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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:	)	**AGREEMENT FOR RECOVERY OF RESPONSE COSTS**
Murray Ohio Dump Site Lawrenceburg, Lawrence County, Tennessee	)	**U.S. EPA Region 4 CERCLA Docket No. CER-04-2002-3764**
Murray, Inc. SETTLING PARTY	)	**PROCEEDING UNDER SECTION 122(h)(1) OF CERCLA 42 U.S.C. § 9622(h)(1)**

04-2002-3764

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D. Authority to enter into or exercise Agency concurrence with this agreement has been further re-delegated from the Regional Administrator through the Director of the Waste Management Division, through the Associate Division Director for the Office of Superfund and Emergency Response, to the Chief of the CERCLA Program Services Branch by EPA Regional Delegation No. R-14-14-D.

2. This Agreement is made and entered into by EPA and Murray, Inc. ("Settling Party"). The Settling Party consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Murray Ohio Dump Superfund Site ("Site") located in Lawrenceburg, Lawrence County, Tennessee. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. In performing this response action, EPA incurred response costs at or in connection with the Site and will incur additional costs in the future.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred at or in connection with the Site.

7. EPA and Settling Party desire to resolve Settling Party's alleged civil liability for Past and Future Response Costs without litigation and without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

8. This Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this 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 Agreement or in any appendix attached hereto, the following definitions shall apply:

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

b. "Additional Response Actions" shall mean the Seep Collection, Treatment and Discharge Contingency measures described in the Record of Decision ("ROD") for the Site in Section VI, Remedial Alternative 7, and additional response actions required pursuant to Section XI (Additional Response Actions) of the UAO.

c. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

d. "Day" shall mean a calendar day. In computing any period of time under this 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.

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

f. "Future Response Costs" shall mean all costs including, but not limited to, direct and indirect costs that are not inconsistent with the NCP and are incurred and/or paid by the United States at or in connection with the Site after August 15, 2001, in connection with the Unilateral Administrative Order for Remedial Design and Remedial Action, U.S. EPA Docket No. 95-15-C, issued by EPA on April 21, 1995, (the "UAO"), the Scope of Work attached to the UAO (the "SOW"), or this Agreement, including: reviewing or overseeing Settling Party's plans, reports, work and other items submitted or conducted pursuant to the UAO and SOW; conducting response activities pursuant to Section XIII (EPA Review of Submissions) of the UAO; performing periodic remedial action reviews under Section X (EPA Periodic Review) of the UAO or Section 121 of CERCLA, 42 U.S.C. § 9621; or implementing, overseeing or enforcing this Agreement; including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of attorney time, costs of obtaining access to the Site, and Interest on all such costs accrued from the date payment of a specific amount is due under this Agreement. Notwithstanding the foregoing, the term "Future Response Costs" does not include costs incurred by the United States to implement Additional Response Actions.

g. "Interest" shall mean interest at the current rate specified for interest on investments of the 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).

h. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

i. "Parties" shall mean EPA and the Settling Party.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA, or the U.S. Department of Justice on behalf of EPA, has paid at or in connection with the Site through August 15, 2001, plus accrued Interest on all such costs through such date.

k. "Section" shall mean a portion of this Agreement identified by a roman numeral.

l. "Settling Party" shall mean Murray, Inc., a Tennessee corporation.

m. "Site" shall mean the Murray Ohio Dump Superfund site, an approximately 27 acre landfill area located approximately four miles southwest of the city limits of Lawrenceburg in Lawrence County, Tennessee.

n. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

10. Within 30 days of the effective date of this Agreement, the Settling Party shall pay to the EPA Hazardous Substance Superfund $373,639.70 in reimbursement of Past Response Costs, plus an additional sum for Interest on that amount calculated from the date set forth in the definition of Past Response Costs through the date of payment.

11. Settling Party shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs, as defined in Paragraph 9f above. On a periodic basis, the United States will send Settling Party a bill requiring payment that includes a SCORPIOS cost summary. Settling Party shall make all payments within 30 days of Settling Party's receipt of each bill requiring payment, except as otherwise provided in Paragraph 14. Settling Party shall make all payments required by this Paragraph in accordance with Paragraph 12.

12. Payments shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 0496, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency, Region 4
Superfund Accounting
Attn: Superfund Collection Officer
P.O. Box 100142
Atlanta, Georgia 30384

13. At the time of payment, each Settling Party shall send notice that such payment has been made to the following persons:

Gregory Tan
USEPA–EAD
61 Forsyth St., S.W.
Atlanta, GA 30303-8960

Paula V. Batchelor
USEPA–CPSB
Waste Management Division
61 Forsyth Street S.W.
Atlanta, GA 30303-8960

14. Settling Party may contest payment of any Future Response Costs under Paragraph11 if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XIV (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Party shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 12. Simultaneously, the Settling

Party shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Tennessee and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Party shall send to the United States, as provided in Section XIV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Party shall initiate the Dispute Resolution procedures in Section VI (Dispute Resolution).

VI. DISPUTE RESOLUTION

15. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Agreement. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Party that have not been disputed in accordance with this Section.

16. Any dispute which arises pursuant to Paragraph 14 of this Agreement shall, in the first instance, be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when EPA receives Settling Party's written objections as set forth in Paragraph 14. The period for informal negotiations shall continue until Settling Party receives written notice from EPA that informal negotiations are concluded. This notice shall state EPA's position on the objections raised by Settling Party to any particular costs, and the amount due after any adjustments. Within 20 days from the receipt of that notice, Settling Party shall either pay the amount due, or submit a written request to the EPA Waste Management Division Director invoking her or his assistance in resolving the disputed amounts. The Division Director shall review the relevant records and provide a written statement of her or his decision and the reasons supporting that decision to Settling Party. The Division Director's determination is EPA's final decision.

17. If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Party shall pay the sums due (with accrued Interest) to the United States in the manner described in Paragraph 12. If the Settling Party prevails concerning any aspect of the contested costs, the Settling Party shall pay that portion of the costs (plus associated accrued Interest) for which they did not prevail to the United States in the manner described in Paragraph 12. Settling Party shall be disbursed any balance of the escrow account. If Settling Party fails to make payment consistent with the determination of EPA's Division Director, EPA reserves the right to seek appropriate relief.

18. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Party under this Agreement, the UAO or SOW, not directly in dispute, unless EPA agrees otherwise.

VII. FAILURE TO COMPLY WITH AGREEMENT

19. In the event that any payment required by Paragraph 10 or 11 is not made when due, Interest shall continue to accrue on the unpaid balance through 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 Settling Party's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 20. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph12.

20. If any amounts due to EPA under Paragraph 10 or 11 are not paid by the required date, Settling Party shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 19, five hundred dollars ($500.00) per violation per day that such payment is late.

21. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA under Paragraph 20 shall be identified as "stipulated penalties" and shall be made in accordance with Paragraph 12.

22. Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

23. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with any term or condition of this Agreement it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

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

VIII. COVENANT NOT TO SUE BY EPA

25. Except as specifically provided in Paragraph 26 (Reservations of Rights by EPA), EPA covenants not to sue Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Paragraphs 10, 19 and 20. This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement. This covenant not to sue extends only to Settling Party and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

26. The covenant not to sue by EPA set forth in Paragraph 25 does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all other matters, including but not limited to:

a. liability for failure of Settling Party to meet a requirement of this Agreement;

b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability; and

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

27. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTY

28. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs, Future Response Costs, or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA 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 claims arising out of the response actions at the Site for which Past Response Costs were or Future Response Costs are incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs and/or Future Response Costs. Notwithstanding the foregoing, Settling Party reserves any right it may have to seek reimbursement from the EPA Hazardous Substance Superfund for the costs of conducting any Additional Response Actions on the basis that such required work was found to be either inconsistent with the National Contingency Plan or arbitrary and capricious.

29. 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).

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

30. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA and Settling Party each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

31. EPA and Settling Party agree that the actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

32. The Parties agree that Settling Party is entitled, as of the effective date of this Agreement, 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 Agreement. The "matters addressed" in this Agreement are Past Response Costs.

33. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and

within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

34. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Paragraph 25. The Settling Party also shall not assert, plead, or raise against the United States in any fashion, any defense or claim concerning the timeliness of commencing an action for recovery of any costs in connection with the Site including a claim or defense based on the principles of laches, estoppel, or a statutory limitations period.

XII. UNILATERAL ADMINISTRATIVE ORDER

35. By signing this Agreement, Settling Party agrees not to contest its obligations to complete the work required by the Unilateral Administrative Order, EPA Docket No. 95-15-C, issued by EPA to Settling Party on April 21, 1995, including any contingent remedial action work or any Additional Response Actions required pursuant to Section XI of the UAO. Settling Party also acknowledges and agrees that the UAO remains independently enforceable pursuant to applicable provisions of 42 U.S.C. Sections 9606 and 9607(C)(3) of CERCLA. Nothing in this paragraph shall be construed, however, to limit Settling Party's reservation of any right it may have to seek reimbursement for the costs of any Additional Response Actions as provided in Paragraph 28.

XIII. RETENTION OF RECORDS

36. Until ten (10) years after the effective date of this Agreement, Settling Party shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

37. After the conclusion of the document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Settling Party shall deliver any such records or documents to EPA. Settling Party may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the

name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records and documents that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor.

38. By signing this Agreement, Settling Party certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XIV. NOTICES AND SUBMISSIONS

39. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Party.

As to EPA:

Gregory R. Tan
USEPA–EAD
Atlanta Federal Center
61 Forsyth, St., SW
Atlanta, GA 30303-8960

As to Settling Party:

Mr. Phillip Hood
Manager, Environmental Affairs
Murray, Inc.
Hannon Drive
Lawrenceburg, TN 38464

with copy to:

J. Andrew Goddard
Bass, Berry & Sims PLC
315 Deaderick St., Suite 2700
Nashville, TN 37238-3001

XV. INTEGRATION

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

XVI. PUBLIC COMMENT

41. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

42. The Attorney General or his designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XVIII. EFFECTIVE DATE

43. The effective date of this Agreement shall be the date upon which EPA issues to Settling Party written notice that the public comment period pursuant to Paragraph 41 has closed

and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By: _____ Feb 22, 2002
Franklin Hill, Chief Date
CERCLA Program Services Branch
Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

THE UNDERSIGNED SETTLING PARTY enters into this Agreement relating to the Murray Ohio Dump Superfund Site in Lawrenceburg, Lawrence County, Tennessee.

FOR SETTLING PARTY:

MURRAY, INC.
Hannon Drive
Lawrenceburg, TN 38464

By: James P Neal
VP O&O MURRAY INC

Feb-12, 2002
Date