UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

JERNIGAN TRUCKING DUMP SITE–NORTHERN PORTION,
Seffner, Hillsborough County, Florida

GULF COAST RECYCLING, INC., and
LAFARGE NORTH AMERICA, INC.,
Respondents

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

U.S. EPA Region 4
Docket Number CERCLA-04-2006-3803

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

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Gulf Coast Recycling, Inc, and Lafarge North America, Inc. ("Respondents"). This Settlement Agreement provides for the performance of a removal action by Respondents and the reimbursement of certain response costs incurred by the United States at or in connection with property located along W.E. Fertic Drive in Seffner, Hillsborough County, Florida–specifically, the Northern Portion of the Jernigan Trucking Dump Site (the "Site").

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA").

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

4. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement 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 Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondents and their corporate 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 Agreement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

7. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which 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 Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

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

c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.

d. "Enforcement Action Memorandum" shall mean that EPA Enforcement Action Memorandum and its attachments that relates to the Site and was signed on September 26, 2006, by the Director of the Waste Management Division, EPA Region 4. The "Enforcement Action Memorandum" is attached as *Appendix A*.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "FDEP" shall mean the Florida Department of Environmental Protection and any successor departments or agencies of the State.

g. "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 plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 35 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 45 (emergency response), and Paragraph 70 (work takeover). Future Response Costs shall begin to accrue on the Effective Date of this Settlement Agreement.

h. "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.

i. "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.

j. "Northern Portion" shall mean that portion of the Site sometimes referred to as "the Jernigan parcel" and more particularly described as follows:

> East 2/3 of the SE ¼ of the SE ¼ of Section 20, Township 28 South, Range 20 East, Hillsborough County, Florida; and West 429 feet of the SW ¼ of the SW ¼ of Section 21, Township 28 South, Range 20 East, Hillsborough County, Florida, less the North 25 feet for road.

k. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

l. "Parties" shall mean EPA and Respondents.

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

n. "Respondents" shall mean: Gulf Coast Recycling, Inc., an active Florida corporation headquartered in Tampa, Florida; and Lafarge North America, an active Maryland corporation headquartered in Herndon, Virginia.

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

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

q. "Site" shall mean the Jernigan Trucking Dump Site, encompassing approximately 178.5 acres, located along W.E. Fertic Drive in Seffner, Hillsborough County, Florida, and depicted generally on the map attached as *Appendix B*.

r. "State" shall mean the State of Florida.

s. "Waste Material" shall mean: (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (iv) any "hazardous substance" under Section 403.703 (29), Florida Statutes.

t. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

The following constitutes an outline of the facts upon which this Settlement Agreement is based:

9. The Site encompasses three parcels of land totaling approximately 178.5 acres located along W.E. Fertic Drive in Seffner, Hillsborough County, Florida.

10. Jerry A. Lewis and Mary E. Lewis own the parcel known as "the Lewis parcel." Lewis' 8001 Enterprises, Inc., a Florida corporation, owns the parcel known as "the Jernigan parcel." Rosemary Conkey and Ross A. Fertic own the parcel known as "the Fertic parcel."

11. Since the mid-1960s, the parcels of land that make up the Site have housed a dairy farm, a peat mining operation, a landfill, and an informal dumping ground for construction and demolition debris, slag, clinkers, coal residue, kiln dust, miscellaneous trash, and lead-acid battery casings.

12. Some of the battery casings were dumped at the Site in the late 1970s by or on behalf of Gulf Coast Recycling, Inc.

13. Some of the slag, coal residue, kiln dust, and/or clinkers were dumped at the Site by or on behalf of General Portland, Inc., to which Lafarge North America, Inc., is the successor.

14. The Florida Department of Environmental Protection ("FDEP") had jurisdiction over the Site for more than a decade, during which it issued numerous citations, warning notices, and a consent order to former and current owners of the Site for various infractions. FDEP has since referred the Site to EPA.

15. On November 28, 2005, EPA contractors implemented an EPA-approved sampling plan as part of an Integrated Removal Site Evaluation/HRS Special Study. Selected areas of the Site were screened for lead contamination in soil using XRF screening. A total of 45 environmental samples, including background and duplicate samples, were collected from surface and subsurface soil, sediment, groundwater, and surface water on-Site.

16. Analytical results indicated that lead concentrations at the Site exceed EPA Region 9 Preliminary Remedial Goals and Florida Soil Cleanup Target Levels in several locations. Lead and arsenic, the primary constituents of concern, were present in all environmental media at elevated concentrations as compared to background. EPA's contractors found levels as high as 11,000 mg/kg and 100,000 mg/kg for lead in the surface soil. The maximum arsenic concentration detected in surface soils was 440 ppm. Elevated arsenic and lead concentrations were most frequently detected in samples collected from the Fertic parcel of the Site where battery casings have been observed along the roadbeds and in the wetland areas.

17. Arsenic and lead are both hazardous substances, listed in Section 302.4 of Title 40 of the Code of Federal Regulations, as referred to in Section 101(14) of CERCLA.

18. In its Enforcement Action Memorandum, EPA has made findings that conditions at the Site pose an imminent and substantial endangerment to the public health or welfare and to the environment. Expressly identified threats include actual or potential exposure to nearby human populations, animals, or the food chain via inhalation of windborne dust, inadvertent ingestion of contaminated soil, and direct contact with contaminated surficial soils. Several areas throughout the Site are devoid of vegetation, making the hazardous substances, pollutants, or contaminants in those areas susceptible to wind and water migration during the storms and heavy rain events common in the geographical area. Off-Site transport is a concern. Furthermore, the numerous ponds and drainage ditches on-Site could carry contaminated surface water to and through the wetlands on and directly east of the Fertic parcel. These wetlands provide an adequate habitat to support ecological receptors of concern.

19. In its Enforcement Action Memorandum, EPA has determined that hazardous substances at the Site will continue to be a threat to public health, welfare, and the environment if not mitigated.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

20. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

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

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

c. 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), and is jointly and severally liable for performance of a response action and for response costs to be incurred at the Site. Respondents Gulf Coast Recycling, Inc., and Lafarge North America, Inc., arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

e. The conditions described in Paragraphs 16 through 18 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 removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

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

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

22. Within 12 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within seven days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

23. EPA has designated Leigh Vorreuter of the Emergency Response and Removal Branch, Region 4, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the OSC at:

Leigh Vorreuter
On-Scene Coordinator
EPA Region 4, ERRB
61 Forsyth Street, S.W.
Atlanta, GA 30303

24. EPA and Respondents shall have the right, subject to Paragraph 22, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA five days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

25. Respondents shall perform, at a minimum, all actions necessary to implement the Enforcement Action Memorandum on the Northern Portion of the Site. The actions to be implemented generally include, but are not limited to, the following:

a. Continued extent-of-contamination sampling. All environmental media with levels over Removal Action Levels ("RALs"), based on off-Site laboratory analysis, will be addressed;

b. Actions to protect the public, including installing a secure gate and posting warning signs;

c. Excavation with restoration and/or capping of surface soils where arsenic and/or lead levels exceed EPA's RALs. Currently EPA's residential RAL is established at 40 ppm for arsenic and 400 ppm for lead. Excavation will occur to a depth of

up to 24 inches, depending on the level of contamination. Excavation of highly contaminated source material beyond 24 inches will also occur, where appropriate. EPA's "Superfund Lead-Contaminated Residential Sites Handbook" will be used as a guide during the action;

d. Continued assessment of any wetlands area in the Northern Portion of the Site and implementation of actions to reduce any risks identified during the ecological assessment; and

e. Actions to insure the protection of on-Site wetlands and surface water.

26. Work Plan and Implementation.

a. Within 21 days after the Effective Date, Respondents shall submit to EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 25 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within 14 business days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 26(b).

27. Health and Safety Plan. Within 21 days after the Effective Date, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

28. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than 14 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

29. Site Characterization and Extent of Contamination

a. Within 28 days of the effective date of this Settlement Agreement, the Respondents shall provide a site-specific Sampling and Analysis Plan ("SAP") and Quality Assurance Plan ("QAPP") to the OSC for review and comment. The SAP shall be subject to approval by OSC.

b. The SAP shall conform to the standards of the approved site specific QAPP and the EPA Region 4 Environmental Investigations Standard Operating Procedures and Quality Assurance Manual (EISOPQAM, November 2001). The SAP shall, at

minimum, address the following site characteristics and contaminant nature-and-extent delineation objectives:

i. Describe those activities proposed for determinating the nature and extent of hazardous substances released to the environment on the Site and surrounding properties;

ii. Specify the number and type of environmental samples that will be collected on and around the Site;

iii. Submit all samples to an off-site laboratory approved by EPA; and

iv. Propose a schedule for implementation of the SAP, including a projection of the total time necessary for completion of the site characterization and scope and extent activities.

c. Respondents shall implement the SAP no later than 20 days after receipt of approval from the EPA.

d. Respondents shall provide a Final Report of Site Characterization and Scope and Extent Activities to the OSC. The report shall be submitted to the OSC within 21 days of the scheduled completion date of the site characterization and contamination scope and extent activities and is subject to approval by OSC.

30. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondents shall submit a proposal for post-removal site control consistent with Section 300.415(*l*) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondents shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

31. Reporting.

a. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every seventh day after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondents shall submit four copies of all plans, reports or other submissions required by this Settlement Agreement or any approved work plan. Upon request by EPA, Respondents shall submit such documents in electronic form.

32. Final Report. Within 60 days after completion of all Work required by this Settlement Agreement, Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a 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 the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

33. Off-Site Shipments.

a. 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 the On-Scene 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.

i. Respondents shall include in the written notification the following information: (a) the name and location of the facility to which the Waste Material is to be shipped; (b) the type and quantity of the Waste Material to be shipped; (c) the expected schedule for the shipment of the Waste Material; and (d) 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.

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action. Respondents shall provide the information required by Paragraph 33(a) and 33(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain 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.

IX. SITE ACCESS

34. If the Site, or any other property where access is needed to implement this Settlement Agreement, is controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

35. Where any action under this Settlement Agreement 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 14 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

36. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

37. Respondents shall provide to EPA, upon request, copies of all documents and information 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 Agreement, 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, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

38. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement 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). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondents that the documents or information 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 documents or information without further notice to Respondents.

39. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the contents of the document, record, or information; and (f) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

40. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

41. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

42. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

43. Each Respondent hereby 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, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information 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.

XII. COMPLIANCE WITH OTHER LAWS

44. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondents shall identify ARARs in the Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

45. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSCs or, in the event of his/her unavailability, the Regional Duty Officer at (404) 562-8700, and

the EPA Regional Emergency 24-hour telephone number, (800) 424-8801, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

46. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the OSC at (404) 229-9510 and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

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

XV. PAYMENT OF RESPONSE COSTS

48. Payments for Future Response Costs.

a. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a SCORPIOS cost summary. Respondents shall make all payments within 45 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 50 of this Settlement Agreement.

b. Respondents shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the parties making payment and EPA Site/Spill ID number (046H). Respondents shall send the check(s) to:

U.S. Environmental Protection Agency
ATTN: Region 4 Superfund
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

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

Corey Diehl-Miller
Enforcement Project Manager
WMD-SEIMB, 11th Floor
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Paula V. Batchelor
Environmental Protection Specialist
WMD-SEIMB, 11th Floor
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

d. The total amount to be paid by Respondents pursuant to Paragraph 48(a) shall be deposited in the Jernigan Trucking Dump 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.

49. In the event that the payments for Future Response Costs are not made within 45 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of 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 XVIII.

50. Respondents may dispute all or part of a bill for Future Response Costs submitted under this Settlement Agreement, if Respondents allege that EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP. 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 to EPA as specified in Paragraph 48 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 persons listed in Paragraph 48(c) above. 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 seven days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

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

52. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within 21 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 30 days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

53. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher 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 Agreement. Respondents' obligations under this Settlement Agreement 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 EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

54. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, increased cost of performance, or a failure to attain performance standards/action levels set forth in the Action Memorandum/Enforcement.

55. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within 72 hours of when Respondents first knew that the event might cause a delay. Within seven days thereafter, Respondents shall provide to EPA in writing 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* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of

force majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

56. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event 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* event 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* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

57. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 58 and 59 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

58. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any failure to meet compliance milestones identified in Paragraph 58(b):

Penalty Per Violation Per Day	Period of Noncompliance
$200.00	1st through 14th day
$500.00	15th through 30th day
$1,000.00	31st day and beyond

b. Compliance Milestones:
   i. Timely submittal of draft Work Plan;
   ii. Timely submittal of draft Health and Safety Plan;
   iii. Timely submittal of Sampling and Analysis Plan;
   iv. Timely submittal of Quality Assurance Plan; and
   v. Tasks as scheduled in the EPA-approved Work Plan.

59. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 29(d), 31 and 32:

Penalty Per Violation Per Day	Period of Noncompliance
$100.00	1st through 14th day
$200.00	15th through 30th day
$400.00	31st day and beyond

60. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 70 of Section XX (Reservations of Rights by EPA), Respondents shall be liable for a stipulated penalty in the amount of five hundred thousand dollars ($500,000.00).

61. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section VIII (Work to Be Performed), 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 Management Official at the Division Director level or higher, under Paragraph 53 of Section XVI (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 herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

62. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, 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.

63. All penalties accruing under this Section shall be due and payable to EPA within 45 days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

U.S. Environmental Protection Agency
ATTN: Region 4 Superfund
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number (046H), the EPA Docket Number, and the name and address of the parties making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 23, and to:

Corey Diehl-Miller
Enforcement Project Manager
WMD-SEIMB, 11th Floor
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Paula V. Batchelor
Environmental Protection Specialist
WMD-SEIMB, 11th Floor
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

64. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

65. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

66. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 63. Nothing in this Settlement Agreement 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 Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 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 herein, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 70. 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 Agreement.

XIX. COVENANT NOT TO SUE BY EPA

67. 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 except as otherwise specifically provided in this Settlement Agreement, 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 on the Northern Portion of the Site and Future

Response Costs relating to the Northern Portion of the Site. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

68. Except as specifically provided in this Settlement Agreement, nothing herein 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 herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, 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.

69. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definition of Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

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

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

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

70. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an

endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

71. 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 on the Northern Portion of the Site and Future Response Costs relating to the Northern Portion of the Site, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on 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 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, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 73 (Waiver of Claims), 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 the reservations set forth in Paragraphs 69 (b), (c), and (e) - (g), 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.

72. Nothing in this Agreement 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).

73. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, 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 the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of: (i) 0.002% of the total volume of waste at the Site; or (ii) 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against such Respondent.

XXII. OTHER CLAIMS

74. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. Neither the United States nor EPA shall 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 Agreement.

75. Except as expressly provided in Section XXI, Paragraph 73 (De Micromis Waivers) and Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, 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.

76. No action or decision by EPA pursuant to this Settlement Agreement 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).

XXIII. CONTRIBUTION

77. Contribution.

a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C.§ 9613(f)(2), and that Respondents are 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, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work on the Northern Portion of the Site and Future Response Costs relating to the Northern Portion of the Site.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the United States for the Work on the Northern Portion of the Site and Future Response Costs relating to the Northern Portion of the Site.

c. Except as provided in Section XXI, Paragraph 73 of this Settlement Agreement (Non-Exempt De Micromis Waivers), nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 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).

XXIV. INDEMNIFICATION

78. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives 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, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, 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 Agreement. 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 Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

79. 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.

80. Respondents waive all claims 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.

XXV. INSURANCE

81. At least seven days prior to commencing any on-Site work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of one million dollars ($1,000,000.00), combined single limit. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement, 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 Agreement. 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 an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

82. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security in the amount of two hundred thousand dollars ($200,000.00) in one or more of the following forms:

a. A surety bond guaranteeing performance of the Work;

b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;

c. A trust fund;

d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of Respondents; or

e. A demonstration that one or more of the Respondents satisfy the requirements of 40 C.F.R. Part 264.143(f).

83. If Respondents seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 82(a) of this Section, Respondents shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Respondents seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 82(d) or (e) of this Section, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondents shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 82 of this Section. Respondents' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Settlement Agreement.

84. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 82 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Respondents may reduce the amount of the security in accordance with the written decision resolving the dispute.

85. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. MODIFICATIONS

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

87. If Respondents seek permission to deviate from any approved work plan or schedule, 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 OSC pursuant to the previous Paragraph.

88. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVIII. NOTICE OF COMPLETION OF WORK

89. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including payment of Future Response Costs and retention of records, EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

90. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondents shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

91. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: *Appendix A*, Action Memorandum/Enforcement; and *Appendix B*, map of the Site.

XXX. EFFECTIVE DATE

92. This Settlement Agreement shall be effective seven days after the Settlement Agreement is signed by the Regional Administrator or his/her delegatee.

It is so ORDERED and AGREED this 26th day of September, 2006.

9/26/06
Date

Matthew W. Taylor for
Shane Hitchcock, Chief
Emergency Response and Removal Branch
Waste Management Division
Region 4
U.S. Environmental Protection Agency

THE UNDERSIGNED representatives enter into the terms and conditions of this Administrative Settlement Agreement and Order on Consent for Removal Action for the Jernigan Trucking Dump Site–Northern Portion in Seffner, Hillsborough County, Florida, and they certify that they are fully authorized to bind the parties they represent to this document.

FOR RESPONDENT:

Date: Sept 14, 06

By: _____
(Signature)

Printed Name: William B Taylor IV

Title: Attorney

Company Name: Gulf Coast Recycling Inc.

Address: 1601 N. 66th St

Tampa, FL 33619

THE UNDERSIGNED representatives enter into the terms and conditions of this Administrative Settlement Agreement and Order on Consent for Removal Action for the Jernigan Trucking Dump Site–Northern Portion in Seffner, Hillsborough County, Florida, and they certify that they are fully authorized to bind the parties they represent to this document.

FOR RESPONDENT:

Date: September 19, 2006

By: _____
(Signature)

Printed Name: Jean-Pierre Cloiseau

Title: President

Company Name: Lafarge North America Inc.

Address: 12950 Worldgate Drive

Herndon, Virginia 20170

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

4WD-ERRB

Appendix A

ENFORCEMENT ACTION MEMORANDUM

Subject: **Request for a Removal Action at the Jernigan Trucking Dump Site (JTD), Seffner, Hillsborough County, Florida.**

From: **Leigh N. Vorreuter**
On-Scene Coordinator

To: **Beverly H. Banister, Acting Director**
Waste Management Division

Site ID#: 046H

I. PURPOSE:

The purpose of this Action Memorandum is to request and document approval of the proposed enforcement-lead removal action described herein for the Jernigan Trucking Dump Site (JTD), located in Seffner, Hillsborough County, Florida (the Site). The release of hazardous substances at the Site poses a threat to public health and the environment pursuant to Section 104 (a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that meets the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) section 300.415(b)(2) criteria for removal actions. This removal action is anticipated to be enforcement lead pursuant to an Administrative Order on Consent (AOC).

II. SITE CONDITIONS AND BACKGROUND:

CERCLIS ID Number: FLD981757446

Removal Category: **Time-Critical Removal Action**

A. SITE DESCRIPTION:

1. Removal Site Evaluation:

In June of 2004, Florida Department of Environmental Protection (FDEP) referred Jernigan Trucking Dump Site to Environmental Protection Agency's Emergency Response and Removal Branch (ERRB). An Integrated Removal Site Evaluation (RSE) and a Hazardous Ranking System (HRS) Special Study Sampling Investigation was initiated by EPA. On September 8, 2005, OSC Stilman and Superfund Technical Assessment and Response Team

(START) mobilized to the Site to review Site conditions and to finalize the sampling plan. FDEP personnel were also on-scene to assist with sampling location selection.

On November 28, 2005, START re-mobilized to implement the EPA approved sampling plan for the Integrated Removal Site Evaluation/HRS Special Study Sampling Investigation. Selected areas of the property were screened for lead contamination in soil using X-Ray Fluorescence (XRF) screening. Results indicated that lead concentrations exceeded EPA Region 9 Preliminary Remedial Goals (PRGs) and Florida Soil Cleanup Target Levels (SCTLs) in 19 locations. A total of 45 environmental samples, including background and duplicate samples were collected from all media. Lead and arsenic, the primary constituents of concern, were present in all media at elevated concentrations compared to background. Levels as high as 440 mg/kg and 100,000 mg/kg for arsenic and lead in surface soil, were found.

There have been numerous studies and inspections completed for the Site. In September of 1987, the Florida Department of Environmental Regulation (FDEP) conducted a preliminary assessment (PA) on the Jernigan portion of the property. FDEP concluded a site inspection (SI) was needed. In August of 1988, FDEP conducted a screening site inspection (SSI) of the Lewis and Fertic portions of the property, a listing site inspection (LSI) was recommended. In September of 1990, EPA conducted a SSI on the Jernigan portion of the property and recommended a LSI. In March of 1993, EPA conducted a Final Expanded Site Inspection (ESI) on Jernigan, Fertic, and Lewis portions. EPA recommended a HRS documentation package be prepared for the Site. In December of 1994, EPA completed a Hazardous Ranking System package.

2. Physical Location:

The Site is located off W.E. Fertic Drive in Seffner, Hillsborough County, Florida. JTD comprises several parcels of land owned by multiple individuals. The Site (total 178.52 acres) is bound to the north by orange groves and Bessie Dix Road, to the west by Williams Road, to the east by wetlands, and to the south by pastureland. The geographic coordinates are 28°01'25" north latitude, and 82°19'11" west longitude.

3. Site Characteristics:

The Site is surrounded by a predominantly residential area in Seffner, Hillsborough County, Florida. The Site is divided into three portions. The northern portion of the JTD property consists of two parcels which together encompass 39.5 acres. It is referred to as the Jernigan portion. The southwestern portion of the JTD property is referred to as the Lewis portion and it encompasses 59.05 acres. The southeastern portion of the property is referred to as the Fertic portion and is 79.97 acres. The roadbeds along the wetlands and ponds on the Fertic portion of the JTD property run east to west and consist of battery casings.

From the middle to late 1960s through the early 1980s, the original owners of the various properties used the land for mining sand and peat. The land was stripped until clay was encountered, and then debris and rubble were hauled in for use as fill material in the borrowed areas. Materials deposited included construction and demolition (C&D) debris, slag, clinkers, coal residue, kiln dust, miscellaneous trash, and lead-acid battery casings. Some of these wastes were deposited in former borrow areas, while others were placed directly on the land surface or in surface water bodies. The battery casings located on the Fertic parcel make up a road that runs east to west. Some of the battery casings were reported to have been dumped in the 1970s.

All former and current property owners were ordered to remove the battery casings from their properties. In the early 1990s, some or all of the battery casings were reported to be removed from the Lewis portion; however, documentation of the removal is minimal. In 2000 and 2001, battery casing removals occurred on the Jernigan portion of the property. Lead and arsenic contaminated soils were excavated from an unknown area of the property and stockpiled. Most of these stockpiles are still on-site. One pile was treated with a mixture of triple superphosphate and subsequently removed to an approved landfill for disposal. No additional remedial or removal activities have since taken place.

4. Release or Threatened Release into the Environment of a Hazardous Substance, or Pollutant or Contaminant:

Analytical results indicated that arsenic and lead contamination occurs in the surface and subsurface soils above the residential removal action levels (RAL) of 40 mg/kg and 400 mg/kg, respectively. The maximum lead concentration detected in surface soils was 100,000 mg/kg and the maximum arsenic concentration in surface soils was 440 mg/kg. Elevated arsenic and lead concentrations were most frequently detected in samples collected from the Fertic portion of the Site (where the roadbed made of battery casings is located). Also, the presence of battery casings were observed in the wetland area along the roadbed.

Arsenic and lead are both hazardous substances, listed in the Title 40 of the Code of Federal Regulations (CFR) Section 302.4, as referred to in Section 101 (14) of the CERCLA, as amended. Hazardous substances from the Site will continue to be a threat to public health, welfare and the environment, if not mitigated.

The Lewis portion is currently being used as a C&D landfill, but the other portions are undeveloped. Depending on the future land use, there is a major possibility of children being in direct contact with the Site's soil. Also, there is the Jennings Middle School 0.5 miles north of the Site and residences directly to the east and west.

5. National Priority List (NPL) Status:

The Site is not on the National Priorities List (NPL) and it is unlikely to go on the NPL in the future.

6. Maps, Pictures, and Other Graphic Representations

The RSE prepared by START includes several maps/figures, and is attached to this Action Memorandum.

B. OTHER ACTIONS TO DATE:

1. Previous Actions:

In September of 1987, FDEP conducted a PA on the Jernigan portion of the property. FDEP recommended a SI was needed. In August of 1988, FDEP conducted a SSI of the Lewis and Fertic portions of the property, a LSI was recommended. In September of 1990, EPA conducted a SSI on the Jernigan portion of the property and recommended a LSI. In March of 1993, EPA conducted an ESI on Jernigan, Fertic, and Lewis portions. EPA recommended a HRS documentation package be prepared for the Site. It was determined that contaminants were found at concentrations above their respective Florida SCTLs. In December of 1994, EPA completed a Hazardous Ranking System package.

2. Current Actions:

EPA and the Potentially Responsible Parties (PRP) have negotiated an Administrative Order on Consent. Owners of potentially impacted property are now cooperating with EPA and the PRPs in order to ensure the proper cleanup of the Site.

C. STATE AND LOCAL AUTHORITIES' ROLE

1. State and Local Actions to Date:

The Florida Department of Environmental Protection (FDEP) has issued numerous citations, warning notices, and a consent order (CO) for various infractions to former and current owners at JTD. The FDEP referred the Site to EPA in June of 2004. The State has deferred the lead role to ERRB, but EPA anticipates that they will continue monitoring the Site's progress and remain actively involved in the C&D landfill permit.

2. Potential for Continued State and Local Response:

It is not anticipated that the FDEP will perform any response activities at the Site. ERRB will continue to coordinate with the state and local agencies in order to keep the community informed of future removal Site activities.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES:

A. THREATS TO PUBLIC HEALTH OR WELFARE;

Arsenic and lead present in on-site surface and subsurface soils pose the following threats to public health or welfare as listed in Section 300.415 (b)(2) of the NCP:

- Section 300.415 (b)(2)(i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants. The RSE disclosed that there is significant lead and arsenic contamination. Lead and arsenic concentrations exceeding the Residential RALs of 400 mg/kg and 40 mg/kg, respectively, were confirmed by laboratory analysis. The maximum lead concentration detected in surface soils was 100,000 mg/kg, and the maximum arsenic concentration in surface soils was 440 mg/kg. Potential human exposure to the Site related contaminants may occur via inhalation of windborne dust, inadvertent ingestion of contaminated soil, and direct contact with the contaminated surficial soils. Studies have shown that exposure to high lead levels can severely damage the brain and kidneys in adults or children and ultimately cause death. In pregnant women, high levels of exposure to lead may cause miscarriages. Exposure to lower levels of arsenic can cause nausea and vomiting, decreased production of red and white blood cells, abnormal heart rhythm, damage to blood vessels, and a sensation of "pins and needles" in hands and feet. Jennings Middle School is 0.5 miles away from the Site and the surrounding areas are being developed into residential neighborhoods. There are many children living around the site. The children could easily come into contact with the contaminated soil via direct contact by trespassing and increasing the likelihood of exposure to highly contaminated surface soils. They could also be exposed by inhalation of windborne dust.

- Section 300.415 (b)(2)(iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate. Analytical results reveal that high lead and arsenic levels are present at or near the surface creating a potential for migration to off-site locations. The on site ditches are positioned to transport the surface runoff to off-site locations. The nearby residential properties and the school may be impacted by the transport of surface runoff.

The highest levels of contaminants found on Site are as follows:

Surface Soils		Subsurface Soils (2 to 4 feet)	
Lead	100,000 mg/kg	Lead	98,000 mg/kg
Arsenic	440 mg/kg	Arsenic	260 mg/kg

-Section 300.415 (b)(2)(v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released. Several areas throughout the Site are

void of vegetation making them susceptible to wind and surface water runoff during heavy rain events which are common in this geographical area. The ditches are positioned to transport the surface runoff to off-site locations. This could affect the nearby residents and school.

B. THREATS TO THE ENVIRONMENT:

The elevated levels of arsenic and lead in surface and subsurface soils pose the following threats to the environment as listed in Section 300.415 (b)(2) of the NCP:

- ***Section 300.415 (b)(2)(ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems.*** The sample with the highest concentration for lead and arsenic was located on the battery casing roadbed on the Fertic portion of the property. There are wetlands located on both sides of the roadbed and there are visible battery casings in and around the wetlands. Analytical results revealed elevated lead levels in the sediment collected from the wetlands near the roadbed. This site provides an adequate habitat to support ecological receptors that may be exposed. Releases of the hazardous substances from the Site have the potential to adversely impact these sensitive ecosystems.

- ***Section 300.415 (b)(2)(iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate.*** Analytical results reveal that high lead and arsenic levels are present at or near the surface creating a potential for migration to off-site locations. There are numerous ponds and drainage ditches on the property. Surface water can flow from the Site to adjacent neighborhoods. Also, the wetlands are on and directly east of the Fertic portion. Analytical results reveal elevated lead levels in the sediment collected from the wetlands. These contaminated sediments are part of wetlands that discharges off-site.

IV. ENDANGERMENT DETERMINATION:

Actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment.

V. PROPOSED ACTION:

A. PROPOSED ACTIONS:

Proposed actions to complete the removal activities at the Site include sampling, excavation, offsite transportation, and disposal of the hazardous substances or pollutants or contaminants located on-site.

1. Proposed Action Description:

a. Continued extent-of-contamination sampling. Those properties with levels over RALs, based on off-site laboratory analysis, need to be addressed.

b. Excavation with restoration and/or capping of surface soils where arsenic and/or lead levels exceed EPA's RALs. Currently EPA's residential RAL is established at 40 mg/kg for arsenic and 400 mg/kg for lead. Excavation will occur to a depth of up to twenty-four (24) inches, depending on the level of contamination. Excavation of highly contaminated source material beyond twenty-four inches will also occur, where appropriate. EPA's "Superfund Lead-Contaminated Residential Sites Handbook" will be used as a guide during the action.

c. Continued assessment of the wetlands area and implementation of actions to reduce the risks identified during the assessment.

d. Actions to insure the protection of the wetlands and surface water.

e. If contaminated soil is left on site, the PRPs will implement institutional controls and manage the post-removal site control activities.

2. Contribution to Remedial Performance:

The proposed removal action will address the threats discussed in Section III which meet the NCP Section 300.415 (b) (2) removal criteria. Although future action under the Remedial Program is unlikely, the removal action contemplated in this Action Memorandum would be consistent with any future remedial action.

3. Description of Alternative Technologies:

At this time it is difficult to anticipate what disposal and/or treatment alternatives will be applicable to the waste. Contaminated soil from the Site may be excavated and treated and/or disposed off-site. Alternatively, contaminated soils in some areas may be capped to eliminate the direct exposure pathway. There are no alternative technologies under consideration at this time.

4. Engineering Evaluation/Cost Analysis (EE/CA):

This proposed action is a time-critical removal and does not require an EE/CA.

5. Applicable or Revelant and Appropriate Requirements (ARARs):

On-site removal activities conducted under CERCLA are required to attain ARARs to the extent practical considering the exigencies of the situation. Off-site removal activities need only comply with all applicable Federal and State laws, unless there is an emergency. All waste

transferred off-site will follow the CERCLA Off-Site Rule. A letter to FDEP requesting ARARs was sent May 1, 2006.

6. Project Schedule:

The EPA has negotiated with the PRPs to undertake the removal actions outlined in this memorandum. The project schedule will be incorporated in the work plan submitted to EPA for approval under the Administrative Order on Consent (AOC).

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN:

If this response action is significantly delayed or not taken, the residents from nearby neighborhoods may be at risk to prolonged exposure to lead and arsenic.

VII. OUTSTANDING POLICY ISSUES:

No outstanding policy issues have been identified at this time.

VIII. ENFORCEMENT:

EPA anticipates the PRPs will fund and conduct the removal action. EPA and PRPs have negotiated the terms of the AOCs for conducting the removal. Should the PRPs fail to implement the actions in the AOCs, EPA may decide to issue a Unilateral Order or take a fund-lead removal action.

IX. RECOMMENDATION:

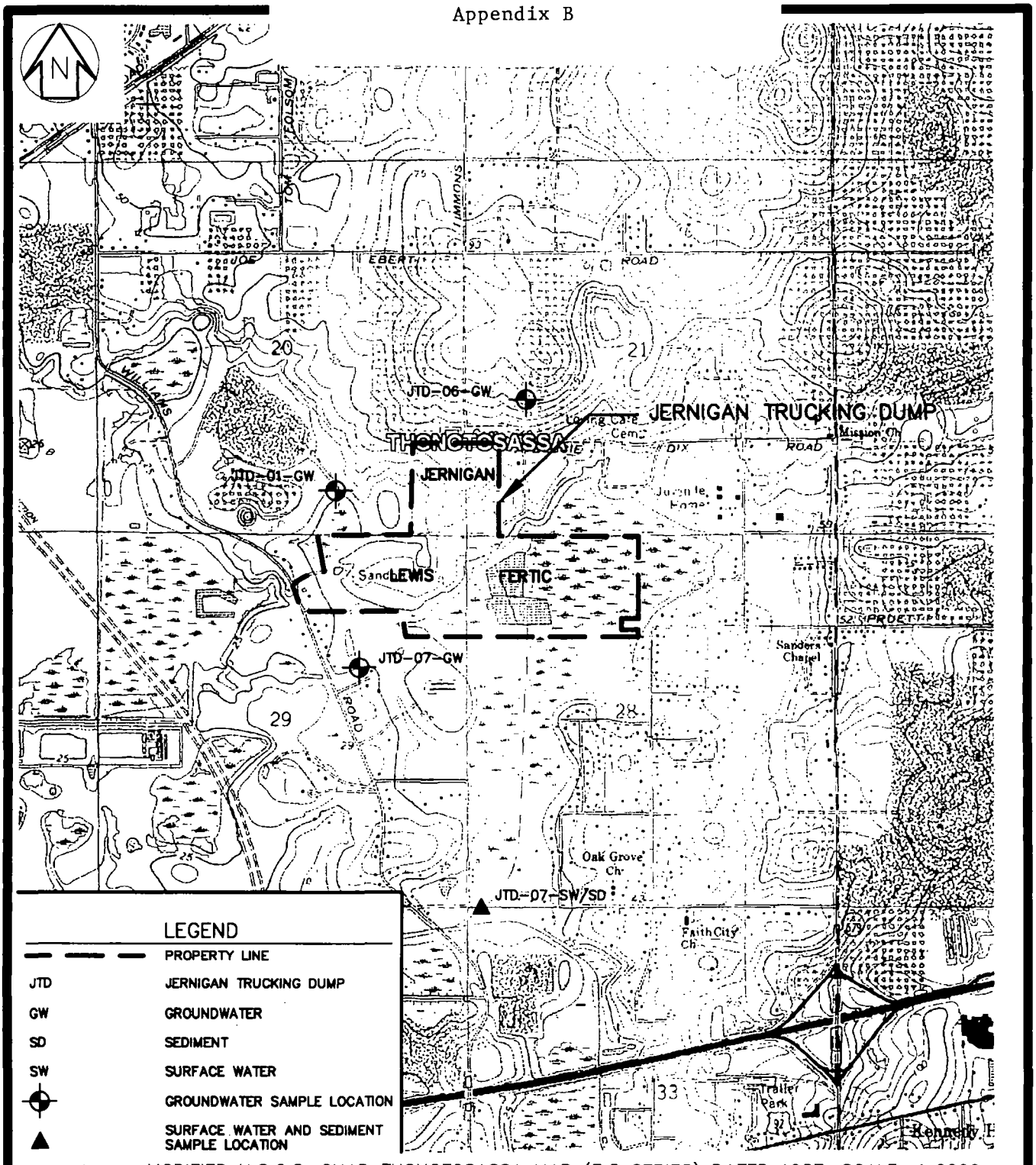
This decision document represents the selected removal action for the Jernigan Trucking Dump Site, located in Seffner, Hillsborough County, Florida. This document was developed in accordance with CERCLA, as amended, and not inconsistent with the NCP. This decision is based upon the administrative record established for the site. Conditions at the Site meet the NCP Section 300.415 (b)(2) criteria for a removal action, and I recommend your approval of this proposed enforcement removal action.

(Approval) _____ Date: 9-26-06

(Disapproval) _____ Date: _____

Beverly H. Banister, Acting Director
Waste Management Division

Attachments
Enforcement Addendum
Site Map
Figure 1 Fertic Parcel
Figure 2 Jernigan Parcel
Site Pictures



MODIFIED U.S.G.S. QUAD THONOTOSASSA MAP (7.5 SERIES) DATED 1987, SCALE: 1:2000

JERNIGAN TRUCKING DUMP SEFFNER, HILLSBOROUGH COUNTY, FLORIDA	GENERAL SITE LOCATION MAP AND OFF-SITE SAMPLING LOCATIONS FIGURE 1

WESTON SOLUTIONS, INC. — USEPA REGION 4

WESTON SOLUTIONS

DRAWN: J.MILLER	DATE: 2/8/06	W.O. NO.: jernigan2.dwg 12587-001-001-0294
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY