

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

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IN THE MATTER OF:

BCX TANK SUPERFUND SITE,  
Jacksonville, Duval County, Florida

A & S Oil Recovery of Florida, Inc.;  
All Environmental Services, Inc.;  
Arr-Maz Custom Chemicals;  
Atlantic Industrial Services, Inc.;  
CSX Transportation, Inc.;  
Clariant Life Science Molecules (Florida),  
Inc.;  
Colonna's Shipyard, Inc.;  
ERG Partners, LLC;  
GE Sealants & Adhesives, Inc., (formerly  
Coronado Laboratories);  
International Paper Company;  
M.D. Moody & Sons, Inc.;  
McKenzie Tank Lines, Inc.;  
MOBRO Marine, Inc.;  
North Florida Shipyards, Inc.; and  
Oak Bark Corporation (formerly d/b/a  
Wright Corporation),

Respondents.

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

U.S. EPA Region 4  
Docket Number CERCLA-04-2007-3789

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 the parties listed in *Appendix A* ("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 the property located at 1903 East Adams Street in Jacksonville, Duval County, Florida, the "BCX Tank Superfund Site" or 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 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. "Action Memoranda" shall mean the Emergency Action Memorandum relating to the Site signed on June 21, 2004, by the On-Scene Coordinator, together with the Action Memorandum relating to the Site signed on August 16, 2004, by the Acting Director of the Waste Management Division, EPA Region 4, the Regional Administrator's delegate. The Action Memoranda is attached as *Appendix B*.

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

c. "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.

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

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 predecessor or 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 24 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 34 (emergency response), and Paragraph 59 (work takeover).

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

k. "Parties" shall mean EPA and Respondents.

l. "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).

m. "Respondents" shall mean those parties identified in *Appendix A*.

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

o. "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.

p. "Site" shall mean the BCX Tank Superfund Site located at 1903 East Adams Street in Jacksonville, Duval County, Florida, more particularly described as:

Part of the E. Hundal Grant, in Section 45, Township 2 South, Range 27 East, Jacksonville, Duval County, Florida, more particularly described as follows: Commencing at the Southeast corner of Lot 98 of Commodores Point, according to plat recorded in Plat Book 12, Pages 31 and 32, of the current public records of Duval County, Florida; thence South 83 degrees 22 minutes East 50 feet to the intersection of the East line of Bryan Street with the North line of East Adams Street for a place of beginning; thence Northerly along said East Line of Bryan Street 205.4 feet to the Southerly right of way line of a spur track, said right of way line being 10 feet from the center line of an existing spur track; thence Northeasterly along said right of way line along a curve with a radius of 531.67 feet an arc distance of 298.02 feet to the intersection of another right of way line of another spur track, said right of way line being 10 feet from the center line of said other spur track; thence Southerly along said right of way line 300 feet (Deed) (300.34 feet-actual) to a point of curve; thence along said right of way line with a curve to the right with a radius of 809 feet an arc distance of 161.9 feet (Deed) (162.04 feet-actual) to the North line of East Adams

Street; thence Westerly along said North line of East Adams Street 139.4 feet (Deed) (129.40 feet-actual) to the place of beginning.

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

r. "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 material" under Section 403.703 (29), Florida Statutes.

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

#### **IV. FINDINGS OF FACT**

9. For the purposes of this Settlement Agreement, EPA finds and Respondents neither admit nor deny that:

a. The Site is the location of an abandoned tank farm made up of at least 15 tanks, some of which hold up to 600,000 gallons.

b. From 1987 until 2000, International Processing Specialists, Inc. ("IPS"), operated a storage and treatment facility for industrial wastewater and used oil at the Site.

c. The Site has been owned by Seven Out, LLC, a Florida limited liability company, since 2001.

d. Neither Seven Out, LLC, nor its affiliate, BCX Inc., a Georgia corporation, were able to secure the necessary operating permits to continue to operate the Site as a storage and treatment facility for industrial wastewater and used oil.

e. The tanks were full or nearly full at the time IPS ceased operations at the Site, and those contents remained in the tanks until the tanks deteriorated to a point where they could no longer hold their contents.

f. Each of the Respondents either arranged for the disposal, treatment, or transportation of hazardous substances that ended up at the Site, or selected the Site as the ultimate location of hazardous substances and then transported those substances to the Site.

g. In June of 2004, the Site was referred to EPA by officials from the State of Florida and the City of Jacksonville. EPA conducted an emergency response action that began June 21, 2004.

h. Sampling and analysis of the waste revealed that it contained benzene, tetrachloroethene, naphthalene, arsenic, lead, anthracene, chromium, acetone, methyl ethyl ketone, methylene chloride, toluene, benzoic acid, petroleum residues, phenols, and xylenes, among other 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.

i. Sludge containing hazardous substances remains in the tanks, which continue to deteriorate.

j. In its Action Memoranda, 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 and that a delay in action would increase the actual or potential threat to the public and the environment.

k. EPA issued letters containing a General Notice of Liability and Invitation to Conduct Removal Action to the Respondents beginning in March of 2007.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

10. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined and Respondents neither admit nor deny that:

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

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

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

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.

i. Respondents A & S Oil Recovery of Florida, Inc.; Arr-Maz Custom Chemicals; Atlantic Industrial Services, Inc.; Clariant Life Science Molecules (Florida), Inc.; Colonna's Shipyard, Inc.; CSX Transportation, Inc.;

GE Sealants & Adhesives, Inc., (formerly Coronado Laboratories); International Paper Company; M.D. Moody & Sons, Inc.; McKenzie Tank Lines, Inc.; MOBRO Marine, Inc.; North Florida Shipyards, Inc.; and Oak Bark Corporation (formerly d/b/a Wright Corporation) 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).

ii. Respondents A & S Oil Recovery of Florida, Inc.; All Environmental Services, Inc.; Atlantic Industrial Services, Inc.; and ERG Partners, LLC, accepted hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

e. The conditions described in Paragraphs 9(g)-(j) 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 Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

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

11. 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 14 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.

12. Within 14 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.

13. EPA has designated Matthew Huyser of the Emergency Response and Removal Branch, Superfund Division, 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:

Matthew Huyser, On-Scene Coordinator  
Emergency Response and Removal Branch  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

14. EPA and Respondents shall have the right, subject to Paragraph 12, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA seven 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**

15. Respondents shall perform, at a minimum, all actions necessary to implement the Action Memoranda. The actions to be implemented generally include, but are not limited to, the following:

- a. Removal of waste water and sludge from within the tanks and secondary containment area;
- b. Decontamination and cleaning of the tanks and secondary containment areas;
- c. Disposal of the waste water and sludge removed from the tanks and secondary containment area, including any sampling and analysis necessary to determine proper treatment and disposal methods; and
- d. Stabilization and/or removal of the tanks and secondary containment wall to prevent future releases of hazardous substances from the Site.

16. Work Plan and Implementation.

a. Within 30 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 15 above. At a minimum, the draft Work Plan should discuss the proposed methods for conducting the removal action, including waste sampling and characterization methods, proposed waste treatment and disposal options and a schedule of proposed activities. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement. Respondents shall prepare a Quality Assurance Project Plan ("QAPP") as part of the Work Plan. The QAPP should be prepared in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001), and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998).

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 15 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 16(b).

17. Health and Safety Plan. Within 30 days after the Effective Date, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public and worker 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.

18. 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.

19. 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.

20. Reporting.

a. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 14th 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 two 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.

21. Final Report. Within 45 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."

22. 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 22(a) and 22(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**

23. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or 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.

24. 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 30 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, except that no money need be paid to: Seven Out, LLC; BCX, Inc.; or any of the current or former officers, directors, or investors of either of those business entities. 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).

25. 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**

26. 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.

27. 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.

28. Respondents may assert that certain documents, records and other information are privileged under the work product doctrine, 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.

29. 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 evincing conditions at or around the Site.

## **XI. RECORD RETENTION**

30. Until five years after Respondents' receipt of EPA's notification pursuant to Section XXIX (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, unless such documents or copies thereof have been provided to EPA. Until five years after Respondents' receipt of EPA's notification pursuant to Section XXIX (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.

31. 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.

32. 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**

33. 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**

34. 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 OSC or, in the event of his/her unavailability, the Regional Duty Officer, Region 4 Emergency Response and Removal Branch, (404) 562-8700, 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).

35. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the OSC at (404) 562-8700 and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within 7 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**

36. 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**

37. 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 report, which includes direct and indirect costs incurred by EPA and its contractors. Respondents shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 39 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," referring to the name and address of the parties making payment and EPA Site/Spill ID number A4FE. Respondents shall send the check(s) by overnight or express delivery to:

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



c. At the time of payment, Respondents shall send notice of such payment to:

Karen Coleman  
Enforcement Project Manager  
SD-SEIMB, 11<sup>th</sup> Floor  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

Paula V. Batchelor  
Environmental Protection Specialist  
SD-SEIMB, 11<sup>th</sup> 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 37(a) shall be deposited in the EPA Hazardous Substance Superfund.

38. In the event that payments for Future Response Costs are not made within 30 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.

39. 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 37 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 37(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**

40. 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.

41. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including but not limited to billings for Future Response Costs, or EPA decisions relating to a claim of *force majeure* under Section XVII, they shall notify EPA in writing of their objection(s) within 30 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 60 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.

42. 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**

43. 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 Memoranda.

44. 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 three days 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.

45. 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**

46. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 47 and 48 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.

47. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 47(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 14th day
\$1,000.00	15th through 30th day
\$1,500.00	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.

48. 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 20 and 21:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100.00	1st through 14th day
\$300.00	15th through 30th day
\$500.00	31st day and beyond

49. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 59 of Section XX, Respondents shall be liable for a stipulated penalty in the amount of one hundred thousand dollars (\$100,000.00).

50. 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 42 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.

51. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, EPA shall give Respondents written or oral notification of the failure and describe the noncompliance. EPA shall send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of when EPA notifies Respondents of a violation.

52. All penalties accruing under this Section shall be due and payable to EPA within 30 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  
Superfund Payments  
Cincinnati Finance Center  
Post Office Box 979076  
St. Louis, MO 63197-9000

and shall refer to the name and address of the parties making payment, the EPA Docket Number, and the EPA Site/Spill ID number (A4FE). Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA by email to [acctreceivable.cinwd@epa.gov](mailto:acctreceivable.cinwd@epa.gov), and to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, OH 45268

Karen Coleman  
Enforcement Project Manager  
SD-SEIMB, 11<sup>th</sup> Floor  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

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

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

54. 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.

55. 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 52. 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 59. 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**

56. 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 and Future Response Costs. This covenant not to sue 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**

57. 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.

58. 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.

59. 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. EPA shall notify Respondents in writing of such determination. 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**

60. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States Environmental Protection Agency, or its contractors or employees, with respect to the Work, Future Response Costs, 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 Florida 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 Environmental Protection Agency pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 62 (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 58(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.

61. 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).

62. Respondents agree not to assert any claims under CERCLA and to waive all claims or causes of action under CERCLA 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:

a. 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.

b. 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.

63. 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 that has entered into a final *de minimis* settlement under Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), with EPA with respect to the Site as of the Effective Date. This waiver 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**

64. 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. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

65. Except as expressly provided in Section XXI, Paragraphs 62 and 63 (*De Micromis* and *De Minimis* 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.

66. 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**

### **67. 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 and Future Response Costs.

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 and Future Response Costs.

c. Except as provided in Section XXI, Paragraphs 62 and 63 (*De Micromis* and *De Minimis* Waivers) of this Order, 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**

68. 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.

69. 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.

70. 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**

71. 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, 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**

72. Within 30 days of the Effective Date, one or more Respondents shall establish and maintain financial security in the amount of six hundred fifty thousand dollars (\$650,000.00) 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).

73. If Respondents seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 72(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 72(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 72 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.

74. 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 72 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.

75. 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**

76. 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.

77. 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. EPA shall respond promptly to any such request. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 76.

78. 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**

79. 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, such as post-removal site controls, payment of Future Response Costs, or record retention, 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**

80. 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.

81. 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:

- a. *Appendix A*, List of Respondents
- b. *Appendix B*, Action Memoranda

## **XXX. EFFECTIVE DATE**

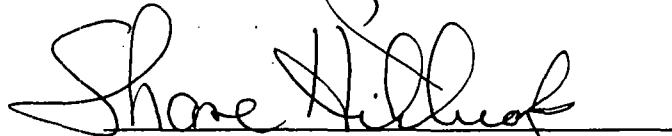
82. This Settlement Agreement shall be effective on the day the Settlement Agreement is signed by the Regional Administrator or his/her delegatee.

In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

FOR EPA:

It is so ORDERED and AGREED this 10<sup>th</sup> day of October, 2007.



Shane Hitchcock, Chief  
Emergency Response and Removal Branch  
Superfund Division  
Region 4  
U.S. Environmental Protection Agency

In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

AGREED this 19 day of September, 2007.

FOR RESPONDENT:

Name of Respondent: A & S Oil Recovery of Florida, Inc.

By: Frank Amaral  
(Signature)

Printed Name: Frank Amaral

Title: President

Address: A & S Oil Recovery of Florida, Inc.  
1097 62nd Terrace S.  
St. Petersburg, FL 33705



In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida

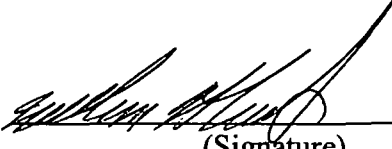
ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

AGREED this 20TH day of SEPTEMBER, 2007.

FOR RESPONDENT:

Name of Respondent: ARRMA2 CUSTOM CHEMICALS

By:   
(Signature)

Printed Name: WILLIAM H. COOK

Title: CHIEF MANUFACTURING OFFICER

Address: 4800 STATE ROAD 60 EAST  
MULBERRY, FLORIDA 33860



In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

AGREED this 21<sup>ST</sup> day of SEPTEMBER, 2007.

FOR RESPONDENT:

Name of Respondent: ATLANTIC INDUSTRIAL SERVICES, INC.

By:   
(Signature)

Printed Name: ALEXANDER THOMAS

Title: PRESIDENT

Address: ATLANTIC INDUSTRIAL SERVICES

In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida

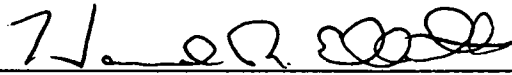
ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

AGREED this 24 day of September, 2007.

FOR RESPONDENT:

Name of Respondent: CSX Transportation, Inc.

By:   
(Signature)

Printed Name: H. R. Elliott

Title: V.P. Public Safety + Environment

Address: 500 Water Street  
J 275  
Jacksonville, FL 32202

In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida

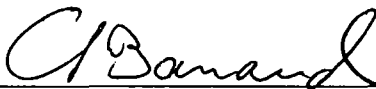
ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

AGREED this 14<sup>th</sup> day of September, 2007.

FOR RESPONDENT:

Name of Respondent: Clariant Life Science Molecules (Florida) Inc.

By:   
(Signature)

Printed Name: Christopher S. Barnard

Title: Secretary

Address: c/o Clariant Corporation  
4000 Monroe Rd.  
Charlotte, NC 28205

In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

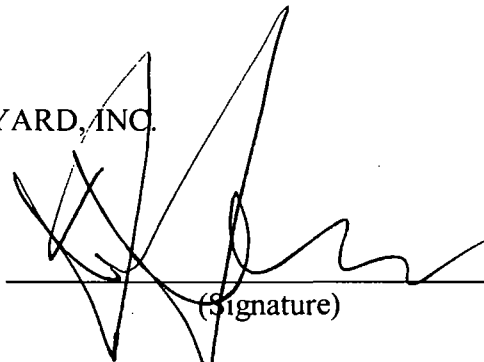
The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

AGREED this 9/18 day of September, 2007.

FOR RESPONDENT:

Name of Respondent: COLONNA'S SHIPYARD, INC.

By:



(Signature)

Printed Name: Thomas W. Godfrey, Jr.

Title: President & CEO

Address: 400 East Indian River Road  
Norfolk, Virginia, 23523

In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

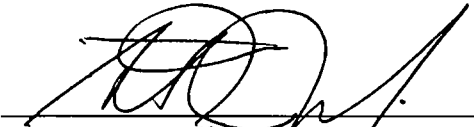
The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

AGREED this 1 day of OCTOBER, 2007.

FOR RESPONDENT:

Name of Respondent: ERG PARTNERS LLC

By:

  
(Signature)

Printed Name: STEVEN T. JENKINS

Title: MANAGER

Address: 251 LEVY RD, ATL BHM, FL 32233

In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida


ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

AGREED this 10<sup>th</sup> day of September, 2007.

FOR RESPONDENT:

Name of Respondent: General Electric Co.

By:  \_\_\_\_\_  
(Signature)

Printed Name: Lisa A. Hamilton

Title: Manager, SE/MidAtlantic/Western  
Regions

Address: \_\_\_\_\_

GE CEP  
640 Freedom Business Ctr  
King of Prussia PA 19406

In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

AGREED this 19<sup>th</sup> day of September, 2007.

FOR RESPONDENT:

Name of Respondent: International Paper Company

By: Elton Parker  
(Signature)

Printed Name: Elton L. Parker

Title: Sr. Counsel - Environment Health + Safety

Address: 6400 Poplar Ave  
Memphis, TN 38197

In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida


ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

AGREED this 12<sup>th</sup> day of September, 2007.

FOR RESPONDENT:

Name of Respondent: McKenzie Tank Lines, Inc.

By:   
(Signature)

Printed Name: James Shaeffer

Title: President

Address: c/o Ron H. Noble, Esquire  
Fowler White Boggs Banker P.A.  
501 E. Kennedy Boulevard  
Suite 1700  
Tampa, FL 33602



In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida

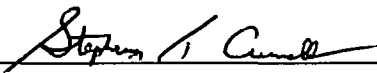
ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

AGREED this 21st day of September, 2007.

FOR RESPONDENT:

Name of Respondent: Mobro Marine, Inc.

By:   
(Signature)

Printed Name: Stephen T. Cumella

Title: Vice President

Address: 606 State Road 16 E, Green Cove Springs, FL 32043

In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida

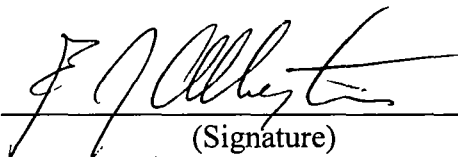
ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

AGREED this 21<sup>ST</sup> day of September, 2007.

FOR RESPONDENT:

Name of Respondent: M D MOODY & SON, INC

By:   
(Signature)

Printed Name: EMIL J ALBERTINI

Title: CFO

Address: 4600 Phillips Hwy  
Jacksonville, FL 32207

In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

AGREED this 20<sup>th</sup> day of September, 2007.

FOR RESPONDENT:

Name of Respondent: North Florida Shipyards, Inc.

By: James Spincy Jr  
(Signature)

Printed Name: JAMES F. SPINCY JR.

Title: Personnel Director

Address: 2060 E. Adams Street  
JACKSONVILLE, FL 32202

In the Matter of the BCX Tank Superfund Site  
Jacksonville, Duval County, Florida

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

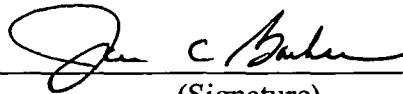
The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

AGREED this 27<sup>th</sup> day of SEPTEMBER, 2007.

FOR RESPONDENT:

Name of Respondent: OAK-BARK CORPORATION

By:



(Signature)

Printed Name: JAMES C. BARKER

Title: PRESIDENT

Address: P.O. BOX 9009

WILMINGTON, N.C. 28402-9009

*Appendix A*

**List of Respondents**

A & S Oil Recovery of Florida, Inc.  
All Environmental Services, Inc.  
Arr-Maz Custom Chemicals  
Atlantic Industrial Services, Inc.  
CSX Transportation, Inc.  
Clariant Life Science Molecules (Florida), Inc.  
Colonna's Shipyard, Inc.  
ERG Partners, LLC  
GE Sealants & Adhesives, Inc., (formerly Coronado Laboratories)  
International Paper Company  
M.D. Moody & Sons, Inc.  
McKenzie Tank Lines, Inc.  
MOBRO Marine, Inc.  
North Florida Shipyards, Inc.  
Oak Bark Corporation (formerly d/b/a Wright Corporation)

SITE: BCX Facility
BREAK: 2.9
OTHER:

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
\$250,000 EMERGENCY ACTION MEMO / INITIAL POLLUTION REPORT**

**Date:** June 21, 2004

**Subject:** BCX Tank Site  
Jacksonville, Duval County, Florida

**From:** Terry Stilman, OSC  
Emergency Response and Removal Branch

**To:** Regional Response Center, 4WD-ERRB  
Shane Hitchcock, ERRB  
Matt Taylor, ERRB  
FDEP

2 9 0001

10134329

**I. PURPOSE**

The purpose of this document is twofold. First, it documents the decision to initiate emergency response actions described herein for the BCX Tank Site located in Jacksonville, Duval County, Florida under the OSC's \$250,000 authority. Second, it serves as the Initial Pollution Report (POLREP #1) for the Site.

**II. BACKGROUND****Site No:** A4FE**TO Amount:** \$200,000**Contractor:** WRS Environmental Services**CERCLIS No:** FLD982109761**Response Authority:** CERCLA**State Notification:** 6/21/04**Demobilization Date:** N/A**NPL Status:** Non-NPL**Start Date:** 06/21/04**Completion Date:** On-going**III. SITE INFORMATION****A. Incident Category:** (check one)

- Active Production Facility
- Inactive Production Facility
- Active Waste Management Facility
- Inactive Waste Management Facility
- Midnight Dump
- Transportation Related
- Other (specify)

**B. Site Location****1. Site description****a. Removal site evaluation**

On 21 June 2004, OSC Stilman mobilized to the BCX Tank Site along with the Florida Department of Environmental Protection, Bureau of Emergency Response (BER) personnel to conduct a removal site evaluation. While inspecting and assessing the site, OSC Stilman discovered approximately twelve abandoned tanks on the site, located near a public road which borders the site. The tanks are located within a concrete secondary containment wall that shows signs of past and present leakage outside of the facility. The secondary containment is also holding over two feet of waste water from various tank leaks and area rain. During the assessment OSC Stilman observed on-going leaks from cracks in the secondary containment wall. The largest tank is reported to have a capacity of 600,000 gallons. Based on personal observations made at the site, in addition to information from the City of Jacksonville, the tanks and waste in the secondary containment are suspected to contain industrial waste water and waste oil.

**b. Physical location and Site characteristics**

The Site is located at East Adams Street, Jacksonville, Florida. The past operational history of the site involved the storage and treatment of industrial waste water and waste oil. The facility is approximately 75 yards from a storm drain. The storm drain flows approximately 200 yards to the St. John's River.

**c. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant**

There are abandoned and unsecured tanks located on the site, adjacent to a public road and areas routinely used by the public for parking near the Jacksonville Jaguars Alltel stadium. The tanks are within a secondary containment wall which is in poor condition that also contains over two feet of waste in some locations. The specific contents of the tanks are unknown, but, in the past, the facility experienced an explosion and fire at one of the tanks resulting in the death of an employee. Based on this incident the contents of the tanks are believed to contain waste that exhibits hazardous characteristics under RCRA (ie. Ignitability). Based on this determination the wastes at the facility are hazardous wastes; making them hazardous substances under CERCLA. All readily available information indicates that there has been an actual release into the environment of substances reasonably believed to be hazardous substances, and that there is a substantial threat of future releases of hazardous substances into the environment from the site.

**d. Maps, pictures, and other graphic representations**

Maps, pictures, and other graphic representations can be made available upon request.

## 2. Description of threat

Explanations of how this release or threat of release meets the criteria for threats to public health or welfare or the environment in section 300.415 (b)(2) of the NCP are discussed below.

### a. 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"

There are abandoned tanks that contain hazardous substances, pollutants or contaminants located on the site. These tanks are located near a public road which borders the site. There is a fence that only covers the front of the Site. There are breaches in the fence. The Site is approximately 200 yards from the St. Johns River. Any further release from the Site would flow overland to storm drains to the St. Johns River. The river is a sensitive ecosystem that supports endangered species (manatee).

### b. 300.415(b)(2)(iii) "Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release"

There are unsecured, abandoned tanks containing hazardous substances, pollutants or contaminants on the site. The integrity of these tanks are questionable and pose a threat of release. In addition, trespassers or vandals could access the site and cause a release by tampering with the tanks. The actual condition of the tanks cannot be determined due to the amount of waste water within secondary containment.

### c. 300.415(b)(2)(v) "Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released"

Secondary containment at the facility presently has between two to three feet of waste water in some locations. There are also indications of ongoing leaks through cracks in the containment wall. Reports from the City and State indicate that the containment continues to fill with each successive rain event.

### d. 300.415(b)(2)(vi) "Threat of fire and explosion"

An explosion and fire occurred in the past at one of the facility's tanks, resulting in the death of an employee.

## IV. RESPONSE INFORMATION

### A. Situation

1. Current situation
2. Removal activities to date



a. **Federal Government/Private Party**

EPA OSC Stilman initiated an emergency removal action to stabilize the secondary containment wall and secure the tanks on the site. ERRS contractor WRS has been mobilized to conduct the removal as directed by the OSC. The BER is also on site to assist with the response.

**3. Enforcement<sup>1</sup>**

An EPA Region 4 attorney has been assigned to investigate any potential enforcement actions.

**B. Planned Removal Actions**

**1. Proposed action description**

The specific tasks involved in the proposed response to the threats include:

- Emergency stabilization of the secondary containment wall which may be leaking or have questionable integrity;
- Sampling of waste from tanks and secondary containment to determine the specific nature of contents, if necessary;
- Bulking of materials and disposal off site, if necessary, in compliance with Federal regulations including the CERCLA off site rule.
- Determination of the extent of sludge and soil contamination and disposal off-site, if necessary, in compliance with Federal regulations including the CERCLA off site rule.
- Movement and/or removal of tanks to allow for the safe clean-up of the Site.

**2. Contribution to remedial performance**

The proposed actions will, to the extent practicable, contribute to the efficient performance of any long-term remedial action at the site.

**3. Description of Alternative Technologies**

N/A

**4. ARARs**

---

<sup>1</sup> Enforcement strategy is not part of the Action Memo for purposes of NCP consistency.

The Federal ARARs identified for the site include:

RCRA Treatment, Storage and Disposal  
 RCRA Transportation  
 DOT  
 OSHA

#### 5. Project schedule

The initial emergency action to stabilize the site is expected to be of a short duration (weeks), however, subsequent time-critical removal activity is expected.

#### V. COSTS

##### Extramural Costs:

	<u>Ceiling</u>	<u>To Date</u>
ERRS	\$ 200,000	1,000
USCG Strike Team	\$ 25,000	
<u>Contingency</u>	<u>\$ 25,000</u>	
<b>TOTAL PROJECT CEILING</b>	<b>\$ 250,000</b>	

The Project Ceiling has been approved by the OSC as documented in this Action Memo/ Initial Pollution Report. The above accounting of expenditures is an estimate based on figures known to the OSC at the time this report was written. The OSC does not necessarily receive specific figures on final payments made to any contractor. Other financial data, which the OSC must rely upon, may not be entirely up to date. The cost accounting provided in this report does not necessarily represent an exact monetary figure which the government may include in any claim for cost recovery.

Direct costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of the removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.

**VI. DISPOSITION OF WASTES**

Disposal analysis will be conducted on waste as appropriate in order to identify potential disposal options.

**VII. 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, present an imminent and substantial endangerment to public health, welfare, or the environment.

**VIII. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN**

A delay in action or no action at this Site would increase the actual or potential threats to the public and the environment.

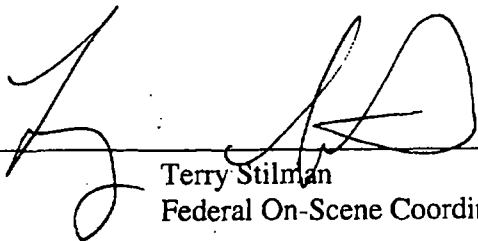
**IX. OUTSTANDING POLICY ISSUES**

NONE

**X. APPROVAL**

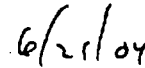
This decision document represents the selected removal action for this Site, developed in accordance with CERCLA as amended, and not inconsistent with the National Contingency Plan. This decision is based on the administrative record for the site.

Conditions at the site meet the NCP section 300.415(b)(2) criteria for a removal and through this document, I am approving the proposed removal actions. The total project ceiling is \$250,000, of which, \$ 250,000 will be funded from the Regional removal allowance.



---

Terry Stilman  
Federal On-Scene Coordinator



---

Date



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

SITE: BCX 6210
BREAK: 2.9
OPER:

290007

10134330



4WD-ERRB

ACTION MEMORANDUM

SUBJECT: Request for Ceiling Increase and Continued Removal Action at the BCX Tank Site, Jacksonville, Duval County, Florida

FROM: Terry Stilman  
On-Scene Coordinator

TO: Winston A. Smith, Director  
Waste Management Division

Site ID #: A4FE

I. PURPOSE

The purpose of this Action Memorandum is to request and document approval of the proposed ceiling increase for continued removal action described herein for the BCX Tank Site (the "Site"), located in Jacksonville, Duval County, Florida. This request is based on the presence of over 2 million gallons of waste water in leaking tanks and secondary containment. The total project ceiling if approved will be \$1,492,000, of which an estimated \$1,235,000 comes from the FY 04 Regional removal allowances.

II. SITE CONDITIONS AND BACKGROUND

A. Site Description

The CERCLIS ID number for this time-critical removal action is FLD982109761.

1. Removal Site Evaluation

On June 21, 2004, OSC Stilman mobilized to the BCX Tank Site along with the Florida Department of Environmental Protection, Bureau of Emergency Response (BER) personnel to conduct a removal site evaluation. While conducting a reconnaissance of the site, OSC Stilman discovered approximately fifteen abandoned tanks on the Site, located near a public road bordering the Site. The tanks were located within a concrete secondary containment wall that showed signs of past leakage. The secondary containment also held over two feet of waste water from various tank leaks and area rain. During the assessment OSC Stilman observed on-going leaks from cracks in the secondary containment wall. The largest tank was reported to have a capacity of 600,000 gallons. The tanks and waste in the secondary containment were suspected to contain industrial waste water and waste oil. The specific contents of the tanks were unknown at the time, but a past explosion and fire at one of the tanks occurred at the facility resulting in the death of an employee. Based on the fire and explosion incident, the contents of the tanks were believed to contain waste that exhibited hazardous

characteristics under RCRA (ie. Flammability). The waste at the facility was considered CERCLA hazardous substances and OSC Stilman initiated an emergency response and established a Site ceiling of \$250,000.

In July 1987, International Processing Specialists, Inc. (IPS) leased the property from Petroleum Fuel and Terminal Co. to operate a used oil storage facility. IPS also operated an industrial waste water facility at the same location. Used oil storage and processing is regulated by the Florida Department of Environmental Protection (FDEP). Industrial waste water processing and sanitary sewer discharge is regulated by the City of Jacksonville. In 1991, IPS began used oil processing. In September of 1995 an explosion at its 630,000 gallons used oil storage tank caused the death of one of IPS's employees. As a result of the explosion, the FDEP conducted an inspection of the facility. In May of 1996, FDEP entered into a Consent Order with IPS that required IPS to upgrade its facility and allow it to continue to operate the used oil processing facility until it completed a permit application

FDEP issued a permit in 1997 to IPS to operate as a used oil processing facility. After sending several letters to the facility regarding non-compliance, in 1999 FDEP issued an Intent to Deny IPS's permit modification request, to accept and process Petroleum Contact Water at the IPS facility. In May of 2000, FDEP filed a Civil Complaint to compel compliance, prohibit receipt of used oil or wastewater by the facility, revoke the permit, and collect penalties. In May of 2002, FDEP issued a Final Order to revoke IPS's Used Oil Processor permit.

In 2001, BCX became the new owner of the facility. Between 2001 and June of 2004, FDEP and the City of Jacksonville have attempted to force IPS and BCX to remove waste and close the facility. In 2001, the facility removed equipment, containers and associated piping in a process area and demolished the process building. To date, no other clean-up has taken place. The facility is not known to have received waste since 2001.

In June of 2004, an inspector with the City of Jacksonville's Tanks Program discovered an accumulation of wastewater in the secondary containment area and that a crack in the containment wall was allowing waste to leak to the environment. FDEP confirmed the City's findings and contacted BCX. No action was taken by BCX. BCX had insufficient funds to address problems at the Site and comply with the requirements of FDEP. On June 11, 2004 the City of Jacksonville obtained an emergency Temporary Injunction ordering BCX, IPS, related companies, and real property owners to remove waste from the secondary containment within 1 week, sample wells within 3 weeks, remove all waste from the tanks within 3 months, and to remediate contamination and provide financial assurance. BCX also informed the City that insufficient funds were available.

On June 21, 2004, at the request of FDEP, OSC Terry Stilman, conducted a removal site assessment at the BCX facility. Based on the continuing release and threat of release, OSC Stilman initiated an emergency action. EPA's Emergency Response and Removal Services contractor, WRS, arrived on-scene to assist with stabilization of the secondary containment wall. FDEP and the City of Jacksonville began regular patrols of the facility. On June 28, 2004 EPA, the USCG Strike Team and WRS pumped approximately 100,000 gallons of waste

water into temporary tanks staged adjacent to the facility. This relieved pressure on the secondary containment walls and reduced the amount of waste water leaking through cracks in the wall. Sampling of the tanks was also conducted.

Analytical results indicated the presence of benzene, tetrachloroethene and naphthalene as well as other contaminants in high levels in the waste water and sludge in the tanks and secondary containment. Approximately 2 million gallons of waste water and sludge are on-site. The tanks are abandoned and in poor condition. In accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300.410, EPA has determined that there is a threat to public health or welfare or the environment posed by the presence of high levels of benzene, tetrachloroethene and naphthalene contaminated waste water at the BCX Tank Site. These substances are Comprehensive Environmental Response Compensation and Liability Act (CERCLA) hazardous substances. Based on the Site conditions, the OSC has determined that the Site meets the criteria for time-critical removal actions under Section 300.415 of the NCP.

## 2. Physical Location

The Site is located at East Adams Street, Jacksonville, Florida. The past operational history of the site involved the storage and treatment of industrial waste water and waste oil. Runoff from the facility flows to storm water ditches and storm sewers to the St. Johns River, approximately 1/4 mile from the facility. The facility is bordered by an active rail-road line and by parking areas for the All-tel Stadium, Site of the 2005 Super Bowl.

## 3. Site Characteristics

Topographically, the Site is relatively flat, with elevations ranging from sea level to 5 feet above mean sea level. The Site is located in a light industrial area and is adjacent to a residential area. The containment wall and floor are concrete constructed. The integrity of the containment is not known, but leaks along the side wall are present.

## 4. Release or threatened release into the environment of a hazardous substance or pollutant or contaminant.

The Site represents an actual ongoing release to human health, welfare and the environment from the CERCLA hazardous substances, benzene, tetrachloroethene and naphthalene. Sampling of the tanks by EPA, have detected benzene, tetrachloroethene and naphthalene in liquid and sludges.

## 5. NPL Status

This Site is not on the NPL. The Site has been referred to EPA's Site Evaluation Section for review.

**B. Other Actions to Date****1. Previous Actions**

Previous actions at this Site have included site assessment activities performed by EPA and FDEP and an on-going EPA funded emergency response action.

**2. Current Actions**

No other governmental or private clean-up efforts are occurring at the Site.

**C. State and Local Authorities Role****1. State and Local Actions to Date.**

See section B.1 above.

**2. Potential for continued State/Local Response**

The FDEP Waste Clean-up and Emergency Response Sections have referred this Site to EPA because of insufficient state funds to implement this action.

**III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES****A. Threats to Public Health or Welfare**

Benzene, tetrachloroethene and naphthalene are hazardous substances as defined by section 101(14) of CERCLA and RCRA characteristic definitions. There are abandoned and unsecured tanks located on the site containing these hazardous substances. The tanks are within a secondary containment wall which is in poor condition that also contains over two feet of waste water in some locations. An employee died from an explosion and fire at one of the tanks at the facility. The tanks pose a significant threat to public health. The threat comes primarily from the continued release from the tanks and secondary containment and the potential for catastrophic release from these abandoned tanks.

The EPA OSC has determined that a release, as defined by Section 101 of CERCLA, is actual and ongoing. Therefore, Site conditions meet the requirements for initiating a time-critical removal action according to criteria listed in Section 300.415 of the NCP.

In evaluating the potential risks posed by the site, the following factors cited from the NCP must be considered in determining the appropriateness of a removal action:

- *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."*—There are abandoned tanks that contain hazardous substances, pollutants or contaminants located on the Site. These tanks are located near a public road which borders the Site. There is a fence that only covers the front of the Site. The Site is not fully secured. The tanks have leaked in the past and may leak in the future, because they are not being maintained.
- *Section 300.415(b)(2)(iii) "Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release"* - There are unsecured, abandoned tanks containing hazardous substances, pollutants or contaminants on the Site. The integrity of these tanks are questionable and pose a threat of release. In addition, trespassers or vandals could access the Site and cause a release by tampering with the tanks. The actual condition of the tanks cannot be determined due to the amount of waste water within secondary containment.
- *Section 300.415(b)(2)(v) "Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released"*—Secondary containment at the facility has two to three feet of waste water in some locations. There are also indications of ongoing leaks through cracks in the containment wall. Reports from the City and State indicate that the containment continues to fill with each rain event.
- *Section 300.415(b)(2)(vi) "Threat of fire and explosion"* - An explosion and fire occurred at one of the facility's tanks, resulting in the death of an employee.
- *Section 300.415(b)(2)(vii) "Availability of other appropriate federal or state response mechanisms to respond to a release."* Given the potential size and scope of the action, State funds are insufficient. No other governmental entity has funds available to conduct the necessary removal activity.

#### B. Threats to the Environment

Benzene, tetrachloroethene and naphthalene contaminated waste water at the Site pose a significant threat to the environment. During major rain events, uncontrolled releases of contaminated waste water flow into the St. Johns River via the surface water pathway. The release poses a threat to aquatic species, including fish and mammal (manatee) populations. The manatee is a federal and state listed endangered species. There have been documented releases of waste water outside of the secondary containment wall. The continued migration of hazardous substances from known sources at the Site to this water resource could continue to have potential long term, negative impacts on the St. Johns River's native species.

#### IV. ENDANGERMENT DETERMINATION

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



## V. PROPOSED ACTIONS AND ESTIMATED COSTS

### A. Proposed Actions

#### 1. Proposed action description

EPA's proposed actions includes:

- 1) the continued emergency stabilization of the secondary containment wall which may be leaking or have questionable integrity;
- 2) sampling of waste from tanks and secondary containment to determine the specific nature of contents;
- 3) bulking of materials and disposal off site, if necessary, in compliance with Federal regulations including the CERCLA off site rule;
- 4) determination of the extent of sludge and soil contamination and disposal off-site, if necessary, in compliance with Federal regulations including the CERCLA off site rule.

These activities will to extent practicable be undertaken without movement of the tanks, however, movement and/or removal of some of the tanks will also take place to allow for the safe clean-up of the Site.

#### 2. Contribution to remedial performance

Based on the information available at this time, the proposed removal activity will abate the immediate threats identified in Section III of this document. The EPA Site Evaluation Section is continuing to review the Site for possible inclusion on the NPL.

#### 3. Description of alternative technologies

Because the final disposition of any waste materials at the site has not been determined, no formal evaluation of alternative technologies has been made. Such an evaluation will take place before the disposal phase of the response action and will be documented at that time.

#### 4. Environmental Evaluation/ Cost Analysis (EE/CA)

Due to the time-critical nature of this removal action, an EE/CA is not required.

#### 5. Applicable or relevant and appropriate requirements (ARARs)

On-site removal activities conducted under CERCLA are required to attain ARARs to the extent practicable 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.

The State of Florida has not identified additional ARARs.

6. Proposed Schedule

Response actions at the Site will be initiated upon approval of this Action Memorandum. Foregoing any unexpected delays, all actions are expected to be completed within three months of re-mobilization.

B. Estimated Costs

An independent government cost estimate was prepared using disposal prices and rates from the ERRS contract and START contract technical direction documents.

EXTRAMURAL COSTS:	CURRENT CEILING	PROPOSED INCREASE	PROPOSED CEILING
<u>Regional Removal Allowance Costs</u>			
ERRS	\$200,000	\$ 975,000	\$1,175,000
Coast Guard Strike Team	\$ 50,000	\$ 10,000	\$ 60,000
Subtotal	\$250,000	\$ 985,000	\$1,235,000
<u>Other Extramural Costs Not Funded from the Regional Allowance</u>			
START	\$ -0-	\$ 50,000	\$ 50,000
20% Contingency	\$ -0-	\$ 207,000	\$ 207,000
TOTAL EXTRAMURAL COSTS:	\$250,000	\$1,242,000	\$1,492,000

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

If action is significantly delayed or not taken, there will be a continued release into the environment increasing the possibility of exposure to the public and to the environment.

VII. OUTSTANDING POLICY ISSUES

None

## VIII. ENFORCEMENT

ERRB anticipates that this will be a fund-lead response. The facility owner has insufficient funds to undertake this action. No other parties have been identified at this time. The OSC will continue to coordinate with the CERCLA Office of Legal Support on enforcement strategy. See attached Enforcement Addendum for detailed enforcement strategy information.

The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be \$2,151,864<sup>1</sup>.  
[(\$1,492,000 + \$25,000) + (41.85% of \$1,517,000)]

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Direct costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgement interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of the removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.

**IX. RECOMMENDATION**

This decision document represents the selected removal action for the BCX Tank Site in Jacksonville, Duval County, Florida, developed in accordance with CERCLA as amended, and not inconsistent with the NCP. The document is based on the administrative record for the Site.

Conditions at the Site meet the NCP section 300.415(b)(2) criteria for a removal and I recommend your approval of the proposed removal action. The total project ceiling if approved will be \$1,492,000. Of this, an estimated \$1,235,000 comes from the FY 04 Regional removal allowances.

Approval: for J. Smith Date: 8/16/04  
Winston A. Smith, Director  
Waste Management Division

Disapproval: \_\_\_\_\_ Date: \_\_\_\_\_  
Winston A. Smith, Director  
Waste Management Division

**Attachments**

cc: Mike Norman  
Matthew Monsees  
Matt Taylor  
Ruth Davidson