

APPENDIX A

SUPPLEMENTAL PROVISIONS FOR IMPLEMENTATION OF RI/FS  
BY RESPONDENTS

1. The definition of "Work" under the Settlement Agreement and Order shall be changed to: "The performance of the RI/FS described in this Settlement Agreement and Order and all related activities."
2. Existing Paragraphs 10-17, 21, 34, 37, 41, 45, 46, 57, 60, 73-75 and 77 of the Settlement Agreement and Order no longer apply and are replaced as described below.
3. The following additions and revisions to the Settlement Agreement and Order take effect immediately upon the Respondents' determination under Paragraph 13 that they will perform the RI/FS:

**A. Paragraphs 10-12 of the Settlement Agreement and Order are replaced with the following:**

1. Designation of Contractors, Project Coordinator and Remedial Project Manager

10. All Work performed under this Settlement Agreement and Order shall be under the direction and supervision of qualified personnel. Within 30 days of the effective date of this Settlement Agreement and Order, and before the work outlined below begins, the Respondents shall notify U.S. EPA and IEPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. With respect to any proposed contractor, the Respondents shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA. U.S. EPA retains the right to disapprove of the persons undertaking the work for Respondents. If U.S. EPA disapproves in writing a selected contractor, subcontractor, consultant or laboratory, Respondents shall retain replacement(s) and shall notify U.S. EPA and IEPA of the identity and qualifications of the replacement(s) within 14 days of the written notice. If U.S. EPA subsequently disapproves of the replacement(s), U.S. EPA reserves the right to terminate this Settlement Agreement and Order and to conduct a

complete RI/FS, and to seek reimbursement for costs and penalties from Respondents. During the course of the RI/FS, Respondents shall notify U.S. EPA and IEPA in writing of any changes or additions in the contractors, subcontractors, consultants or laboratories used to carry out such work, providing their names, titles, and qualifications. U.S. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

11. A. Within 10 calendar days after the effective date of this Settlement Agreement and Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Settlement Agreement and Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA and IEPA. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If U.S. EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within 14 calendar days following U.S. EPA's disapproval and shall notify U.S. EPA and IEPA of that person's name and qualifications within 14 calendar days of U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement and Order shall constitute receipt by all Respondents.

B. The U.S. EPA has designated Ross delRosario of the Remedial Response Branch, Region 5, as its Remedial Project Manager ("RPM"). Respondents shall direct all submissions required by this Settlement Agreement and Order to the RPM along with the required copies in accordance with Section XIX (Submittals/Correspondence) in accordance with the approved schedule under this Settlement Agreement and Order. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies. Upon request by U.S. EPA, Respondents shall submit in electronic form all portions of RI and FS Reports, and any report or other deliverable Respondents are required to submit pursuant to provisions of this Settlement Agreement and Order, including the SOW.

12. U.S. EPA and Respondents shall have the right, subject to the provisions of this section, to change their designated RPM or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice within 4 calendar days of oral notification.

**A. Paragraphs 13-17 of the Settlement Agreement and Order are replaced with the following:**

## 2. Work to Be Performed

13. Respondents shall develop and submit to U.S. EPA and IEPA an RI report, an FS report, and all other deliverables in accordance with the attached Statement of Work ("SOW"). The SOW is incorporated into and made an enforceable part of this Settlement Agreement and Order. All deliverables shall be prepared in accordance with the provisions of this Settlement Agreement and Order, the SOW, CERCLA, the NCP, U.S. EPA guidance related to remedial investigations and feasibility studies including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05), Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part A), Interim Final (EPA-540-1-89-002), OSWER Directive 9285.7-01A, December 1, 1989; and Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments), Interim, (EPA 540-R-97-033), OSWER Directive 9285.7-01D, January 1998, guidances referenced in the SOW, and any RI/FS related guidance subsequently issued by U.S. EPA. In the RI and FS Reports, Respondents shall address the factors required to be taken into account in Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430 of the NCP, 40 C.F.R. § 300.430.

13a. Except as specifically noted in the SOW, this RI/FS is limited to the industrial park portion of the Site. All other areas of the Site and all areas where hazardous substances, pollutants or contaminants from the Site have migrated or have been come to be located, will be addressed in a subsequent RI/FS process.

13b. The RI shall characterize the geology and hydrogeology of the Site, determine the nature and extent of hazardous substances, pollutants or contaminants at or from the Site, and characterize all ecological zones including terrestrial, riparian, wetlands, aquatic/marine, and transitional. Respondents shall prepare, for inclusion with the RI Report, a determination of the nature and extent of the current and potential threat to the public health or welfare or the environment posed by the release or threatened release of any hazardous substances, pollutants, or contaminants at or from the Site, including a "Human Health Risk Assessment" and "Ecological Risk Assessment".

13c. In the FS Report, Respondents shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action that protect human health and the environment by recycling waste or by eliminating, reducing and/or controlling risks posed through each pathway at the Site. In the FS Report,

the Respondents shall evaluate a range of alternatives including but not limited to those alternatives described in 40 C.F.R. § 300.430(e) and remedial alternatives that utilize permanent solutions and alternative treatment technologies or resource recovery technologies. The FS Reports shall include a detailed analysis of individual alternatives against each of the nine evaluation criteria in 40 C.F.R. § 300.430(e)(9)(iii) and a comparative analysis that focuses upon the relative performance of each alternative against the nine criteria in 40 C.F.R. § 300.430(e)(9)(iii).

13d. Respondents shall submit to U.S. EPA and Illinois EPA copies of all plans, reports, submittals and other deliverables required under this Settlement Agreement and Order, the SOW and the RI/FS Planning Documents in accordance with the approved schedule for review and approval pursuant to Section VI.2.F of this Settlement Agreement and Order (U.S. EPA Approval of Plans and Other Submissions). Upon request by U.S. EPA, Respondents shall submit in electronic form all portions of RI and FS Reports, and any report or other deliverable Respondents are required to submit pursuant to provisions of this Settlement Agreement and Order, including the SOW. Upon approval by U.S. EPA, all deliverables under this Settlement Agreement and Order, including the SOW, shall be incorporated into and become enforceable under this Settlement Agreement and Order.

13e. The Work conducted under this Settlement Agreement and Order is subject to approval by U.S. EPA (in consultation with IEPA) and shall provide all appropriate and necessary information to assess site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP").

## 2.A RI/FS Work Plan

14. Respondents shall implement the approved RI/FS work plan and sampling and analysis plan.

14a. As a supplement to the RI/FS work plan, the Respondents shall submit for U.S. EPA review and comment (in consultation with IEPA) a plan that ensures the protection of the public health and safety during performance of work under this Settlement Agreement and Order. The plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910 and shall be prepared in accordance with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992 or subsequently issued guidance). If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the RI/FS.

14b. Upon request by U.S. EPA, Respondents shall have such a

laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondents shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with, at a minimum, OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

14c. Upon request by U.S. EPA, Respondents shall allow U.S. EPA, IEPA, or their authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing work under this Settlement Agreement and Order. Respondents shall notify U.S. EPA and IEPA not less than 7 working days in advance of any sample collection activity. U.S. EPA and IEPA shall have the right to take any additional samples that they deem necessary.

## 2.B RI Report

15. The RI Report will be developed in two primary phases: the Site Characterization Technical Memorandum and the Risk Assessment Technical Memorandum.

### 2.B.1 Site Characterization Technical Memorandum

15a. Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a Site Characterization Technical Memorandum, in accordance with the schedule contained in the SOW. The Site Characterization Technical Memorandum shall present the results of the site characterization activities as described in the SOW.

### 2.B.2 Risk Assessment Technical Memorandum

15b. Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a Risk Assessment Technical Memorandum, in accordance with the schedule contained in the SOW. The Risk Assessment Technical Memorandum shall evaluate both ecological risks and human health risks and shall present the results of the Risk Assessment activities as described in the SOW.

### 2.B.3 Final RI Report

15c. Within 30 calendar days after approval of the Risk Assessment Technical Memorandum, the Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a draft RI Report that is consistent with this Settlement Agreement and Order and the SOW.

15d. The draft RI report and all revisions thereto shall include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my

knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this Report, the information submitted is true, accurate, and complete.

#### 2.B.4 Interim Actions

15e. In developing the RI, to the extent possible, Respondents shall also identify and evaluate potential interim response activities that may be implemented to reduce or eliminate human exposures to contamination at or from the industrial portion of the Site prior to completion of the RI. Such response activities shall be discussed in the Phase II Technical Memorandum, and Respondents may propose to implement such activities pursuant to section VI.2.E of this Settlement Agreement and Order.

#### 2.C FS Report

16. Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a draft FS Report that is consistent with this Settlement Agreement and Order and the SOW. The FS Report will be developed in three primary phases: the Remedial Action Objectives Technical Memorandum, the Alternatives Screening Technical Memorandum, and the Comparative Analysis of Alternatives Technical Memorandum.

##### 2.C.1 Remedial Action Objectives Technical Memorandum

16a. Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a Remedial Action Objectives Technical Memorandum, in accordance with the schedule contained in the SOW. Based on the results of the approved RI Report, the Remedial Action Objectives Technical Memorandum shall identify the constituents and media of concern, the actual and potential exposure pathways and receptors, and the appropriate cleanup objectives for the identified media and pathways.

##### 2.C.2 Alternatives Screening Technical Memorandum

16b. Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) an Alternatives Screening Technical Memorandum, in accordance with the schedule contained in the SOW. The Alternatives Screening Technical Memorandum shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the SOW and RI/FS Work Plan. Respondents shall summarize the development and screening of remedial alternatives, and include an alternatives array document as described in the SOW.

##### 2.C.3 Comparative Analysis of Alternatives Technical Memorandum

16c. Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a Comparative Analysis of Alternatives Technical

Memorandum, in accordance with the schedule contained in the SOW. The Comparative Analysis of Alternatives Technical Memorandum shall summarize the results of the comparative analysis performed between the remedial alternatives and present the results of all treatability studies performed, as described in the SOW.

#### 2.C.4 Final FS Report

16d. Within 21 calendar days after approval of the Comparative Analysis of Alternatives Technical Memorandum, the Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a draft FS Report that is consistent with this Settlement Agreement and Order and the SOW.

16e. The draft FS report and all revisions thereto shall include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this Report, the information submitted is true, accurate, and complete.

16f. Respondents shall not commence or undertake any remedial actions at the Site without prior U.S. EPA approval.

#### 2.D Reporting

17. Respondents shall submit a monthly written progress report to U.S. EPA and IEPA concerning actions undertaken pursuant to this Settlement Agreement and Order, beginning 30 calendar days after the effective date of this Settlement Agreement and Order, until termination of this Settlement Agreement and Order, unless otherwise directed in writing by the RPM. These reports shall: (1) describe all significant developments during the preceding period, including the work performed and any problems encountered; (2) provide all analytical data received during the reporting period; (3) describe all developments anticipated during the next reporting period, including a schedule of work to be performed; and (4) describe all anticipated problems and planned resolutions of past or anticipated problems.

17a. Respondents shall make presentations at, and participate in, meetings at the request of U.S. EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at U.S. EPA's discretion (in consultation with IEPA and the Respondents).

17b. Any Respondent that owns any portion of the Site shall, at least 20 calendar days prior to the conveyance of any interest in real property at the Site, give written notice of this Settlement Agreement and Order to the transferee and written notice of the

proposed conveyance to U.S. EPA and IEPA. The notice to U.S. EPA and IEPA shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section VI.3. (Access to Property and Information).

## 2.E Additional Work

17c. In the event that the U.S. EPA or the Respondents determine that additional work is necessary to accomplish the objectives of the RI/FS, notification of such additional work shall be provided to the other parties in writing. Any additional work which Respondents determine to be necessary shall be subject to U.S. EPA's written approval (in consultation with IEPA) prior to commencement of the additional work. Respondents shall complete, in accordance with standards, specifications, and schedules U.S. EPA has approved, any additional work Respondents have proposed, and which U.S. EPA has approved in writing or that U.S. EPA has determined to be necessary, and has provided written notice of pursuant to this paragraph. Subject to Dispute Resolution as provided in Section IX, Respondents shall implement the additional tasks that U.S. EPA determines are necessary.

## 2.F U.S. EPA Approval of Plans and other Submissions

17d. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Settlement Agreement and Order, including the SOW, U.S. EPA (in consultation with IEPA) shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, U.S. EPA shall not modify a submission without first providing Respondents at least one notice of deficiency and an opportunity to cure within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

17e. In the event of approval, approval upon conditions, or modification by U.S. EPA, pursuant to Subparagraph 17d(a), (b), (c) or (e), Respondents shall proceed to take any action required by the plan, report or other item, as approved or modified by U.S. EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section IX with respect to the modifications or conditions made by U.S. EPA. Following U.S. EPA approval or modification of a submittal or portion thereof, Respondents shall not thereafter alter or amend such submittal or portion thereof unless directed by U.S. EPA. In the event that U.S. EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 17d(c) and the submission had a material defect, U.S. EPA retains the right to seek stipulated penalties, as provided in Section XI. U.S. EPA also retains the right to perform its own studies, complete the RI/FS (or any portion of

the RI/FS), and seek reimbursement from Respondents for its costs; and/or seek any other appropriate relief.

17f. Resubmission of Plans.

a. Upon receipt of a notice of disapproval or required modifications, Respondents shall, within 21 days or such longer time as specified by U.S. EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XI, shall accrue during the 21-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 17g and 17h.

b. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed, at the direction of U.S. EPA, to take any action required by any non-deficient portion of the relevant submission. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties under Section XI.

c. For all remaining deliverables not enumerated above in Sections 2.A-2.C and 2.E, Respondents shall proceed with all subsequent tasks, activities and deliverables without awaiting U.S. EPA approval on the submitted deliverable. U.S. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

17g. If U.S. EPA disapproves a resubmitted plan, report or other item, or portion thereof, U.S. EPA may direct Respondents to correct the deficiencies and specify the date by which the corrections must be submitted. U.S. EPA also retains the right to modify or develop the plan, report or other item. Respondents shall implement any such plan, report, or item as corrected, modified or developed by U.S. EPA, subject only to their right to invoke the dispute resolution procedures set forth in Section IX. In the event of U.S. EPA disapproval of a revised submittal, Respondents may be deemed in violation of this Settlement Agreement and Order. If Respondents are deemed in violation of this Settlement Agreement and Order, U.S. EPA retains the right to seek stipulated or statutory penalties; perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondents for its costs; to terminate this Settlement Agreement and Order; and/or seek any other appropriate relief.

17h. If upon resubmission, a plan, report, or item is disapproved or modified by U.S. EPA due to a material defect, Respondents shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Respondents invoke the dispute resolution procedures in accordance with Section IX and U.S. EPA's action is revoked or substantially modified

pursuant to a Dispute Resolution decision issued by U.S. EPA or superceded by an agreement reached pursuant to that Section. The provisions of Section IX and XI shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If U.S. EPA's disapproval or modification is not otherwise revoked, substantially modified or superceded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section IX, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XI.

17i. In the event that U.S. EPA takes over some of the tasks, but not the preparation of the RI Report or the FS Report, Respondents shall incorporate and integrate information supplied by U.S. EPA into the final reports.

17j. All plans, reports, and other items submitted to U.S. EPA under this Settlement Agreement and Order shall, upon approval or modification by U.S. EPA, be incorporated into and enforceable under this Settlement Agreement and Order. In the event U.S. EPA approves or modifies a portion of a plan, report, or other item submitted to U.S. EPA under this Settlement Agreement and Order, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement and Order.

17k. Neither failure of U.S. EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by U.S. EPA. Whether or not U.S. EPA gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables acceptable to U.S. EPA.

**B. Paragraph 21 of the Settlement Agreement and Order is replaced with the following:**

21. Where work or action under this Settlement Agreement and Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 30 calendar days after the effective date of this Settlement Agreement and Order, or as otherwise specified in writing by the RPM. Respondents shall notify U.S. EPA within 4 calendar days if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. If Respondents cannot obtain access agreements, U.S. EPA may, in its discretion, obtain access for Respondents, perform those tasks or activities with U.S. EPA contractors, or terminate the Settlement Agreement and Order. In the event that U.S. EPA performs those tasks or activities with U.S. EPA contractors and does not terminate the Settlement Agreement and Order, Respondents shall perform all other activities not requiring access to that property, and shall

reimburse U.S. EPA for all costs incurred in performing such activities. Respondents shall integrate the results of any such tasks undertaken by U.S. EPA into its reports and deliverables.

**C. The following language will be added to Paragraph 29 of the Settlement Agreement and Order:**

Where any portion of the activities is to be conducted off-site and requires a federal or state permit or approval, the Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

**D. Paragraphs 30a and 30b will be added to the Settlement Agreement and Order:**

30a. Off-Site Shipments

i. Respondents shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to U.S. EPA's Designated Project Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

ii. Respondents shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

iii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the remedial investigation and feasibility study. Respondents shall provide the information required by Subparagraph 30a.ii and 30a.iv as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

iv. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain U.S. EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances,

pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

30b. Emergency Response and Notification of Releases

i. If any incident, or change in Site conditions, during the activities conducted pursuant to this Settlement Agreement and Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the RPM or, in the event of his unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. If Respondents fail to respond, U.S. EPA may respond to the release or endangerment and reserve the right to recover costs associated with that response.

ii. Respondents shall submit a written report to U.S. EPA and IEPA within 10 calendar days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondents shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

**A. Paragraph 34 of the Settlement Agreement and Order is replaced with the following:**

34a. Respondents shall pay all Oversight Costs of the United States related to the Site that are not inconsistent with the NCP. The obligation to pay Oversight Costs shall not take effect unless and until the Respondents elect to perform the RI/FS as provided in paragraph 13.b of the Settlement Agreement and Order. U.S. EPA will send Respondents a bill for Oversight Costs on an annual basis. The bill shall consist of an Itemized Costs Summary. "Oversight Costs" are all costs incurred and paid by U.S. EPA after the date of Respondents' election to perform the RI/FS under paragraph 13.b of this Settlement Agreement and Order relating to this Settlement Agreement and Order, including, but not limited to direct and indirect costs related to overseeing work performed under this Settlement Agreement and Order, and reviewing or developing plans, reports and other items pursuant to this Settlement Agreement and Order.

34b. Respondents shall, within 45 calendar days of receipt of a bill from U.S. EPA, remit a cashier's or certified check for the

amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Program Accounting and Analysis Section  
P.O. Box 70753  
Chicago, Illinois 60673

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Ellsworth Industrial Park Site" and shall reference the payor(')s(') name and address, the U.S. EPA site identification number B52A, and the docket number of this Settlement Agreement and Order.

34c. The total amount to be paid by Respondents under this Section shall be deposited in the Ellsworth Industrial Park Special Account within the U.S. 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 U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

34d. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the RPM. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

**A. Paragraph 37 of the Settlement Agreement and Order is replaced with the following:**

37. If the Respondents object to any U.S. EPA action taken pursuant to this Settlement Agreement and Order, including billings for response costs, the Respondents shall notify U.S. EPA in writing of their objection(s) within 10 calendar days of such action, unless the objection(s) have been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which the Respondents rely. U.S. EPA shall submit its Statement of Position, including supporting documentation, within 15 business days of receipt of the written notice of dispute. In the event

that these time periods for exchange of written documents may cause a delay in the Work, they shall be shortened upon, and in accordance with, notice by U.S. EPA.

**A. Paragraph 41 of the Settlement Agreement and Order is replaced with the following:**

41. Respondents' obligations under this Settlement Agreement and Order shall not be tolled by submission of any objection for dispute resolution under this Section. 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 U.S. EPA's decision, whichever occurs. No U.S. EPA decision made pursuant to this Section shall constitute a final Agency action giving rise to judicial review.

**A. Paragraphs 45 and 46 of the Settlement Agreement and Order are replaced with the following:**

45. Respondents shall be liable to U.S. EPA for stipulated penalties in the amounts set forth below for failure to comply with the Work requirements of this Settlement Agreement and Order specified below, unless excused under Section X, or modified by written agreement of the parties under Section XVIII:

<u>Deliverable/Activity</u>	<u>Penalty For Days 1-7</u>	<u>Penalty For &gt; 7 Days</u>
Failure to Submit a Draft RI or FS Report	\$250/Day	\$750/Day
Failure to Submit a revised RI or FS Report	\$250/Day	\$750/Day
Failure to Submit a Data Report or Technical Memorandum	\$250/Day	\$750/Day
Late Submittal of Progress Reports or Other Miscellaneous Reports/Submittals	\$100/Day	\$ 400/Day

Failure to Meet any Scheduled Deadline in the Settlement Agreement and Order                      \$150/Day                      \$ 400/Day

46. Unless the failure to perform is excused or the timing for performance is otherwise modified by the parties, all penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VI.2 (Work to be Performed), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, U.S. EPA Region 5, under Section IX (Dispute Resolution), during the period, if any, beginning on the 21st day after the U.S. EPA submits its Statement of Position until the date that the Director of the Superfund Division, U.S. EPA Region 5, issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement and Order.

**A. Paragraph 57 of the Settlement Agreement and Order is replaced with the following:**

57. Except as reserved in Section XII of this Settlement Agreement and Order, in consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement and Order, and except as otherwise specifically provided in this Settlement Agreement and Order, U.S. 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 performance of the Work and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement and Order, including, but not limited to, payment of Oversight Costs pursuant to Section VIII. This covenant not to sue extends only to Respondents and does not extend to any other person.

**A. Paragraph 60 of the Settlement Agreement and Order is replaced with the following:**

60. The Respondents reserve, and this Settlement Agreement and Order is without prejudice to, their potential claims against the United States for intentional or willful torts committed by any employee of the United States while acting within the scope of their office or employment, to the extent such claims are

otherwise allowed by any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Respondents' reservation does not include any claim based on U.S. EPA's selection of response actions, or U.S. EPA's oversight or approval of the Work.

**A. Paragraph 69a will be added to the Settlement Agreement and Order:**

69a. Notice of Completion. When U.S. EPA determines (in consultation with IEPA) that all work, including the RI and FS Reports, has been fully performed in accordance with this Settlement Agreement and Order, except for certain continuing obligations required by this Settlement Agreement and Order (e.g., record retention, payment of costs), U.S. EPA will provide written notice to the Respondents. If U.S. EPA determines (in consultation with IEPA) that any such Work has not been completed in accordance with this Settlement Agreement and Order, U.S. EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RI/FS Planning Documents or other work plan if appropriate in Settlement Agreement and Order to correct such deficiencies. Respondents shall implement the modified and approved RI/FS Planning Documents or other approved work plan and shall submit the required deliverable(s) in accordance with the U.S. EPA notice. Failure by Respondents to implement the approved modified RI/FS Planning Documents or other work plan shall be a violation of this Settlement Agreement and Order.

**A. Paragraph 73-75 of the Settlement Agreement and Order are replaced with the following:**

73. Respondents shall establish and maintain a financial instrument or trust account or other financial mechanism acceptable to U.S. EPA, funded sufficiently to perform the work and any other obligations required under this Settlement Agreement and Order, including a margin for cost overruns.

74. Within 15 days after the effective date of this Settlement Agreement and Order, Respondents shall fund the financial instrument or trust account sufficiently to perform the work required under this Settlement Agreement and Order projected for the period beginning with the effective date of the Settlement Agreement and Order through December 31, 2005. Beginning December 15, 2005, and on or before the 15th calendar day of each calendar year quarter thereafter, Respondents shall fund the financial instrument or trust account sufficiently to perform the work and other activities required under this Settlement Agreement and Order projected for the succeeding calendar year quarter.

75. If at any time the net worth of the financial instrument or trust account is insufficient to perform the work and other

obligations under the Settlement Agreement and Order for the upcoming quarter, Respondents shall provide written notice to U.S. EPA within 7 days after the net worth of the financial instrument or trust account becomes insufficient. The written notice shall describe why the financial instrument or trust account is funded insufficiently and explain what actions have been or will be taken to fund the financial instrument or trust account adequately. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement and Order.

**A. Paragraph 77 of the Settlement Agreement and Order is replaced with the following:**

77. Prior to commencement of any work under this Settlement Agreement and Order, Respondents shall secure, and shall maintain in force for the duration of this Settlement Agreement and Order, and for two years after the completion of all activities required by this Settlement Agreement and Order, Comprehensive General Liability ("CGL") and automobile insurance, with limits of \$2 million dollars, combined single limit, naming as insured the United States. The CGL insurance shall include Contractual Liability Insurance in the amount of \$1 million per occurrence, and Umbrella Liability Insurance in the amount of \$2 million per occurrence.

77a. Respondents shall also secure, and maintain in force for the duration of this Settlement Agreement and Order and for two years after the completion of all activities required by this Settlement Agreement and Order the following:

- a. Professional Errors and Omissions Insurance in the amount of \$1,000,000.00 per occurrence.
- b. Pollution Liability Insurance in the amount of \$1,000,000.00 per occurrence, covering as appropriate both general liability and professional liability arising from pollution conditions.

77b. For the duration of this Settlement Agreement and Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of the Respondents, in furtherance of this Settlement Agreement and Order.

77c. If Respondents demonstrate by evidence satisfactory to U.S. EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Respondents need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

77d. Prior to commencement of any work under this Settlement Agreement and Order, and annually thereafter on the anniversary of the effective date of this Settlement Agreement and Order, Respondents shall provide to U.S. EPA certificates of such insurance and a copy of each insurance policy.

77e. At least 7 days prior to commencing any work under this Settlement Agreement and Order, Respondents shall certify to U.S. EPA that the required insurance has been obtained by that contractor.