UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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| IN THE MATTER OF:<br><br>Behr-Dayton Thermal Systems VOC Plume, Site Dayton, Montgomery County, Ohio<br><br>Aramark Uniform and Career Apparel LLC, and MAHLE Behr Dayton Thermal LLC,<br><br>Respondents<br><br>Proceeding Under Sections 104, 107, and 122 of the Comprehensive, Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607 and 9622 | CERCLA Docket No. V-W-21-C-008<br><br>**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL DESIGN** |

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

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## I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Aramark Uniform and Career Apparel LLC and MAHLE Behr Dayton Thermal LLC ("Respondents"). This Settlement provides for the performance of a Remedial Design (RD) by Respondents and the payment of certain response costs incurred by the United States at or in connection with the "Behr-Dayton Thermal Systems VOC Plume Site" (the "Site") generally encompassing contamination at or from the following locations: 1600 Webster Street; 1287 Air City Avenue; 1200 Webster Street; 220 Janney Road; 55 Janney Road; 814 Hillrose Avenue; and 529 Hunter Avenue, all located in Dayton, Montgomery County, Ohio.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (CERCLA), as amended. This authority was delegated to the EPA Administrator on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions Through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). These authorities were further redelegated by the Regional Administrator of EPA Region 5 to the Region 5 Superfund & Emergency Management Division Director by Region 5 Delegation 14-14-C dated May 2, 1996, and Region 5 Delegation 14-14-D dated May 2, 1996.

3. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Ohio Environmental Protection Agency and the Department of Interior on or about December 2, 2019, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Settlement.

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

## II. PARTIES BOUND

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

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

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

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

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

## III. DEFINITIONS

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

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the RD, including, but not limited to, the following properties: 1600 Webster Street; 1287 Air City Avenue; 1200 Webster Street; 220 Janney Road; 55 Janney Road; 814 Hillrose Avenue; and 529 Hunter Avenue in Dayton, Ohio.

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

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

"Effective Date" shall mean the effective date of this Settlement as provided in Section XXVII.

"EPA" shall mean the United States Environmental Protection Agency.

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

"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, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section VIII (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), ¶ 62 (Work Takeover), ¶ 15 (Emergencies and Releases), ¶ 86 (Access to Financial Assurance), ¶ 16 (Community Involvement Plan (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), and the costs incurred by the United States in enforcing the terms of this Settlement, including all costs incurred in connection with Dispute Resolution pursuant to Section XIII (Dispute Resolution) and all litigation costs. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Respondents have agreed to pay under this Agreement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from January 31, 2021 to the Effective Date.

"Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs: (a) paid by the United States in connection with the Site between January 31, 2021 and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.

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

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

"Non-Settling Owner" shall mean any person, other than a Respondent, that owns or controls any Affected Property, including but not limited to Gem City Chemicals, Inc. (Gem City); DAP Products, Inc. (DAP); Gayston Corporation (Gayston); Hohman Plating and Mfg. LLC; and MLC, Inc. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.

"Owner Respondent" shall mean any Respondent that owns or controls any Affected Property, including Aramark Uniform and Career Apparel LLC and MAHLE Behr Dayton Thermal LLC. The clause "Owner Respondent's Affected Property" means Affected Property owned or controlled by Owner Respondent.

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

"Parties" shall mean EPA and Respondents.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through January 31, 2021, plus Interest on all such costs through such date.

"The Payment Towards Past Response Costs paid under paragraph 34.a. of the Settlement" shall mean the $500,000 amount Respondents are paying towards past response costs under paragraph 34.a. of the Settlement.

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

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

"Record of Decision" or "ROD" shall mean the EPA Interim Record of Decision relating to the Site, signed on September 26, 2019 by the Regional Administrator, EPA Region 5, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

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

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

"Respondents" shall mean Aramark Uniform and Career Apparel LLC and MAHLE Behr Dayton Thermal LLC.

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

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

"Site" shall mean the Behr-Dayton Thermal Systems VOC Plume Site Superfund Site, encompassing approximately 360 acres, including contamination at and/or from the following properties: 1600 Webster Street; 1287 Air City Avenue; 1200 Webster Street; 220 Janney Road; 55 Janney Road; 814 Hillrose Avenue; and 529 Hunter Avenue in Dayton, Montgomery County, Ohio, and depicted generally on the map attached as Appendix C.

"Behr-Dayton Thermal Systems VOC Plume Site Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and the settlement dated June 8, 2010, between the Liquidation Trust and United States the United States

entered on October 21, 2010, in In re Old CARCO (f/k/a Chrysler LLC), Case No. 09-50002(AJG), in the United States Bankruptcy Court for the Southern District of New York.

"State" shall mean the State of Ohio.

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

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

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

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

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous waste" under Ohio Admin. Code §§ 3745-50-10(A)(48) and 3745-51-03.

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

## IV. FINDINGS OF FACT

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

a. The Behr-Dayton Thermal Systems VOC Plume Superfund Site includes properties located at 1600 Webster Street, 1287 Air City Avenue, 1200 Webster Street, 220 Janney Road, 55 Janney Road, 814 Hillrose Avenue, and 529 Hunter Avenue in Dayton, Montgomery County where releases of volatile organic compounds occurred and all surrounding areas affected by the plume of contaminated groundwater associated with those releases.

b. The Site encompasses approximately 360 acres in the City of Dayton, Ohio. It lies approximately 1.5 to 2 miles north of the City's downtown, in an area of mixed industrial, commercial, and residential land uses; and sits directly northeast of the confluence of the Greater Miami and Mad rivers, which bound three sides of the Site. The Site contains portions of several city parks, including Deeds Park, Claridge Park, and Kettering Park; and has affected at least one elementary school. It also includes portions of the Great Miami Buried Valley Aquifer System (GMBVAS), which EPA designated a "Sole-Source Aquifer" in 1988, because it serves as the principal source of drinking water for the population in the region, including the City of Dayton and Greene County. (See 53 Fed. Reg. 15876 (1988) and 53 Fed. Reg. 25670 (1988)). Groundwater in the Dayton area

occurs within the upper and lower sand and gravel (outwash) aquifers of the GMBVAS. Water from the aquifers is pumped at the Dayton Mad River Well Field and the Miami South Well Field, which is the well field near the Site.

c. EPA has been conducting a Remedial Investigation and Feasibility Study (RI/FS) at the Site since 2008 to identify the nature and extent of contamination at the Site. EPA found tetrachloroethene (PCE) (also called perchloroethylene, PERC, and tetrachloroethylene), trichloroethene (TCE), and 1,1,1 trichloroethane (1,1,1-TCA), as well as the associated degradation products cis-1,2-dichloroethylene (DCE) and vinyl chloride (VC) in soils, groundwater, sub-slab soil gas and in the indoor air of structure, including over a hundred homes, at the Site. EPA considers these substances the chemicals of potential concern (COPCs) at the Site. The CERCLA regulation at 40 C.F.R. §302.4 designates all five COPCs "hazardous substances." They can also be classified as "hazardous waste" under the Resource Conservation and Recovery Act (RCRA) and its regulations at 40 C.F.R. Part 261. PCE is often found with TCE and breaks down into TCE; TCE then breaks down into cis-1,2 DCE, and trans-1,2 DCE and VC.

d. TCE at a concentration of 0.5 mg/L (500 ug/L), using the Toxicity Characteristic Leaching Procedure (TCLP) test, exhibits the characteristic of toxicity and is considered a RCRA hazardous waste under 40 C.F.R. § 261.24, and given hazardous waste number D040. PCE at a concentration of 0.7 mg/L (700 ug/L), using the TCLP test, exhibits the characteristic of toxicity and is considered a RCRA hazardous waste under 40 C.F.R. § 261.24, and given hazardous waste number D039. VC at a concentration of 0.2 mg/L (200 ug/L), using the Toxicity Characteristic Leaching Procedure (TCLP) test, exhibits the characteristic of toxicity and is considered a RCRA hazardous waste under 40 C.F.R. § 261.24, and given hazardous waste number D043.

e. During the RI, EPA found that only a small portion of the groundwater plume associated with the Site was migrating in the direction of the Miami South Well Field, which draws water from the lower aquifer. EPA found Site-related contamination in the upper aquifer but not in the lower aquifer. That upper aquifer extends from approximately 20 feet below ground surface down another 60 to 100 feet to a semi-continuous clay-rich basal till that generally separates it from a lower aquifer, where the City's production wells are screened. Groundwater at most of the Site migrates primarily to the southwest, towards Deeds Park, but groundwater extraction from the lower aquifer at the Dayton Miami South Well Field to the northeast and from the upper aquifer at the Eastern and the Western Keowee Street dewatering wells impacts the direction at which the groundwater migrates.

f. Operations at each of the properties listed in paragraph a. released COPCs into soil and groundwater at the Site.

g. Aramark Uniform & Career Apparel, LLC (Aramark) has operated a textile rental/industrial laundry facility at 1200 Webster Street since 1986. According to Aramark, it acquired the property when the prior owner Servisco, formerly known as National Work-Clothes Rental, merged into SAC Delaware Inc., a wholly owned subsidiary of Aramark; this subsidiary was subsequently liquidated and its assets transferred to Delsac

I, Inc., which was merged into Aratext Services, Inc. in 1988; Aratex Services, Inc. changed its name to Aramark Uniform Services, Inc. in 1994; Aramark Uniform Services, Inc. changed its name to Aramark Uniform & Career Apparel, Inc. in 1998; and Aramark Uniform & Career Apparel, Inc. converted under Delaware law to Aramark Uniform & Career Apparel, LLC, the current owner of the facility, in 2007. Servisco conducted dry-cleaning activities that used PCE from approximately 1966 through 1986, originally under the name National Work-Clothes Rental. In 1987, operation and use of the dry-cleaning equipment was discontinued.

In 1991, three underground storage tanks (USTs) that contained gasoline, fuel oil, and diesel were excavated from the property. During the UST excavation activities, soil was found to be impacted by PCE in the surface soil obtained from the UST areas. The firm handling the tank removal did not at that time test for TCE. During a subsequent Phase II Characterization, the highest PCE concentration in soil was observed 5 feet below ground surface (bgs) at 72 micrograms per kilogram (µg/kg). Aramark indicates the highest TCE concentration in soil was observed 10 feet bgs at 42 µg/kg. To further characterize the subsurface, Aramark installed five groundwater monitoring wells to approximately 28 feet below ground surface (bgs). The maximum PCE concentration observed in these five groundwater monitoring wells was 480 micrograms per liter (µg/L) in 1997. The maximum TCE concentration observed in these five groundwater monitoring wells was 2.57 milligrams per liter in 1997. However, Aramark indicates this well is off-site and upgradient from the Aramark facility. To help remove the PCE source area, Aramark installed and operated an air sparge/soil vapor extraction (AS/SVE) system at the facility from September 1996 through November 2003. Aramark indicates it has no history of TCE use, storage, or disposal.

h. Aramark is former owner and operator of the Aramark facility at a time of disposal, as a successor to Servisco.

i. Aramark currently owns the property at 1200 Webster Street, Dayton, Ohio, and continues to operate an industrial laundry at that location.

j. La Mirada Products, Inc. f/k/a DAP, Inc. (La Mirada) manufactured caulking, glazing and adhesive compound and generated solvent waste at the DAP facility at 220 Janney Road, which was constructed in 1967, and later operated as a RCRA treatment, storage or disposal facility (TSD) there. La Mirada used VOCs, including 1,1,1-TCA, toluene, methyl ethyl ketone, methylene chloride, and acetone in its manufacturing process, and stored chemicals in underground and above-ground storage tanks. Groundwater samples taken at the DAP facility indicated the presence of 1,1-DCA, 1,2-DCA, 1,1-DCE, trans 1,2-DCE, cis 1,2-DCE, 1,1,1-TCA, toluene, PCE and TCE. Soils samples indicate 1,2-DCA, 1,2-DCE, 1,1,1-TCA, toluene, carbon tetrachloride, 1,1-DCA and TCE. An Ohio EPA Director's Final Findings and Orders (FFO), dated April 30, 1990, found chemicals had been spilled or otherwise placed onto the surface soils at a transfer area at the facility.

k. Electro Polish Co. conducted aluminum, black oxide, chem film, electropolish, and coat anodizing as well as passivation, plugging & masking, and power coating at the Electro Polish facility at 529 Hunter Avenue. That facility consists of five

contiguous, irregular-shaped parcels, totaling 1.48 acres, with 4 industrial/commercial type structures and an office, and has used the following addresses: 519 Hunter Avenue; 529 Hunter Avenue; 1003 Keowee Street; and 332 Vermont Avenue. A 2017 Phase I Environmental Assessment indicates a former office building where MLC, Inc. currently conducts powder coating and shipping was constructed at the 529 Hunter address in 1938; the current office building (formerly 519 Hunter) and buildings housing the chem film and passivate lines were added in 1945; the staging building at 1003 Keowee Street was constructed in 1955; and the original portion of the Electro Polish Building was constructed in 1946 and expanded in 1978 and 1997. Electro Polish Company operated a vapor degreaser that used chlorinated solvents in a building at the Vermont address from at least the 1980s until the 1990s. A 700-gallon tank was installed at the 529 Hunter address around 1973. The Phase I indicates the building located at 332 Vermont Avenue was originally used for auto repair but has been occupied by Electro Polish since the early 1950s. A Phase II report indicates TCE was detected in soils, groundwater and subslab vapor at the Electro Polish facility. Operations there included vapor degreasing, which historically used TCE, and auto repair, which historically have used chlorinated solvents including PCE and TCE. Electro Polish Inc. used a substance called Loosey Goosey Penetrating Oil at the facility that contains PCE.

l. Gayston Corporation (Gayston) operated a precision metal parts manufacturing and assembly plant from 1962 until 1987, at the Gayston facility at 55 Janney Road, that used chlorinated solvents, including PCE and 1,1,1-TCA as degreasers to clean metal parts. An Ohio EPA Director's Final Finding and Orders (FFO) Gayston Corporation signed in 1993, found Gayston contributed PCE, 1,1,1-TCA, cis-1,2-DCA, 1,1-DCA, TCE and chloroethane released into the environment there and that the releases or disposal of industrial waste and/or hazardous waste there constituted a substantial threat to public health or safety or was causing or contributing to or threatening to cause or contribute to air, water pollution or soil contamination. It referred to contaminants found in soils and groundwater at the Gayston facility. Gayston operated an AS/SVE system at that facility between 1994 and 2012.

m. Gem City Chemicals, Inc. (Gem City) has operated since 1967 at its Gem City facility at 1287 Air City, where it manufactures custom molded urethane products and conducts bulk chemical distribution and prepackaging, and has received, stored, transferred, blended and distributed chemical products and solvents. In May 1986, Gem City removed 10 underground storage tanks (USTs), including at least two tanks used for fuel oil storage, and others used to store Stoddard (not chlorinated) solvents. Some shallow soil samples it collected in 1987 were found to contain concentrations of PCE as high as 554 milligrams per kilogram (mg/kg), TCE as high as 141 mg/kg, and 1,1,1-TCA as high as 14 mg/kg. The soil samples were also found to contain isopropyl alcohol, acetone, toluene, xylene and methyl ethyl ketone. Groundwater samples Gem City collected between 1988 and 1993 were found to have concentrations of TCE as high as 597 ppb, PCE as high as 848 ppb, and 1,1,1-TCA as high as 1,830 ppb. The general areas exhibiting contamination included a chemical pouring shed where Gem City transferred solvents from tanker trucks into drums, a storage shed, a former above ground storage tank area, and the general location of the USTs Gem City removed in 1986. Groundwater sampling Gem City conducted in 1988 found TCE, PCE, 1,1-DCA, 1,1-DCE, cis1,2-DCE, trans 1,2-DCE,

benzene and chloroform. Around 1990-1991, Gem City constructed a concrete pad as containment for a pouring shed. Ohio EPA became aware of the contamination in groundwater at the Gem City facility in 1989 during a regional investigation of the sources of VOC contamination in the Dayton Mad River Well Field. Gem City installed a SVE system at its facility, with five SVE wells and a groundwater pump and treat system, that involved air stripping with discharge to surface water. Gem City later signed an Order on Consent with Ohio EPA, dated July 6, 1992, that, among other things, discussed preventing the further off-property migration of contaminants from the Facility. Gem City continues to operate the groundwater pump and treatment system at the Gem City facility.

n. Hohman Plating and Mfg. operated at the Hohman facility at 814 Hillrose Avenue from about 1955 to 2011. It manufactured parts providing services such as electroplating, electroless plating, anodizing, chemical conversion coatings, spray coatings, vacuum coatings, and combination coatings and formulated and manufactured the Surf-Koter line of dry film lubricants. It purchased and receives parts, materials and chemicals to process and manufacture products for its customers to defined specifications. The facility historically used TCE in its vapor degreasing operations

o. Chrysler manufactured air conditioning equipment at the Behr facility at 1600 Webster Street from at least 1944 until 2002, when, as Daimler Chrysler Corporation ("DCC"), it sold the property to MAHLE Behr Dayton Thermal LLC (f/k/a Behr Dayton Thermal Products LLC) in April of 2002. Chrysler documented groundwater contamination at the Behr facility as far back as the 1990s and took voluntary steps to address some of that contamination in the early 2000s, conducting some remediation after the sale. It operated an SVE system at that facility from about 2003 through 2005. From about 2004 through 2005, it also operated a pump, treat, and reinjection system to try to enhance anaerobic biodegredation of groundwater contamination, by adding sodium lactate to the aquifer. Ohio EPA required Chrysler to discontinue this system.

p. Soil investigations have identified PCE and TCE in subsurface soils at the Behr facility. Groundwater investigations have identified chlorinated solvents, including TCE, PCE, and 1,1,1-TCA, in the groundwater below the facility. EPA detected PCE, TCE, and 1,1,1-TCA in soil boring samples collected from below the ground water table. RI/FS sampling from March 2014 showed groundwater PCE concentrations as high as 2,800 ug/L, and TCE concentrations as high as 11,000 ug/L at the southern border of the Behr facility.

q. MAHLE Behr Dayton LLC acquired the Behr facility at 1600 Webster Street, Dayton, Ohio in 2002, when it was known as Behr Dayton Thermal Products LLC; remains the owner of that facility. It has manufactured air conditioning and engine cooling systems at the Behr facility since 2002.

r. EPA executed an administrative order on Consent with Chrysler in 2006 (the 2006 AOC), for a removal action to address vapor intrusion into residential areas from the Behr facility; issued a unilateral administrative order to MAHLE to continue that removal work in 2009 (the 2009 UAO), after Chrysler filed for bankruptcy and stopped work required by the 2006 AOC; executed an administrative settlement agreement and order

on consent with MAHLE in 2013, to conduct an engineering evaluation/cost analysis to study and recommend actions for an area of impacted groundwater at the southern border of the Behr facility (the 2013 ASAOC); and executed an ASAOC for a non-time critical removal action with MAHLE in 2015 (the 2015 ASAOC), to address that area using air sparging with soil vapor extraction (AS/SVE). Work under the 2009 UAO and the 2015 ASAOC continues at the Site.

s. In addition to contaminated soils at the facilities listed above, the plume of groundwater contamination from releases at those facilities currently encompasses approximately 360 acres in the City of Dayton, Ohio and contributes to vapor intrusion of contaminants in the sub-slab gas and the indoor air of about 200 homes and other structures.

t. EPA continues to investigate the nature and extent of the contamination in the ongoing RI/FS.

u. The interim remedy EPA selected in the Interim ROD treats groundwater in the portion of the plume where trichloroethylene (TCE) concentrations are 500 ppb or greater by using AS/SVE.

v. The map in Attachment 2 shows the highest concentration of PCE and TCE lie generally beneath and downgradient of the Behr facility and downgradient of the Aramark facility.

w. The interim remedy also addresses VI from the entire groundwater plume at the Site by sampling for vapor intrusion impacts to commercial, residential and industrial buildings above the entire plume plus a 100 foot buffer zone surrounding it; installing vapor intrusion management systems (VIMS) at occupied commercial, residential, and industrial buildings impacted by VI above current health-based screening levels; maintaining and monitoring new and existing VIMS; and operating an SVE system just south of the Behr facility that Chrysler installed around 2008 to supplement the VI abatement from the VIMS in that neighborhood (the 2008 SVE). This interim remedial action enhances the frequency and extent of monitoring and updates the health-based action levels that trigger installation of VIMS from those set in 2006 AOC and 2009 UAO, which MAHLE continues to implement.

x. EPA estimates the interim remedy will cost approximately $18,100,000.

y. EPA incurred approximately $10,539,841.64 in outstanding past costs. This amount subtracts amounts EPA previously collected from a settlement in the Old CARCO (f/k/a Chrysler) bankruptcy and from billings for oversight of the 2013 ASAOC and 2015 ASAOC.

z. The Environmental Justice Analysis attached to the 2015 ASAOC indicates EPA determined there was a high potential for EJ concerns at the Behr facility and its surrounding area and included an EJSCREEN report that indicated approximately 5,722 people lived within a mile of that facility.

aa. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (NPL), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on May 11, 2009, 74 Fed. Reg. 16126 (2009).

bb. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA commenced in 2008, an RI/FS for the Site pursuant to 40 C.F.R. § 300.430. The RI/FS is ongoing.

cc. EPA completed a Remedial Investigation (RI) Report in November 2017, and completed a Focused Feasibility Study (FFS) Report in May 2018, although the RI/FS continues at the Site, and EPA plans to issue future reports.

dd. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FFS and of the proposed plan for RA for an interim remedy on September 5, 2018, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for RA. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator or Regional delegatee, EPA Region 5, based the selection of the response action.

ee. The decision by EPA on the RA to be implemented at the Site is embodied in an Interim ROD, executed on September 26, 2019, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

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

(1) Respondents Aramark Uniform and Career Apparel LLC and MAHLE Behr Dayton Thermal LLC are "owner(s)" and/or "operator(s)" at 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).

(2) Servisco, a predecessor of Respondent Aramark Uniform and Career Apparel LLC, was an "owner(s)" and/or "operator(s)" at the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

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

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

## VI. SETTLEMENT AGREEMENT AND ORDER

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

## VII. PERFORMANCE OF THE WORK

13. **Coordination and Supervision**

a. **Project Coordinators**.

(1) Respondents' Project Coordinator's role shall be Respondent's one person for the entire Site that is designated to serve as the primary point of contact for any contact with EPA and to coordinate the Work. Respondents' Project Coordinator must have sufficient technical expertise to coordinate the Work. Respondents' Project Coordinator may not be an attorney representing any Respondent in this matter and may not act as the Supervising Contractor. Respondents' Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA shall designate and notify Respondents of EPA's Remedial Project Manager (RPM) and Alternate Remedial Project Manager[s]. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Remedial Project Manager /Alternate Remedial Project Manager will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material. All deliverables, notices, notifications, proposals, reports, and requests specified in

this Settlement must be in writing, unless otherwise specified, and be submitted by email to D. Erik Hardin, Remedial Project Manager, at hardin.erik@epa.gov.

(3) Respondents' Project Coordinators shall meet with EPA's Remedial Project Manager at least monthly, or as otherwise requested by EPA.

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

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

(1) Respondents shall designate, and notify EPA, within 30 days after the Effective Date, of the name[s], title[s], contact information, and qualifications of Respondents' proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (*e.g.,* experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

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

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

14. **Performance of Work in Accordance with SOW.** Respondents shall develop the RD in accordance with the SOW and all EPA-approved, conditionally approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the Settlement or SOW shall be subject to approval by EPA in accordance with ¶ **5.5** (Deliverables) of the SOW.

15. **Emergencies and Releases**. Respondents shall comply with the emergency and release response and reporting requirements under ¶ **3.9** (Emergency Response and Reporting) of the SOW. Subject to Section XVI (Covenants by EPA), nothing in this Settlement, including ¶ **3.9** of the SOW, limits any authority of EPA: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or

threatened release of Waste Material on, at, or from the Site. If, due to Respondents' failure to take appropriate response action under ¶ **3.9** of the SOW, EPA takes such action instead, Respondents shall reimburse EPA under Section XII (Payment of Response Costs) for all costs of the response action.

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

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

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to carry out the RD, then EPA may notify Respondents of such modification. If Respondents object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Section XIII (Dispute Resolution).

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

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

## VIII. PROPERTY REQUIREMENTS

18. **Agreements Regarding Access and Non-Interference.** Respondents shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondents and the EPA, providing that such Non-Settling Owner, and Owner Respondent shall, with respect to Owner Settling Respondent's Affected Property: (i) provide EPA, the State, Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in ¶ 18.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or that interferes with or adversely affects the implementation or integrity of the RD. Respondents shall provide a copy of such access agreement(s) to EPA and the State.

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

(1) Monitoring the Work;

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

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions;

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

(7) Implementing the Work pursuant to the conditions set forth in ¶ 62 (Work Takeover);

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

(9) Assessing Respondents' compliance with the Settlement;

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

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

19. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access, as required by this Section. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XII (Payment of Response Costs).

20. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning

restrictions, or other governmental controls or notices are needed, Respondents shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such institutional controls.

21. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligation to secure access.

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

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

## IX. ACCESS TO INFORMATION

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

25. **Privileged and Protected Claims**

a. Respondents may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with ¶ 25.b, and except as provided in ¶ 25.c.

b. If Respondents assert such a privilege or protection, they shall provide EPA and the State with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they

claim to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

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

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

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

## X. RECORD RETENTION

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

29. At the conclusion of the document retention period, Respondents shall notify EPA and the State at least 90 days prior to the destruction of any such Records and, upon request by

EPA or the State, and except as provided for in ¶ 25 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA or the State.

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

## XI. COMPLIANCE WITH OTHER LAWS

31. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Settlement, if approved by EPA, shall be considered consistent with the NCP.

32. **Permits**. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(c)(3) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e. within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal, state, or local permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

33. Respondents may seek relief under the provisions of Section XIV (Force Majeure) for any delay in performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 32 (Permits) and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

## XII. PAYMENT OF RESPONSE COSTS

34. **Payment Towards Past Response Costs**

a. **Payment of the Payment Towards Past Response Costs.** Within 30 days after the Effective Date, Respondents shall pay to EPA $500,000 towards Past Response Costs. This payment does not represent a compromise of Past Response Costs at the Site. Respondents agree that the remaining unpaid balance of Past Response Costs at the Site are outstanding. EPA asserts that as potentially responsible parties at the Site, Respondents remain liable for costs as provided in 42 U.S.C. § 9607, including outstanding past costs. Respondents shall make payment at https://www.pay.gov to the U.S. EPA account in accordance with the following payment instructions: enter "sfo 1.1" in the search field to access EPA's Miscellaneous Payment Form - Cincinnati Finance Center. Complete the form including the Site Name, docket number, and Site/Spill ID Number B5FH.

Respondents shall send to EPA, in accordance with Paragraph 13.a(2), a notice of this payment including these references.

b. **Deposit of the Payment Towards Past Response Costs paid under paragraph 34.a. of the Settlement**. The total amount to be paid by Respondents pursuant to ¶ 34.a shall be deposited by EPA in the Behr Dayton Thermal Products VOC Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

35. **Payments for Future Response Costs**. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills**. On a periodic basis, EPA will send Respondents a bill requiring payment that includes an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondents shall make all payments within 30 days after Respondents' receipt of each bill requiring payment, except as otherwise provided in ¶ 37 (Contesting Future Response Costs). Respondents shall make all payments and send notice of the payments in accordance with ¶ 34.a (Payment of the Payment Towards Past Response Costs).

b. **Deposit of Future Response Costs Payments**. The total amount to be paid by Respondents pursuant to ¶ 35.a (Periodic Bills) shall be deposited by EPA in the Behr Dayton Thermal Products VOC Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Behr Dayton Thermal Products VOC Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.

36. **Interest**. In the event that any payment for the Payment Towards Past Response Costs paid under paragraph 34.a. of the Settlement or Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on the Payment Towards Past Response Costs paid under paragraph 34.a. of the Settlement shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondents' 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 Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XV (Stipulated Penalties).

37. **Contesting Future Response Costs**. Respondents may initiate the procedures of Section XIII (Dispute Resolution) regarding payment of any Future Response Costs billed under ¶ 35 (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the EPA Remedial Project Manager 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 Respondents submit a Notice of Dispute, Respondents 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 ¶ 35, 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. Respondents shall send to the EPA Remedial Project Manager 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 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in ¶ 35. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in ¶ 35. Respondents 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 XIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

## XIII. DISPUTE RESOLUTION

38. 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.

39. **Informal Dispute Resolution**. If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within 20 days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 20 days from EPA's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

40. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 20 days after the end of the Negotiation

Period, submit a statement of position to EPA. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, the Director of the Superfund & Emergency Management Division, U.S. EPA Region 5 will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

41. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement, except as provided by ¶ 37 (Contesting Future Response Costs), as agreed by EPA.

42. Except as provided in ¶ 52, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Stipulated Penalties).

## XIV. FORCE MAJEURE

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

44. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify the EPA Remedial Project Manager orally or, in his or her absence, EPA's Alternate Remedial Project Manager or, in the event both of EPA's designated representatives are unavailable, the EPA Region 5 Spill Hotline 312-353-2318, within 7 days of when Respondents first knew that the event might cause a delay. Within 7 days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or

Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 43 and whether Respondents have exercised their best efforts under ¶ 43, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

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

46. If Respondents elect to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of ¶¶ 43 and 44. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

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

## XV. STIPULATED PENALTIES

48. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in ¶¶ 49.a and 50 for failure to comply with the obligations specified in ¶¶ 49.a and 50, unless excused under Section XIV (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement. If (i) an initially submitted or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under **¶ 5.5(a)(2)** of the SOW; or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

49. **Stipulated Penalty Amounts: Payments, Financial Assurance, Major Deliverables, and Other Milestones.**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with any obligation identified in ¶ 0.b:

| Penalty Per Violation Per Day | Period of Noncompliance |
|---|---|
| $1,000 | 1st through 21st day |
| $3,000 | 22nd through 44th day |
| $5,000 | 45st day and beyond |

b. **Obligations**

(1) Payment of any amount due under Section XII (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXIII (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under ¶ 37 (Contesting Future Response Costs).

(4) Establish and maintain insurance in accordance with ¶ 80.

(5) Designate Project Coordinator(s) and Supervision Contractor(s) in accordance with ¶ 13.c

(6) Submit RD Work Plan

(7) Submit Pre-Design Investigation (PDI) Work Plan

(8) Conduct PDI

(9) Submit PDI Evaluation Report

(10) Submit Vapor Intrusion Sampling Work Plan

(11) Conduct Vapor Intrusion Sampling and Provide Results under ¶ **3.4** of the SOW

(12) Submit Preliminary (30%) RD

(13) Submit Intermediate (60%) RD

(14) Submit Pre-Final (95%) RD

(15) Submit Final (100%) RD

50. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement, other than those specified in ¶ 49.b:

| Penalty Per Violation Per Day | Period of Noncompliance |
|---|---|
| $500 | 1st through 21st day |
| $1,500 | 22nd through 44th day |
| $2,500 | 45th day and beyond |

51. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 62 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of $200,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under ¶¶ 62 (Work Takeover) and 86 (Access to Financial Assurance).

52. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period and shall be paid within 15 days after the agreement or the receipt of EPA's decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ **5.5** (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Region 5 Superfund and Emergency Management Division Director , under Section XIII (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.

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

54. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. Respondents shall make all payments and shall send notice of such payments in accordance with the procedures under ¶ 35 (Payments for Future Response Costs). Respondents shall indicate in the comment field on the https://www.pay.gov payment form that the payment is for stipulated penalties

55. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 52 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 54 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

57. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that EPA shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 62 (Work Takeover).

58. 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.

## XVI. COVENANTS BY EPA

59. Except as provided in Section XVII (Reservation of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, the Payment Towards Past Response Costs paid under paragraph 34.a. of the Settlement, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

## XVII. RESERVATIONS OF RIGHTS BY EPA

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

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

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

a. liability for failure by Respondents to meet a requirement of this Settlement;

b. liability for costs not included within the definitions of "the Payment Towards Past Response Costs paid under paragraph 34.a. of the Settlement," or "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.

62. **Work Takeover**

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

b. If, after expiration of the 10-day notice period specified in ¶ 62.a Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be

electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 62.b. Funding of Work Takeover costs is addressed under ¶ 86 (Access to Financial Assurance).

c. Respondents may invoke the procedures set forth in ¶ 40 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under ¶ 62.b. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 62.b until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with ¶ 40 (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.

## XVIII. COVENANTS BY RESPONDENTS

63. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, the Payment Towards Past Response Costs paid under paragraph 34.a. of the Settlement, 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 Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Work, the Payment Towards Past Response Costs paid under paragraph 34.a. of the Settlement, 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 State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

64. Except as expressly provided in ¶ 67 (Waiver of Claims by Respondents), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVII (Reservations of Rights by EPA), other than in ¶ 61.a (liability for failure to meet a requirement of the Settlement), 61.d (criminal liability), or 61.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

65. 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).

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

67. **Waiver of Claims by Respondents**

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

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

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

b. **Exceptions to Waivers**

(1) The waivers under this ¶ 67 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against such Respondent.

(2) The waiver under ¶ 67.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver, if EPA determines that: (i) that the materials containing hazardous substances contributed to the Site by such person have contributed significantly,

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

## XIX. OTHER CLAIMS

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

69. Except as expressly provided in ¶ 67 (Waiver of Claims by Respondents) and Section XVI (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

70. 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).

## XX. EFFECT OF SETTLEMENT/CONTRIBUTION

71. Except as provided in ¶ 67 (Waiver of Claims by Respondents), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XVIII (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

72. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from

contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work, the Payment Towards Past Response Costs paid under paragraph 34.a. of the Settlement, and Future Response Costs.

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

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

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

76. Effective upon signature of this Settlement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Respondent the payment(s) required by ¶ 34.a. (Payment of the Payment Towards Past Response Costs) and, if any, Section XV (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in ¶ 72 and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondents that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

## XXI. INDEMNIFICATION

77. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, employees, and representatives for or from any and all claims or

causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree to pay the United States all costs it incurs, including, but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into, by, or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

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

## XXII. INSURANCE

80. No later than 15 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Work Completion pursuant to **¶ 3.11** of the SOW, commercial general liability insurance with limits of liability of $1 million per occurrence, and automobile insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance

described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the Behr-Dayton Thermal Systems VOC Plume Site, Dayton, Ohio and the EPA docket number for this action.

## XXIII. FINANCIAL ASSURANCE

81. In order to ensure the completion of the Work, Respondents shall secure financial assurance, initially in the amount of $1,000,000 ("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 EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

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

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

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

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

e. A demonstration by a Respondent that it meets the financial test criteria of ¶ 83 , accompanied by a standby funding commitment, which obligates the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of ¶ 83.

82. Respondents shall, within 30 days of the Effective Date, obtain EPA's approval of the form of Respondents' financial assurance. Within 30 days of such approval, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Dale Meyer, Regional Comptroller, Mail Code MF-10J, Resource Management

Division, at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604, with a copy to Justin Abrams, Accountant, Program Accounting and Analysis Section, at Mail Code MF-10J, Resource Management Divison, at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604.

83. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 81.e or 81.f, must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) 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

(2) 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

b. 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://cfpub.epa.gov/compliance/models/.

84. Respondents providing financial assurance by means of a demonstration or guarantee under ¶ 81.e or 81.f must also:

a. Annually resubmit the documents described in ¶ 83.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

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

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶.83.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.

85. Respondents shall diligently monitor the adequacy of the financial assurance. If any 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, such Respondent shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures of ¶ 87 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

86. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 62.b, then, in accordance with any applicable financial assurance mechanism and/or related standby funding commitment, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 86.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 ¶ 86.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 62.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 81.e or 81.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. Respondents shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 86 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Behr-Dayton Thermal Systems VOC Plume Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 86 must be reimbursed as Future Response Costs under Section XII (Payments for Response Costs).

87. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 82, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents 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 XIII (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request

submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 82 .

88. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Work Completion under **¶ 3.11** of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIII (Dispute Resolution).

## XXIV. INTEGRATION/APPENDICES

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

a. Appendix A is the ROD.

b. Appendix B is the SOW.

## XXV. MODIFICATION

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

91. If Respondents seek permission to deviate from any approved work plan, schedule, or SOW, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the EPA Remedial Project Manager pursuant to ¶ 90.

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

## XXVI. TAX IDENTIFICATION

93. For the purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 162(f)(2)(A)(ii), and 26 C.F.R. 162-21(b)(2), performance of the work under Section VII and Payment of Response Costs under Section XII plus interest paid pursuant to Paragraph 36 are restitution, remediation, or required to come into compliance with the law.

## XXVII. EFFECTIVE DATE

94. This Settlement shall be effective 5 days after the Settlement is signed by the Regional Administrator or his/her designee. IT IS SO AGREED AND ORDERED;

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


September 8, 2021
Dated

Douglas Ballotti, Director
Superfund & Emergency Management Division, Region 5

Signature Page for Settlement regarding the Behr Dayton Thermal Products VOC Superfund Site

**FOR** Aramark Uniform & Career Apparel, LLC**:**

8-11-21
Dated

Ed Friedler, Esq.
Vice President and Associate General Counsel

Signature Page for Settlement regarding the Behr Dayton Thermal Products VOC Superfund Site

**FOR MAHLE Behr Dayton L.L.C.:**

9/1/2021
Dated

Scott Kitkowski
President MAHLE Behr Dayton L.L.C.
1600 Webster St
Dayton, OH 45404

# REMEDIAL DESIGN

# STATEMENT OF WORK

# BEHR DAYTON THERMAL VOC PLUME SUPERFUND SITE

**Dayton, Montgomery County, State of Ohio**

**EPA Region 5**

**August 2021**

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# 1. INTRODUCTION

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

**1.2 Structure of the SOW**

- Section 2 (Community Involvement) sets forth EPA's and Respondents' responsibilities for community involvement.
- Section 3 (Remedial Design) sets forth the process for developing the RD, which includes the submission of specified primary deliverables.
- Section 4 (Reporting) sets forth Respondents' reporting obligations.
- Section 5 (Deliverables) describes the content of the supporting deliverables and the general requirements regarding Respondents' submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- Section 6 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the RA.
- Section 7 (State Participation) addresses State participation.
- Section 8 (References) provides a list of references, including URLs.

**1.3** The Work includes the Remedial Design of the Remedy described in Section 1.4 of the ROD, including:

(a) Designing an air sparging (AS) and soil vapor extraction (SVE) system to mitigate trichloroethylene (TCE) concentrations in the surficial aquifer. The zone of influence of the AS wells shall extend to no less than the portion of the groundwater plume at the Site consisting of 500 parts per billion (ppb) or more of TCE. The zone of influence of the SVE in the vadose zone shall exceed the corresponding area of influence of the AS in the saturated zone by no less than 100 feet or as otherwise approved by EPA.

(b) Sampling of occupiable commercial, residential, and industrial buildings for potential vapor intrusion (VI) impacts. This includes the following buildings above the portion of the Site groundwater plume which is in excess of the most current (at the time of sampling) vapor intrusion screening level (VISL) or within 100 feet of the portion of the groundwater plume exceeding the VISL:

1) Buildings for which at least two sets of VI samples (one in the winter heating season and one in the summer cooling season) have not been collected; and/or

2) Buildings for which the last set of VI samples were taken more than 7 years prior (at the time of sampling) and not equipped with a vapor intrusion mitigation system (VIMS); and

EPA has discretion to determine if sampling is required at a location and/or time.

(c) Designing VIMS for occupied commercial, residential, and industrial buildings impacted by VI above current (at the time of sampling) health-based screening levels or for which EPA finds VI impacts to be imminent (based on sub-slab soil vapors).

**1.4** The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Administrative Settlement Agreement and Order on Consent ("Settlement" or "ASAOC"), have the meanings assigned to them in CERCLA, in such regulations, or in the Settlement, except that the term "Paragraph" or "¶" means a paragraph of the SOW, and the term "Section" means a section of the SOW, unless otherwise stated.

## 2. COMMUNITY INVOLVEMENT

### 2.1 Community Involvement Responsibilities

(a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. Previously, during the remedial investigation/feasibility study (RI/FS) phase, EPA developed a Community Involvement Plan (CIP) for the Site. Pursuant to 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP.

(b) If requested by EPA, Respondents shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondents' 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. EPA may describe in its CIP Respondents' responsibilities for community involvement activities. All community involvement activities conducted by Respondents at EPA's request are subject to EPA's oversight. Upon EPA's request, Respondents shall establish a community information repository at or near the Site to house one copy of the administrative record and/or maintain the existing repository.

(c) **Respondents' CI Coordinator**. If requested by EPA, Respondents shall, within 15 days, designate and notify EPA of Respondents' Community Involvement Coordinator (Respondents' CI Coordinator). Respondents may hire a contractor for this purpose. Respondents' notice must include the name, title, and qualifications of the Respondents' CI Coordinator. Respondents' CI Coordinator is responsible for providing support regarding EPA's community involvement

activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the Site.

## 3. REMEDIAL DESIGN

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

(a) Plans for implementing all RD activities identified in this SOW, in the RDWP, or required by EPA to be conducted to develop the RD;

(b) A description of the overall management strategy for performing the RD, including a proposal for phasing of design and construction, if applicable;

(c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the Remedial Action (RA) as necessary to implement the Work;

(d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;

(e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);

(f) Description of any proposed pre-design investigation;

(g) Descriptions of any applicable permitting requirements and other regulatory requirements;

(h) Description of plans for obtaining access in connection with the Work, such as property acquisition, property leases, right-of-way (ROW) access, and/or easements; and

(i) The following supporting deliverables described in ¶ 5.6 (Supporting Deliverables): Health and Safety Plan; Emergency Response Plan; Field Sampling Plan, and Quality Assurance Project Plan. The Quality Assurance Project Plan shall meet the requirements articulated in Section 5.6(d).

**3.2** Respondents shall meet monthly (in person, via telephone, or via web conference) with EPA to discuss design issues as necessary, as directed or determined by EPA.

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

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

(1) An evaluation and summary of existing data and description of data gaps;

(2) A sampling plan including media to be sampled, contaminants or parameters for which sampling will be conducted, location (areal extent and depths), and number of samples; and

(3) Cross references to quality assurance/quality control (QA/QC) requirements set forth in the Quality Assurance Project Plan (QAPP) as described in ¶ 5.65.6(d).

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

(1) Summary of the investigations performed;

(2) Summary of investigation results;

(3) Summary of validated data (i.e., tables and graphics);

(4) Data validation reports and laboratory data reports;

(5) Narrative interpretation of data and results;

(6) Results of statistical and modeling analyses;

(7) Photographs documenting the work conducted; and

(8) Conclusions and recommendations for RD, including design parameters and criteria.

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

**3.4 Vapor Intrusion Sampling.** The purpose of the VI sampling is to determine if VI is impacting properties with occupied structures, in the vicinity of the Site groundwater plume exceeding the vapor intrusion screening level (VISL) for trichloroethylene (TCE), and not addressed by previous actions at the Site:

(a) **VI Sampling Work Plan.** Respondents shall submit a VI Work Plan (VIWP) for EPA approval. The VIWP must include:

(1) An operational list of properties eligible for sampling. Eligible properties shall include all properties with occupiable structures within 100 feet of the Site groundwater plume exceeding the VISL for TCE except for properties:

(i) sampled for VI in both the winter (heating) and summer (cooling) seasons, with the last sample having been taken within the previous 7 years;

(ii) equipped with a VI mitigation system; or

(iii) determined by EPA to not require VI sampling.

(2) A schedule for outreach activities to obtain access from owners and, if applicable, tenants of eligible properties ("Owners/Tenants"). The outreach activities shall include, but not be limited to, the following sequence of activities until access for VI sampling is granted by the property Owners/Tenants:

(i) Respondents (or Respondents' contractor) shall send via Certified Mail or equivalent a hardcopy request for access, including an access agreement form, to Owners/Tenants of eligible properties.

(ii) If the Owners/Tenants of an eligible property does not respond to the request for access after 30 calendar days after receipt, Respondents (or Respondents' contractor) shall attempt to communicate with the Owners/Tenants of eligible properties via telephone or video call to further attempt to gain access;

(iii) On no less than a semi-annual basis, Respondents shall provide EPA an operational list of all properties for which Owners/Tenants have not responded to requests for access for VI sampling or have denied access. The list shall include:

(A) The contact information for the Owner/Tenant.

(B) A description of the attempts made for access, including dates.

(3) A general description of the procedures to be used for VI sampling, not including those procedures included in the QAPP.

(4) A description of the procedures Respondents shall use to notify property Owners/Tenants of the results of the VI sampling.

(b) For each eligible property for which access has been granted for VI sampling, Respondents shall conduct no less than 2 rounds of VI sampling for TCE and PCE in both sub-slab soil vapor, indoor air, and crawlspace air (where applicable). The first round shall be conducted within 90 days of access being granted, unless otherwise approved by EPA. At least one round of samples shall be conducted during the winter heating season, and at least one round shall be conducted during the summer cooling season.

(c) Respondents shall provide results of all VI sampling to the respective property Owners/Tenants in the form of Certified Mail or equivalent no less than 30 days after receipt of the sampling results from Respondent's laboratory. The results shall be accompanied by a cover letter reviewed by EPA.

(d) Within 14 days of receipt of data from Respondents' laboratory, Respondents shall provide the results of all VI sampling to EPA in a format described in Section 5.4.

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

(a) A design criteria report, as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995);

(b) Preliminary drawings and specifications;

(c) Descriptions of permit requirements, if applicable;

(d) Preliminary Operation and Maintenance (O&M) Plan and O&M Manual;

(e) A description of how the RA will be implemented in a manner that minimizes environmental impacts in accordance with EPA's *Principles for Greener Cleanups* (Aug. 2009);

(f) A description of monitoring and control measures to protect human health and the environment, such as air monitoring and dust suppression, during the RA; and

(g) Updates of all supporting deliverables required to accompany the RDWP and the following additional supporting deliverables described in ¶ 5.6 (Supporting Deliverables): Site Wide Monitoring Plan; Construction Quality Assurance/Quality Control Plan; Transportation and Off-Site Disposal Plan; O&M Plan; and O&M Manual.

**3.6 Intermediate (60%) RD**. Respondents shall submit the Intermediate (60%) RD for EPA's comment. The Intermediate RD must: (a) be a continuation and expansion of the Preliminary RD; (b) address EPA's comments regarding the Preliminary RD; and (c) include the same elements as are required for the Preliminary (30%) RD.

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

(a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's MasterFormat or equivalent, as approved by EPA.

(b) A survey and engineering drawings showing existing Site features, such as elements, property borders, easements, and Site conditions;

(c) Pre-Final versions of the same elements and deliverables as are required for the Preliminary and Intermediate RD;

(d) A specification for photographic documentation of the RA; and

(e) Updates of all supporting deliverables required to accompany the Preliminary (30%) RD.

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

**3.9 Emergency Response and Reporting**

(a) **Emergency Response and Reporting**. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 3.9(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.

(b) **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately notify the authorized EPA officer orally.

(c) The "authorized EPA officer" for purposes of immediate oral notifications and consultations under ¶ 3.9(a) and ¶ 3.93.9(b) is the EPA Remedial Project Manager, the EPA Alternate Remedial Project Managers (if the EPA Remedial Project Manager is unavailable), or the EPA Region 5 Spill Hotline 312-353-2318 (if neither EPA Remedial Project Manager is available).

(d) For any event covered by ¶ 3.9(a) and ¶ 3.9(b), Respondents shall: (1) within 14 days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.

(e) The reporting requirements under ¶ 3.9 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

### 3.10 Off-Site Shipments

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

(b) Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide notice to the appropriate state environmental official in the receiving facility's state and to the EPA Remedial Project Manager. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents also shall notify the state environmental official referenced above and the EPA Remedial Project Manager of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the notice as soon as practicable after the award of the contract and before the Waste Material is shipped.

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

### 3.11 Notice of Work Completion

(a) When EPA determines, after EPA's review of the Final 100% RD under ¶ 3.8 (Final (100%) RD), that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations as provided in ¶ 3.11(c), EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RD Work Plan if appropriate in order to correct such deficiencies.

(b) Respondents shall implement the modified and approved RD Work Plan and shall submit a modified Final 100% Report for EPA approval in accordance with the EPA notice. If approved, EPA will issue the Notice of Work Completion.

(c) Issuance of the Notice of Work Completion does not affect the following continuing obligations: (1) obligations under Sections **VIII** (Property Requirements), **IX** (Access to Information), and **X** (Record Retention); and (3) **XII** (Payment of Response Costs) of the Settlement.

## 4. REPORTING

**4.1** **Progress Reports**. Respondents shall submit progress reports to EPA on a monthly basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the RD Work Plan until issuance of Notice of Work Completion pursuant to ¶ 3.11, unless otherwise directed in writing by EPA's Remedial Project Manager. The reports must cover all activities that took place during the prior reporting period, including:

(a) The actions that have been taken toward achieving compliance with the ASAOC;

(b) A summary of all results of sampling, tests, and all other data received or generated by Respondents;

(c) A description of all deliverables that Respondents submitted to EPA;

(d) A description of all activities scheduled for the next six weeks;

(e) information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;

(f) A description of any modifications to the work plans or other schedules that Respondents have proposed or that have been approved by EPA; and

(g) A description of all activities undertaken in support of the Community Involvement Plan (CIP) during the reporting period and those to be undertaken in the next six weeks.

**4.2** **Notice of Progress Report Schedule Changes**. If the schedule for any activity described in the Progress Reports changes, Respondents shall notify EPA of such change at least seven days before the originally scheduled day for the performance of the activity.

## 5. DELIVERABLES

**5.1** **Applicability**. Respondents shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 5.2 (In Writing) through 5.4 (Technical

Specifications) apply to all deliverables. Paragraph 5.5 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.

**5.2 In Writing**. As provided in ¶13.a.(2) of the ASAOC, all deliverables under this SOW must be in writing unless otherwise specified.

**5.3 General Requirements for Deliverables.**

(a) Except as otherwise provided in this Order, Respondents shall direct all deliverables required by this Order to the Remedial Project Manager by email to D. Erik Hardin, Remedial Project Manager, at hardin.erik@epa.gov.

(b) All deliverables provided to the State in accordance with ¶ 7 (State Participation) shall be directed to the State Project Coordinator by email to Leslie Williams, State Project Coordinator, at Leslie.Williams@epa.ohio.gov.

(c) All deliverables must be submitted by the deadlines in the RD Schedule, as applicable. Respondents shall submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in ¶ 5.4. All other deliverables shall be submitted to EPA in the electronic form specified by the EPA Remedial Project Manager. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondents shall also provide EPA with paper copies of such exhibits only upon written request by EPA.

**5.4 Technical Specifications**

(a) Sampling and monitoring data should be submitted in standard EPA Region 5 Electronic Data Deliverable (EDD) format, which can be found at https://www.epa.gov/superfund/region-5-superfund-electronic-data-submission. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://www.epa.gov/geospatial/epa-metadata-editor.

(c) Each file must include an attribute name for each Site unit or sub-unit submitted. Consult https://www.epa.gov/geospatial/geospatial-policies-and-standards for any further available guidance on attribute identification and naming.

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

**5.5 Approval of Deliverables**

(a) **Initial Submissions**

(1) After review of any deliverable that is required to be submitted for EPA approval under the CD or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

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

(b) **Resubmissions**. Upon receipt of a notice of disapproval under ¶ 5.5(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 5.5(a), Respondents shall, within 7 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (5) any combination of the foregoing.

(c) **Implementation**. Upon approval, approval upon conditions, or modification by EPA under ¶ 5.5(a) (Initial Submissions) or ¶ 5.5(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the ASAOC; and (2) Respondents shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 5.5(a) or ¶ 5.5(b) does not relieve Respondents of any liability for stipulated penalties under Section XV (Stipulated Penalties) of the ASAOC.

**5.6 Supporting Deliverables**. Respondents shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. Respondents shall develop the deliverables in accordance with all applicable regulations, guidances, and

policies (see Section 8 (References)). Respondents shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.

(a) **Health and Safety Plan**. The Health and Safety Plan (HASP) describes all activities to be performed to protect on-Site personnel and area residents from physical, chemical, and all other hazards posed by the Work. Respondents shall develop the HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP required by this RD SOW should cover RD activities and should be, as appropriate, updated to cover activities during the RA and updated to cover activities after RA completion. (Updates may be needed for RA activities and after RA completion.) EPA does not approve the HASP but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.

(b) **Emergency Response Plan**. The Emergency Response Plan (ERP) must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:

(1) Name of the person or entity responsible for responding in the event of an emergency incident;

(2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;

(3) Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for, spills and discharges;

(4) Notification activities in accordance with ¶ 3.9(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004; and

(5) A description of all necessary actions to ensure compliance with ¶ 3.9(a) (Emergency Response and Reportion) in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.

(c) **Field Sampling Plan**. The Field Sampling Plan (FSP) addresses all sample collection activities. The FSP must be written so that a field sampling team

unfamiliar with the project would be able to gather the samples and field information required. Respondents shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).

(d) **Quality Assurance Project Plan**. The Quality Assurance Project Plan (QAPP) augments the FSP and addresses sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of Respondents' quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. Respondents shall develop the QAPP in accordance with *EPA Requirements for Quality Assurance Project Plans*, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006); *Guidance for Quality Assurance Project Plans*, QA/G-5, EPA/240/R 02/009 (Dec. 2002); and *Uniform Federal Policy for Quality Assurance Project Plans*, Parts 1-3, EPA/505/B-04/900A though 900C (Mar. 2005). The QAPP also must include procedures:

(1) To ensure that EPA and the State and their authorized representatives have reasonable access to laboratories used by Respondents in implementing the ASAOC (Respondents' Labs);

(2) To ensure that Respondents' Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;

(3) To ensure that Respondents' Labs can obtain reporting limits that conform to the required regulatory levels and perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)) or other methods acceptable to EPA;

(4) To ensure that Respondents' Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;

(5) For Respondents to provide EPA and the State with notice at least 14 days prior to any sample collection activity;

(6) For Respondents to provide split samples and/or duplicate samples to EPA and the State upon request;

(7) For EPA and the State to take any additional samples that they deem necessary;

(8) For EPA and the State to provide to Respondents, upon request, split samples and/or duplicate samples in connection with EPA's and the State's oversight sampling; and

(9) For Respondents to submit to EPA and the State all sampling and test results and other data in connection with the implementation of the ASAOC.

(e) **Site Wide Monitoring Plan**. The purpose of the Site Wide Monitoring Plan (SWMP) is to obtain baseline information regarding the extent of contamination in affected media at the Site; to obtain information, through short- and long- term monitoring, about the movement of and changes in contamination throughout the Site, before and during implementation of the RA; to obtain information regarding contamination levels to determine whether Performance Standards (PS) are achieved; and to obtain information to determine whether to perform additional actions, including further Site monitoring. The SWMP must include descriptions of:

(1) The environmental media to be monitored;

(2) The data collection parameters, including existing and proposed monitoring devices and locations, schedule and frequency of monitoring, analytical parameters to be monitored, and analytical methods employed;

(3) How performance data will be analyzed, interpreted, and reported, and/or other Site-related requirements;

(4) Verification sampling procedures;

(5) Deliverables that will be generated in connection with monitoring, including sampling schedules, laboratory records, monitoring reports, and monthly and annual reports to EPA and State agencies; and

(6) Proposed additional monitoring and data collection actions (such as increases in frequency of monitoring, and/or installation of additional monitoring devices in the affected areas) in the event that results from monitoring devices indicate changed conditions (such as higher than expected concentrations of the contaminants of concern or groundwater contaminant plume movement).

(f) **Construction Quality Assurance/Quality Control Plan (CQA/QCP)**. The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that RA construction has satisfied all plans,

specifications, and related requirements, including quality objectives. The CQA/QCP must:

(1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/QCP;

(2) Describe the PSs required to be met to achieve Completion of the RA;

(3) Describe the activities to be performed: (i) to provide confidence that PSs will be met and (ii) to determine whether PSs have been met;

(4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;

(5) Describe industry standards and technical specifications used in implementing the CQA/QCP;

(6) Describe procedures for tracking construction deficiencies from identification through corrective action;

(7) Describe procedures for documenting all CQA/QCP activities; and

(8) Describe procedures for retention of documents and for final storage of documents.

(g) **Transportation and Off-Site Disposal Plan**. The Transportation and Off-Site Disposal Plan (TODP) describes plans to ensure compliance with ¶ 3.10 (Off-Site Shipments). The TODP must include:

(1) Proposed routes for off-Site shipment of Waste Material;

(2) Identification of communities affected by shipment of Waste Material; and

(3) Description of plans to minimize impacts on affected communities.

(h) **O&M Plan**. The O&M Plan describes the requirements for inspecting, operating, and maintaining the RA. Respondents shall develop the O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:

(1) Description of PSs required to be met to implement the ROD;

(2) Description of activities to be performed: (i) to provide confidence that PSs will be met and (ii) to determine whether PSs have been met;

(3) **O&M Reporting**. Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records,

records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;

(4) Description of corrective action in case of systems failure, including: (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve PS; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and

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

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

(j) **Institutional Controls Implementation and Assurance Plan**. The Institutional Controls Implementation and Assurance Plan (ICIAP) describes plans to implement, maintain, and enforce the Institutional Controls (ICs) at the Site. Respondents shall develop the ICIAP in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). The ICIAP must include the following additional requirements:

(1) Locations of recorded real property interests (e.g., easements, liens) and resource interests in the property that may affect ICs (e.g., surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and

(2) Legal descriptions and survey maps that are prepared according to current American Land Title Association (ALTA) survey guidelines and certified by a licensed surveyor.

## 6. SCHEDULES

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

**6.2 RD Schedule**

| | Description of Deliverable, Task | ¶ Ref. | Deadline* |
|---|---|---|---|
| 1 | RDWP | 3.1 | 90 days after EPA's Authorization to Proceed regarding Supervising Contractor under ASAOC ¶ **13.c** |
| 2 | PDIWP | 3.3(a) | 90 days after EPA's Authorization to Proceed regarding Supervising Contractor under ASAOC ¶ **13.c** |
| 3 | PDI Evaluation Report | 3.3(b) | 45 days after receipt of laboratory data from final sample to be evaluated |
| 3 | VIWP | 3.4 | 60 days after EPA's Authorization to Proceed regarding Supervising Contractor under ASAOC ¶ **13.c** |
| 4 | Preliminary (30%) RD | 3.4, 3.3(a) | 30 days after EPA approval of Final RDWP |
| 5 | Intermediate (60%) RD | 3.6 | 30 days after EPA comments on Preliminary RD |
| 6 | Pre-final (90/95%) RD | 3.7 | 30 days after EPA comments on Intermediate RD |
| 7 | Final (100%) RD | 3.8 | 14 days after EPA comments on Pre-final RD |

***"Days" in this table are used consistent with the definition in the ASAOC.**

## 7. STATE PARTICIPATION

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

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

(a) Any EPA approval or disapproval under ¶ 5.5 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and any disapproval of, or Notice of Work Completion under, ¶ 3.11 (Notice of Work Completion).

## 8. REFERENCES

**8.1** The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in ¶ 8.2:

(a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).

(b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).

(c) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).

(d) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).

(e) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr.1990).

(f) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).

(g) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).

(h) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).

(i) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).

(j) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).

(k) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).

(l) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).

(m) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).

(n) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, 540-R-01-007 (June 2001).

(o) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).

(p) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).

(q) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).

(r) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A though 900C (Mar. 2005).

(s) Superfund Community Involvement Handbook SEMS 100000070 (January 2016), https://www.epa.gov/superfund/community-involvement-tools-and-resources.

(t) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).

(u) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).

(v) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).

(w) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).

(x) USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2 (amended Apr. 2007).

(y) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), https://www.epa.gov/geospatial/geospatial-policies-and-standards and https://www.epa.gov/geospatial/epa-national-geospatial-data-policy.

(z) Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, OSWER 9283.1-33 (June 2009).

(aa) Principles for Greener Cleanups (Aug. 2009), https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups.

(bb) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).

(cc) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).

(dd) Groundwater Road Map: Recommended Process for Restoring Contaminated Groundwater at Superfund Sites, OSWER 9283.1-34 (July 2011).

(ee) Recommended Evaluation of Institutional Controls: Supplement to the "Comprehensive Five-Year Review Guidance," OSWER 9355.7-18 (Sep. 2011).

(ff) Construction Specifications Institute's MasterFormat, available from the Construction Specifications Institute, https://www.csinet.org/masterformat.

(gg) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach, OSWER 9200.2-125 (Sep. 2012).

(hh) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).

(ii) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).

(jj) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), http://www.epaosc.org/_HealthSafetyManual/manual-index.htm.

(kk) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).

(ll) Guidance for Evaluating Completion of Groundwater Restoration Remedial Actions, OSWER 9355.0-129 (Nov. 2013).

(mm) Groundwater Remedy Completion Strategy: Moving Forward with the End in Mind, OSWER 9200.2-144 (May 2014).

(nn) Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air, OSWER 9200.2-154 (June 2015).

(oo) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), https://www.epa.gov/superfund/superfund-post-construction-completion.

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

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

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

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