Other Resource Use Restrictions. The following is a list of land, water, or other resource use restrictions applicable to the Affected Property. The following activities which could interfere with the removal action shall be prohibited:

- i. Accessing or allowing access to areas where soil excavation work has been initiated but not completed by any persons other than EPA, the Respondent, its representatives, contractors, and subcontractors.
- ii. Accessing or allowing access to areas where soil excavation work has been initiated but not completed by any persons other than EPA, the Respondent, its representatives, contractors, and subcontractors.
- iii. Installation or construction on any new structures on the Affected Property until a *Notice of Completion of Work* has been issued to the Respondent.

45. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access 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 fair-market value monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIV (*Payment of Response Costs*).

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

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

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

49. Notice to Successors-in-Title.

a. Owner Respondent shall, within sixty (60) days after the Effective Date, submit for EPA approval a notice to be filed regarding Owner Respondent's Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title that: (i) such Affected Property is part of, or related to, the Site; (ii) EPA has selected a removal action for the Site; and (iii) potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of that removal action; and (3) identify the name, docket number, and effective date of this Settlement. Owner Respondent shall record the notice within thirty (30) days after EPA's approval of the notice and submit to EPA, within thirty (30) days thereafter, a certified copy of the recorded notice.

b. Owner Respondent shall, prior to entering into a contract to Transfer its Affected Property, or thirty (30) days prior to Transferring its Affected Property, whichever is earlier:

- i. Notify the proposed transferee that EPA has selected a removal action regarding the Site, that potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of such removal action, (identifying the name, docket number, and the effective date of this Settlement); and
- ii. Notify EPA and SCDHEC of the name and address of the proposed transferee and provide EPA and the State with a copy of the above notice that it provided to the proposed transferee.

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

X. ACCESS TO INFORMATION

51. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondent's possession or

control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work. Assertions that any such documents are privileged or protected are addressed in Paragraphs 52 or 53.

52. Privileged and Protected Claims.

a. Respondent may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 52.b and except as provided in Paragraph 52.c.

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

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

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

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

XI. RECORD RETENTION

55. Until ten (10) years after EPA provides Respondent with notice, pursuant to Section XXVII (*Notice of Completion of Work*), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with regard to the Site, provided, however, Respondent must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to

be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

56. At the conclusion of the document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 52 (*Privileged and Protected Claims*), Respondent shall deliver any such Records to EPA.

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

XII. COMPLIANCE WITH OTHER LAWS

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

59. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state

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

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

60. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at 404-562-8700 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (*Payment of Response Costs*).

61. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at 404-562-8700, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Sections 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

62. For any event covered under this Section, Respondent shall submit a written report to EPA within seven (7) days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release referenced in Paragraph 60 and to prevent the reoccurrence of such a release or threat of release.

XIV. PAYMENT OF RESPONSE COSTS

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

a. Periodic Bills. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a Superfund Cost Recovery Package Imaging and On-line System (SCORPIOS) Report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within thirty (30) days after Respondent's receipt of each bill requiring payment,

except as otherwise provided in Paragraph 66 (*Contesting Future Response Costs*).

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

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

and shall reference Site/Spill ID Number B49F and the EPA docket number for this action.
Respondent may make payment to EPA by Automated Clearinghouse (ACH) to:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number B49F and the EPA docket number for this action.

c. At the time of payment, Respondent shall send notice that payment has been made to:

Paula V. Painter
U.S. EPA Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303
Painter.paula@epa.gov

and to the EPA Cincinnati Finance Office by email at cuwd_accsreceivable@epa.gov, or by mail to:

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

Such notice shall reference Site/Spill ID Number B49F and the EPA docket number for this action.

64. Deposit of Future Response Costs Payments. The total amount to be paid by Respondent pursuant to Paragraph 63.a (*Periodic Bills*) shall be deposited by EPA in the EPA Hazardous Substance Superfund.

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

66. Contesting Future Response Costs. Respondent may initiate the procedures of Section XV (*Dispute Resolution*) regarding payment of any Future Response Costs billed under Paragraph 63 (*Payments of Future Response Costs*) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondent shall submit a Notice of Dispute in writing to the OSC within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 63 (*Payment of Future Response Costs*) 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. Respondent shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within five (5) days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 63 (*Payments of Future Response Costs*). If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 63 (*Payments of Future Response Costs*). Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (*Dispute Resolution*) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

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

68. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within days after such action. EPA and Respondent shall have thirty (30) days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

69. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within twenty (20) days thereafter, submit a statement of position. Thereafter, an EPA management official at the Branch Chief level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

70. Except as provided in Paragraph 66 (*Contesting Future Response Costs*) or as agreed by EPA, the invocation of formal Dispute Resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Except as provided in Paragraph 80, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (*Stipulated Penalties*).

XVI. FORCE MAJEURE

71. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work, or increased cost of performance or a failure to attain performance standards set forth in the Action Memorandum-Enforcement.

72. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA's designated representatives are unavailable, the Director

of the Waste Management Division, EPA Region 4, within ten (10) days of when Respondent first knew that the event might cause a delay. Within seven (7) days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 71 and whether Respondent has exercised its best efforts under Paragraph 71, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

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

74. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (*Dispute Resolution*), it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 71 and 72. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

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

XVII. STIPULATED PENALTIES

76. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 77.a. and 78 for failure to comply with the obligations specified in Paragraphs 77.b.

and 78 unless excused under Section XVI (*Force Majeure*). "Comply," as used in the previous sentence includes compliance by Respondent with all applicable requirements of this Settlement within the deadlines established under this Settlement.

77. Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverable, and Other Milestones

a The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 77.b.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	5 th through 14 th day
\$750	15 th through 30 th day
\$15,000.00	31 st day and beyond

b Obligations

- i. Timely submission of the Work Plan contemplated under Section VIII (*Work to be Performed*).
- ii. Timely submission of the Health and Safety Plan in Paragraph 37
- iii. Payment of any amount due under Section XIV (*Payment of Response Costs*)
- iv. Timely performance of tasks constituting an element of the Work contemplated under the EPA-approved Work Plan.
- v. Establishment and maintenance of financial assurance in accordance with Section XXV (*Financial Assurance*).
- vi. Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph (*Contesting Future Response Costs*).

78. Stipulated Penalty Amounts - Deliverables. The following stipulated penalties shall accrue per violation per day for each failure to timely submit a deliverable contemplated under the terms of this Settlement:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250.000	5 th through 14 th day
\$500.00	15 th through 30 th day
\$1,000	31 st day and beyond

79. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 90 (*Work Takeover*), Respondent shall be liable for a stipulated penalty in the amount of Five Hundred Thousand dollars (\$500,000). Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 90 (*Work Takeover*) and 114 (*Access to Financial Assurance*).

80. All penalties shall begin to accrue upon the fifth (5th) day after complete performance is due or upon the fifth (5th) day after a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within fifteen (15) days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 35 (*Work Plan and Implementation*), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Branch Chief level or higher, under Paragraph 69 (*Formal Dispute Resolution*), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

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

82. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XV (*Dispute Resolution*) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 63 (*Payments of Future Response Costs*).

83. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 63 (*Payments of Future Response Costs*) until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 81 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

85. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(f) of

CERCLA, 42 U.S.C. §§ 9606(b) and 9622(f), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(f) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 90 (*Work Takeover*).

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

XVIII. COVENANTS BY EPA

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

XIX. RESERVATIONS OF RIGHTS BY EPA

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

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

- a. liability for failure by Respondent to meet a requirement of this settlement;
- b. liability for costs not included within the definition of Future Response Costs
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the Work;
- f. liability for damages for injury to, destruction of, or loss of natural resources,

and for the costs of any natural resource damage assessments;

g liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

90. Work Takeover.

a In the event EPA determines that Respondent: (1) has 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 Respondent. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of three (3) days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b If, after expiration of the three (3) day notice period specified in Paragraph 90.a, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("*Work Takeover*"). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 90.b. Funding of Work Takeover costs is addressed under Paragraph 114 (*Access to Financial Assurance*).

c Respondent may invoke the procedures set forth in Paragraph 69 (*Formal Dispute Resolution*) to dispute EPA's implementation of a Work Takeover under Paragraph 90.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 90.b until the earlier of (1) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 69 (*Formal Dispute Resolution*).

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

XX. COVENANTS BY RESPONDENT

91. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, and this Settlement, including, but not limited to:

a any direct or indirect claim for reimbursement from the EPA Hazardous

Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

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

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

92. Except as provided in Paragraph 96 (*Waiver of Claims by Respondent*), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (*Reservations of Rights by EPA*) other than in Paragraph 89.a (*liability for failure to meet a requirement of the Settlement*), 89.d (*criminal liability*), or 89.e (*violations of federal/state law during or after implementation of the Work*), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

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

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

96. Waiver of Claims by Respondent.

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

i. De Minimis Waiver. For all matters relating to the Site against

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

b. Exceptions to Waivers.

- i. The waiver under this Paragraph 96 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against such Respondent.
- ii. The waiver under Paragraph 96.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(c) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

XXI. OTHER CLAIMS

97. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

98. Except as expressly provided in Paragraphs 96 (*Waiver of Claims by Respondent*) and Section XVIII (*Covenants by EPA*), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, for any liability such person may have under CERCLA, other

statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

100. Except as provided in Paragraphs 96 (*Waiver of Claims by Respondent*), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (*Covenants by Respondent*), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

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

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

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

104. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however,

that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVIII (*Covenants by EPA*).

XXIII. INDEMNIFICATION

105. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent's behalf or under its control, in carrying out activities pursuant to this Settlement. Further, Respondent agrees to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

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

XXIV. INSURANCE

108. No later than thirty (30) days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVII (*Notice of Completion of Work*), 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 EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates

and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the Burlington Industries Cheraw Superfund Site, Cheraw, South Carolina and the EPA docket number for this action.

XXV. FINANCIAL ASSURANCE

109. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of \$5,600,000 ("*Estimated Cost of the Work*"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the EPA or under the "Financial Assurance- Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <http://efpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondent may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

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

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

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

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

e. A demonstration by Respondent that it meets the financial test criteria of Paragraph 111; 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 Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the relevant financial test criteria of Paragraph 108.

110. Respondent shall, within thirty (30) days after the Effective Date, obtain EPA's approval of the form of Respondent's financial assurance. Within thirty (30) days of such approval, Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and document to Paula Painter at U.S. EPA Region 4, 61 Forsyth Street SE, Atlanta, Georgia, 30303.

111. Respondent seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 109.e or 109.f, must within 30 days of the Effective Date:

- a. Demonstrate that the affected Respondent 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
- b. The affected Respondent 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

- c. Submit to EPA for the affected Respondent 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://efpub.epa.gov/compliance/models/>.

112. Respondents providing financial assurance by means of a demonstration or guarantee under Paragraph 109.e or 109.f must also:

- a. Annually resubmit the documents described in Paragraph 111.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 Paula Painter 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 111(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.

113. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify EPA of such information within seven (7) days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Respondent of such determination. Respondent shall, within thirty (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 Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed sixty (60) days. Respondent shall follow the procedures of Paragraph 115 (*Modification of Amount, Form, or Terms of Financial Assurance*) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Settlement.

114. Access to Financial Assurance.

a If EPA issues a notice of implementation of a Work Takeover under Paragraph 90.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 114.d.

b If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 114.d.

c If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 90.b either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraph 109.e or 109.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. Respondent shall, within thirty (30) days of such demand, pay the amount demanded as directed by EPA.

d Any amounts required to be paid under this Paragraph 114 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 Burlington Industries Cheraw Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e All EPA Work Takeover costs not paid under this Paragraph 114 must be reimbursed as Future Response Costs under Section XIV (*Payments of Response Costs*).

115. Modification of Amount, Form, or Terms of Financial Assurance. Respondent may submit, on any anniversary of the Effective Date, ninety (90) days after the Removal Work Plan is approved by EPA, 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 110, 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 amendment to the terms of the financial assurance. EPA will notify Respondent of its decision to approve or disapprove a requested reduction pursuant to this Paragraph. Respondent may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (*Dispute Resolution*). Respondent may change the 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 terms of a

financial assurance mechanism shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within thirty 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, Respondent shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 110.

116. Release, Cancellation, or Discontinuation of Financial Assurance. Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXVII (*Notice of Completion of Work*); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XV (*Dispute Resolution*).

XXVI. MODIFICATION

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

118. If Respondent seeks permission to deviate from any approved Work, work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 117.

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

XXVII. NOTICE OF COMPLETION OF WORK

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

XXVIII. INTEGRATION/APPENDICES

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

The following appendices are attached to and incorporated into this Settlement

- a "Appendix A" is the map of the Residential Properties.
- b "Appendix B" is the map of the Site.
- c "Appendix C" is a chart of the excavation width(s) for identified residences abutting the Western Ditch.

XXIX. EFFECTIVE DATE

122. This Settlement shall be effective five (5) days after the Settlement is signed by the Regional Administrator or his/her delegate.

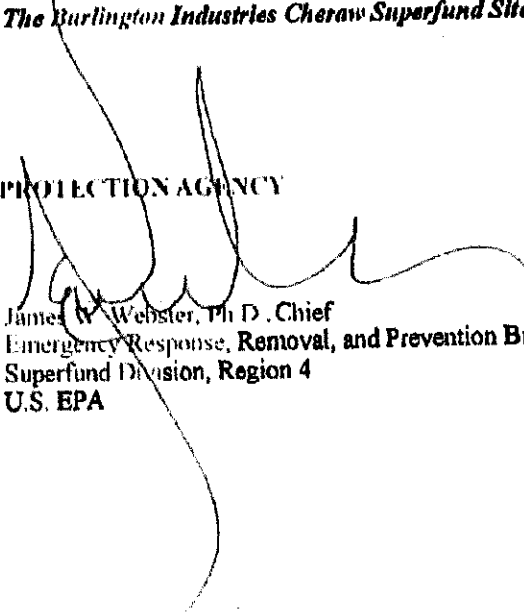
THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

Signature Page for Settlement Regarding The Burlington Industries Cheraw Superfund Site

IT IS SO AGREED AND ORDERED:

FOR: U.S. ENVIRONMENTAL PROTECTION AGENCY

10/16/2017
Date

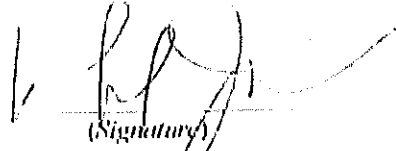


James W. Webster, Ph.D., Chief
Emergency Response, Removal, and Prevention Branch
Superfund Division, Region 4
U.S. EPA

Signature Page for Settlement Regarding *The Burlington Industries Cheraw Superfund Site*

FOR: HIGHLAND INDUSTRIES, INC.

9/18/17
Date


(Signature)

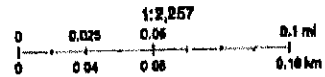
Name David Jackson
Title President & COO
Company Highland Industries, Inc
Address 1350 Bridgeway Dr S11
Kempersville, NC 27881

Burlington Industries Cheraw - Site Map 2



July 29, 2017

-  SIC Western Ditch
-  SIC Hightend Plant
-  SIC Residential Properties
-  World Transportation



Appendix A

ESRI, HERE, DeLorme, Mapbox, and OpenStreetMap contributors
 Esri, HERE, DeLorme, Mapbox, and OpenStreetMap contributors,
 and the GIS User Community
 Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics,
 CNR/Airbus, USDA, AeroGRID, IGN, and the GIS User

Matthew Nyser

Burlington Industries Cheraw - Site Map 1



July 23, 2017
 BIC Winston Sikee
 BIC Hickberry Park
 BIC Town Lot
 BIC Highland Phase
 BIC Residential Properties
 World Transportation

Appendix B

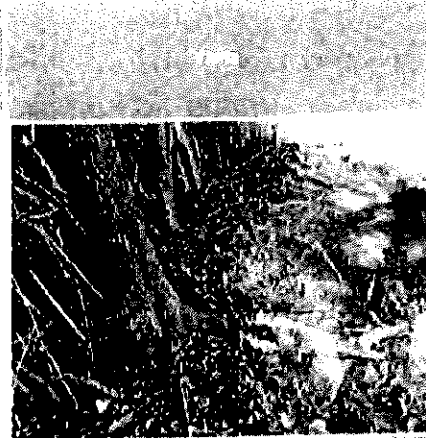
1:25,000
 0 0.1 0.2 0.4 0.7 mi
 E.A. HERR, Delaware, Independent Geographical Consultants
 E.A. HERR, Delaware, Major Work, or Consultant
 and the GIS Information
 Sources: E.A. HERR, Delaware, Consultant
 Copyright © 2017, E.A. HERR, Delaware, Consultant
 All Rights Reserved

September 26, 2017

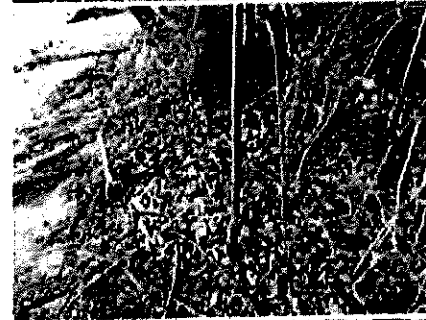
Appendix C
Excavation Extent in Residential Properties

Darlington Industries Cheraw Site

Silt Fence Assessment/Excavation 2 ft 1 ft 4 ft
up to Silt Fence



Silt Fence Assessment/Excavation 5 ft 3 ft 6 ft
up to Silt Fence.



T-post Assessment/Excavation 2 ft 2 ft 2 ft
to within 2 feet from
Cut Bank. Silt Fence set
10 feet forward from
Excavation edge.



T-post Assessment/Excavation 2 ft 2 ft 2 ft
to within 2 feet from
Cut Bank Silt Fence set
0-10 feet forward from
Excavation edge.



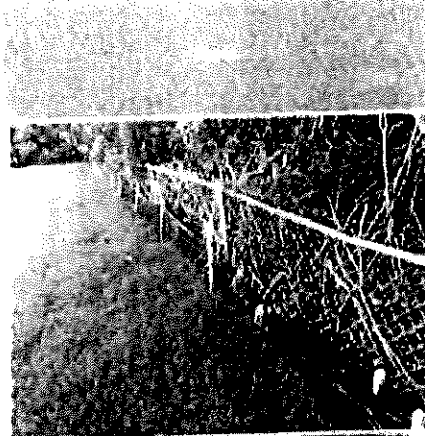
September 26, 2017

Appendix C
Excavation Extent In Residential Properties

Burlington Industries Charaw Site

Chain-link
Fence

Assessment/Excavation 4 ft 3 ft 5 ft
up to chain-link fence
In rear, Silt fence set
up to chain-link fence.



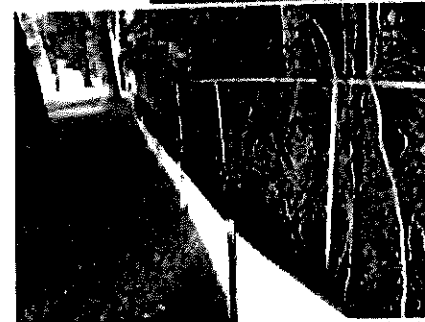
Silt Fence

Assessment/Excavation 3 ft 1 ft 5 ft
up to Silt Fence.



Chain-link
Fence

Assessment/Excavation 4 ft 3 ft 5 ft
up to chain-link fence
In rear, Silt Fence set 1
foot back.



Chain-link
Fence

Initial
Assessment/Excavation 2 ft 2 ft 3 ft
up to chain link fence
In rear, Silt Fence set 1
foot back with 1
deviation around tree.

Second
Assessment/Excavation
between chain link
fence and ditch.

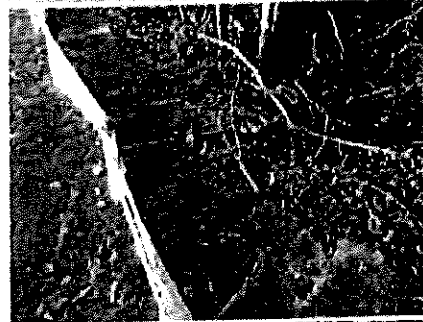


September 26, 2017

Appendix C
Excavation Extent in Residential Properties

Burlington Industries Cheraw Site

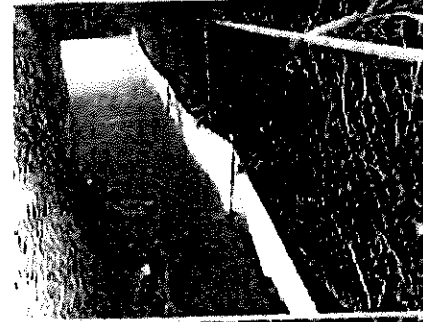
Silt Fence Assessment/Excavation 3 ft 2 ft 5 ft
up to Silt Fence.



Chain-link Fence Assessment/Excavation 2 ft 1 ft 4 ft
up to chain link fence in rear. Silt Fence set up to chain-link fence.



Chain-link Fence Assessment/Excavation 2 ft 1 ft 4 ft
up to chain link fence in rear. Silt Fence set up to chain-link fence.



Silt Fence Assessment/Excavation 4 ft 5 ft 3 ft
up to Silt Fence.

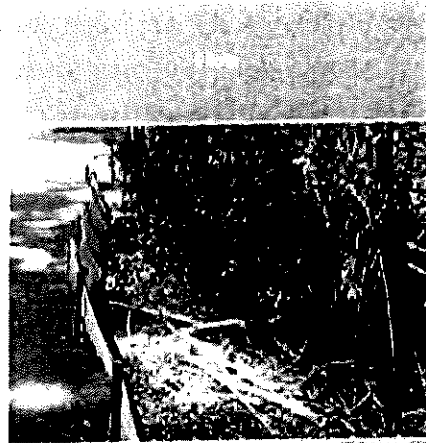


September 26, 2017

Appendix C
Excavation Extent in Residential Properties

Burlington Industries Cheraw Site

Silt Fence Assessment/Excavation 3 ft 2 ft 4 ft
up to Silt Fence.



Silt Fence Assessment/Excavation 3 ft 2 ft 5 ft
up to Silt Fence.

