UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

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| IN THE MATTER OF:<br><br>Former General Electric Railcar Repair Services Corporation Property<br>Triumph Industrial Park<br>505 Blue Ball Road (Rte. 545)<br>Elkton, Maryland 21921<br><br>EPA I.D. No. MDD 078 288 354<br><br>Proceeding under Section 3008(h) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(h) | RCRA Docket No. RCRA-03-2023-0046CA<br><br>**ADMINISTRATIVE ORDER ON CONSENT** |

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## I. JURISDICTION

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Transport Pool Corporation ("TPC" or "Respondent") regarding the former General Electric Railcar Repair Services Corporation Property located at Triumph Industrial Park, 505 Blue Ball Road (Rte. 545), Elkton, MD 21921 ("the Facility"). This Order provides for the performance of corrective action and/or other response measures at or in connection with the Facility. A map that generally depicts the Facility is attached hereto as Appendix A.

2. This Order is issued under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, as amended 42 U.S.C. § 6928(h). The Administrator of EPA has delegated the authority to issue orders under Section 3008(h) to the Regional Administrator of Region III by EPA Delegation Nos. 8-31, dated Jan. 17, 2017, and 8-32, dated May 11, 1994, and this authority has been further delegated by the Regional Administrator for Region III to the Director of the Land, Chemical and Redevelopment Division ("LCRD") by EPA Delegations Nos. 8-31 and 8-32, both dated April 15, 2019.

3. EPA granted the State of Maryland ("the State") authorization to operate a state hazardous waste program in lieu of the federal program, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), effective February 11, 1985 (50 FR 3511). Subsequent to the February 11, 1985 authorization, EPA granted authorization for revisions to the State's authorized hazardous waste program effective July 31, 2001 and September 24, 2004. The State, however, does not have authority to enforce Section 3008(h) of RCRA. The State has been given notice of the issuance of this Order.

4. EPA and Respondent recognize that this Order has been negotiated in good faith. Respondent consents to, and agrees not to contest, EPA's jurisdiction to issue this Order or to enforce its terms. Further, Respondent will not contest EPA's jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondent's full or interim compliance with the terms of this Order; or impose sanctions for violations of this Order. Respondent waives any right to request a hearing on this matter pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), as an Administrative Order on Consent issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

5. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedures Act, 5 U.S.C. §§ 701-706, and 40 C.F.R. Part 24 providing for review of final agency action. Nothing in this Order affects any remedies, claims, or rights that Respondent may have with respect to persons that are not a party to this Order.

## II. PARTIES BOUND

6. This Order is binding upon EPA and upon Respondent and its agents, 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 Respondent's responsibilities under this Order. Any conveyance of title, easement, or other interest in the Facility shall not affect Respondent's obligations under this Order.

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

8. Respondent shall provide a copy of this Order to each contractor hired to perform the Work and to each person representing Respondent with respect to the Facility or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Respondent or its contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Order.

## III. STATEMENT OF PURPOSE

9. In entering into this Order, the mutual objectives of EPA and Respondent are to have Respondent implement the corrective measures for the Facility, as selected in the February 25, 2020, Final Decision and Response to Comments ("FDRTC"), attached hereto as Appendix B, and to have Respondent provide financial assurance for such work and perform, if appropriate, interim measures at the Facility as necessary to protect human health and the environment.

## IV. DEFINITIONS

10. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in RCRA, 42 U.S.C. §§ 6901-6992k, shall have the meaning assigned to them in RCRA. Whenever terms listed below are used in this Order or its Appendices, the following definitions shall apply solely for purposes of this Order:

"Areas of Concern" shall mean any area of the Facility under the control or ownership of the owner or operator where a release to the environment of Hazardous Waste has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration of the release.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

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

"Effective Date" shall mean the date EPA signs this Order.

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

"Facility" shall mean the former General Electric Railcar Repair Services Corporation Property located at Triumph Industrial Park, 505 Blue Ball Road (Rte. 545), Elkton, MD, as shown in Appendix A, which includes all contiguous property under the control of Respondent as of the effective date of this Order.

"Groundwater Remedial Objectives" shall mean the National Primary Drinking Water Standard Maximum Contaminant Levels ("MCLs") promulgated pursuant to Section 42 U.S.C. §§ 300f et seq. of the Safe Drinking Water Act and codified at 40 C.F.R. Part 141 or EPA's regional risk screening levels ("RSLs") set at a cancer risk of 1 $x10^{-6}$ and a hazard quotient of 1 where MCLs are not established for a constituent.

"Hazardous Constituents" shall mean those constituents listed in Appendix VIII to 40 C.F.R. Part 261 or any constituent identified in Appendix IX to 40 C.F.R. Part 264.

"Hazardous Waste(s)" shall mean any hazardous waste as defined in Section 3001 of RCRA. This term includes Hazardous Constituents as defined above.

"Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices of contamination, notices of administrative action, or other notices that: limit land, water, or other resource use to minimize the potential for human exposure to contaminants at or in connection with the Facility; limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the Work; or provide information intended to modify or guide human behavior at or in connection with the Facility.

"Off-site Property" shall mean all real property beyond the Facility boundaries which are both impacted by Facility-related releases to groundwater and where groundwater monitoring wells have been or will be installed.

"Order" shall mean this Administrative Order on Consent and any appendices attached hereto (listed in Section XXIII (Integration/Appendices)). In the event of any conflict between this Order and any appendix, this Order shall control. Deliverables approved, conditionally-approved, or modified by EPA also will be incorporated into and become enforceable parts of this Order.

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

"Parties" shall mean EPA and Respondent.

"Proprietary Controls" or "PCs" shall mean easements or covenants running with the land that: (i) limit land, water or other resource use and/or provide access rights; and (ii) are

created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992, as amended by the Hazardous and Solid Waste Amendments of 1984 (also known as the Resource Conservation and Recovery Act).

"Respondent" shall mean Transport Pool Corporation.

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

"Solid Waste Management Unit(s)" or "SWMU(s)" shall mean any discernable unit(s) at which solid wastes have been placed at any time irrespective of whether the unit was intended for the management of solid waste or Hazardous Waste. Such units include any area at a Facility where solid wastes have been routinely or systematically released.

"State" shall mean the State of Maryland.

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

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

"Work" shall mean all activities and obligations Respondent is required to perform under this Order, except those required by Section XII (Record Retention).

## V. FINDINGS OF FACT

11. Respondent neither admits nor denies the following Findings of Fact:

a. Respondent is a corporation and is a person as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

b. Respondent is the owner and/or operator of a former Hazardous Waste management facility located at Triumph Industrial Park, 505 Blue Ball Road (Rte. 545), Elkton, MD 21921.

c. The Facility was a facility authorized to operate under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), for purposes of Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

d. The Findings of Fact set out in the Administrative Order on Consent, CERCLA Docket No. CERC-03-2007-0030CA, signed on September 12, 2007 ("2007 Order"), are incorporated by reference herein as though fully set forth at length. The 2007 Order is attached herein and made a part hereof as Appendix C to this Order.

e. The FDRTC selecting the Final Remedy for the Facility was issued on February 25, 2020, and is incorporated by reference herein as though fully set forth at length and is attached herein and made a part hereof as Appendix B to this Consent Order ("Final Remedy").

f. The FDRTC incorporated the Statement of Basis that had been made available for public comment on January 24, 2020. The Statement of Basis described the earlier response actions at the Facility, the investigations that were performed prior to and pursuant to the 2007 Order, the risk assessments conducted under the 2007 Order, and the areas that, based on the risk assessments, warranted corrective measures.

g. Based on the findings above, EPA has determined that there are potential adverse environmental or human health impacts associated with the Hazardous Wastes which are present at or released at or from the Facility.

## VI. CONCLUSIONS OF LAW AND DETERMINATIONS

12. EPA hereby determines that there is or has been a release of Hazardous Waste within the meaning of 3008(h) of RCRA, 42 U.S.C. § 6928(h), into the environment from the Facility and that the corrective action and/or other response measures required by this Consent Order are necessary to protect human health or the environment. If carried out in compliance with the terms of this Order, the response actions required by the Order will be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP").

## VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND EPA PROJECT COORDINATOR

13. Respondent has designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondent required by this Order: Robert Witsell, Project Manager, General Electric Company, 1935 Redmond Circle, Rome, GA 30165. The Project Coordinator must have sufficient expertise to coordinate the Work and must be present at the Facility or readily available upon fourteen (14) days' notice during implementation of the Work. If EPA disapproves of the designated Project Coordinator, Respondent shall designate and notify EPA of an alternate within 14 days. EPA has designated Diane Schott of the Land, Chemicals and Redevelopment Division, Region III as EPA's Project Coordinator. EPA and Respondent shall have the right, subject to this Paragraph, to change their designated Project Coordinators. Respondent shall notify EPA 14 days before such a change is made. The initial notification by Respondent of a change in the Project Coordinator may be made orally, but shall be promptly followed by a written notice.

14. Respondent shall retain one or more contractors to perform the Work and shall, within 10 days after the Effective Date, notify EPA of the name(s), title(s), and qualifications of such contractor(s). Respondent shall also notify EPA of the name(s), title(s), and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 60 days prior to commencement of such Work. EPA retains the right to disapprove any or all of the contractors

and/or subcontractors retained by Respondent. If EPA disapproves a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 60 days after EPA's disapproval. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Mar. 2001, reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA review for verification that such persons meet objective assessment criteria (*e.g.,* experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project. The elements of the QMP will be included in the updated QAPP prepared under Section IX of this Order.

15. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to EPA's Project Coordinator in accordance with Section XIII (Reporting and Document Certification). EPA's Project Coordinator has the authority to oversee Respondent's implementation of this Order. The absence of EPA's Project Coordinator from the Facility shall not be cause for the stoppage of Work unless specifically directed by EPA's Project Coordinator.

## VIII. WORK TO BE PERFORMED

### 16. General Work Requirements

a. Pursuant to Section 3008(h) of RCRA, Respondent agrees to and is hereby ordered to perform the Work in accordance with the FDRTC and any EPA approved work plans or schedules developed pursuant to this Order. Respondent shall perform all Work undertaken pursuant to this Order in a manner consistent with RCRA and other applicable federal and state laws and their implementing regulations, including the NCP, as well as applicable EPA guidance documents, including but not limited to those available at: https://www.epa.gov/hwcorrectiveactionsites/corrective-action-resources-specific-epas-region-3.

b. For any regulation or guidance referenced in the Order, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from EPA of the modification, amendment, or replacement.

c. EPA acknowledges that Respondent may have completed some of the tasks required by this Order. Respondent may also have made available some of the information and data required by this Order. This previous work may be used to meet the requirements of this Order upon submission to and formal approval by EPA.

d. Within 120 days after the Effective Date, Respondent shall submit to EPA a Health and Safety Plan ("HASP") that describes all activities to be performed to protect all persons on and off site from physical, chemical, and all other hazards posed by the Work.

Respondent shall develop the HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration ("OSHA") requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should cover all Work and should be updated, as appropriate, to cover activities after Work completion. EPA does not approve the HASP but will review it to ensure that all necessary elements are included and that the HASP provides for the protection of human health or the environment.

e. All written documents prepared by Respondent pursuant to this Order shall be submitted according to the procedures set forth in Section XIII (Reporting and Document Certification). With the exception of progress reports and the HASP, all such submittals will be reviewed and approved by EPA in accordance with Section XIV (Agency Approvals/Additional Work/Modifications).

f. Respondent will communicate frequently and in good faith with EPA to assure successful completion of the requirements of this Order. At a minimum, Respondent shall provide EPA with annual progress reports commencing on the last day of the month which is one year after the Effective Date and annually thereafter throughout the period that this Order is effective.

17. **Phases of Corrective Action**

a. **Corrective Measures Implementation ("CMI")**

(1) Within 120 days after the Effective Date, Respondent shall submit to EPA for review and approval work plans and project schedules that implement the selected corrected measures and additional work requirements of this Order.

(2) At a minimum, the work plans shall include a Groundwater Monitoring Plan, a Soil Management Plan, a Cap Maintenance Plan (which may be combined with the Soil Management Plan for efficiency and improved future compliance), and an IC Implementation and Assurance Plan ("IC Plan").

(3) Upon receipt of EPA approval of a work plan, Respondent shall implement the EPA-approved work plan in accordance with the requirements and schedules contained therein.

(4) The Groundwater Monitoring Plan shall include at a minimum the following requirements:

(a) Monitor groundwater at specific locations for Facility-related constituents to show Groundwater Remedial Objectives will be attained and will continue to be attained throughout the volume of Facility-related releases to groundwater, to include the following:

(i) Monitor groundwater at specific locations as well as at other locations to be determined, as necessary, to show the maximum concentrations of Facility-related constituents in groundwater;

(ii) Monitor groundwater at specific locations as well as at other locations to be determined, as necessary, to show the maximum concentration of mobilized contaminant masses within the plumes, if any;

(iii) Monitor groundwater at specific locations as well as at other locations to be determined, as necessary, to show the lateral and vertical extent that the concentrations of Facility-related constituents in groundwater exceed Groundwater Remedial Objectives;

(b) Monitor groundwater at sentinel locations to confirm that potential on- and off-site receptors are protected;

(c) Monitor groundwater levels in the wells to discern flow patterns and the relationship among groundwater levels, precipitation events, and contaminant concentrations in groundwater;

(d) Monitor groundwater in accordance with an EPA-approved Quality Assurance Project Plan;

(e) Remove or relocate wells after written approval of EPA; and

(f) Decommission (close) unused wells in accordance with applicable state and/or local requirements.

(5) The IC Plan shall establish a schedule by which Respondent shall execute and record an environmental covenant ("Covenant") on the title to the Facility property pursuant to the Maryland Uniform Environmental Covenants Act, §§ 1-801 through 1-815 of the Environment Article, Annotated Code of Maryland ("UECA"), that includes the use restrictions selected by EPA in the FDRTC, and shall be in substantially the form set forth in Appendix D to this Consent Order.

(6) At a minimum the Covenant shall include the use restrictions selected by EPA in the FDRTC.

b. **CMI Assessment Report**

Every five years from the Effective Date of this Order, Respondent shall submit to EPA for review and approval a CMI Assessment Report. The CMI Assessment Report shall include whether each component of the Order is being complied with, whether human health and the environment continue to be protected from unacceptable risk if any posed by exposure if any to release addressed by this Order, whether the Final Remedy or any amendment thereto will achieve media cleanup objectives within a reasonable time frame consistent with FDRTC (or any amendment thereto) given existing and reasonably anticipated future

circumstances, whether revisions to the Final Remedy are recommended, and/or whether revisions to the groundwater monitoring plan are needed.

c. **Interim Measures ("IM")**

(1) Commencing on the Effective Date of this Consent Order and continuing thereafter, in the event Respondent identifies an immediate or potential threat to human health and/or the environment at or from the Facility, or discovers new releases of Hazardous Waste and/or Hazardous Constituents at or from the Facility not previously identified to EPA or discovers a pre-existing solid waste management units ("SWMUs") not previously identified to EPA, Respondent shall notify the EPA Project Coordinator orally within 48 hours of discovery and notify EPA in writing within five (5) calendar days of such discovery summarizing the immediacy and magnitude of the potential threat(s) to human health or the environment. Upon written request of EPA, Respondent shall submit to EPA for approval an IM Work Plan in accordance with the IM Scope of Work. If EPA determines that immediate action is required, the EPA Project Coordinator may orally authorize Respondent to act prior to EPA's receipt of the IM Work Plan. In this situation, Respondent may have additional notification or other obligations under RCRA, CERCLA, or another legal authority.

(2) Commencing on the Effective Date of this Order and continuing thereafter, if EPA identifies an immediate or potential threat to human health and/or the environment at the Facility, or discovers new releases of Hazardous Waste and/or Hazardous Constituents at or from the Facility not previously identified, EPA will notify Respondent in writing. Within ten days of receiving EPA's written notification, Respondent shall submit to EPA for approval an IM Work Plan in accordance with the IM Scope of Work that identifies interim measures which will mitigate the threat. If EPA determines that immediate action is required, the EPA Project Coordinator may orally require Respondent to act prior to Respondent's receipt of EPA's written notification.

(3) All IM Work Plans shall ensure that the interim measures are designed to mitigate immediate or potential threats to human health and/or the environment and should be consistent with the objectives of, and contribute to the performance of the Final Remedy selected by EPA in the FDRTC or any amendment thereto.

(4) Each IM Work Plan shall include the following sections as appropriate and approved by EPA: Interim Measures Objectives, Public Involvement Plan, Data Collection Quality Assurance, Data Management, Design Plans and Specifications, Operation and Maintenance, Project Schedule, Interim Measures Construction Quality Assurance, and Reporting Requirements. Concurrent with submission of an IM Work Plan, Respondent shall submit to EPA an IM Health and Safety Plan.

## IX. QUALITY ASSURANCE

18. Within 120 days after the Effective Date, and every ten years thereafter, Respondent shall submit to EPA for review and approval an updated Quality Assurance Project Plan ("QAPP"). The QAPP shall address all sampling, monitoring, and analyses activities to be performed pursuant to the CMI.

19. Commencing on the date of EPA approval of the initial QAPP and continuing thereafter, Respondent shall ensure all work performed pursuant to the work plans are conducted in accordance with the current EPA-approved QAPP.

20. The QAPP shall address quality assurance and quality control procedures for all sampling, monitoring and analyses activities performed pursuant to the CMI including but not limited to groundwater level monitoring, sample collection, sample analysis, sample management, chain of custody, data management, data validation, and data reporting.

21. Respondent shall develop the QAPP in accordance with "EPA Requirements for Quality Assurance Project Plans," QA/R-5, EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans," QA/G-5, EPA/240/R 02/009 (Dec. 2002), and other applicable guidance as identified by the EPA. The QAPP also must include procedures:

a. To ensure that all analytical data used in decision making relevant to this Order are of known and documented quality;

b. To ensure that EPA and its authorized representatives have reasonable access to laboratories used by Respondent ("Respondent's Labs") in implementing the Order;

c. To ensure that Respondent's Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;

d. To ensure that Respondent's Labs perform all analyses using EPA-accepted methods according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)" or other methods approved by EPA;

e. To ensure that Respondent's Labs participate in an EPA-accepted quality assurance/quality control ("QA/QC") program or other QA/QC program acceptable to EPA;

f. For Respondent to provide EPA with notice at least 28 days prior to any sample collection activity;

g. For Respondent to provide split samples or duplicate samples to EPA upon request; any analysis of such samples shall be in accordance with the approved QAPP;

h. For EPA to take any additional samples and conduct any analyses that it deems necessary;

i. For EPA to provide to Respondent, upon request, split samples or duplicate samples in connection with EPA's oversight sampling; and

j. For Respondent to submit to EPA all sampling and test results and other data in connection with the implementation of this Order.

## X. PROPERTY REQUIREMENTS

22. **Agreements Regarding Access and Non-Interference**. Respondent shall, with respect to the Facility: (i) provide EPA and its representatives, contractors, and subcontractors with access at all reasonable times to the Facility to conduct any activity regarding the Order, including those activities listed in Paragraph 22.a (Access Requirements); and (ii) refrain from using the Facility in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Hazardous Waste, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Final Remedy or any amendment thereto, including the restrictions listed in Paragraph 17.a(5). Recording of and compliance with the Environmental Covenant as described in Paragraphs 17.a(5) and 23 satisfies the requirements of the preceding sentence. In addition, Respondent shall, with respect to Off-site Property, use best efforts to secure from Off-site Property Owner, an agreement, enforceable by Respondent and by EPA, providing that such Off-site Property Owner: (1) provide EPA and its representatives, contractors, and subcontractors with access at all reasonable times to such Off-site Property to conduct any activity regarding the Order, including those activities listed in Paragraph 22.a (Access Requirements); (2) refrain from using groundwater at such Off-site Property for any purpose other than environmental characterization, remedial operation and maintenance, and groundwater monitoring activities, unless it is demonstrated in writing to EPA that such use will not pose a threat to human health or the environment or adversely affect or interfere with the Final Remedy; and (3) refrain from any disturbance to or interference with the groundwater monitoring wells and monitoring activities required under the Order. Respondent shall provide a copy of such access agreement(s) to EPA upon request.

a. **Access Requirements**. The following is a list of activities for which access is required regarding the Facility and Off-site Property:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to EPA;

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

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional corrective action activities at or near the Facility;

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

(7) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section XI (Access to Information);

(8) Assessing Respondent's compliance with the Order;

(9) Determining whether the Facility and/or the Off-site Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order; and

(10) Implementing, monitoring, maintaining, reporting on, and enforcing and assessing compliance with any land, water, or other resource use restrictions and Institutional Controls.

23. **Proprietary Controls**. Respondent shall, with respect to the Facility, execute and record, in accordance with the procedures of this Paragraph, Proprietary Controls that (i) grant a right of access to conduct any activity regarding this Order, including those activities listed in Paragraph 22.a; and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in Paragraph 17.a(5). The Proprietary Controls shall be in the general form of the Environmental Covenant attached and incorporated as Appendix D to this Consent Order.

a. **Grantees**. The Proprietary Controls must be granted to one or more of the following persons and their representatives, as determined by EPA: the State, Respondent, and other appropriate grantees. Proprietary Controls in the nature of a covenant shall include a designation that EPA is an "agency" expressly granted the rights of access and the right to enforce the covenants allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

b. Respondent shall monitor, maintain, enforce, and annually report on all Proprietary Controls required under this Order. Annual reports on Proprietary Controls shall be submitted the later of (i) each annual progress report or (ii) the last day of the month of one year after the date of execution of the first Proprietary Control and annually thereafter.

24. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Facility or Off-site Property, as applicable. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, Respondent shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Facility or Off-site Property, as applicable.

25. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls, or notices of contamination, notices of administrative action, or other notices are needed, Respondent shall cooperate with EPA's efforts to record, secure, and ensure compliance with such Institutional Controls.

26. **Notice to Successors-in-Title**

a. Respondent shall, within 30 days after the Effective Date, submit for EPA approval a notice about the Facility in the appropriate land records. The notice must: (1) include a proper legal description of the Facility; (2) provide notice to all successors-in-title: (i) that EPA has determined that corrective action activities are needed at the Facility; and (ii) that Respondent has entered into an Order requiring implementation of such selected corrective action activities; and (3) identify the EPA docket number and/or Effective Date. Respondent shall record the notice within 15 days after EPA's approval of the notice and submit to EPA, within ten days thereafter, a certified copy of the recorded notice.

b. Respondent shall, prior to entering into a contract to Transfer the Facility, or 60 days prior to Transferring the Facility, whichever is earlier:

(1) Notify the proposed transferee that EPA has determined that corrective action activities are needed at the Facility and that Respondent has entered into an Order requiring implementation of such corrective action activities; and

(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

27. In the event of any Transfer of the Facility, unless EPA otherwise consents in writing, Respondent shall continue to comply with its obligations under the Order, including its obligation to secure access, compliance with release reporting, and ensure compliance with any use restrictions regarding the Facility and to implement, maintain, monitor, and report on Institutional Controls.

28. Notwithstanding any provision of the Order, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions and institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

## XI. ACCESS TO INFORMATION

29. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including in electronic form) (hereinafter referred to as "Records") within Respondent's possession or control or that of its contractors or agents relating to activities at the Facility or to the implementation of this Order, 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.

Respondent shall also, upon request, make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

30. **Privileged and Protected Claims**

a. Respondent may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 30.b and except as provided in Paragraph 30.c.

b. If Respondent asserts such a privilege or protection, Respondent shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that Respondent claims privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding:

(1) Any data regarding the Facility, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Facility; or

(2) The portion of any Record that Respondent is required to create or generate pursuant to this Order.

31. **Business Confidential Claims**. Respondent may assert that all or part of a Record provided to EPA under this Section or Section XII (Record Retention) is business confidential to the extent permitted by and in accordance with 40 C.F.R. §§ 2.203 and 270.12(a). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondent asserts business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

32. Notwithstanding any provision on this Order, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under RCRA and any other applicable statutes or regulations.

## XII. RECORD RETENTION

33. **Record Retention**

a. Until ten years after EPA issues the Acknowledgement of Termination pursuant to Paragraph 77, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control, that relate in any manner to this Order or to Hazardous Waste management and/or disposal at the Facility. Respondent must also retain, and instruct its contractors and agents to preserve, for the same time period specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

b. At the conclusion of this record retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA and except as provided in Paragraph 30 (Privileged and Protected Claims), Respondent shall deliver any such records to EPA.

c. Respondent certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Facility since September 12, 2007, and that it has fully complied with any and all EPA and State requests for information regarding the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and state law.

## XIII. REPORTING AND DOCUMENT CERTIFICATION

34. **General Requirements for Deliverables**. Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 35. All other deliverables shall be submitted to EPA in the electronic form specified by EPA's Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11" in their native format, and such exhibits cannot be submitted electronically, Respondent shall contact the EPA by telephone or email to make arrangements for submitting such exhibits. All documents submitted pursuant to this Order shall be sent to:

Diane Schott
RCRA Corrective Action Program Project Manager
U.S. EPA Mid-Atlantic Region (Mail Code 3LD10)
Four Penn Center

1600 John F Kennedy Boulevard
Philadelphia, Pennsylvania 19103-2852
Telephone # 215-814-3430
E-mail: schott.diane@epa.gov
All electronic messages and submittals additionally are to be submitted to:
R3_RCRAPOSTREM@epa.gov

Documents to be submitted to Respondent shall be sent to:

Robert Witsell
Project Manager
General Electric Company
1935 Redmond Circle
Rome, GA 30165
robert.witsell@ge.com

In addition, documents pursuant to Section XV (Financial Assurance) and any notice of destruction of documents pursuant to Section XII (Record Retention) shall be submitted to EPA's Project Coordinator.

35. Technical Specifications.

a. Sampling and monitoring data should be submitted in standard Electronic Data Deliverable ("EDD") format. Other delivery methods may be allowed upon EPA approval if electronic direct submission presents a significant burden or as technology changes.

b. Spatial data, including spatially-referenced data and geospatial data, should be submitted:

(1) in the ESRI File Geodatabase format; and

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

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

36. All deliverables that are submitted pursuant to Section VIII (Work to be Performed) must be signed by Respondent's Project Coordinator, or other responsible official of Respondent, and must contain the following statement:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than 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.
>
> Signature: _____
> Name: _____
> Title: _____
> Date: _____

## XIV. AGENCY APPROVALS/ADDITIONAL WORK/MODIFICATIONS

### 37. EPA Approvals

a. **Initial Submissions**

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

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

b. **Resubmission**. Upon receipt of a notice of disapproval under Paragraph 37.a (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 37.a(1), Respondent shall, within 60 days, or ten calendar days in the case of an IM Workplan, or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may:

(1) Approve, in whole or in part, the resubmission;

(2) Approve the resubmission upon specified conditions;

(3) Modify the resubmission;

(4) Disapprove, in whole or in part, the resubmission, requiring Respondent to correct the deficiencies; or

(5) Any combination of the foregoing.

c. **Implementation**. Upon approval, approval upon conditions, or modification by EPA under Paragraph 37.a or 37.b, of any such deliverable, or portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and become an enforceable part of this Order; and (2) Respondent shall take any action required by the deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under Paragraph 37.a or resubmitted under Paragraph 37.b does not relieve Respondent of any liability for stipulated penalties under Section XVI (Delay in Performance/Stipulated Penalties).

38. **Additional Work**

a. EPA may determine that certain tasks, including investigatory work, engineering evaluation, procedure/methodology modifications, or land, water, or other resource use restrictions or Institutional Controls, are necessary in addition to or in lieu of the tasks included in any EPA-approved workplan to meet the purposes set forth in Section III (Statement of Purpose). If EPA makes such a determination, EPA will notify Respondent in writing and provide the opportunity for a meeting within 14 days to discuss the additional work request. Unless otherwise stated by EPA, within 60 days after the receipt of such determination or 60 days after the date of the meeting, whichever is later, Respondent shall submit for EPA approval a workplan for the Additional Work. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed). Upon approval of the workplan by EPA, Respondent shall implement it in accordance with the schedule and provisions contained therein. This Section does not alter or diminish EPA's Project Coordinator's authority to make oral modifications to any plan or schedule pursuant to Paragraph 39.a.

39. **Modifications**

a. Other than modifications subject to Paragraph 38, EPA's Project Coordinator may modify any workplan 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 EPA's Project Coordinator's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

b. If Respondent seeks permission to deviate from any approved workplan, schedule, or SOW, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from EPA's Project Coordinator pursuant to Paragraph 39.a.

c. No informal advice, guidance, suggestion or comment by EPA's Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirement of this Order, unless it is modified in writing pursuant to Paragraph 39.a.

## XV. FINANCIAL ASSURANCE

40. Commencing annually from the effective date of EPA approval of the initial financial assurance instrument under this Order, Respondent shall submit to EPA certification and supporting documentation that financial assurance to address work remaining in this Order remains in place, and that such financial assurance is valid, accessible to EPA, and reasonably addresses the cost of work remaining in this Order.

41. **Estimated Cost of the Work**

a. Respondent has submitted and EPA has approved, an initial Estimated Cost of the Work to be Performed under Section VIII in the amount of $1.28 million, which covers the Corrective Measures Implementation under Section VIII.

b. Respondent shall annually adjust the Estimated Cost of the Work for inflation within 30 days before the close of Respondent's fiscal year until the Work required by this Order is completed. In addition, Respondent shall adjust the Estimated Cost of the Work if EPA determines that any Additional Work is required, pursuant to Paragraph 38, or if any other condition increases the cost of the Work to be performed under this this Order.

c. Respondent shall submit each Estimated Cost of the Work to EPA for review annually within 30 calendar days before the close of Respondent's fiscal year. EPA will review each cost estimate and notify Respondent in writing of EPA's approval, disapproval, or modification of the cost estimate.

42. **Assurances of Financial Responsibility for Completing the Work**

a. Within 60 days after the Effective Date, Respondent shall establish financial assurance for the benefit of the EPA in the amount of the initial Estimated Cost of the Work. Respondent shall maintain adequate financial assurance until EPA releases Respondent from this requirement pursuant to Section XXII (Termination). Respondent shall update the financial instrument or financial test demonstration to reflect changes to the Estimated Cost of the Work within 90 days after the close of the Respondent's fiscal year. Respondent may use one or more of the financial assurance forms described in subparagraphs (1) – (6) immediately below. Any and all financial assurance documents shall be satisfactory in form and substance as determined by EPA.

(1) A trust fund established for the benefit of EPA, administered by a trustee;

(2) A surety bond unconditionally guaranteeing performance of the Work in accordance with this Order, or guaranteeing payment at the direction of

EPA into a standby trust fund that meets the requirements of the trust fund in subparagraph (1) above;

(3) An irrevocable letter of credit, payable at the direction of the Director, Land, Chemicals and Redevelopment Division, into a standby trust fund that meets the requirements of the trust fund in subparagraph (1) above;

(4) An insurance policy that provides EPA with rights as a beneficiary, issued for a face amount at least equal to the current Estimated Cost of the Work, except where costs not covered by the insurance policy are covered by another financial assurance instrument;

(5) A corporate guarantee, executed in favor of the EPA by one or more of the following: (1) a direct or indirect parent company, or (2) a company that has a "substantial business relationship" with Respondent (as defined in 40 C.F.R. § 264.141(h)), to perform the Work to Be Performed under Section VIII of this Order or to establish a trust fund as permitted by subparagraph (1) above; provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the portion of the Estimated Cost of the Work that it proposes to guarantee; or

(6) A demonstration by Respondent that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

b. Respondent shall submit all original executed and/or otherwise finalized instruments to the EPA Region III RCRA Financial Assurance Administrator, Claudia Scott, Scott.Claudia@epa.gov, 215-814-3240, within thirty (30) days after date of execution or finalization as required to make the documents legally binding. The RCRA Financial Assurance Administrator will provide Respondent with a mailing address to send paper copies. Respondent shall also provide copies to the EPA Project Coordinator.

c. If at any time Respondent provides financial assurance for completion of the Work by means of a corporate guarantee or financial test, Respondent shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, and will promptly provide any additional information requested by EPA from Respondent or corporate guarantor within seven calendar days of its receipt of such request from EPA or the corporate guarantor.

d. For purposes of the corporate guarantee or the financial test described above, references in 40 C.F.R. § 264.143(f) to "the sum of current closure and post-closure costs and the current plugging and abandonment Estimated Cost of the Works" shall mean "the sum of all environmental remediation obligations, including, but not limited to, obligations under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., RCRA, the Underground Injection Control Program promulgated pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., and the Toxic Substances

Control Act, 42 U.S.C. §§ 2601, et seq., and any other federal or state environmental obligation guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work.

e. Respondent may combine more than one mechanism to demonstrate financial assurance for the Work to Be Performed under Section VIII of this Order.

f. Respondent may satisfy its obligation to provide financial assurance for the Work to be Performed under Section VIII herein by providing a third party who assumes full responsibility for said Work and otherwise satisfies the obligations of the financial assurance requirements of this Order; however, Respondent shall remain responsible for providing financial assurance in the event such third party fails to do so and any financial assurance from a third party shall be in one of the forms provided in subparagraphs 42.a.(1) through (6) above.

g. If at any time EPA determines that a financial assurance mechanism provided pursuant to this Paragraph 42 is inadequate, EPA shall notify Respondent in writing. If at any time Respondent becomes aware of information indicating that any financial assurance mechanism(s) provided pursuant to this Paragraph 42 is inadequate, Respondent shall notify EPA in writing of such information within ten (10) days of Respondent's becoming aware of such information. Within 90 days of receipt of notice of EPA's determination, or within 90 days of Respondent's becoming aware of such information, Respondent shall establish and maintain adequate financial assurance for the benefit of the EPA which satisfies all requirements set forth in this Section. Any and all financial assurance documents provided pursuant to this Order shall be submitted to EPA for review in draft form at least 45 days before they are due to be filed and shall be satisfactory in form and substance as determined by EPA.

h. Respondent's inability or failure to establish or maintain financial assurance for completion of the Work to be Performed under Section VIII of this Order shall in no way excuse performance of any other requirements of this Order.

i. Release of Financial Assurance. Respondent may submit a written request to the Director, Land, Chemicals and Redevelopment Division that EPA release Respondent from the requirement to maintain financial assurance under this Section XV upon receipt of written notice from EPA pursuant to Section XXII that, as set forth therein, the terms of this Order have been satisfactorily completed. If said request is granted, the Director, Land, Chemicals and Redevelopment Division shall notify both the Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Order.

43. **Access to Financial Assurance**

a. In the event that EPA determines that Respondent (i) has ceased implementation of any portion of the Work, (ii) is seriously or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both the Respondent and the financial assurance provider of Respondent's failure to perform. The notice issued by EPA will specify the grounds upon which

such a notice was issued and will provide the Respondent with a period of thirty (30) days within which to remedy the circumstances giving rise to the issuance of such notice.

b. Failure by the Respondent to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the 30-day notice period specified in Paragraph 43.a, shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 42.a(1) – (6). EPA may at any time thereafter direct the financial assurance provider to immediately (i) deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument or (ii) arrange for performance of the Work in accordance with this Order.

c. If EPA has determined that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 43.a have occurred, and if EPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the Work in accordance with this Order from the financial assurance provider pursuant to this Order, then, upon receiving written notice from EPA, Respondent shall within ten days thereafter deposit into the standby trust fund, or a newly created trust fund approved by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining Work to be performed in accordance with this Order as of such date, as determined by EPA.

d. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation into the relevant standby trust fund or a newly created trust fund approved by EPA to facilitate performance of the Work in accordance with this Order**.**

e. Respondent may invoke the procedures set forth in Section XVII (Dispute Resolution) to dispute EPA's determination that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 43.a. has occurred. Invoking the dispute resolution provisions shall not excuse, toll, or suspend the obligation of the financial assurance provider under Paragraph 43.b of this Section to fund the trust fund or perform the Work. Furthermore, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion direct the trustee of such trust fund to make payments from the trust fund to any person that has performed the Work in accordance with this Order until the earlier of (i) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice; or (ii) the date that a final decision is rendered in accordance with Section XVII (Dispute Resolution), that Respondent has not failed to perform the Work in accordance with this Order.

44. **Modification of Amount, Form, or Terms of Financial Assurance**

a. **Reduction of Amount of Financial Assurance**. If Respondent believes that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this Order, Respondent may, at the same time that Respondent submits the annual cost adjustment, pursuant to Paragraph 41.d, or at

any other time agreed to by EPA, submit a written proposal to EPA to reduce the amount of the financial assurance provided under this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval of a revised financial assurance amount, Respondent shall follow the procedures set forth in Paragraph 44.b(2) of this Section. If EPA decides to accept such a proposal, EPA shall notify Respondent of its decision in writing. After receiving EPA's written decision, Respondent may reduce the amount of the financial assurance only in accordance with and to the extent permitted by such written decision. In the event of a dispute, Respondent may reduce the amount of the financial assurance required hereunder only in accordance with the final EPA Dispute Decision resolving such dispute. No change to the form or terms of any financial assurance provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraph 44.b below.

b. **Change of Form of Financial Assurance**

(1) If Respondent desires to change the form or terms of financial assurance, Respondent may, at the same time that Respondent submits the annual cost adjustment, pursuant to Paragraph 41.b of this Section, or at any other time agreed to by EPA, submit a written proposal to EPA to change the form of financial assurance. The submission of such proposed revised or alternative form of financial assurance shall be as provided in Paragraph (2) below. The decision whether to approve a proposal submitted under this Paragraph 44 shall be made in EPA's sole and unreviewable discretion and such decision shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Order or in any other forum.

(2) A written proposal for a revised or alternative form of financial assurance shall specify, at a minimum, the cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of financial assurance, including all proposed instruments or other documents required in order to make the proposed financial assurance legally binding. The proposed revised or alternative form of financial assurance shall satisfy all requirements set forth or incorporated by reference in this Section. EPA shall notify Respondent in writing of its decision to accept or reject a revised or alternative form of financial assurance submitted pursuant to this Paragraph. Within ten days after receiving a written decision approving the proposed revised or alternative financial assurance, Respondent shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal and such financial assurance shall be fully effective. Respondent shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the Director, Land, Chemicals and Redevelopment Division within 30 days of receiving a written decision approving the proposed revised or alternative financial assurance, with a copy to EPA's Project Coordinator. EPA shall release, cancel, or terminate the prior existing

financial assurance instruments only after Respondent has submitted all executed and/or otherwise finalized new financial assurance instruments or other required documents to EPA.

c. **Release of Financial Assurance**. Respondent may submit a written request to the Director, Land, Chemicals and Redevelopment Division that EPA release the Respondent from the requirement to maintain financial assurance under this Section at such time as EPA and Respondent have both executed an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right" pursuant to Paragraph 77 of this Order. The Director, Land, Chemicals and Redevelopment Division shall notify both the Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Order. Respondent shall not release, cancel, or terminate any financial assurance provided pursuant to this Section except as provided in this Paragraph or Paragraph 44.b(2). In the event of a dispute, Respondent may release, cancel, or terminate the financial assurance required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

## XVI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

45. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 46 for failure to comply with the requirements of this Order specified below, unless excused under Section XVIII (Force Majeure and Excusable Delay). Compliance by Respondent shall include commencement or completion, as appropriate, of any activity, plan, study, or report required by this Order in an acceptable manner and within the specified time schedules in and approved under this Order. If (i) an initially submitted or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under Section XIV (Agency Approvals/Additional Work/Modifications); or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

46. **Stipulated Penalty Amounts**

a. For failure to commence, perform or complete Work as prescribed in this Order: $1,000 per day for one to seven days or part thereof of noncompliance, and $2,000 per day for each day of noncompliance, or part thereof, thereafter;

b. For failure to comply with the provisions of this Order after receipt of notice of noncompliance by EPA: $1,000 per day for one to seven days or part thereof of noncompliance, and $3,000 per day for each day of noncompliance, or part thereof, thereafter; in addition to any stipulated penalties imposed for the underlying noncompliance;

c. For failure to submit deliverables as required by this Order, or for failure to comply with this Order not described in subparagraphs a. and b. immediately above: $500 per day for one to seven days or part thereof of noncompliance, and $1,000 per day for each day of noncompliance, or part thereof, thereafter.

47. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the

correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (i) with respect to a deficient submission under Section XIV (Agency Approvals/Additional Work/Modifications), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency, or (ii) with respect to a decision under Section XVII (Dispute Resolution), during the period, if any, beginning the 21st day after the Negotiation Period begins until the date that EPA issues a final decision regarding such dispute. Nothing in this Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

48. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of such noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in Paragraph 47 regardless of whether EPA has notified Respondent of a violation.

49. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVII (Dispute Resolution) within the 30-day period.

50. If Respondent fails to pay stipulated penalties when due, Respondent shall pay interest on the unpaid stipulated penalties as follows: interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the 31st day after Respondent's receipt of EPA's demand. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. § 3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days. In addition, a handling fee of $15/month shall be assessed beginning on the 31st day after Respondent's receipt of EPA's demand.

51. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be paid to "Treasurer, United States" by Automated Clearinghouse (ACH) to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Payments shall include a reference to the name of the Facility, Respondent's name and address, email address and telephone number, the EPA docket number of this action, and the amount and method of payment. A copy of the transmittal request shall be sent simultaneously to EPA's Project Coordinator, the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, and the EPA Regional Hearing Clerk by email at R3_Hearing_Clerk@epa.gov.

52. The payment of penalties and interest, if any, shall not alter in any way Respondent's obligation to complete the performance of Work required under this Order.

53. Nothing in this Order 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 Respondent's violation of this Order or of the statutes and regulations upon which it is based, including but not limited to 42 U.S.C. § 6928(h)(2); however, EPA shall not seek civil penalties pursuant to 42 U.S.C. § 6928(h)(2) for any violation for which a stipulated penalty is provided in this Order, except in the case of a willful violation of this Order.

54. 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 Order.

## XVII. **DISPUTE RESOLUTION**

55. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Order. The parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

56. **Informal Dispute Resolution**. If Respondent objects to any EPA action taken pursuant to this Order, it shall notify EPA in writing of its objection(s) within 14 days after such action. EPA and Respondent shall have 20 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through informal negotiations (the "Negotiation Period"). Upon request of Respondent, the Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Order.

57. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 14 days after the end of the Negotiation Period, submit a statement of position to EPA's Project Coordinator. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Order. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

58. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Respondent under this Order not directly in dispute, unless EPA provides otherwise in writing. Except as provided in Paragraph 47, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of the Order. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Delay in Performance/Stipulated Penalties).

## XVIII. **FORCE MAJEURE**

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

60. If any event occurs or has occurred that may delay the performance of any obligation under this Order for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's Project Coordinator orally or, in his or her absence, the Director, Land, Chemicals and Redevelopment Division, EPA Region III, within seven days of when Respondent first knew that the event might cause a delay. Within seven days thereafter, Respondent shall provide in writing to EPA an explanation 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; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice available documentation supporting its claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 59 and whether Respondent has exercised its best efforts under Paragraph 59, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely notices under this Paragraph.

61. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondent in writing of its decision.

62. If Respondent elects to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution) regarding EPA's decision, Respondent shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements

of Paragraphs 60. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation(s) of this Order identified to EPA.

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

## XIX. RESERVATION OF RIGHTS

64. Notwithstanding any other provisions of this Order, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect public health 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 or constituents of such wastes, on, at, or from the Facility, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.

65. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, that may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2).

66. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.

67. This Order is not intended to be nor shall it be construed to be a permit. Respondent acknowledges and agrees that EPA's approval of the Work and/or workplan does not constitute a warranty or representation that the Work and/or workplans will achieve the corrective measures completion criteria. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

68. Respondent agrees not to contest this Order or any action or decision by EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, the Director, Land, Chemicals and Redevelopment Division, or any authorized representative of EPA, prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Order. In any action brought by EPA for violation of this Order, Respondent shall bear the burden of proving that EPA's actions were arbitrary and capricious and not in accordance with law. Entry into this Order does not constitute an admission of any liability of Respondent.

## XX. OTHER CLAIMS

69. By issuance of this Order, EPA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. EPA will not be deemed a party to any contract, agreement or other arrangement entered into by Respondent or its

officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this Order.

70. Respondent waives all claims against the United States relating to or arising out of this Order, including, but not limited to, contribution and counterclaims.

71. Each Party will bear its own litigation costs.

72. In any subsequent administrative or judicial proceeding initiated by EPA for injunctive or other appropriate relief relating to the Facility, Respondent 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 by the United States in the subsequent proceeding were or should have been raised in the present matter.

## XXI. **INDEMNIFICATION**

73. Respondent 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 Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Respondent's behalf or under their control, in carrying out actions pursuant to this Order. In addition, Respondent agrees 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 Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

75. Respondent agrees not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays. In addition, Respondent 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 Respondent and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays.

## XXII. **PREVIOUS ORDERS**

76. The 2007 Order is terminated upon the Effective Date of this Order.

## XXIII. **TERMINATION**

77. This Order shall be deemed satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights" ("Acknowledgment of Termination"). EPA will prepare the Acknowledgment of Termination for Respondent's signature. The Acknowledgment of Termination will specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed. Respondent's execution of the Acknowledgement of Termination will affirm Respondent's continuing obligation to preserve all records as required in Section XII (Record Retention), to maintain any necessary Property Requirements as required in Section X, to recognize EPA's Reservation of Rights as required in Section XIX, and to comply with Section XX (Other Claims) and Section XXI (Indemnification).

## XXIV. **INTEGRATION/APPENDICES**

78. This Order and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following Appendices are incorporated into this Order: Appendix A – Facility map; Appendix B – FDRTC and Statement of Basis; Appendix C – 2007 CERCLA Order; and Appendix D – Draft Environmental Covenant.

Signature Page for Administrative Order on Consent regarding the Former General Electric Railcar Repair Services Corporation Property, Docket No. RCRA-03-2023-0046CA

IT IS SO AGREED AND ORDERED:

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

DANA AUNKST

Digitally signed by DANA AUNKST
Date: 2023.02.07 12:02:57 -05'00'

*Digitally Signed and Dated*
Dana Aunkst
Director
Land, Chemicals and Redevelopment Division
U.S. Environmental Protection Agency, Region III

Signature Page for Administrative Order on Consent regarding the Former General Electric Railcar Repair Services Corporation Property, Docket No. RCRA-03-2023-0046CA

For Transport Pool Corporation, Respondent

DocuSigned by:
marian whiteman
2DA10D47E4E5443...

01-Feb-2023

*Digitally Signed and Dated*

[Name] Marian E. Whiteman

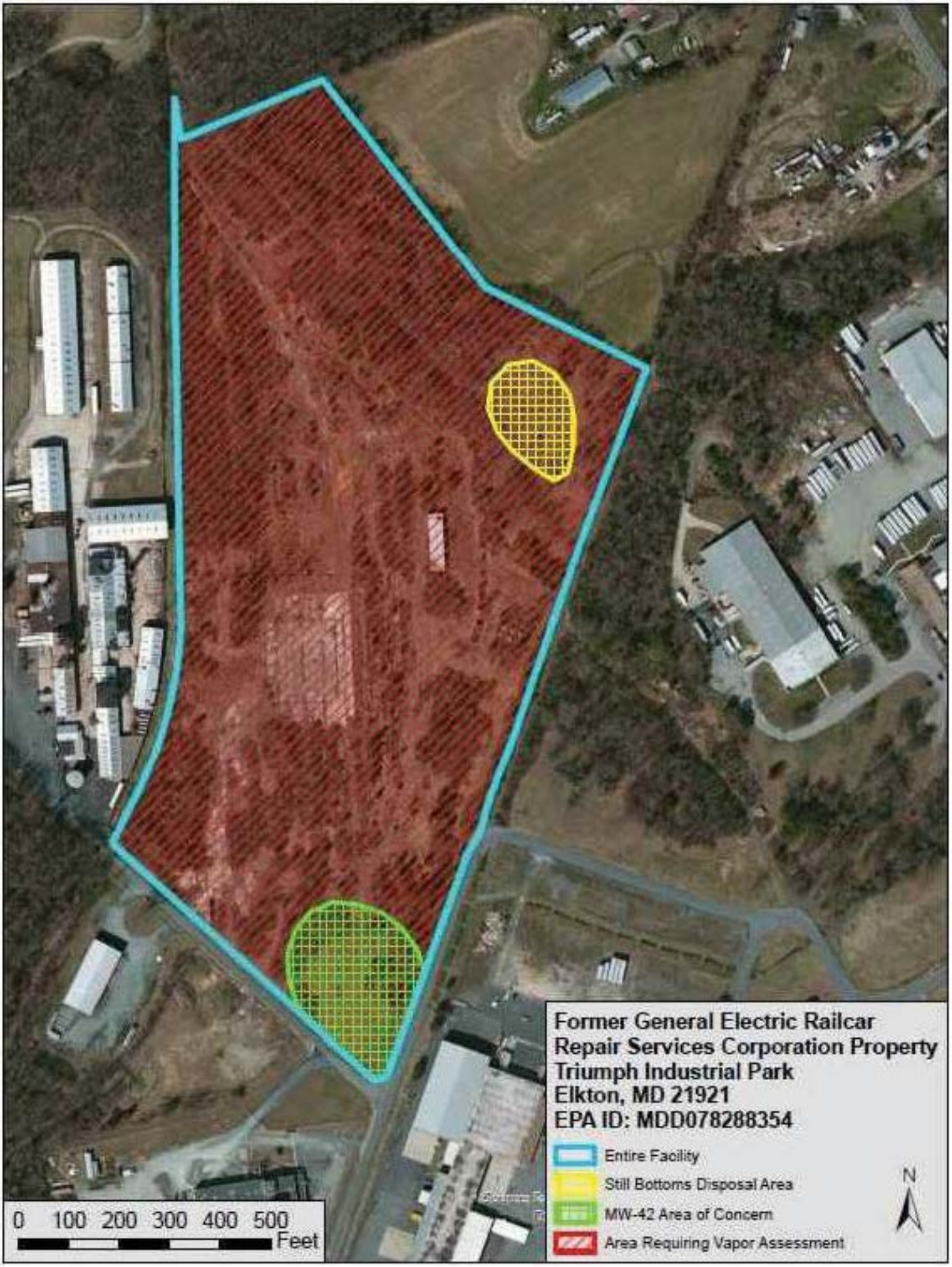
[Title] Vice President-Real Estate

[Company] Transport Pool Corporation

[Address] 901 Main Avenue
Room 8059
Norwalk, CT
06851

# APPENDIX A

Facility Map


Former General Electric Railcar
Repair Services Corporation Property
Triumph Industrial Park
Elkton, MD 21921
EPA ID: MDD078288354
Entire Facility
Still Bottoms Disposal Area
MW-42 Area of Concern
Area Requiring Vapor Assessment
N
0 100 200 300 400 500
Feet

# APPENDIX B

FDRTC and Statement of Basis

# UNITED STATES
# ENVIRONMENTAL PROTECTION AGENCY
# REGION III

## FINAL DECISION and RESPONSE TO COMMENTS

## Former GE Railcar
## Elkton, Maryland

*EPA ID: MDD 078 288 354*

I. FINAL DECISION

The United States Environmental Protection Agency (EPA) has selected the Final Remedy for RCRA Corrective Action for the Former GE Railcar property (Facility) in Elkton, Maryland. EPA's Final Remedy consists of: (1) natural attenuation of volatile organic compounds in on- and off-site groundwater, and (2) land and groundwater use restrictions on the property.

The Final Remedy is based on EPA's findings as detailed in the Statement of Basis (SB), dated January 2020.

II. PUBLIC COMMENT PERIOD

EPA issued a notice soliciting public comment on its proposed remedy for this Facility on January 24, 2020, in *The Cecil Whig*, a local newspaper. The notice provided the website where the SB could be accessed. The 30-day public comment period opened on January 24, 2020 and ended February 23, 2020.

III. RESPONSE TO COMMENTS

EPA received no comments on the proposed remedy. Therefore, the Final Remedy is unchanged from the remedy proposed in the SB. The SB is attached to this Final Decision and Response to Comments (FDRTC) as Attachment A and is incorporated herein.

IV. AUTHORITY

EPA is issuing this FDRTC under the authority of the Solid Waste Disposal Act, as amended by RCRA, and the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. Sections 6901 to 6992k.

V. DECLARATION

EPA has determined that the Final Remedy selected in this FDRTC is protective of human health and the environment. EPA's determination is based on the Administrative Record of Corrective Actions taken at the Former GE Railcar Facility in Elkton, Maryland.

Mary L. Dow for JAA

Date: 2/25/2020

John A. Armstead, Director
Land, Chemicals and Redevelopment Division
U.S. Environmental Protection Agency, Region III

Attachment A: Statement of Basis (January 2020)

# ATTACHMENT A

UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

REGION III

STATEMENT OF BASIS

**Former GE Railcar**

**Elkton, Maryland**

EPA ID: MDD 078 288 354

Prepared by

RCRA Corrective Action Branch 1
Land, Chemicals and Redevelopment Division

January 2020

## Table of Contents

## Section 1: Introduction

The United States Environmental Protection Agency (EPA) prepared this Statement of Basis (SB) to solicit public comment on its proposed remedy for the former General Electric Railcar Repair Services Corporation (GE Railcar) property located in Triumph Industrial Park, near Elkton, Maryland (the Facility) (Figure 1). The Facility is owned by the Transport Pool Corporation (formerly GE Railcar Services Corporation) and is currently unused.

This SB highlights key information relied upon by EPA in proposing its remedy for the Facility. In addition to the remedial actions already completed at the Facility, EPA is proposing monitored natural attenuation of volatile organic compounds in on- and off-site groundwater. Land and groundwater use restrictions are also proposed.

The Facility is subject to EPA's Corrective Action program under the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901, et seq. The Corrective Action program requires that facilities subject to certain provisions of RCRA investigate and address releases of hazardous waste and hazardous constituents, usually in the form of soil or groundwater contamination, that have occurred at or from their properties. EPA is the lead Agency in overseeing the investigation and selecting a final remedy for the Facility, in cooperation with Maryland Department of the Environment.

EPA is providing thirty (30) days for public comment on the proposed remedy as summarized in this SB. EPA may modify its proposed remedy based on comments received during this period. EPA will announce the final remedy selected for the Facility in a Final Decision and Response to Comments document after the public comment period ends.

EPA's fact sheet on the Facility is posted at: https://www.epa.gov/hwcorrectiveaction/hazardous-waste-cleanup-p-r-railcar-service-ge-railcar-elkton-md.

Attachment A contains the Administrative Record (AR) Index for the Facility. The AR contains all documents, including data and quality assurance information that EPA used in selecting the proposed final remedy. Public Participation information is provided in Section 9 for those interested in reviewing the AR.

## Section 2: Facility Background

The Facility is located in the Triumph Industrial Park (TIP) at 505 Blue Ball Road (State Road 545), approximately one mile north-northwest of the City of Elkton, Cecil County, Maryland (Figure 1). The Facility is at the intersection of Hope and Zeitler Lanes in the TIP. The Facility is comprised of two adjoining parcels and a railroad right of way (ROW). The ROW is located on the western portion of the Facility property and extends north and south beyond the Facility boundary. The proposed remedy applies to the two Facility parcels (28.5 acres total) and off-site properties impacted by Facility contamination (Figure 2).

The Facility is surrounded by industrial and commercial properties within TIP. An agricultural property is located on the Facility's northern boundary. The area that eventually became TIP was primarily agricultural land. Industrialization began in the 1930's with some small manufacturing facilities. During World War II, the area experienced explosive development when it became the site of munitions, explosives and other ordnance production for the war. Munitions and ordnance production ceased after World War II. Thereafter, other manufacturers began operations in TIP. The Facility is located on land in TIP where munitions and ordnance were previously handled. The Facility was last used for freight car cleaning, repair and maintenance, primarily for tank cars and also included box, hopper, flat and specialty cars. The Facility had nine buildings and approximately 10,000 feet of railroad rails. The buildings, tanks and equipment and most of the rails were removed. The Facility is currently heavily vegetated with some concrete slabs and former building foundations remaining on the Facility property.

The railcar cleaning process first required removing residual products left in the railcars and storing the residual products (hazardous and non-hazardous) on-site for eventual removal. Car interiors were either steam cleaned (to remove volatiles) or cleaned using other methods, depending on the residual. Steam and volatiles were routed to a gas assisted flare for burning. Washwater, rinsate and flare tower condensate were collected and stored in tanks for off-site disposal. Maintenance and repair activities included steel fabrication, welding, cutting and brazing. Car interiors and exteriors were sandblasted and painted as needed. Water was used to hydrostatically test railcars for leaks. The water was reused until spent, then shipped off-site for disposal.

Railcar operations began at the Facility in 1976 when P&R Railcar Service Corporation (P&R) purchased the Facility property. In 1979, North American Car Corporation acquired the Facility property and added railcar cleaning to the repair and maintenance service. In July 1986, Quality Service Repair Corporation acquired the Facility and subsequently changed its name to GE Railcar Repair Services in April 1987, and continued railcar cleaning and maintenance until operations ceased in September 1987. Thereafter, GE Railcar began closing waste management units and removing on-site structures. The Facility has remained unused since the late 1980's. The current Facility property owner is Transport Pool Corporation, a successor of GE Railcar.

## Section 3: Environmental History and Investigations

### 3.1 Maryland Permits and Remediation Activities

In 1982, Maryland Department of Health and Mental Hygiene (MD DHMH) issued a Controlled Hazardous Substance Facility Permit (A-229) to the North American Car Corporation to operate two drum hazardous waste storage areas and a hazardous waste tank farm for spent railcar wash and product residuals. The tank farm consisted of four above ground steel 10,000-gallon tanks. After railcar cleaning activities ceased, remediation of two drum storage areas was completed in 1992, and aboveground storage tanks (ASTs) and contaminated soil in the tank farm area were removed, backfilled with clean fill and then capped between December 1989 and January 1990. These remedial activities were conducted under a Maryland Department of the Environment (MDE) approved Closure Work Plan.

MDE issued closure letters in 1990 and 1992, releasing the Facility from its obligations under the A-229 permit.

GE Railcar removed the following structures and waste storage units after residual waste removal. There was no evidence of releases from these units: (1) twelve 5,000-gallon ASTs used for railcar residual chemical storage and wash water, and AST concrete containment boxes; (2) three 8,000-gallon steel ASTs used for washwater recyling enclosed in a containment area consisting of an earthen berm with a PVC liner; (3) a 9,740-gallon AST for caustic liquid storage in a containment area; (4) a 500 gallon steel AST for solvent/detergent mixing for railcar cleaning; (5) a 20,000 gallon underground storage tank (UST) for No. 2 fuel heating oil; (6) gas flare tower system, including a 18,253 gallon steel AST for storing liquid propane. Some structures were closed under MDE clean closure acceptance. In 1992, MDE released the Facility from its obligations under the A-229 Permit in a letter to the Facility.

During the tank farm remediation and closure, a mass of buried waste material was discovered in the Facility's northeast corner which was traced to Galaxy Chemicals, Inc. (Galaxy), a nearby solvent recycling facility. Trinco, a previous Facility owner, allowed Galaxy to dispose of their waste chemicals into trenches in the Facility's northeast corner. Galaxy distilled waste solvents from various sources. Distillation created a chemical waste by-product that settled in the bottom of the stills. These still bottoms wastes were removed to an outdoor unlined impoundment on Galaxy's property. From 1968 to 1971, the Facility received an unknown amount of still bottoms waste dredged from the Galaxy impoundment. Pursuant to a 1991 MDE Consent Order, GE Railcar delineated the waste disposal area. From January through March 1991, GE Railcar excavated 932 cubic yards of the still bottom solids (hazardous waste) and underlying soil and disposed of it at a permitted off-site incinerator. Waste analysis of the still bottoms material identified elevated levels of benzene, chlorobenzene (CB), chloroform, chlorinated solvents (i.e., tetrachloroethylene (PCE) and trichloroethylene (TCE)) and other halogenated and non-halogenated solvents. A 0.7-acre area was excavated and backfilled with about 6 inches of clean fill, then covered with a compacted clay cap and 6 inches of topsoil (Figure 2).

### 3.2 Facility Investigation Summary

In October 1999, the Army Corps of Engineers conducted a Facility inspection for EPA. Based on the May 31, 2000 inspection report, EPA entered into a RCRA Corrective Action Facility Lead Corrective Action Agreement (Agreement) with GE Railcar to undertake further assessment of the Facility. On October 9, 2001, GE Railcar agreed to the Agreement in a letter to EPA. Prior to the Agreement, on August 9, 2001, GE Railcar submitted a Site Investigation Work Plan to EPA. EPA approved the Work Plan and the resulting Site Investigation (SI) Report for the Facility was submitted to EPA in August 2002 (2002 SI Report). In a letter to the Facility dated May 14, 2003, EPA approved the SI Report. As a result of the SI Report's findings, from 2001 to 2006 the Facility performed the following investigations and submitted the following reports to EPA: (1) 2002 SI Report; (2) MW-42 AOC Soil Investigation (2004); (3) MW-09 and MW-25 Soil Gas Investigation (2005); (4) In-Situ Pilot Test Evaluation Report (GW treatment); (5) Off-Site GW Investigations (2006).

In September 2007, GE Railcar and EPA entered into an Administrative Settlement Agreement and Order on Consent (Consent Order) for a Remedial Investigation/Feasibility Study (RI/FS), pursuant to Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622 and Section 3008(h) under RCRA, 42 U.S.C. § 6908(h). The Consent Order identified two Areas of Concern (AOCs), the Still Bottom Disposal Area and MW-42 Area, and four Areas of Interest (AOIs), MW-40 Area, Central Drainage Ditch, Spent Blast Sand Area and SF-15 Area, for further investigation (Figure 2). On- and off-site groundwater impacted with VOCs and Soil Vapor investigations were added after the Consent Order.

EPA approved the following Work Plans and Reports under the Consent Order: (1) Remedial Investigation of two AOCs and four AOIs and a Baseline Human Health Risk Assessment (BHHRA) (2009); (2) Spent Blast Sand Area Soil Investigation (2012); (3) Long-Term GW Monitoring (2012 – 2019); (4) BHHRA Addendum (2015); (5) Off-Site GW DPT Investigation (2015-2016); (6) On-Site Saprolite MW Investigation (2016); (7) Off-Site Soil Gas Investigation (2016); (8) Off-Site Monitoring Well Installations (2017); (9) MW-40 AOI Soil Investigation (2017); (10) Indoor Air Investigation for Buildings 508A and 573A (2017-2018); 2018 Feasibility Study Report (2018).

### 3.3 Investigations Findings:

1. Site Geology and Hydrogeology: The Facility is situated within the Atlantic Coastal Plain Province, which consists of Potomac Group (PG) unconsolidated sediments in the Facility area. On-site, the soil column consists of interbedded silts, clays, argillaceous sands and gravels to a depth of 12 to 45 feet below ground surface (fbgs). PG sediments are underlain by a clay-rich, weathered/decomposed bedrock layer termed saprolite. Saprolite is chemically weathered bedrock, which consists of serpentinized gabbros, gneisses, schists and amphibolites of the Piedmont Province. Two water-bearing zones were identified at the Facility; a shallow unconfined or water table aquifer in the unconsolidated sediments, and an underlying saturated confined unit in the saprolite layer. Hydraulic conductivity or water flow velocity in the saprolite layer is very low due to its high clay content. Groundwater (GW) in the shallow water table aquifer flows south, discharging to the Little Elk Creek, located 1,500 to 2,200 feet south of the Facility, while GW flow in saprolite appears to flow very little, laterally or vertically.

The topography of the Facility is generally flat with a steep slope (30 – 35 feet) at the northern quarter of the Facility property.

2. Soil: The 2002 SI Report was a comprehensive on-site assessment of Facility soil, sediment and groundwater (GW). Soil samples were collected from 23 monitoring well (MW) borings at two depths (0.5 – 1 and 4 - 6 feet below ground surface (fbgs)) and 16 additional surficial soil samples (0-2 fbgs) targeted to areas of suspected releases. Also, five surficial sediment samples were collected from the Central Drainage Ditch (CDD). Samples were analyzed for volatile (VOCs) and semivolatile organic compounds (SVOCs), metals and two surficial soils were analyzed for polychlorinated biphenyls (PCBs). Sampling results were compared to MDE's non-residential clean-up standards (NRCS) for soil.

All analytes were below NRCS except for an exceedance of mercury at MW-40 and at a nearby surficial sample, and an Arochlor 1254 (PCB) exceedance in the CDD and a few low-level exceedances of benzo(a)pyrene in surficial soils. Arsenic exceeded the standard in a few samples at levels considered within normal background. The mercury exceedance from the MW-40 sample exceeded the NRCS by two orders of magnitude (38.8 parts per million (ppm)) (Figure 2). MW-40 area soil was investigated for mercury under the 2007 Order and confirmed that mercury was limited to the initial sample, probably from a broken mercury vapor lamp.

The Facility conducted a soil gas survey around MW-9 and MW-25 to determine if a contaminant source was causing elevated VOC readings on field instruments (PID) inserted in the air space above the water table in the two wells. Holes were drilled to 3 fbgs around each well for vapor sampling tubes. Soil gas pumped from the sealed holes were field screened using a PID and where VOC levels were elevated, a soil gas sample was collected for lab analysis. Three samples were collected for analysis. The results showed low level VOCs below background levels. A contaminant source area contributing to elevated VOCs in GW and air space in the two MWs was not indicated.

The 2007 Order identified two Areas of Concern (AOCs) and four Areas of Interest (AOIs) for further soil investigation. The following AOCs were investigated during the RI: the Still Bottom Disposal Area (SBDA) and MW-42. The AOIs investigated during the RI were: MW-40, the Central Drainage Ditch (CDD), Spent Blast Sand Area (SBSA) and SF-15, shown in Figure 2 and discussed in A – E below.

A. The SBDA AOC investigation in 2008 delineated the remaining contaminated soil beneath and around a SBDA clay cap which was installed in 1991. Eighteen borings were completed to 20 feet below ground surface (fbgs) to collect soil samples at 5 feet depth intervals beneath the cap and outside of the cap. The samples were analyzed for VOCs. The sample results showed that 3 feet of contaminated material was removed in 1991, prior to capping. Low level PCE, TCE, TeCA, ethylbenzene and xylenes were found in soil beneath the eastern and southern portion of the cap, with only one or two samples with COC exceeding EPA's industrial soil screening levels. The Baseline Human Health Risk Assessment (BHHRA) Addendum stated that exposure risks to current or future outdoor receptors are within acceptable levels, however, PCE and TCE levels in soils may potentially pose an indoor air vapor risk in any structures constructed in or near the SBDA AOC.

B. MW-42 AOC is approximately 1.69-acres in the Facility's southeastern corner and encompasses MWs -42 and -44. Multiple soil borings were completed to delineate cVOC contamination in this area. The 2002 SI Report identified this AOC as an area where contaminants were released but did not appear to be associated with former railcar operations. In soil, TeCA and TCE were found above MDE and EPA's screening levels. GW at MW-42 exhibited elevated levels of TeCA, DCE and TCE. The exposure risks to current or future outdoor receptors from soil are within acceptable levels, however, TeCA and TCE levels in soil may pose potential indoor air vapor risk for any future structures constructed in or near the MW-42 AOC.

C. CDD AOI is an unlined channel for surface water runoff from the central and southern portions of the Facility, emptying to a 20 feet diameter settling basin and discharged to an outfall at the eastern property line. The CDD is approximately 1,141 feet long, situated where most Facility activities took place. Sediment from the CDD was sampled twice, once for VOCs, SVOCs and metals during the SI and again during the RI for PCBs. The results showed that VOCs, SVOCs, metals and PCBs did not exceed MDE's and EPA's industrial soil screening levels.

D. SF-15 AOI was one of 16 surficial soil samples (0.25 – 1 fbgs) collected in areas of previous railcar activities. SF-15 was near a former pole-mounted transformer. Samples were analyzed for VOCs, SVOCs and metals, and SF-15 and SF-16 were also analyzed for PCBs. None of the samples exceeded industrial soil screening levels, except at SF-15 for Aroclor 1254 (PCB). To investigate whether PCBs were more prevalent, 5 soil borings were drilled around SF-15 to 5 feet bgs during the RI. Soil samples were collected from the top 12 inches and bottom 6 inches of the borings. Results showed that samples from two borings had low level Aroclor 1254 detections above the screening level for industrial settings but did not pose an unacceptable risk to current or future receptors according to the BHHRA.

E. Spent Blast Sand Area AOI (SBSA) is a rectangular half acre area of discarded sand used in sandblasting paint from railcars. The SBSA ranges in thickness from 0.25 feet to 4 feet above ground surface. During trenching in the SBSA for sampling, three distinct zones were found: blast sand, and at the base of the sand, a limited area of gravel and a small layer of greenish-white clay. The three areas were sampled as follows: two composite samples of sandblast material were collected and analyzed for SVOCs, metals and PCBs, toxicity characteristic leaching procedure (TCLP) for SVOCs and metals. TCLP is used to determine leachability of contaminants and to determine whether the material is hazardous. Two single samples collected from the basal gravel and were analyzed for VOCs, SVOCs, metals and PCBs. One sample collected from the clay was analyzed for metals. Results show that one blast sand composite exceeded the screening level for Aroclor-1254 (PCB) and basal gravel exceeded the arsenic screening level. TCLP showed non-hazardous results. In May 2012, the SBSA was sampled again for RI supplemental data gathering. Twelve composite samples were collected and analyzed for SVOCs, metals and PCBs. A single sample was collected and analyzed for VOCs. The results showed a number of samples with lead and PCB detections, but only 3 samples exceeded the industrial soil screening level for PCBs. The 2015 BHHRA Addendum indicated that there was no unacceptable risk to workers.

3. Groundwater: In 2001, the Facility installed 48 MWs on-site, including 42 MWs in the water table aquifer and 6 MWs into the underlying saprolite. GW samples were analyzed for VOCs, SVOCs and metals. Results showed that five VOCs comprise the primary contaminants of concern (COC): benzene, chlorobenzene (CB), tetrachloroethylene (PCE), trichloroethylene (TCE) and 1,1,2,2-tetrachloroethane (TeCA). Benzene, CB and TCE plumes are associated with the Still Bottoms Disposal Area (SBDA) located in the northeast corner of the Facility. PCE, TCE and TeCA chlorinated VOCs (cVOCs) COC are distributed in the west and southern areas of the Facility. From 2004 to 2017, GE installed off-site MWs to map off-site plumes that appeared to have originated on the Facility (Figure 3).

Shallow GW flows in the Potomac Group (PG) sediments underlying the region. GW flow in the saprolite clay layer underling the PG sediments was calculated to flow laterally very slowly at 3.7 feet/year (average) in contrast to PG GW flow, calculated at 15 to 178 feet/year. Low level contamination in the saprolite/clay layer is most likely bound up in the saprolite/clay matrix with little movement. PG GW flows south from the site to discharge in Little Elk Creek, which acts as a hydraulic boundary to further off-site contaminant migration.

In-Situ Remediation Pilot Studies: From 2003 to 2004, the Facility conducted pilot studies to test potential in-situ remedial technologies to treat dissolved VOCs in GW. MW-02 and MW-42 (Figure 3) areas were selected for injection of compounds known to facilitate breakdown of VOCs under certain geochemical conditions. At MW-02, GW conditions were oxygen poor (i.e., anaerobic) and had elevated levels of benzene and chlorobenzene. Naturally occuring anaerobic bacteria can degrade cVOCs through anaerobic reductive dechlorination (ARD) reactions, while non-chlorinated VOCs such as benzene can degrade through anaerobic oxidation reactions. To enhance biodegradation at MW-02, a bacteria food source, sodium lactate, was injected to increase bacterial biomass and sustain reducing conditions. As biomass increases and sodium lactate decreases, the bacteria will degrade VOCs through different oxidation-reduction reactions. Sodium lactate was injected into wells three times over six months. Monitoring showed that the sodium lactate radius of influence was three feet around MW-2. While the study concluded that target constituents were not successfully treated, it is likely that the volume of sodium lactate reagent added to wells was too small.

In the MW-42 Area, in-situ chemical oxidation was used to oxidize VOCs in GW. The oxidized VOC by-products are subsequently degraded by resident bacteria. An injection into twelve boreholes was performed using 1,140 gallons of oxidant solution. Results showed that dissolved phase VOCs decreased locally, however, to increase the effectiveness of the oxidation, higher dosing or a treatment barrier was recommended. Subsequent long-term monitoring documented VOC declines in the MW-42 Area, likely from the oxidant liberating native organic material in soil, which promoted biodegradation of cVOCs.

Natural Attenuation Assessment: The Facility evaluated over 12 years of VOC monitoring results and six years of biogeochemical and molecular biological results in the 2018 Feasibility Study Report. Data were evaluated for natural attenuation processes using a multiple lines of evidence approach.

The data indicated that anaerobic conditions exist in the SBDA area and in the downgradient plume. Among other factors, elevated GW alkalinity indicated biodegradation of aromatic hydrocarbons (e.g., benzene) by anaerobic bacteria, with benzene serving as a carbon source for bacteria. As a result, elevated chlorobenzene levels downgradient of the SBDA is significantly lower in nearby off-site MWs because of biochemical breakdown or attenuation. Within the SBDA area, there is also evidence that other VOCs are biochemically attenuating.

Conversely, GW beneath the southern portion of the Facility at the MW-42 area and at off-site downgradient areas exhibits aerobic or oxidizing conditions. Aerobic conditions are a limiting factor for

biodegradation of cVOCs, such as TeCA and TCE. The absence of VOC degradation products in these areas indicates that physical processes, such as pore-flushing of the aquifer matrix is the likely dominant attenuation process. However, abiotic reactions with iron minerals can also contribute to VOC attenuation. Long-term monitoring after the MW-42 area pilot test resulted in a biological reduction of VOCs in a limited area.

To estimate remedial timeframes for natural attenuation, a linear regression trend analysis was performed using sample results from 16 representative MWs. Chlorobenzene, TCE and TeCA exhibited a higher frequency of elevated detections than benzene and PCE. The regression trend analysis was performed twice, first using data from 2001 to 2018, then using data from 2014 to 2018. Remedial timeframes for the benzene/chlorobenzene plume range from 2 years (saprolite zone) to greater than 30 years (PG aquifer) based on data from 8 MWs. For the VOC southern plume, remedial timeframes range from 3 years to greater than 30 years.

4. Little Elk Creek (LEC) Surface Water Monitoring: LEC is a meandering stream located off-site and downgradient from the Facility (Figure 3). LEC and Big Elk Creek join south of Elkton at Elkton Landing to form the Elk River. Elk River flows southeast and discharges into the Chesapeake Bay. VOC GW plumes in the Potomac Group aquifer underlying the Facility flow towards LEC.

In 1997, MDE collected surface water (SW) samples from LEC. In the LEC section downgradient from the Facility, the study found that the highest SW detection of VOCs was TCE at 3 parts per billion (ppb). In a 2000 LEC investigation conducted by an adjacent facility, Orbital ATK, TCE (the only VOC consistently detected) was found in LEC SW downgradient of the GE Facility at 0.22 to 0.28 ppb. However, upstream of this area, SW contained TCE in the 0.22 to 1.1 ppb range. Sediment samples in LEC downgradient of the Facility ranged from below detection to 2.9 ppb. Low level TCE in SW and sediment were orders of magnitude lower than EPA Region III screening levels for freshwater media. Therefore, no adverse ecological impacts are expected to biota in the LEC, downgradient of the Facility.

5. Off-site Soil Gas, Sub-slab and Indoor Air Investigations: Figure 4 depicts on- and off-site GW plumes with 100 feet buffers around off-site buildings. There are currently no on-site buildings. The buffers were drawn using EPA's Vapor Intrusion Screening Levels (VISL) calculator to estimate potential vapor intrusion (VI) levels for VOC vapor into off-site buildings. Thirteen off-site buildings were identified for VI investigations, based on VOC levels in the upper most or shallow aquifer. These thirteen buildings are used for commercial or industrial purposes. The off-site GW investigation found that VOC concentrations increases with depth, with shallow GW showing significantly lower concentrations than that found in the deeper (>5 feet) aquifer. Of the13 buildings identified, access was granted to 7 buildings for the VI investigation (Figure 4). Three locations only allowed exterior soil gas sampling points and one building was eliminated because it is unoccupied and likely to remain so (Bldg. 391-A). Property access was denied for five small buildings along Hope Lane (Bldgs. 325A-E). However, GE Railcar installed vapor points on the Facility side of Hope Lane to measure exterior soil gas levels near the five buildings. The sixth property that denied access, Bldg. 0664-A, was not pursued for further action because only a small portion of the building was within the buffer area and soil gas

sampling results from nearby buildings didn't indicate impacts in this area. Based on property access and soil gas sampling results, six of the 13 buildings initially identified were investigated. Exterior soil gas points were installed around three buildings and sub-slab soil gas pins were installed inside three buildings. Exterior soil gas points were installed above the water table (approximately 2 feet). Sub-slab and exterior soil gas samples were collected in January and February 2017. Results were screened using EPA's VISL calculator. Two buildings exceeded VISL screening levels for sub-slab or exterior soil gas VOCs: Bldg. 508-A (B508-A) for TCE and PCE and Bldg. 573-A (B573-A) for TCE in exterior soil gas. The B573-A owner did not grant access for sub-slab soil gas sampling; therefore, exterior soil-gas results were used for the screening. Chloroform was detected in several buildings and is not considered a Facility-related contaminant and also does not pose unacceptable risk to building occupants, based on the modeling results.

B508-A and B573-A were then sampled for indoor air and concurrent sub-slab (B508A) or exterior soil gas (B573-A). Both properties were sampled twice, once in January 2018, and again in either October (2017) (B537-A) or late winter/early spring (B508-A) (2017 and 2018). Ambient air samples were collected outside the buildings during indoor air sampling. Low-level VOCs were detected below or just above laboratory detection limits in indoor and outdoor air samples for both buildings. Facility related VOCs were non-detected or one to two orders of magnitude below VISL screening levels for indoor air in both buildings both times they were sampled. Further investigation is not indicated.

## Section 4: Human Health Risk Assessment

The current exposure to soil and groundwater contamination at the Facility is controlled. To control trespasser access, the Facility is fenced, gated and locked with frequent security checks. Approximately 90% of the Facility is vegetated. The potable use pathway for GW at the Facility and in TIP is considered an incomplete pathway for current and future use. Groundwater is not used at the Facility and GW is not used as a potable supply at TIP. TIP is supplied by a municipal water supplier that draws water from off-site sources. TIP has been an industrial and commercial center since the early 1940's and Facility land is likely to remain industrial/commercial in the future.

The 2009 BHHRA and the revised 2015 BHHRA Addendum evaluated risk scenarios for future on-site workers (industrial/commercial and construction/maintenance) from exposure to soil, GW and VOC vapor. EPA approved the BHHRA Addendum on May 4, 2016. For off-site workers, risk scenarios were evaluated for GW consumption and VOC inhalation exposures. Table 1 summarizes the results of the risk evaluations.

| Table 1<br>Baseline Human Health Risk Assessment Results | | | |
|---|---|---|---|
| **Areas Identified in Investigations** | **Description/ Contaminants** | **Size** | **Potential Risk to Future Workers** |
| **SBDA AOC**<br>Still Bottoms Disposal Area | VOC Waste/residue removed & clay cap over the area. | 1.43 acres | Potential risk from VOCs in soil & VOC inhalation. |
| **MW-42 AOC** | Soil & GW VOCs. | 1.69 acres | Same risk as SBDA AOC |
| **CDD AOI** | Central Drainage Ditch, no exceedances. | 1,141 x 20 ft. (approx.) | No unacceptable risk. |
| **SF-15 AOI** | Pole mounted transformer PCBs. | <100 ft.$^2$ | No unacceptable risk. |
| **SBSA AOI**<br>Sand Blast Material | Arsenic, PCBs & benzo[a]pyrene. | 0.62 acres | No unacceptable risk. |
| **MW-40 AOI** | Broken mercury vapor lamp bulb, small area. | <100 ft.$^2$ | No unacceptable risk. |
| **GW (On & Off-Site, Off-Site VI)** | Elevated VOCs in GW, on & off-Site. | 60 acres (approx.) | GW consumption & vapor inhalation risks. Exposure pathways incomplete. |

## 4.1 Ecological Evaluation

A Screening Level Ecological Risk Assessment was not considered necessary due to limited and low-grade habitat on-site. Ecological impact potential to Little Elk Creek (LEC) from Facility-related GW contamination was evaluated. GW results from shallow MWs and temporary borings located adjacent to LEC were compared to EPA Region 3 Freshwater Screening Benchmarks. GW VOCs do not exceed the Benchmarks. SW samples from Little Elk Creek exhibited non-detect to very low-level VOCs and are well below the EPA Region 3 Freshwater Benchmark screening levels indicating no adverse ecological impacts are expected to LEC biota.

## 4.2 Environmental Indicators

Under the Government Performance and Results Act (GPRA), EPA set national goals to address RCRA corrective action facilities. Under GPRA, EPA evaluates two key environmental clean-up indicators for each facility: (1) Current Human Exposures Under Control; and (2) Migration of Contaminated Groundwater Under Control. The Facility met both indicator goals in April 2003 and May 2008, respectively. The environmental indicator forms are linked to EPA's Fact Sheet for this Facility at https://www.epa.gov/hwcorrectiveaction/hazardous-waste-cleanup-p-r-railcar-service-ge-railcar-elkton-md).

## Section 5: Corrective Action Objectives (CAOs)

EPA's Corrective Action Objectives (CAOs) for environmental media are:

**1. Soil** – EPA's CAO for on-site soil is to prevent human exposure to soil contaminants that exceed EPA and MDE's acceptable cancer risk range of $1x10^{-5}$ to $1x10^{-6}$, or one excess cancer occurrence in 100,000 people to one occurrence in one million people and a non-cancer risk hazard quotient of 1 or less for an industrial scenario.

**2. Groundwater -** EPA expects final remedies to return usable groundwater to its maximum beneficial use within a reasonable timeframe given the particular circumstances of the Site. Where aquifers are either currently used for water supply or have the potential to be used for water supply, EPA will use the National Primary Drinking Water Standard Maximum Contaminant Levels (MCLs) promulgated pursuant to Section 42 U.S.C. §§ 300f et seq. of the Safe Drinking Water Act and codified at 40 CFR Part 141). Therefore, EPA's CAO for Facility and Facility impacted off-site GW is to attain MCLs or EPA's regional risk screening levels (RSLs) where MCLs are not established for a constituent.

**3. Vapor Intrusion -** EPA's CAO for properties with a vapor intrusion potential in buildings/structures is to control human exposure and attain EPA and MDE's acceptable cancer risk range of $10^{-5}$ to $10^{-6}$ and a non-cancer risk hazard quotient of 1 or less. Currently there are no unacceptable indoor air exposures to VOC contaminants on-site or in buildings located off-site in or within 100 feet of a VOC contaminated GW plume and the indoor exposure pathway is expected to remain within acceptable levels for the future.

## Section 6: EPA's Proposed Remedy

The Facility submitted a Feasibility Study (FS) Report to EPA which identified and evaluated potential remedies regarding applicability and effectiveness in meeting the CAOs for this Facility. EPA approved the FS Report on September 13, 2019. EPA evaluated the potential remedies presented and considers the following remedies as capable of efficiently and effectively meeting EPA's CAO goals for soil, GW and vapor inhalation potential exposure pathways:

**1. Soil:** EPA's proposed remedy for soil at the Facility consists of establishing institutional controls to maintain industrial/commercial land use at the Facility. Because contaminants remain in subsurface soil in the MW-42 AOC and SBDA AOC that may pose a risk to future construction and industrial workers, EPA's proposed remedy requires submission of a Soil Management Plan for any planned subsurface soil disturbance activities (including excavation, drilling and construction) in locations where contaminants remain at levels above EPA's screening levels for non-residential use. EPA also proposes that the SBDA AOC be managed under an EPA approved SBDA Cap Maintenance Plan.

**2. Groundwater:** EPA's proposed remedy for groundwater at the Facility consists of Monitored Natural Attenuation (MNA) of COC in compliance with an EPA-approved GW Monitoring Plan until contaminant levels reach Drinking Water maximum contaminant levels (MCLs) or RSLs for contaminants without an established MCL. EPA also proposes that on-site GW use restrictions be implemented until CAOs are met.

**3. Vapor Intrusion:** There are no current VI exposures on the Facility, however, a vapor intrusion assessment will be required for any future construction planned on or near on-Site GW plumes and in the SBDA and MW-42 AOC on-site. The off-Site GW plume does not currently pose unacceptable indoor air risk in the two buildings impacted by site-related GW plumes.

**Institutional Controls (ICs)**

ICs are non-engineered instruments, such as administrative and legal controls to minimize potential human exposure to contamination and/or protect the integrity of the final remedy by limiting land and/or GW use. Under the proposed remedy, some contaminants remain in GW and soil at the Facility above levels acceptable for residential use. Therefore, EPA's proposed remedy requires compliance with and maintenance of land and GW use restrictions. The use restrictions consist of the following:

a. The Facility property shall not be used for residential purposes unless it is demonstrated to EPA and MDE that such use will not pose a threat to human health or the environment or adversely affect or interfere with the selected remedy and EPA, in consultation with MDE, provides prior written approval for such use;

b. Facility GW will not be used for any purpose other than operation, maintenance and monitoring activities required by EPA and/or MDE, unless it is demonstrated to EPA, in consultation with MDE, that such use will not pose a threat to human health or the environment or adversely affect or interfere with the selected remedy and EPA, in consultation with MDE, provides written approval for such use;

c. Compliance with an EPA-approved GW Monitoring Plan;

d. Compliance with an EPA-approved Soil Management Plan;

e. An EPA-approved VI Assessment Plan shall be implemented if structures are to be constructed on or within 100 feet of the VOC plume on the Facility.

EPA proposes that the land and GW use restrictions be implemented through an enforceable mechanism such as a permit, order, or an Environmental Covenant. If an Environmental Covenant is selected as the enforceable mechanism, it will be recorded in the chain of title for the property pursuant to the Maryland Uniform Environmental Covenants Act, §§ 1-801 through 1-815 of the Environment Article, Annotated Code of Maryland

In addition, the Facility shall provide EPA with a coordinate survey of Facility boundaries. Mapping the extent of the land and groundwater use restrictions will allow for presentation in a publicly accessible

mapping utility such as Google Earth or Google Maps.

## Section 7: Evaluation of EPA's Proposed Remedy

Table 2 lists EPA's criteria for evaluating proposed remedies. The evaluation is two phased. In phase one, the proposed remedy is evaluated against three 'threshold' decision criteria as general goals. In the second phase, remedies that pass the threshold criteria are then evaluated according to seven balancing criteria.

**Table 2**

| Threshold Criteria | Evaluation |
|---|---|
| 1) Protect human health and the environment | Potentially unacceptable human health risks are present in on- and off-Site media; however, exposure pathways are incomplete. By implementing institutional controls for land and GW use on-Site, human exposure to the risks will be effectively controlled. As GW VOC levels decrease over time, potential VOC vapor inhalation risk declines. Implementation of the Soil Management Plan (SMP) will control on-Site worker exposure to soil, GW and vapor-phase VOCs. |
| 2) Achieve media cleanup objectives | Natural attenuation of VOCs in GW will be documented until GW CAOs are achieved. Soil contaminants in the SBDA and MW-42 AOC will be managed under a SMP to protect worker exposure. The SBDA cap reduces VOC transfer from soil to GW. Contaminated structures and soil were removed from 1989-1992. |
| 3) Remediating the Source of Releases | The goal of EPA's proposed remedy is to eliminate or reduce further releases of any remaining Facility-related VOC contaminants that may pose an unacceptable risk to human health and the environment. Waste, residue and contaminated soil were removed from the SBDA and a cap was installed, thereby limiting VOC transfer from subsurface soil to GW. Contaminated soil from dismantled units was removed. Reduction of GW VOCs will be achieved by natural attenuation, also reducing potential VOC vapor into structures. |
| | |
| Balancing Criteria | Evaluation |
| 4) Long-term effectiveness | EPA's proposed remedy will maintain protection of human health and the environment as GW contaminant levels diminish over time. The proposed remedy requires the Facility to maintain the SBDA cap and comply with land and GW use restrictions. |
| 5) Reduction of toxicity, mobility or volume of hazardous constituents | Natural attenuation of VOCs in GW will reduce volume and toxicity of VOCs in GW, soil and vapor. The SBDA cap reduces mobility of VOC residue in subsurface soil. |
| 6) Short-term effectiveness | Facility is unused and is fenced and monitored for trespassers. SBDA former waste area is capped and maintained. GW is not used, soil is covered by vegetation and is undisturbed, therefore, human exposures to Facility COCs are controlled. |

| Table 2 (Con't) | |
|---|---|
| 7) Implementability | Most of the elements in the proposed remedy are already being implemented. EPA proposes to implement land and GW use restrictions through an enforceable mechanism such as a permit, order or Environmental Covenant. |
| 8) Cost | GE's estimated cost of implementing EPA's proposed remedy is approximately $1.28M over 30 years and is cost effective. |
| 9) Community Acceptance | EPA will solicit public comment on the proposed remedy and will review comments received during the 30-day public comment period to evaluate community acceptance. If requested, a public meeting will be held. Responses to comments and any subsequent modifications to the proposed remedy will be included in EPA's Final Decision and Response to Comments. |
| 10) State Acceptance | MDE reviewed this SB and concurred with the proposed remedy. |

## Section 8: Financial Assurance

The Facility will be required to demonstrate and maintain financial assurance of $1.28 million which was provided in their 2018 Feasibility Study Report for completion of the remedy. Such financial assurance shall be established and maintained pursuant to the standards contained in the Code of Federal Regulations, 40 C.F.R. Part 264.

## Section 9: Public Participation

The public is invited to comment on EPA's proposed remedy. The public comment period will last thirty (30) calendar days from the date that the notice is published in a local newspaper. Comments may be submitted by mail, fax, or e-mail to Barbara Smith at the address listed below.

A public meeting will be held upon request. Requests for a public meeting should be made to Barbara Smith at the address listed below. A meeting will not be scheduled unless one is requested.
The Administrative Record contains all the information considered by EPA for the proposed remedy at this Facility. The Administrative Record is available at the following location:

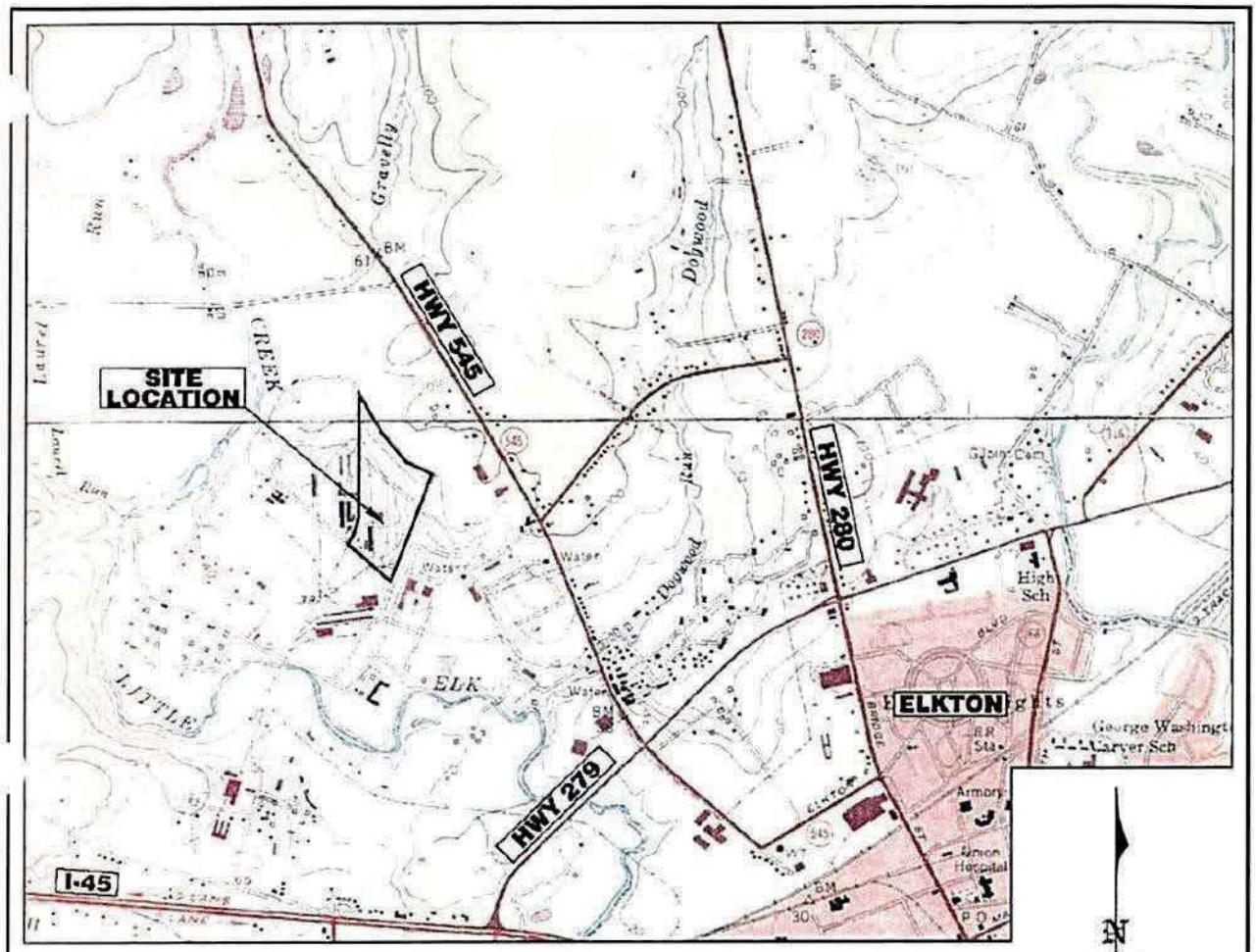
U.S. EPA Region III
1650 Arch Street (3LD10)
Philadelphia, PA 19103

Contact: Barbara Smith
Phone: (215) 814-5786
Fax: (215) 814-3113
Email: Smith.Barbara@epa.gov

## Section 10: Signature

Date: 1.8.20

John A. Armstead, Director
Land, Chemicals and Redevelopment Division
US EPA, Region III




SOURCE:
USGS QUADRANGLE 7.5' SERIES
ELKTON, MD.-DEL 1985 AND
NEWARK WEST, MD.-DEL.-PA. 1970

| | | |
|---|---|---|
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| DESIGNED BY: CAM | DATE: 01/13/09 | |

| NO. | DATE | REVISIONS |
|---|---|---|
| 1 | | |
| 2 | | |
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| 4 | | |
| 5 | | |

| QA/QC | | |
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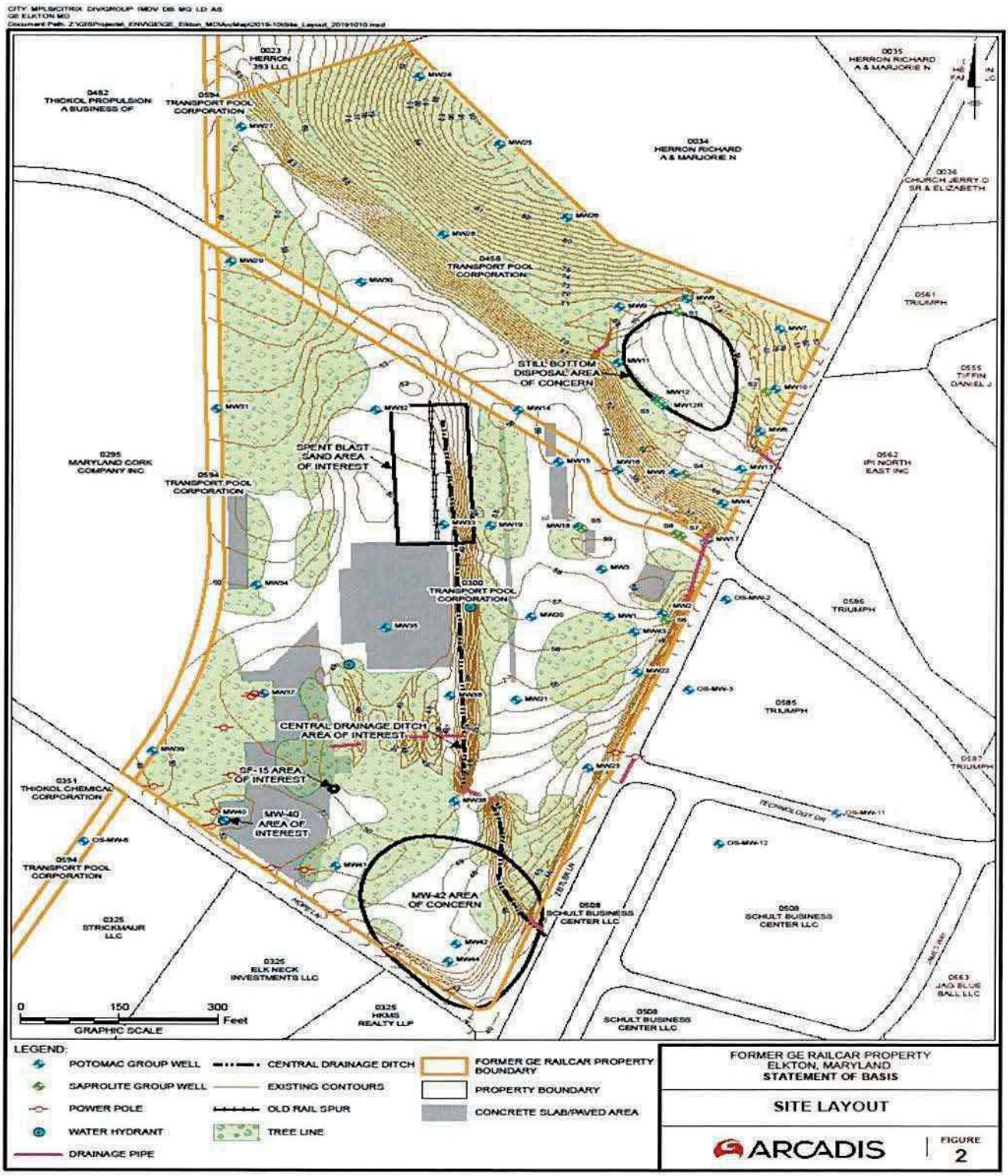
| NO. | DATE | SIGNATURE |
| 1 | 01/14/09 | CAM |
| 2 | 01/15/09 | MRW |
| 3 | 01/28/09 | CAM |
| 4 | | |
| 5 | | |
| 6 | | |

RSA Rosengarten, Smith & Associates, Inc.

FIGURE 1
USGS SITE LOCATION MAP
(DRAFT) REMEDIAL INVESTIGATION REPORT
(VERSION-1) FEBRUARY 27, 2009
GE RAILCAR, ELKTON, MARYLAND
CERCLA DOCKET NO.: CERC-03-2007-0030CA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THIOKOL PROPULSION
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0594
TRANSPORT POOL
CORPORATION
0034
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A & MARJORIE N
0458
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CORPORATION
STILL BOTTOM
DISPOSAL AREA
OF CONCERN
SPENT BLAST
SAND AREA
OF INTEREST
0295
MARYLAND CORK
COMPANY INC
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TRANSPORT POOL
CORPORATION
CENTRAL DRAINAGE DITCH
AREA OF INTEREST
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OF INTEREST
MW-40
AREA OF
INTEREST
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OF CONCERN
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THIOKOL CHEMICAL
CORPORATION
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STRICKMAUR
LLC
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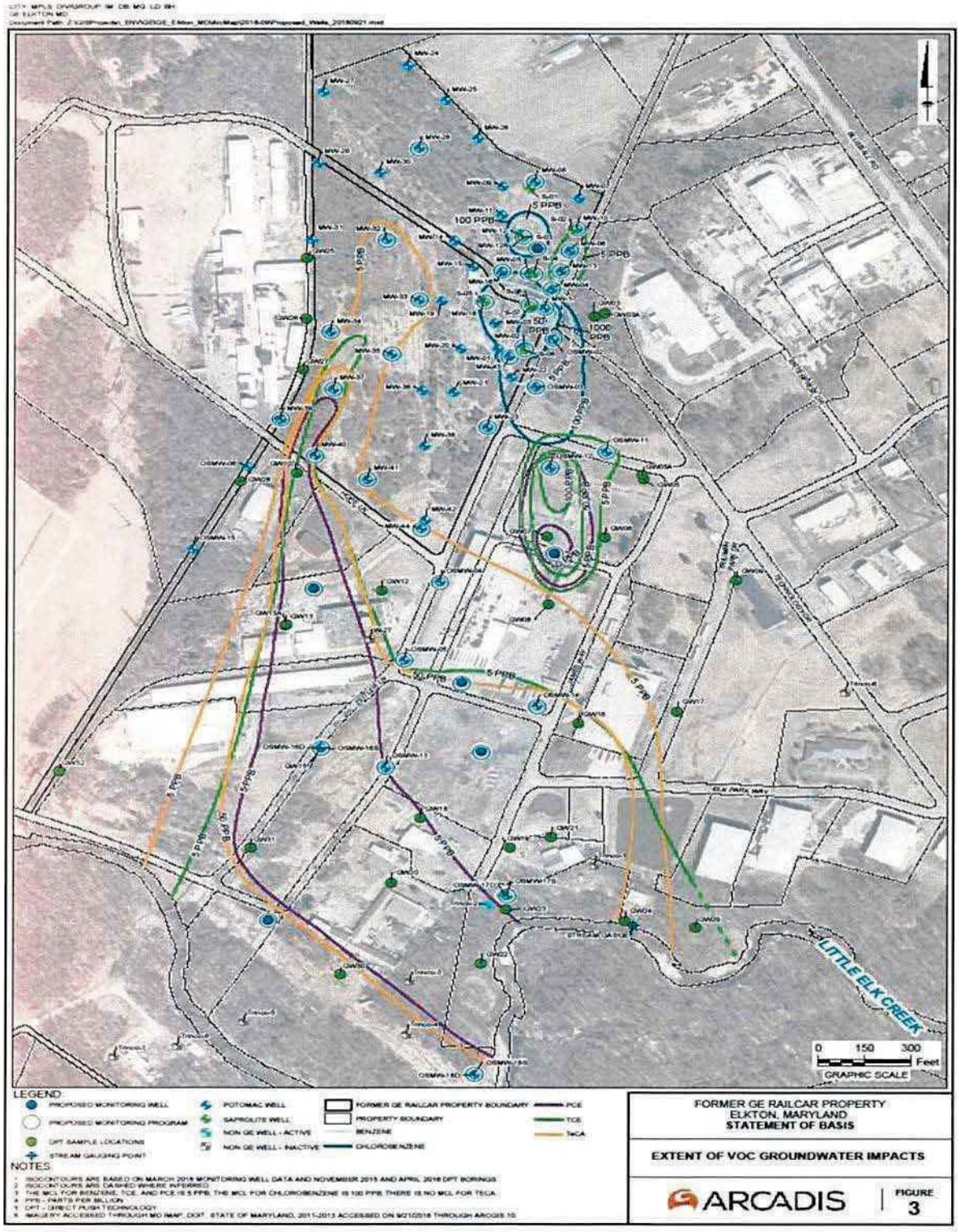
ELK NECK
INVESTMENTS LLC
0325
HKMS
REALTY LLP
0508
SCHULT BUSINESS
CENTER LLC
0561
TRIUMPH
0555
TIFFIN
DANIEL J
0562
IPI NORTH
EAST INC
0586
TRIUMPH
0585
TRIUMPH
0563
JAG BLUE
BALL LLC
0 150 300 Feet
GRAPHIC SCALE
LEGEND:
POTOMAC GROUP WELL
SAPROLITE GROUP WELL
POWER POLE
WATER HYDRANT
DRAINAGE PIPE
CENTRAL DRAINAGE DITCH
EXISTING CONTOURS
OLD RAIL SPUR
TREE LINE
FORMER GE RAILCAR PROPERTY BOUNDARY
PROPERTY BOUNDARY
CONCRETE SLAB/PAVED AREA
FORMER GE RAILCAR PROPERTY
ELKTON, MARYLAND
STATEMENT OF BASIS
SITE LAYOUT
ARCADIS
FIGURE
2


LITTLE ELK CREEK
0 150 300
Feet
GRAPHIC SCALE
LEGEND
PROPOSED MONITORING WELL
PROPOSED MONITORING PROGRAM
DPT SAMPLE LOCATIONS
STREAM GAUGING POINT
POTOMAC WELL
SAPROLITE WELL
NON GE WELL - ACTIVE
NON GE WELL - INACTIVE
FORMER GE RAILCAR PROPERTY BOUNDARY
PROPERTY BOUNDARY
BENZENE
CHLOROBENZENE
PCE
TCE
TeCA
NOTES
1. ISOCONTOURS ARE BASED ON MARCH 2018 MONITORING WELL DATA AND NOVEMBER 2015 AND APRIL 2016 DPT BORINGS.
2. ISOCONTOURS ARE DASHED WHERE INFERRED.
3. THE MCL FOR BENZENE, TCE, AND PCE IS 5 PPB. THE MCL FOR CHLOROBENZENE IS 100 PPB. THERE IS NO MCL FOR TECA.
4. PPB - PARTS PER BILLION
5. DPT - DIRECT PUSH TECHNOLOGY
6. IMAGERY ACCESSED THROUGH MD IMAP, DOIT, STATE OF MARYLAND, 2011-2013 ACCESSED ON 9/21/2018 THROUGH ARCGIS 10.
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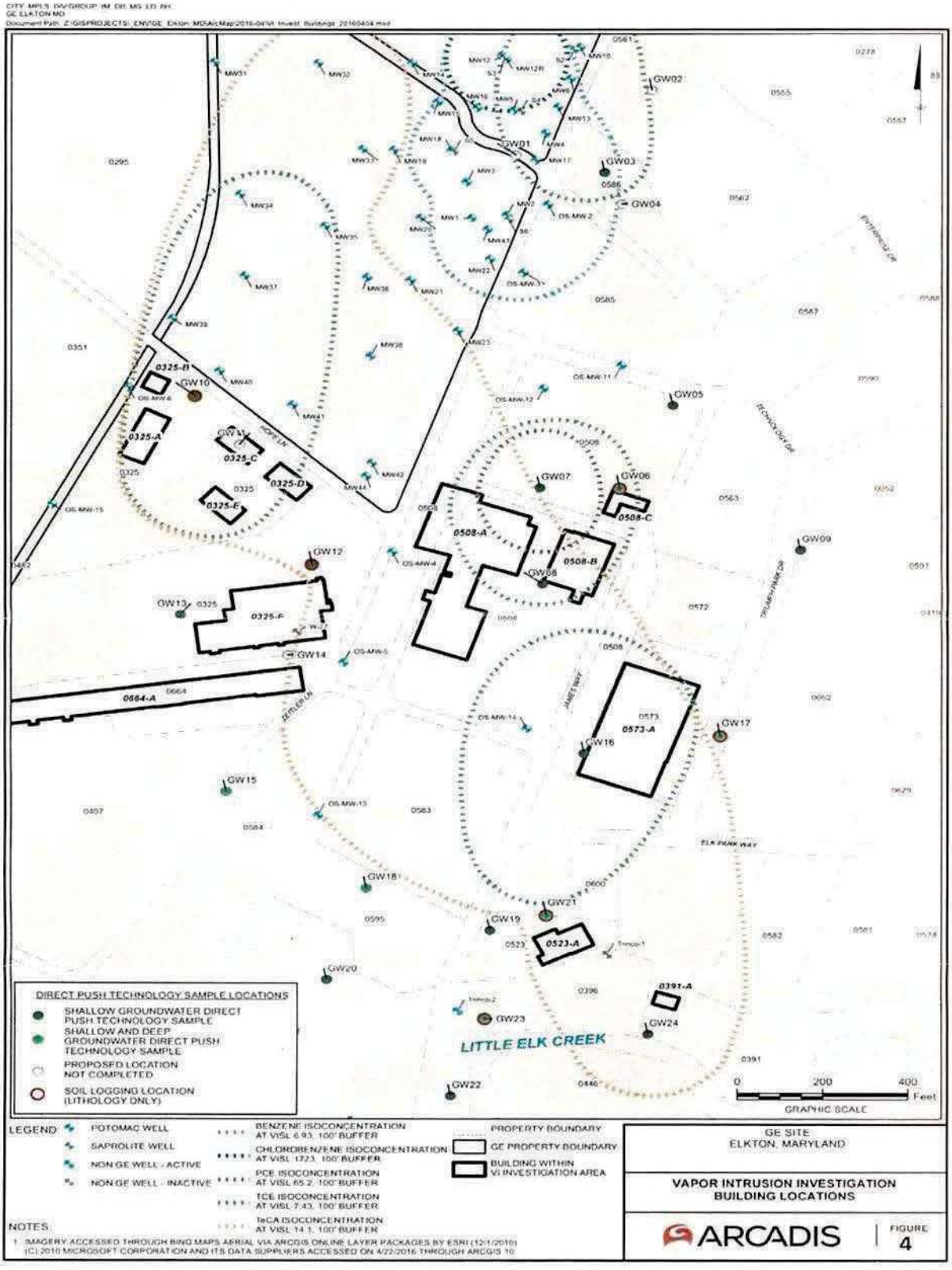
ELKTON, MARYLAND
STATEMENT OF BASIS
EXTENT OF VOC GROUNDWATER IMPACTS
ARCADIS
FIGURE
3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GE ELKTON MD
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GW01
GW02
GW03
GW04
GW05
GW06
GW07
GW08
GW09
GW10
GW12
GW13
GW14
GW15
GW16
GW17
GW18
GW19
GW20
GW21
GW22
GW23
GW24
0325-A
0325-B
0325-C
0325-D
0325-E
0325-F
0508-A
0508-B
0508-C
0664-A
0573-A
0523-A
0391-A
LITTLE ELK CREEK
DIRECT PUSH TECHNOLOGY SAMPLE LOCATIONS
SHALLOW GROUNDWATER DIRECT PUSH TECHNOLOGY SAMPLE
SHALLOW AND DEEP GROUNDWATER DIRECT PUSH TECHNOLOGY SAMPLE
PROPOSED LOCATION NOT COMPLETED
SOIL LOGGING LOCATION (LITHOLOGY ONLY)
0
200
400
Feet
GRAPHIC SCALE
LEGEND
POTOMAC WELL
SAPROLITE WELL
NON GE WELL - ACTIVE
NON GE WELL - INACTIVE
BENZENE ISOCONCENTRATION AT VISL 6.93, 100' BUFFER
CHLOROBENZENE ISOCONCENTRATION AT VISL 1723, 100' BUFFER
PCE ISOCONCENTRATION AT VISL 65.2, 100' BUFFER
TCE ISOCONCENTRATION AT VISL 7.43, 100' BUFFER
TeCA ISOCONCENTRATION AT VISL 14.1, 100' BUFFER
PROPERTY BOUNDARY
GE PROPERTY BOUNDARY
BUILDING WITHIN VI INVESTIGATION AREA
NOTES
1. IMAGERY ACCESSED THROUGH BING MAPS AERIAL VIA ARCGIS ONLINE LAYER PACKAGES BY ESRI (12/1/2010)
(C) 2010 MICROSOFT CORPORATION AND ITS DATA SUPPLIERS ACCESSED ON 4/22/2016 THROUGH ARCGIS 10
GE SITE
ELKTON, MARYLAND
VAPOR INTRUSION INVESTIGATION
BUILDING LOCATIONS
ARCADIS
FIGURE
4

## Attachment A

Administrative Record Index

1989, October; *A preliminary Assessment of the General Electric Railcar Repair Service Company, Cecil County, Maryland*, by Maryland Hazardous and Solid Waste Management Administration for U.S. EPA.

1990, December; *Removal Action Work Plan (Draft), Still Bottom Disposal Area, GE Railcar Repair Services Corporation, Elkton, Maryland Facility*, by Rosengarten, Smith & Associates, Inc. (RSA).

1991, April; *Report of Still Bottom Removal Action (Vol. 1), GE Railcar Services Corporation*, by RSA.

1992, April; *Certification of Final Closure of Hazardous Waste Units, GE Railcar Services Corporation, Elkton, Maryland Facility*, by RSA.

1992, September 1; *Final Report Site Operations/Ownership History, Cecil Industrial Park Site, Elkton, Maryland (Former Triumph Explosives, Inc., Site)*, by Tech Law, Inc. for U.S. Army Corps of Engineers, Omaha, Nebraska.

1998, August; *Surface Water and Ground Water at Triumph Industrial Park, Volume 1, Elkton, Cecil County, MD*, by Maryland Department of the Environment (MDE) for U.S. EPA, Region III.

2000, May 31; *Environmental Indicator Inspection Report for GE Railcar Repair Services Corp.*, prepared by U.S. Army Corps of Engineers for U.S. EPA, Region III.

2000, December 15; *Little Elk Creek Site Investigation Report, Thiokol Propulsion, Elkton, MD*, by ARCADIS Geraghty & Miller.

2001, August 9; *Corrective Action Site Investigation Work Plan, GE Railcar Repair Services Facility, Triumph Industrial Park, Elkton, Cecil County, MD*, by RSA.

2001, October 9; Facility Lead Corrective Action Agreement – Letter of Commitment from GE Capital Rail Services to EPA, Region III regarding GE Railcar Facility, Elkton, MD

2002, August 16; *Site Investigation Report of the GE Railcar Services Facility, Elkton, MD*, by RSA.

2003, March 31; *Quality Assurance Project Plan for the Site Investigation at the GE Railcar Repair Services Facility, Elkton*, MD, by RSA.

2003, March 31; *Work Plans to Conduct MW-42 Soil Investigation and Soil Gas Survey MW-9 & MW-25 Areas of Interest*, by RSA.

2003, March 31; *In-Situ Remediation Pilot Study Work Plan, GE Railcar Repair Services Facility, Triumph Industrial Park, Elkton, Cecil County, MD*, by RSA.

2003, April 2; *Work Plan to Conduct Off-Site Groundwater Investigation, GE Railcar Services Facility, Elkton, MD*, by RSA.

2003, October 24; *Interim Soil Investigation, MW-42 Area of Concern*, by RSA.

2004, March 10; *Submission of 2nd Interim Results, MW-42 AOC*, by RSA.

2004, December 20; *Off-Site Investigation, GE Railcar Repair Services Facility, Triumph Industrial Park, Elkton, Cecil County, MD*, by RSA.

2004, December 29; *In-Situ Remediation Pilot Study Evaluation Report*, by RSA.

2005, February 3; *Results of Soil Gas Survey MW-9 & MW-25 Areas of Interest, GE Railcar Repair Services Facility, Triumph Industrial Park, Elkton, Cecil County, MD*, by RSA.

2006, April 25; *2005 Off-Site Investigation, GE Railcar Repair Services Facility, Triumph Industrial Park, Elkton, Cecil County, MD*, by RSA.

2007, September 12; *Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study, CERCLA Docket No. CERC-03-2007-0030CA, GE Railcar Repair Services Corporation, Elkton, Cecil County, MD*, EPA.

2009, February 27; *Draft Remedial Investigation Report, CERCLA Docket No. CERC-03-2007-0030CA, GERRS Facility, Triumph Industrial Park, Elkton, Cecil County, MD*, by RSA.

2012, February 21; *Supplemental Investigation Work Plan*, by Arcadis.

2012, November 14; *Supplemental RI Data Transmittal* (GW Monitoring Data and Spent Blast Sand AOI Investigation), by Arcadis.

2012 – 2017; *Supplemental RI Data Transmittals #1 – 11*, by Arcadis.

2012 – 2018; *Long-Term Groundwater Monitoring Reports*, by Arcadis.

2014, March; *Semi-Annual Data Transmittal* (GW Monitoring Data), by Arcadis.

2014, August; *Baseline Human Health Risk Assessment Addendum*, by Arcadis.

2014, *November; Preliminary Soil Management Plan*, by Arcadis.

2015, December; *Baseline Human Health Risk Assessment*, Revised, by Arcadis.

2016, March 2; *Offsite Groundwater Investigation Results Report*, by Arcadis.

2016, March 21; *Supplemental GW Sampling Event and GW Delineation Investigation Simplified Work Plan*, by Arcadis.

2016, July 28; *Off-Site Groundwater Investigation Results, Supplemental Data*, by Arcadis.

2016, December 6; *Off-Site Vapor Intrusion Investigation Revised Simplified Work Plan Addendum*, by Arcadis.

2016, December 6; *MW-40 Soil Investigation Simplified Work Plan*, by Arcadis.

2017, August 18; *Monitoring Well Installations and April 2017 Groundwater Results Report*, by Arcadis.

2017, May 17; *Off-Site Vapor Intrusion Investigation Simplified Work Plan*; by Arcadis.

2017, May; *Supplemental Data Transmittal #10* (2016 Off-Site Soil Gas Investigation), by Arcadis.

2017, June; *MW-40 AOI Investigation Results, Data Transmittal #11*, by Arcadis.

2018, November 12; *2018 Feasibility Study Report, Former GE Railcar Site, Elkton, MD*, by Arcadis.

# APPENDIX C

2007 CERCLA Order

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:
GE Railcar Site
Triumph Industrial Park
Zeitler and Hope Lanes
Elkton, Cecil County, MD 21922

General Electric Railcar Repair
Services Corporation,

Respondent

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/
FEASIBILITY STUDY

U.S. EPA Region III

CERCLA Docket No. CERC-03-2007-0030CA

Proceeding Under Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607, and 9622, and Section 3008(h) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928(h).

I hereby certify that the within is a true and correct copy of the original Order filed in this matter.

Courtney J. Nadolski
Attorney for EPA

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ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

## 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 General Electric Railcar Repair Services Corporation ("Respondent"). This Settlement Agreement concerns the preparation and performance of a remedial investigation and feasibility study ("RI/FS") at the GE Railcar Site ("Site") located in Triumph Industrial Park, Elkton, Cecil County, Maryland, and the reimbursement of response costs incurred and to be incurred by EPA in connection with the RI/FS.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607, and 9622 ("CERCLA") and Section 3008(h) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928(h) ("RCRA"). This CERCLA authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on April 15, 1994, by EPA Delegation No. 14-14-C and on May 11, 1994, by EPA Delegation No. 14-14-D. This authority was further re-delegated by the Regional Administrator of EPA Region III to the Director, Hazardous Site Cleanup Division on April 27, 1999, by EPA Region III Delegation 14-14-C and on November 3, 2003, by EPA Region III Delegation 14-14-D. This RCRA authority was delegated to the Regional Administrators by EPA Delegation Nos. 8-31 and 8-32 dated March 6, 1986. This authority was further re-delegated by the Regional Administrator of EPA Region III to the Director, Waste and Chemicals Management Division on June 24, 1998, by EPA Region III Delegation 8-31 and on June 21, 2004, by EPA Region III Delegation 8-32. The Parties agree that this Settlement Agreement is a settlement agreement under Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), as described in Section 122(d)(3) of CERCLA, 42 U.S.C. § 9622(d)(3), and further 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).

3. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), EPA notified the United States Natural Resource Trustees and the State of Maryland on November 2, 2006, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under State and Federal trusteeship.

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact, conclusions of law, and determinations in Sections V and VI of this Settlement Agreement. Respondent agrees to

comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest EPA's jurisdiction regarding this Settlement Agreement or its terms.

## II. PARTIES BOUND

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

6. In the event of any change in ownership or control of the Site, or any portion thereof, owned by the Respondent, Respondent shall notify EPA, in writing, at least thirty (30) days in advance of the change of the name, address, and telephone number of the transferee in interest, the proposed date of the transfer, and the nature of the proposed transfer or change. Further, Respondent shall provide EPA with a copy of any indemnification agreement which may be executed within seven (7) days of its execution. Respondent shall provide a copy of this Settlement Agreement to the transferee in interest at least thirty (30) days prior to any agreement for transfer.

7. The Respondent shall provide a copy of this Settlement Agreement to all contractors, subcontractors, laboratories, consultants, and supervisory personnel retained to conduct or monitor any portion of the Work performed pursuant to this Settlement Agreement within seven (7) days of the effective date of this Settlement Agreement or on their date of retention, whichever is later, and shall condition all such contracts on compliance with the terms of this Settlement Agreement. Notwithstanding the terms of any contract, Respondent is responsible for complying with this Settlement Agreement and for ensuring that its contractors, subcontractors, laboratories, consultants, supervisory personnel, and agents comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Respondent to this Settlement Agreement.

## III. STATEMENT OF PURPOSE

9. In entering into this Settlement Agreement, the objectives of EPA and Respondent are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, hazardous wastes, pollutants, or contaminants at or from the Site by conducting a CERCLA Remedial Investigation and RCRA Facility Investigation (collectively, this investigation is

referred to herein as the "RI"); (b) to identify and evaluate remedial alternatives to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances, hazardous wastes, pollutants, or contaminants at or from the Site by conducting a CERCLA Feasibility Study and RCRA Corrective Measures Study (collectively, this evaluation is referred to herein as the "FS"); and (c) to recover response costs incurred by EPA with respect to this Settlement Agreement.

10. The activities conducted under this Settlement Agreement are subject to approval by EPA and shall provide all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA, RCRA, and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). Respondent shall conduct all of the activities required under this Settlement Agreement in compliance with CERCLA, RCRA, the NCP, and in a manner consistent with all applicable EPA guidances and policies.

## IV. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA and RCRA and in regulations promulgated under CERCLA and RCRA shall have the meaning assigned to them in CERCLA and RCRA and in such regulations promulgated pursuant to those statutes. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

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

b. "Corrective Measures" shall mean those measures or actions necessary to control, prevent, or mitigate the release or potential release of Waste Material into the environment.

c. "Corrective Measures Study" or "CMS" shall mean the investigation and evaluation of potential remedies which will protect human health and the environment and for purposes of this Settlement Agreement alone may be used interchangeably with "Feasibility Study," as that term is used in CERCLA, the NCP, and implementing EPA guidances.

d. "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.

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

f. "Engineering Controls" shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, vertical barriers, groundwater pump and treat systems, and excavation of contaminated soils.

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

h. "Feasibility Study" or "FS" shall have the meaning defined in the National Contingency Plan, 40 C.F.R. § 300.430, and implementing EPA guidances, and for purposes of this Settlement Agreement alone may be used interchangeably with "Corrective Measures Study" or "CMS".

i. "Institutional Controls" shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of Institutional Controls include easements and covenants, zoning restrictions, special building permit requirements, well drilling prohibitions, public health advisories, and administrative orders.

j. "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, 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.

k. "Interim Measures" or "IMs" shall mean measures that can be initiated in advance of implementation of any final Remedial Action for the Site to achieve the goal of contaminant reduction, control, or stabilization, or to provide focused and accelerated environmental characterization regarding the Site.

l. "MDE" shall mean the Maryland Department of the Environment and any successor departments or agencies of the State.

m. "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.

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

o. "Parties" shall mean EPA and Respondent.

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

q. "RCRA Facility Investigation" or "RFI" shall mean the investigation and characterization of the sources of contamination and the nature, extent, direction, rate, movement, and concentration of the sources of contamination that have been, or are likely to be, released into the environment and for purposes of this Settlement Agreement alone may be used interchangeably with "Remedial Investigation" or "RI."

r. "Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States has incurred and will incur in: (1) reviewing or developing plans, reports, and other items in furtherance of this Settlement Agreement, verifying the Work, or otherwise enforcing the Work pursuant to Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1); and (2) implementing the Work. Response Costs shall, include but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry costs, the costs incurred pursuant to Paragraph 51 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 36 (Emergency Response), and Paragraph 85 (Work Takeover).

s. "Remedial Investigation" or "RI" shall have the meaning defined in the NCP, 40 C.F.R. § 300.430, and implementing EPA guidances, and for purposes of this Settlement Agreement alone may be used interchangeably with "RCRA Facility Investigation" or "RFI."

t. "Respondent" shall mean General Electric Railcar Repair Services Corporation ("GE").

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

v. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, all appendices attached hereto (listed in Section XXVIII) and all documents incorporated by reference into this document, including, without limitation, EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of this Settlement Agreement upon approval by EPA. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

w. "Site" shall mean the GE Railcar Site, encompassing approximately thirty-six and one half (36 ½) acres, located in the Triumph Industrial Park, Zeitler and Hope Lanes, near Elkton, Cecil County, Maryland 21922. A map of the Site is attached hereto as Appendix A.

x. "State" shall mean the State of Maryland.

y. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "hazardous waste" under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5); (4) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (5) any "hazardous material" under Section 7-201(m) of the Environmental Article, Annotated Code of Maryland (1993) (as amended).

z. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement, except those required by Section XIV (Retention of Records) and Section XIX (Payment of Response Costs).

## V. FINDINGS OF FACT

12. Site Name, Location, Description, and History.

a. The GE Railcar Site ("Site") consists of approximately thirty-six and one half (36 ½) acres of mostly vacant land located in the Triumph Industrial Park (a/k/a Cecil Industrial Park and Trinco Industrial Park), Zeitler and Hope Lanes, near Elkton, Cecil County, Maryland. The Triumph Industrial Park is a collection of more than seventy (70) individual properties covering approximately 1,300 acres in the northeastern portion of Cecil County. The Site was operated as a rail car cleaning and repair facility that worked on rail freight cars, including tanker cars. The facility operated out of nine buildings and included approximately 10,000 feet of rail on the Site. Only one building remains (except for floor slabs and foundations) and almost all of the rail has been removed.

b. The properties comprising Triumph Industrial Park were initially farmland which began to be used for industrial purposes in the 1930s. The first industrial tenants of the property were fireworks manufacturing facilities. During World War II, the Triumph Fuse and Fireworks Company ("Triumph") expanded its operations to include the manufacture of munitions, explosives, and other ordnance products. As wartime demands increased, Triumph turned to full-time munitions production. In October 1942, the United States Navy took over operations of the plant until a new management group was approved in February 1943. After the war, a number of companies operated in the area around the Site including Elkton Company, which purchased the property from Triumph in 1946, and Trinco in 1947, which developed the area and sold or leased different plots. Various industrial activities have taken place in Triumph

Industrial Park over the years including chemical manufacturing, explosive manufacturing, pesticide production and formulation, rocket propellant manufacturing, phosgene manufacturing, cork processing, specialty paint production, chemical dye production, manufacturing of coated fabric products, and production of di-isocyanate compounds used in making polyurethane foams. Soils in several locations are contaminated with metals, pesticides, and volatile organic compounds ("VOCs") that were manufactured or used in the area. The groundwater in the area is contaminated with VOCs, primarily trichloroethylene ("TCE"), which is a common industrial solvent. Several areas in the Triumph Industrial Park are contaminated with chemicals, explosives, munitions, still bottoms, pesticides, and other liquid and solid wastes. Current surrounding land use in the area of the Site includes a variety of both operating and closed industrial facilities.

c. GE handled all types of mechanical repair and maintenance of railcars or freight cars at the Site, including: tank cars for liquids; box cars; hopper cars; flat cars; and specialty cars. The repair and maintenance included: steel fabrication, welding, cutting, and brazing. The facility was also used to clean, sandblast, and paint the interior and exterior of railcars, including tank cars. The first step included the removal and storage of any product that remained in the railcar. The car was then cleaned in a method consistent with the last contents. When warranted, steam was used to clean the railcars and volatilize materials. The steam and volatiles were then routed to a gas assisted flare tower where it was burned. Any condensate from the flare tower, the wash water, and rinsates were collected and stored in tanks until the material was taken off-Site for disposal. Potable water was used to perform hydrostatic testing of the tank cars and this water was collected and reused until it was deemed unsuitable for hydrostatic testing , at which time it was taken off-Site for disposal.

d. GE operated a permitted hazardous waste tank farm at the Site which consisted of four stainless steel 10,000-gallon tanks (Controlled Hazardous Substance Facility Permit A-229 issued in 1982 by the Maryland Department of Health and Mental Hygiene). These tanks were used to store spent railcar wash water and residual product that were removed from the tank, box, and hopper type railcars. Tank storage continued until the wastes were removed for off-Site disposal. GE removed contaminated soil in the tank farm area, backfilled the area with clean fill material, and covered the area with a cap between December 1989 and January 1990.

e. GE also operated a permitted drum storage area at the Site (Controlled Hazardous Substance Facility Permit A-229 issued in 1982 by the Maryland Department of Health and Mental Hygiene). GE generated a Final Closure Plan for this area in October 1990. After approval of the plan by MDE, GE started remediation of both the bermed and concrete drum storage areas and completed the remediation in early 1992.

f. In 1989, GE discovered buried waste material (still bottoms) in the northeast corner of the Site. GE worked in cooperation with MDE to investigate the origins of the waste

and learned that a previous owner of the Site had a business arrangement with Galaxy Chemicals, Inc., a nearby solvent recycling facility. As part of that arrangement, an undisclosed amount of still bottoms from the processing of used solvents was placed in trenches located on the northeastern corner of the Site. According to MDE records, the material was dredged from the bottom of a surface impoundment at the Galaxy Chemicals, Inc. facility and disposed at the Site between 1968 and 1971. GE completed removal of the still bottoms in March 1991 pursuant to a Consent Agreement with MDE. Approximately 949 cubic yards of contaminated materials were excavated and disposed off-Site at a permitted incinerator. Analysis of the waste indicated that it contained elevated levels of benzene, chlorobenzene, chloroform, tetrachloroethylene ("PCE"), and TCE as well as a variety of spent halogenated solvents used in degreasing and spent non-halogenated solvents. The area was backfilled with a minimum of six (6) inches of clean fill, covered with a clay cap, then covered with top soil. The still bottoms were removed to prevent direct exposure to the waste at the surface or subsurface due to erosion. The cap/cover was installed to prevent the spread of contamination by surface water runoff and to control further mobilization by rainfall infiltration of the contaminants into the groundwater.

g. In April 2003, EPA's Office of Solid Waste and Emergency Response ("OSWER") announced two initiatives regarding the cleanup and reuse of contaminated sites: the One Cleanup Program and the Land Revitalization Initiative. The One Cleanup Program strives to foster consistent approaches throughout EPA's various cleanup programs. The Land Revitalization Initiative identifies methods to facilitate cleanup and productive reuse of contaminated properties. One of the priorities of the initiatives is to develop a geographically based pilot project that demonstrates the coordinated use of multiple authorities in cleaning up and facilitating reuse of multiple sites. In August 2003, Region III finalized its Land Reuse Work Plan in which it selected "The Little Elk Creek Area-Wide One Cleanup Program Pilot" as its pilot project. This area has also been designated as a priority under the Region's Land Revitalization Initiative program. The core area of the pilot project is the Triumph Industrial Park and several other facilities in the area of the Site are performing investigations and/or cleanups under EPA's or the State's Superfund and RCRA programs.

13. Waste Material At, and Actual/Potential Releases From, the Site.

a. GE has performed several evaluations of groundwater and soil contamination at the Site. This evaluation included the sampling and analysis of forty-four (44) wells in the shallow water table, six (6) wells in the bedrock water table, and ten (10) wells located off-Site in the shallow water table. Results of groundwater sampling submitted to EPA, dated April 26, 2006 (2005 Off-Site Investigation), indicate that exceedances of Maximum Contaminant Levels ("MCLs") are present as follows: benzene in five (5) of the shallow wells, two (2) of the bedrock wells located on-Site, and in three (3) of the off-Site wells; chlorobenzene in six (6) of the shallow wells, two (2) of the bedrock wells located on-Site, and in four (4) of the off-Site wells; TCE in nine (9) of the shallow wells located on-Site and in five (5) of the off- Site wells; PCE in

six (6) of the shallow wells located on-Site and in one (1) of the off-Site wells; cis-1,2-DCE in two (2) of the shallow wells located on-Site and in one (1) of the off-Site wells; toluene in one (1) of the shallow wells located on-Site; vinyl chloride in four (4) of the shallow wells located on-Site; 1,1,2-TCA in two (2) shallow wells located on-Site; 1,2-DCA in one (1) of the shallow wells located on-Site; and trans-1,2-DCE in two (2) of the shallow wells located on-Site. 1,1,2,2-PCA was found in concentrations above MDE's standard for groundwater in twenty (20) of the shallow wells, one (1) of the bedrock wells located on-Site, and in four (4) of the off-Site wells.

b. Results of on-Site soil sampling submitted to EPA, dated August 16, 2002 (Site Investigation Report), indicated soil contamination as follows: benzo(a)pyrene above MDE's non-residential standard in six (6) samples; aroclor 1254 above MDE's non-residential standard in one (1) sample; mercury above MDE's non-residential standard of 0.12 ppm in two (2) samples (0.124 and 38.8 ppm, respectively), and selenium above MDE's non-residential standard of 1000 ppm in three (3) samples (1070, 1090, and 1210 ppm, respectively). In addition, 1,1,2,2-PCA, TCE, and PCE were found in concentrations exceeding the risk based concentrations ("RBCs") for industrial use in samples collected in the area of one of the monitoring wells on-Site (MW-42), details of which are provided in a report dated December 20, 2004 (MW-42 Area of Concern).

14. State and EPA Response Actions at the Site.

a. MDE issued Controlled Hazardous Substance Facility Permit A-229 to GE on October 15, 1982, with an expiration date of October 14, 1985. In a letter dated May 28, 1985, GE asked that the facility's permit be withdrawn as the facility no longer stored waste in excess of ninety (90) days. By letters dated June 14, 1990, and May 18, 1992, MDE notified GE that it had determined that GE had closed the tank farm and drum storage areas in accordance with its approved closure plans and that the facility was released from its permit obligations. The letters also indicated that GE was not released from any obligations for any groundwater remediation that might be deemed necessary in Triumph Industrial Park.

b. In October 1999, EPA conducted an Environmental Indicator inspection to determine whether human exposures and groundwater releases were under control. EPA determined that more information was necessary to make that determination and GE submitted a Site Investigation Work Plan to EPA, which was approved in August 2001. The Site Investigation was completed in the Fall of 2002, and included extensive surface and subsurface soil sampling and installation of groundwater monitoring wells and groundwater sampling. The Site Evaluation indicated that soil contamination is present on-Site and that groundwater contamination is present on-Site and may have migrated off-Site. Currently, GE has completed a pilot study for in-situ remediation of contamination in groundwater on-Site and an investigation to delineate groundwater contamination off-Site.

15. Proposal for Inclusion on the National Priorities List.

The Site has not been proposed for inclusion on the National Priorities List.

16. Respondent

On March 2, 1976, P&R Rail Car Service Corporation ("P&R") purchased the property now owned by GE. North American Car Corporation acquired the facility from P&R on January 4, 1979. Quality Service Repair Corporation ("QSR"), the predecessor to GE, took ownership of the facility on July 3, 1986, pursuant to an Asset Purchase Agreement between General Electric Capital Corporation, North American Car Corporation, and others dated February 14, 1986. QSR changed its name to General Electric Railcar Repair Services Corporation on July 14, 1987. Respondent, GE Railcar Repair Services Corporation ("GE"), was incorporated in the State of Delaware on October 17, 1983. Respondent is the current owner of the Site.

## VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, EPA has determined that:

17. The GE Railcar Superfund Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and a "facility authorized to operate under Section 6925(e) [of RCRA]" within the meaning of RCRA Section 3008(h)(1), 42 U.S.C. § 6928(h)(1).

18. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and/or "hazardous wastes" as defined in Section 1004(5) of RCRA, 42 U.S.C. §6903(5) and within the meaning of RCRA Section 3008(h)(1), 42 U.S.C. § 6928(h)(1).

19. The conditions described in Paragraphs 12 and 13 of the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the Facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and a "release of hazardous waste into the environment" within the meaning of Section 3008(h)(1) of RCRA, 42 U.S.C. § 6928(h)(1).

20. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

21. Respondent is a responsible party under Section 107 of CERCLA, 42 U.S.C. § 9607.

22. The actions required by this Settlement Agreement are "necessary to protect human health or the environment" within the meaning of RCRA Section 3008(h)(1), 42 U.S.C. § 6928(h)(1), and are necessary to protect the public health, welfare, or the environment, are in the public interest, are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1) and 9622(a), and will expedite effective remedial action and minimize litigation, within the meaning of CERCLA Sections 104(a)(1) and 122(a), 42 U.S.C. §§ 9604(a)(1) and 9622(a).

23. EPA has determined that Respondent is qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondent complies with the terms of this Settlement Agreement.

## VII. SETTLEMENT AGREEMENT AND ORDER

24. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

## VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

25. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. EPA has accepted Rosengarten, Smith & Associates, Inc. as GE's contractor for performance of the RI/FS. With respect to any additional proposed contractors, subcontractors, consultants, and laboratories, Respondent shall demonstrate that the proposed contractors, subcontractors, consultants, and laboratories have a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995, or most recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001, or subsequently issued guidance) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. If EPA disapproves in writing of any person's technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacements within thirty (30) days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct a complete RI/FS, and to seek reimbursement or response costs and penalties from Respondent. During the course of the RI/FS, Respondent shall notify EPA in

writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

26. EPA has approved Michael O'Toole as GE's Project Coordinator. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during activities at the Site required by this Settlement Agreement. EPA retains the right to disapprove of the designated Project Coordinator. If EPA provides written notice of its disapproval of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within thirty (30) days following receipt of EPA's written notice of disapproval. Respondent shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA thirty (30) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

27. EPA has designated Barbara M. Smith of EPA Region III's Waste and Chemicals Management Division as its Project Coordinator for this Settlement Agreement. EPA will notify Respondent of a change of its Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the Project Coordinator at the following address:

Barbara M. Smith (3WC23)
Project Manager
General Operations Branch
Waste and Chemicals Management Division
1650 Arch Street
Philadelphia, PA 19103.

28. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

29. On or before the Effective Date, EPA will arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA,

42 U.S.C. § 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the EPA-approved RI/FS Work Plan.

## IX. WORK TO BE PERFORMED

30. EPA acknowledges that Respondent has completed some of the tasks required by this Settlement Agreement. The previous work which has been submitted to and approved by EPA may be used to meet the requirements of this Settlement Agreement.

31. Respondent shall conduct the RI/FS work remaining to be done in accordance with the provisions of this Settlement Agreement, the EPA-approved RI/FS Work Plan, CERCLA, RCRA, the NCP, and in a manner consistent with all applicable EPA guidances, policies, and procedures, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01, October 1988, or subsequently issued guidance), "RCRA Facility Investigation Guidance" (EPA Doc. No. EPA 530/SW-89-01, May 1989, or subsequently issued guidance), (hereafter "RI/FS Guidance"), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05, October 1990, or subsequently issued guidance), and guidance referenced therein, as may be amended or modified by EPA. The remaining Remedial Investigation ("RI") work shall consist of collecting data to characterize Site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study ("FS") shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, hazardous wastes, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondent shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e). In accordance with the schedules established in this Settlement Agreement or in the EPA-approved RI/FS Work Plan, Respondent shall submit to EPA and the State two (2) copies of all plans, reports, and other deliverables required under this Settlement Agreement and the EPA-approved RI/FS Work Plan. All plans, reports, and other deliverables will be reviewed and approved by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions). Upon EPA's request, Respondent shall also provide copies of plans, reports, or other deliverables to Community Advisory Groups, Technical Assistance Grant recipients, or any other entities as directed by EPA. Upon request by EPA, Respondent shall submit in electronic form all portions of any plan, report, or other deliverable Respondent is required to submit pursuant to provisions of this Settlement Agreement.

a. RI/FS Work Plans

On August 9, 2001, Respondent submitted to EPA and MDE a Corrective Action Site Investigation Work Plan which included a Groundwater Sampling and Analysis Plan. The Corrective Action Site Investigation Work Plan presented details of investigations to summarize Site conditions and to identify and characterize ecological zones and potential receptors. On August 20, 2001, Respondent submitted to EPA and MDE a Quality Assurance Project Plan ("QAPP") for the Site investigations. On October 9, 2001, EPA, in consultation with MDE, gave conditional approval to the Corrective Action Site Investigation Work Plan and the QAPP. On October 11, 2001, Respondent submitted to EPA and MDE modifications to the Corrective Action Site Investigation Work Plan and the QAPP to address EPA's comments. On October 11, 2001, Respondent also submitted a revised Health and Safety Plan for the Corrective Action Site Investigation Work Plan. On October 31, 2001, EPA, in consultation with MDE, approved Respondent's modifications to the Corrective Action Site Investigation Work Plan and the QAPP and those modifications were incorporated into the QAPP by Respondent and provided to EPA and MDE on December 4, 2001.

On August 27, 2002, Respondent submitted to EPA and MDE Volume 1 of the Site Investigation Report. This submittal included the narrative text, summary tables of field and laboratory data, boring logs, well completion records, sample collection forms, and rising-head test data sheets which were generated during the performance of the Site Investigation. On October 30, 2002, Respondent submitted to EPA and MDE Volume 2 of the Site Investigation Report. This submittal included a discussion of the project's conformance with the Corrective Action Site Investigation Work Plan and the QAPP, the third party laboratory data review and the labpratory's response, and the laboratory reports (including QA/QC data sheets). On May 14, 2003, EPA, in consultation with MDE, approved Volume 1 and Volume 2 of Respondent's Site Investigation Report.

On March 31, 2003, Respondent submitted to EPA and MDE a Soil Investigation Work Plan, MW-42 Area of Concern; a Soil Gas Survey Work Plan, MW-9 and MW-25 Areas of Concern; an In-Situ Remediation Pilot Study Work Plan; and an updated QAPP. The updated QAPP included additional Standard Operating Procedures and a revised list of analytes and detection limits and the Quality Assurance Manual of the laboratory chosen to perform the laboratory analyses described in the work plans. On April 8, 2003, Respondent submitted to EPA and MDE an Off-Site Groundwater Investigation Work Plan to address VOCs detected in groundwater at the Site. On April 9, 2003, EPA, in consultation with MDE, approved Respondent's Soil Investigation Work Plan, MW-42 Area of Concern; Soil Gas Survey Work Plan, MW-9 and MW-25 Areas of Concern; In-Situ Remediation Pilot Study Work Plan; and updated QAPP. On May 2, 2003, EPA, in consultation with MDE, approved Respondent's Off-Site Groundwater Investigation Work Plan.

On October 24, 2003, Respondent submitted to EPA and MDE an Interim Soil Investigation Report, MW-42 Area of Concern. The investigation performed in the MW-42 Area of Concern indicated the presence of VOCs in the shallow soils and identified TCE, PCE, and 1,1,2,2 tetrachloroethane at concentrations exceeding EPA Region III's Industrial Use Risk-Based Concentrations and MDE's Industrial Clean-up Standards. The investigation also indicated that the extent of the VOCs in shallow soils had not been fully delineated. Respondent recommended that additional borings be completed around the perimeter of the area already investigated in an effort to determine the extent of VOCs in shallow soils and proposed locations where such borings should be installed. On March 10, 2004, Respondent submitted to EPA and MDE the results of the analysis of the second set of borings completed at the MW-42 Area of Concern. The additional investigation was successful in delineating the lateral and vertical extent of VOCs in the vadose zone soils along the northern, southern, and eastern boundaries of the previously defined contaminated area. However, the investigation did not delineate the extent of VOC contamination in shallow soils along the western boundary or in the northeast corner of the previously defined contaminated area. Therefore, Respondent recommended that six (6) additional shallow borings be installed for the collection of soil samples from the western and northeastern portions of the MW-42 Area of Concern. Respondent also recommended that one (1) additional boring be installed in the vicinity of boring B-42-D for the collection of samples to be analyzed for total VOCs and by the Synthetic Precipitation Leaching Procedure ("SPLP") in order to determine the concentrations of VOCs that could remain in the shallow soils and still be protective of groundwater.

On December 20, 2004, Respondent submitted to EPA and MDE a Soil Investigation Report, MW-42 Area of Concern, which included all the data collected during the three (3) field sampling events. The data presented in the Soil Investigation Report indicated that soils with elevated levels of VOCs was a continuing source of contamination to the groundwater. On December 21, 2004, Respondent submitted to EPA and MDE an Off-Site Investigation Report, which provided the results of Respondent's investigation of off-Site groundwater in the area of the Site. On December 29, 2004, Respondent submitted to EPA and MDE an In-Situ Remediation Pilot Study Evaluation Report, which recommended a number of groundwater treatment options. On February 3, 2005, Respondent submitted to EPA and MDE a Soil-Gas Survey Report, MW-9 and MW-25 Areas of Concern, which indicated that the investigation did not reveal the sources of contamination within the area surveyed. On June 3, 2005, EPA, in consultation with MDE, approved Respondent's Soil-Gas Survey Report, MW-9 and MW-25 Areas of Concern, and agreed with the conclusions presented therein. On June 13, 2005, EPA, in consultation with MDE, approved Respondent's Off-Site Investigation Report, and specifically accepted/approved the Conclusions and Recommendations for further investigation of off-Site groundwater. On June 24, 2005, EPA, in consultation with MDE, approved Respondent's Soil Investigation Report, MW-42 Area of Concern, and recommended the remediation of the soil in the MW-42 Area of Concern because the data presented in the Soil Investigation Report indicated that soils with elevated levels of VOCs was a continuing source of contamination to the

groundwater. On July 19, 2005, EPA, in consultation with MDE, approved Respondent's In-Situ Remediation Pilot Study Report and accepted its recommendations.

On April 25, 2006, Respondent submitted to EPA a 2005 Off-Site Investigation Report, which presented the findings of the additional investigations of off-Site groundwater. On November 9, 2006, EPA, in consultation with MDE, approved the 2005 Off-Site Investigation Report and indicated that no further off-Site investigation of groundwater was currently necessary.

Within ninety (90) days after the Effective Date of this Settlement Agreement, Respondent shall submit to EPA for review and approval a RI/FS Work Plan for the former Still Bottom Disposal Area, for PCB sampling of the Central Drainage Ditch (including the area around Surficial Sample No. 15), for the two (2) Spent Blast Sand areas, and for delineation of mercury in the shallow soils in the vicinity of MW-40. The RI/FS Work Plan shall include a plan for synthetic precipitation leachate procedure (SPLP) sampling in the MW-42 Area of Concern. Upon its approval by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions), the RI/FS Work Plan shall be incorporated into and become enforceable under this Settlement Agreement. Respondent shall implement the EPA-approved RI/FS Work Plan in accordance with the terms, conditions, and schedules contained therein and shall prepare and submit the RI and FS Reports for EPA's review and approval as specified in the EPA-approved RI/FS Work Plan and its accompanying schedule.

The RI/FS Work Plan shall include, but not be limited to, the following:

(1) A discussion of data gaps;

(2) The methodology and logistics for obtaining information in order to meet the objectives of the RI/FS;

(3) A preliminary listing and discussion of applicable and relevant and appropriate requirements ("ARARs"); other advisories, criteria, and guidance to be considered pursuant to Section 300.400(g)(3) of the NCP, 40 C.F.R. § 300.400(g)(3) ("TBCs"); and a plan for refinement of ARARs and TBCs throughout the RI/FS process, including proposed clean-up levels; and

(4) A schedule for expeditious completion of the RI and FS Reports, including projected start-up and delivery dates for milestone field work, treatability studies, written reports (including draft and final RI and FS Reports), and for meetings with EPA to present progress information about the Site.

(5) Upon request of Respondent, EPA will confer with the Respondent for the purpose of "pre-scoping" the RI/FS Work Plan and for the discussion of or distribution of

relevant EPA guidance documents and policies regarding the performance of an RI/FS. Any delays in the holding of such a meeting shall not excuse any delay in Respondent's obligation to comply with the project schedule.

b. The Respondent shall prepare and submit for EPA review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions) the following:

(1) Site Characterization. Following EPA approval or modification of the RI/FS Work Plan for the former Still Bottom Disposal Area, for PCB sampling of the Central Drainage Ditch (including the area around Surficial Sample No. 15), for the two (2) Spent Blast Sand areas, for additional sampling of the MW-42 Area of Concern, and for delineation of mercury in the shallow soils in the vicinity of MW-40, Respondent shall implement its provisions to characterize those areas of the Site. Respondent shall complete Site characterization of those areas and submit all plans, reports, and other deliverables in accordance with the schedules and deadlines established in this Settlement Agreement and the EPA-approved RI/FS Work Plan.

(2) Reuse Assessment. If EPA, in its sole discretion, determines that a Reuse Assessment is necessary, Respondent will perform the Reuse Assessment in accordance with the RI/FS Work Plan and applicable guidance. The Reuse Assessment should provide sufficient information to develop realistic assumptions of the reasonably anticipated future uses for the Site. Respondent shall prepare the Reuse Assessment in accordance with EPA guidance, including, but not limited to: "Reuse Assessments: A Tool To Implement The Superfund Land Use Directive," OSWER Directive 9355.7-06P, June 4, 2001, or subsequently issued guidance.

(3) Baseline Human Health Risk Assessment. Respondent will perform the Baseline Human Health Risk Assessment ("Risk Assessment") in accordance with the RI/FS Work Plan and applicable EPA guidance, including, but not limited to: "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part A)," (RAGS, EPA-540-1-89-002, OSWER Directive 9285.7-01A, December 1989); "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)," (RAGS, EPA 540-R-97-033, OSWER Directive 9285.7-01D, January 1998); or subsequently issued guidance.

(4) Draft Remedial Investigation Report. Respondent shall submit to EPA for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions), a Draft Remedial Investigation Report consistent with the RI/FS Work Plan. The Draft Remedial Investigation Report shall contain the Risk Assessment.

(5) Development and Screening of Alternatives. Respondent shall develop an appropriate range of waste management options that will be evaluated through the

development and screening of alternatives, as provided in the EPA-approved RI/FS Work Plan. In accordance with the schedules or deadlines established in this Settlement Agreement and the EPA-approved RI/FS Work Plan, Respondent shall provide EPA with the following deliverables for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions):

A. Memorandum on Remedial Action Objectives. The Memorandum on Remedial Action Objectives shall include remedial action objectives for Engineering Controls as well as for Institutional Controls.

B. Memorandum on Development and Screening of Alternatives. The Memorandum on Development and Screening of Alternatives shall summarize the development and screening of remedial alternatives, including institutional controls that may become components of the remedial action.

(6) Detailed Analysis of Alternatives. Respondent shall conduct a detailed analysis of remedial alternatives, as described in the EPA-approved RI/FS Work Plan.

(7) Draft Feasibility Study Report. Within forty-five (45) days after Respondent submits the memorandum described in Paragraph 31.b.(5)B, Respondent shall submit to EPA for review and approval a Draft Feasibility Study Report which reflects the findings in the Risk Assessment. Respondent shall refer to Table 6-5 of the RI/FS Guidance for report content and format. The report as amended, and the administrative record, shall provide the basis for the Proposed Remedial Action Plan to be issued by EPA under CERCLA Sections 113(k) and 117(a), and shall document the development and analysis of remedial alternatives.

c. Community Relations Plan. EPA will prepare a community relations plan, in accordance with EPA guidance and the NCP. As requested by EPA, Respondent shall provide information supporting EPA's community relations plan and shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

32. Modification of the RI/FS Work Plan.

a. If at any time during performance of the Work under this Settlement Agreement, Respondent identifies a need for additional information, Respondent shall submit a memorandum documenting the need for additional information to the EPA Project Coordinator within thirty (30) days of identification. EPA in its discretion will determine whether the additional information will be collected by Respondent and whether it will be incorporated into plans, reports, and other deliverables.

b. If EPA determines that additional activities may be necessary to accomplish the objectives of the RI/FS, Respondent shall indicate its willingness to perform the additional Work in writing to EPA within fourteen (14 ) days of receipt of EPA's request, or such other time period as EPA may prescribe. If Respondent objects to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondent may seek dispute resolution pursuant to Section XVI (Dispute Resolution). The RI/FS Work Plan shall be modified in accordance with the final resolution of the dispute and Section XXX (Effective Date and Subsequent Modification).

c. Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan or written RI/FS Work Plan supplement. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement of the costs to conduct such additional Work from Respondent, and/or to seek any other appropriate relief.

d. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

33. Off-Site Shipment of Waste Material. Respondent 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 EPA's Designated Project Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards. Notifications to states in those circumstances shall be governed by applicable state law.

a. Respondent shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped: (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondent 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.

b. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the RI/FS. Respondent shall provide the information required by Subparagraph 33.a and 33.c as soon as practicable after the award of the contract but no later than one (1) business day before the Waste Material is actually shipped.

c. Respondent shall not handle or remove any Waste Material from the Site except in conformance with the terms of this Settlement Agreement and all applicable Federal,

State, and local laws and regulations, as required by the NCP. Any transfer of Waste Material from the Site to an off-Site facility required by this Settlement Agreement shall be performed in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3). In addition, any transfer of Waste Material from the Site to an off-Site facility for treatment, storage, or disposal required by this Settlement Agreement shall be performed in accordance with 40 C.F.R. § 300.440.

34. Meetings. Respondent shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

35. Progress Reports. In addition to the plans, reports, and other deliverables set forth in this Settlement Agreement, Respondent shall provide to EPA monthly progress reports by the 15th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Settlement Agreement during that month, (2) include all results of sampling and tests and all other data received by Respondent, (3) describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion, and (4) describe all material problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

36. Emergency Response and Notification of Releases.

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, Respondent shall immediately take all appropriate action. Respondent 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. Respondent shall also immediately notify the EPA Project Coordinator. If the EPA Project Coordinator is unavailable, the Respondent shall notify the EPA Region III Hotline at (215) 814-9016 of the incident or Site conditions. Respondent shall submit a written report to EPA within seven (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*. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent

shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIX (Payment of Response Costs).

## X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report, or other item Respondent is required to submit to EPA pursuant to this Settlement Agreement ("Submission"), EPA will: (a) approve the Submission in whole or in part; (b) approve the Submission upon specified conditions; (c) modify the Submission to cure the deficiencies; (d) disapprove, in whole or in part, the Submission, directing that Respondent modify the Submission; or (e) any combination of the above. However, EPA shall not modify a Submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within thirty (30) days, except where EPA determines that doing so would cause serious disruption of the Work or where previous Submission(s) have been disapproved due to material defects.

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 37(a), (b), (c) or (e), Respondent shall proceed to take any action required by the Submission, as approved or modified by EPA, subject only to its right to invoke the Dispute Resolution procedures set forth in Section XVI (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a Submission or portion thereof, Respondent shall not thereafter alter or amend such Submission or portion thereof unless directed by EPA. In the event that EPA modifies the Submission to cure the deficiencies pursuant to Subparagraph 37(c) and the Submission contained a material defect, EPA reserves the right to seek stipulated penalties, as provided in Section XVII (Stipulated Penalties) until the material defect is cured.

39. Resubmission.

a. Upon receipt of a notice of disapproval, Respondent shall, within thirty (30) days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the Submission for approval. Any stipulated penalties applicable to the Submission, as provided in Section XVII, shall accrue during the thirty-day period or otherwise specified period but shall not be payable unless the resubmitted Submission is disapproved or modified due to a material defect as provided in Paragraphs 40 and 41, and such stipulated penalties are demanded.

b. Unless otherwise directed by EPA, Respondent shall proceed to conduct all Work required by any non-deficient portion of the Submission. Implementation of any non-deficient portion of a Submission shall not relieve Respondent of any liability for stipulated penalties under Section XVII (Stipulated Penalties) for any deficient portion of the Submission.

40. If EPA disapproves a resubmitted Submission, or portion thereof, EPA may again direct Respondent to correct the deficiencies. EPA also retains the right to modify or develop the Submission. Respondent shall implement any such plan, report, or deliverable as corrected, modified, or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XVI (Dispute Resolution).

41. If upon resubmission, a Submission is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such Submission timely and adequately unless Respondent invokes the dispute resolution procedures in accordance with Section XVI (Dispute Resolution) and EPA's determination is reversed or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XVI (Dispute Resolution) and Section XVII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise reversed, substantially modified, or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XVI, stipulated penalties shall accrue for such violation from the date on which the initial Submission was originally required, as provided in Section XVII.

42. In the event that EPA takes over some of the Work, but not the preparation of the RI Report or the FS Report, Respondent shall incorporate and integrate the results of the Work EPA takes over into the final RI and FS Reports.

43. All Submissions (other than progress reports) under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and become enforceable under this Settlement Agreement.

44. a. A "responsible official" of the Respondent, or his/her duly authorized representative participating in the oversight of RI/FS activities, shall sign a certification to the final RI and FS reports in accordance with the requirements of this provision.

b. For a corporation, a "responsible official" means a president, secretary, treasurer, vice president in charge of a principal business function, other person who performs similar policy or decision-making functions for the corporation, or, if authority to sign documents has been assigned or delegated to him/her in accordance with corporate procedures, the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $35 million (in second quarter 1980 dollars when the Consumer Price Index was 345.3). For a partnership or sole proprietorship, "responsible official" means a general partner or the proprietor, respectively.

c. A person is a "duly authorized representative" within the meaning of this subsection only if:

1. The authorization is made in writing by a responsible corporate official, and

2. The authorization specifies either an individual or a position within the Respondent's organization responsible for overseeing performance of the RI/FS, and

3. The written authorization has been approved by EPA prior to the certification.

d. The certification required by this provision shall be in the following form:

"Except as provided below, I certify that the information contained in or accompanying this [type of Submission] is true, accurate, and complete."

"As to those portions of this [type of Submission] for which I cannot personally verify their accuracy, I certify that this [type of Submission] and all attachments were prepared at my direction and with my review, in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is true, accurate, and complete to the best of my knowledge, information, and belief."

"This certification shall not apply to information contained herein that was inserted into this [type of Submission] by EPA, or was required by EPA to be inserted into this [type of Submission], over my objection."

45. Neither the failure of EPA to expressly approve or disapprove of Respondent's Submissions within a specified time period, nor the absence of comments on these Submissions, shall be construed as approval by EPA. Regardless of whether EPA expressly approves Respondent's deliverables, Respondent remains responsible for preparing deliverables acceptable to EPA.

## XI. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

46. Quality Assurance. Respondent shall assure that Work performed, samples taken, and analyses conducted conform to the requirements of the RI/FS Work Plan, the QAPP, and guidances identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures. Respondent

shall only use laboratories which have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

47. Sampling.

a. All results of sampling, tests, modeling, or other data generated by Respondent, or on Respondent's behalf, during the period that this Settlement Agreement is effective, shall be submitted to EPA in the first monthly progress report as described in Paragraph 35 of this Settlement Agreement following Respondent's receipt of the sampling results. EPA will make available to Respondent validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondent shall verbally notify EPA and the State at least thirty (30) days prior to conducting field events as described in the RI/FS Work Plan. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondent shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) or the State of any samples collected in implementing this Settlement Agreement.

48. Access to Information.

a. Respondent shall provide to EPA and the State, 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. Respondent shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

b. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and the State 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 it is submitted to EPA and the State, or if EPA has notified Respondent 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 Respondent. Respondent shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondent asserts business confidentiality claims.

c. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, Respondent shall provide EPA and the State 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 contents of the document, record, or information; and 6) the privilege asserted by Respondent. 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.

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

49. In entering into this Settlement Agreement, Respondent waives any objections to the gathering, generating, or evaluating of any data by EPA or the State in the performance or oversight of the Work.

## XII. SITE ACCESS

50. a. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide EPA, the State, and their authorized 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.

b. EPA, the State, and their authorized representatives shall have the authority to enter and freely move about all property owned or controlled by Respondent subject to this Settlement Agreement at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Settlement Agreement; conducting such tests as EPA deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. In addition, EPA and its authorized representatives shall have, for the purposes specified above, the authority to enter, at all reasonable times, all areas at which records related to the performance of the RI/FS are retained. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Settlement Agreement. Confidentiality claims for any material so copied may be asserted in accordance with Section XI, Paragraph 48 of this

Settlement Agreement. Nothing herein shall be interpreted as limiting the inspection and information gathering authority of EPA under Federal law.

c. In the event that EPA takes over the work pursuant to Paragraph 85 of this Settlement Agreement, Respondent agrees to allow EPA, the State, and their authorized representatives access to the Site and to any portions of the Site under its ownership or control for the purpose of conducting the RI/FS and performance of activities identified in Paragraph 50.b of this Section XII.

d. If Respondent acquires title to or control over any portion of the Site to which it does not presently hold title or control, Respondent agrees that EPA, the State, and their authorized representatives shall have access rights to such property as specified in this Section XII.

51. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all access agreements within forty-five (45) days after the Effective Date, or as otherwise specified in writing by the EPA Project Coordinator. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. If Respondent cannot obtain access agreements, EPA may either (i) obtain access for Respondent or assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate; (ii) perform those tasks or activities itself; or (iii) terminate this Settlement Agreement. Respondent 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 XIX (Payment of Response Costs). If EPA performs those tasks or activities with EPA contractors and does not terminate this Settlement Agreement, Respondent shall perform all other tasks or activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such tasks or activities. Respondent shall integrate the results of any such tasks or activities undertaken by EPA into its Submissions.

52. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## XIII. COMPLIANCE WITH OTHER LAWS

53. Respondent shall comply with all applicable local, state, and federal laws and regulations when performing the Work required by this Settlement Agreement. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no local, state, or federal permit

shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-Site requires any permits, Respondent shall submit timely and complete applications and take all other actions necessary to obtain all such permits. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal, state, or local statute or regulation.

## XIV. RETENTION OF RECORDS

54. During the pendency of this Settlement Agreement and for a minimum of ten (10) years after commencement of construction of any remedial action at the Site, Respondent shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) which: (1) are now in its possession or control; (2) come into its possession or control; or (3) are in the possession or control of any of its officers, directors, employees, agents, contractors, consultants, successors, or assigns that relate in any manner to the performance of the requirements of this Settlement Agreement or the liability of any person under CERCLA and/or RCRA with respect to the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after commencement of construction of any remedial action, Respondent shall also instruct its contractors and agents to preserve all documents, records, and other information of whatever kind, nature, or description relating to performance of the requirements of this Settlement Agreement.

55. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such documents, records, or other information, and, upon request by EPA, Respondent shall deliver any such documents, records, or other information to EPA. Respondent 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 Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or other information; 2) the date of the document, record, or other information; 3) the name and title of the author of the document, record, or other information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or other information; and 6) the privilege asserted by Respondent. However, no documents, records, or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

56. Respondent hereby certifies 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 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.

## XV. NATURAL RESOURCE DAMAGES

57. For the purposes of Section 113(g)(1) of CERCLA, the parties agree that, upon issuance of this Settlement Agreement for performance of an RI/FS at the Site, remedial action under CERCLA shall be deemed to be scheduled and any action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within three (3) years after the completion of the remedial action.

## XVI. DISPUTE RESOLUTION

58. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section XVI 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.

59. If Respondent objects to any EPA determination under this Settlement Agreement, including billings for Response Costs, it shall notify EPA in writing of its objection(s) within fourteen (14) days of such determination, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have fourteen (14) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing.

60. Any agreement reached by the Parties pursuant to this Section XVI shall be in writing and shall, upon signature by the 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 Region III management official at the level of the Chief, General Operations Branch, Waste and Chemicals Management Division or higher will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section XVI. Following resolution of the dispute, as provided by this Section XVI, Respondent shall complete the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs, and regardless of whether Respondent agrees with the decision.

61. Notwithstanding any other provisions of this Settlement Agreement, no action or decision by EPA pursuant to this Settlement Agreement shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this Settlement Agreement.

62. Neither invocation of the procedures set forth in this Section XVI, nor EPA's consideration of matters placed into dispute, shall excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Settlement Agreement during the pendency of the dispute resolution process.

63. The existence of a dispute under this Section shall not by itself expand the time frame for completing any Work under this Settlement Agreement. Thus, in the event the Respondent prevails in the dispute, the task must be completed in the remaining amount of time originally specified in this Settlement Agreement unless the time frame is formally modified by EPA. Any such modifications to this Settlement Agreement shall be made in accordance with Section XXX of this Settlement Agreement.

64. The accrual of stipulated penalties shall continue notwithstanding the existence of a dispute or invocation of the procedures set forth in this Section XVI.

65. In order to prevail in any dispute concerning costs under Section XIX of this Settlement Agreement, Respondent shall have the burden of proving that such costs have been calculated incorrectly or have been incurred in a manner inconsistent with the NCP.

## XVII. STIPULATED PENALTIES

66. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 67 and 68 for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XVIII (Force Majeure). "Compliance" by Respondent shall include satisfactory and timely completion of the activities under this Settlement Agreement, including any activities required under the EPA-approved RI/FS Work Plan or other Submission approved by EPA under this Settlement Agreement.

67. Except as specified in Paragraph 68 immediately below, stipulated penalties shall accrue in the amount of $4,000 per day for the first week, and $7,500 per day for each day thereafter.

68. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 85 of Section XXI (Reservation of Rights by EPA), Respondent shall be liable for a stipulated penalty in the amount of $50,000.

69. All penalties shall begin to accrue on the day that complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (2) with respect to a decision by the EPA Region III management official designated in Paragraph 60 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.

70. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the same and describe the noncompliance. EPA may send Respondent a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph 69 regardless of whether EPA has notified Respondent of a violation.

71. All penalties accruing under this Section XVII shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a written demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures in accordance with Section XVI (Dispute Resolution). All payments to EPA under this Section XVII shall be paid by certified or cashier's check(s) made payable to "EPA-Hazardous Substances Superfund," shall be mailed to the following:

U.S. EPA, Region III
ATTENTION: Superfund Accounting
P.O. Box 360515
Pittsburgh, PA 15251-6515.

All payments shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number A3GQ, the EPA Docket Number CERC-03-2007-0030CA and the name and address of the Respondent. Copies of the transmittal letters and the checks shall simultaneously be sent to EPA's Project Coordinator as provided in Paragraph 27, and to the following:

Docket Clerk (3RC00)
U. S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103.

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

73. Penalties shall continue to accrue as provided in Paragraph 69 during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision.

74. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 71.

75. 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 Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), or Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA, Section 3008(h)(2) of RCRA, or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is demanded herein, except in the case of 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 XXI (Reservation of Rights by EPA), Paragraph 85. 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.

## XVIII. FORCE MAJEURE

76. Respondent agrees 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, *force majeure* is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including, but not limited to, its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation in a timely and complete manner. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

77. 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, Respondent shall notify EPA orally within ten (10) days of when Respondent first knew or should have

known through the exercise of due diligence that the event might cause a delay. Within five (5) days thereafter, Respondent 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; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, 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 Respondent 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.

78. 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 EPA determines 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 Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

## XIX. PAYMENT OF RESPONSE COSTS

79. Payments of Response Costs.

Respondent shall pay EPA all Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 81 of this Settlement Agreement. All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA-Hazardous Substances Superfund," and shall be mailed to the following:

U.S. EPA, Region III
ATTENTION: Superfund Accounting
P.O. Box 360515
Pittsburgh, PA 15251-6515.

All payments shall indicate that the payment is for Response Costs, and shall reference the EPA Region and Site/Spill ID Number A3GQ, the EPA Docket Number CERC-03-2007-0030CA, and

the name and address of the Respondent. Copies of the transmittal letters and the checks shall simultaneously be sent to EPA's Project Coordinator as provided in Paragraph 27, and to the following:

Docket Clerk (3RC00)
U. S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103.

80. If Respondent does not pay Response Costs within thirty (30) days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance of Response Costs. The Interest on unpaid Response Costs shall begin to accrue on the date of receipt of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph 80 shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section XIX, including, but not limited to, payments of stipulated penalties pursuant to Section XVII. Respondent shall make all payments required by this Paragraph 80 in the manner described in Paragraph 79.

81. Respondent may contest payment of any Response Costs under Paragraph 79 if it determines that EPA has made an accounting error or if it believes EPA incurred costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Response Costs and the basis for objection. In the event of an objection, Respondent shall within the thirty (30) day period pay all uncontested Response Costs to EPA in the manner described in Paragraph 79. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Maryland and remit to that escrow account funds equivalent to the amount of the contested Response Costs. Respondent shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested 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, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within fifteen (15) days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 79. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 79. Respondent shall be disbursed any balance of the escrow account.

The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Response Costs.

## XX. COVENANT NOT TO SUE BY EPA

82. In consideration of the actions that will be performed and the payments that will be made by Respondent 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 Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C.§§ 9606 and 9607(a), for the Work and for Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of Response Costs pursuant to Section XIX. This covenant not to sue extends only to Respondent and does not extend to any other person.

## XXI. RESERVATIONS OF RIGHTS BY EPA

83. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA 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 Respondent in the future to perform additional activities pursuant to CERCLA, RCRA, or any other applicable law.

84. The covenant not to sue set forth in Section XX 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 Respondent with respect to all other matters, including, but not limited to:

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

b. liability for costs not included within the definition of 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.

85. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is 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. Respondent 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 EPA in performing the Work pursuant to this Paragraph 85 shall be considered Response Costs which Respondent shall pay pursuant to Section XIX (Payment of Response Costs). Unless otherwise provided in EPA's determination to take over the Work, Respondent shall not be released from its obligations under this Settlement Agreement to perform any Work required by this Settlement Agreement other than the Work taken over by EPA and shall remain subject to stipulated penalties and responsible for reimbursement of oversight costs relating to all such Work. 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.

## XXII. COVENANT NOT TO SUE BY RESPONDENT

86. Respondent waives its right to a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. § 24.05. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, 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 the Work or arising out of the response actions for which the Response Costs have been or will be incurred, including any claim under the United States Constitution, the Maryland Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

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

87. Except as expressly provided in Section XXII, Paragraphs 89 and 90 (Non-Exempt De Micromis Waiver) and Paragraphs 91 and 92 (MSW Waiver), 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 84 b, c, and e - g, but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

88. 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).

89. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent 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 directly to the Site, or having accepted for transport for disposal or treatment of hazardous substances directly to the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person directly to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials (or such greater or lesser amounts as the EPA Administrator may determine by regulation). Respondent also agrees to the same waiver conditions provided in this paragraph 89 with respect to any person where the person's liability is based upon arranging for disposal, treatment, or transport of hazardous substances to a facility other than the Site, and those hazardous substances were ultimately disposed at the Site, and the total amount of material containing hazardous substances the person arranged to send to the facility other than the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials (or such greater or lesser amounts as the EPA Administrator may determine by regulation).

90. The waiver in Paragraph 89, immediately above, shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or § 9622(e), or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has

been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

91. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of Municipal Solid Waste ("MSW") at the Site, if the volume of MSW disposed, treated, or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site.

92. The waiver in Paragraph 91, immediately above, shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines that: (a) the MSW contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; (b) the person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or § 9622(e); or (c) the person impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

## XXIII. OTHER CLAIMS

93. By issuance of this Settlement Agreement, EPA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent.

94. Except as expressly provided in Section XXII, Paragraphs 89 and 90 (Non-Exempt De Micromis Waiver), Paragraphs 91 and 92 (MSW Waiver) and Section XX (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 Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, RCRA, 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.

95. 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).

## XXIV. CONTRIBUTION

96. 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 Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 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 Response Costs.

b. The Parties agree that this Settlement Agreement is a settlement agreement under Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), as described in Section 122(d)(3) of CERCLA, 42 U.S.C. § 9622(d)(3), and further 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 Respondent has, as of the Effective Date, resolved its liability to the United States for the Work and Response Costs.

c. Except as provided in Section XXII (Covenant Not to Sue by Respondent), Paragraph(s) 89 and 90 of this Settlement Agreement (Non-Exempt De Micromis Waiver), and Paragraphs 91 and 92 (MSW Waiver), nothing in this Settlement Agreement precludes EPA or Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Settlement Agreement for indemnification, contribution, or cost recovery. 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) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

## XXV. INDEMNIFICATION

97. Respondent 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 Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees 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 Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on

its behalf or under its 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 Respondent in carrying out activities pursuant to this Settlement Agreement. Unless necessary for the purpose of EPA's providing the Respondent with access to the Site, neither Respondent nor any such contractor shall be considered an agent of the United States.

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

99. Respondent waives 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 Respondent and any person for performance of Work on or relating to the Site. In addition, Respondent 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 Respondent and any person for performance of Work on or relating to the Site.

## XXVI. INSURANCE

100. At least thirty (30) days prior to commencing any On-Site Work under this Settlement Agreement, Respondent 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, naming the EPA as an additional insured. Within the same period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of this Settlement Agreement, Respondent shall satisfy, or shall ensure that its 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 Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates 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 Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

## XXVII. FINANCIAL ASSURANCE

101. Within thirty (30) days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of $750,000.00 in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;

b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;

c. a trust fund administered by a trustee acceptable in all respects to EPA;

d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

e. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of Respondent, or by one or more unrelated corporations that have a substantial business relationship with Respondent, including a demonstration that any such company satisfies the financial test requirements of 40 C.F.R. § 264.143(f); and/or

f. a corporate guarantee to perform the Work by the Respondent, including a demonstration that the Respondent satisfies the requirements of 40 C.F.R. § 264.143(f).

102. Any and all financial assurance instruments provided pursuant to this Section XXVII shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within thirty (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 101, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within thirty (30) days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

103. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Subparagraph 101.e. or 101.f. above, Respondent shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. § 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the current cost estimate of $750,000.00 for the Work at the Site shall be used in relevant financial test calculations.

104. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work had diminished below the amount set forth in Paragraph 101 above, Respondent 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. Respondent 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 after receiving written approval from EPA. In the event of a dispute, Respondent may reduce the amount of security in accordance with the written decision resolving the dispute.

105. Respondent may change the form of financial assurance provided under this Section XXVII at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section XXVII. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute in the time and manner set forth in Section XVI (Dispute Resolution) herein.

## XXVIII. INTEGRATION/APPENDICES

106. This Settlement Agreement and its appendices and any Submissions (other than progress reports) that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement 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 appendix is attached to and incorporated into this Settlement Agreement: Appendix A which is a map of the Site.

## XXIX. ADMINISTRATIVE RECORD

107. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondent shall submit to EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Upon request of EPA, Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of EPA, Respondent shall additionally submit any previous studies conducted under state, local, or other federal authorities relating to selection of the response action, and all communications between Respondent and state, local, or other federal authorities concerning selection of the response action. At EPA's discretion, Respondent shall establish a community information repository at or near the Site, to house one copy of the administrative record.

## XXX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

108. This Settlement Agreement shall be effective upon signature by the Director, Waste and Chemicals Management Division, EPA Region III, and the Director, Hazardous Site Cleanup Division, EPA Region III, or their delegatee(s).

109. a. This Settlement Agreement may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by the Director, Waste and Chemicals Management Division, EPA Region III or his/her delegatee. Schedules specified in this Settlement Agreement for completion of the Work may be modified by agreement of both Project Coordinators. All such modifications shall be made in writing.

b. Minor modifications to the requirements of the RI/FS Work Plan, specifically those which do not materially or significantly affect the nature, scope, or timing of the work to be performed, may be made by mutual agreement of the Project Coordinators. Any such modifications must be in writing and signed by both Project Coordinators. The effective date of the modification shall be the date on which the letter from EPA's Project Coordinator is signed.

c. Modifications to the requirements of the RI/FS Work Plan that are not minor modifications as described in paragraph 109.b of this Section XXX may be made by mutual agreement of EPA and the Respondent. Any such modifications shall be in writing and signed by Respondent's Project Coordinator and the Chief of the General Operations Branch, Waste and Chemicals Management Division, EPA Region III. The effective date of the modification shall be the date on which the modification is signed by EPA.

110. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its 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.

## XXXI. NOTICE OF COMPLETION OF WORK

111. When EPA determines that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including, but not limited to, payment of Response Costs and retention of records, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the RI/FS Work Plan, if appropriate, in order to correct such deficiencies, in accordance with Paragraph 32

(Modification of the RI/FS Work Plan). Failure by Respondent to implement the approved modified RI/FS Work Plan shall be a violation of this Settlement Agreement.

Agreed this 15th day of August, 2007

For Respondent General Electric Railcar Services Corporation

By: Daniel E. Nevill

Title: Operations Exec Vice President

It is so ORDERED AND AGREED this 12th day of September, 2007

BY: _____
Abraham Ferdas, Director
Waste and Chemicals Management Division
United States Environmental Protection Agency
Region III

BY: _____
James J. Burke, Director
Hazardous Site Cleanup Division
United States Environmental Protection Agency
Region III


# GE Railcar Site
# Triumph Industrial Park
# Zeitler and Hope Lanes
# Elkton, Cecil County, MD 21922

A

# APPENDIX D

Draft Environmental Covenant

# ENVIRONMENTAL COVENANT

**SITE NAME: Former General Electric Railcar Repair Services LLC Facility**
**GRANTOR/OWNER: Transport Pool Corporation ("TPC")**
**GRANTEE(S)/HOLDER(S): General Electric Company, a New York corporation**
**PROPERTY ADDRESS: Triumph Industrial Park, Blue Ball Road (State Road 545), Elkton, MD 21922**

This Environmental Covenant is created and executed this ___ day of _____, 2022 pursuant to the provisions of the Maryland Uniform Environmental Covenants Act, §§ 1-801 through 1-815 of the Environment Article, Annotated Code of Maryland ("Environment Article"). This Environmental Covenant subjects the Property identified in Paragraph l to the activity and use limitations in this document. This Environmental Covenant has been approved by the United States Environmental Protection Agency ("EPA").

1. **Real Property Affected**. The real property affected ("Property") by this Environmental Covenant is 28.5143 acres located at the Triumph Industrial Park, Blue Ball Road (State Road 545) (intersection of Hope and Zeitler Lanes), Elkton, Cecil County, Maryland.

The postal street address of the Property is: 505 Blue Ball Road, Elkton, MD 21921.
The County Land Records Deed Reference is: Cecil County, Liber C.M.N. No. 3825, Folio 148.
Tax Parcel Information for the Property is: Map 26F, Grid 16, Parcels 300 and 458.
The Maryland Department of Assessment and Taxation Real Property Account Identifiers are: District-03, Account Numbers-032760 and 055191.
The latitude and longitude of the center of the Property affected by this Environmental Covenant are: 39.621805°, -75.858719°.
The Brownfield Master Inventory Identifier is: MD0294- 28.5143 acres.

The Property has been known by the following names: GE Railcar; P and R Rail Car Service Corporation; Stauffer Chemical.

A complete legal description of the Property is attached to this Environmental Covenant as **Exhibit A**. A Map of the Property & its Location Coordinates, also generally depicting the locations of engineering controls and restricted areas, is attached to this Environmental Covenant as **Exhibits B-1 and B-2**.

2. **Property Owner/Grantor**. Transport Pool Corporation, a Delaware corporation, is the owner ("Owner") of the Property and the Grantor of this Environmental Covenant. The mailing address of TPC is: Transport Pool Corporation, c/o General Electric Company, 901 Main Ave., Room 2030, Norwalk, CT 06851, Attn: Marian E. Whiteman, Executive Counsel, Global Law & Policy.

3. **Holder(s)/Grantee(s)/Agenc(ies)**. For purposes of this Environmental Covenant, the following are Holders/Grantee(s)/Agenc(ies):

- **Grantee/Holder:** General Electric Company, 901 Main Ave, Norwalk, CT 06851, Attn: Marian E. Whiteman, Environmental Counsel, Global Law and Policy
- **Agency**: The United States Environmental Protection Agency, Region III, RCRA Corrective Action Branch 1, Land, Chemicals, and Redevelopment Division, Four Penn Center, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103-2852.

4. **EPA Regulatory Program(s) Issuing Determination.** The following regulatory program(s) within EPA are responsible for having issued a determination requiring the use of this Environmental Covenant:

EPA

X EPA Corrective Action Program under the Resource Conservation and Recovery Act

5. **Summary of Identified Contaminants.**

Within the Still Bottoms Disposal Area, the following constituents in soil pose a potential exposure risk via indoor air inhalation in the event of future construction of a building over these soils: Tetrachloroethene ("PCE"), Trichloroethene ("TCE"), and Total Xylenes.

Within the MW-42 Area of Concern, the following constituents in soil pose a potential exposure risk via indoor air inhalation in the event of future construction of a building over these soils: 1,1,2,2-Tetrachloroethane and TCE.

The following constituents in groundwater pose a potential exposure risk via ingestion and/or inhalation of vapors: 1,1,2,2-Tetrachloroethane, 1,1,2-Trichloroethane, 1,2-Dichloroethane, Benzene, Chlorobenzene, Chloroform, cis-1,2-Dichloroethene, Ethylbenzene, PCE, Toluene, TCE, Vinyl chloride, and Total Xylenes.

6. **Definitions**.

(a) "Current Owner" means each subsequent owner of the Property during its period of ownership and any other person holding an active Possessory Interest in the Property. "Current Owner" does not include TPC.

(b) "Owners" means TPC and Current Owner.

(c) "Possessory Interest" means the right to occupy, use, or possess all or any portion of the Property, whether by lease, license, or other agreement.

7. **Activity & Use Limitations**. The Property is subject to the following activity and use limitations, which shall be binding on Owners, Holders, and each subsequent owner(s) and holder(s) of the Property:

(a) **Property Use.** The Property shall not be used for "Residential" or "Recreational" land uses, unless Current Owner demonstrates in writing to EPA and the Maryland Department of the Environment ("MDE" or the "Department") that such use will not pose a threat to human health or the environment or adversely affect or interfere with the remedy selected in the Final Decision and Response to Comments issued by EPA on February 25, 2020 ("Final Remedy"), and EPA , in consultation with MDE, provides written approval in advance of such use. For purposes of this limitation, "Residential" land uses include without limitation: single family homes, multiple family dwellings, schools, daycare or childcare centers, apartment buildings, dormitories, eldercare facilities, other residential-style facilities, hospitals, and in-patient care facilities. "Recreational" land uses include without limitation: playgrounds, gardens, parks, picnic areas, golf courses, athletic fields and facilities, dog parks, and other recreational areas.

(b) **Groundwater Use.** Groundwater at the Property shall not be used for any purpose other than operation, maintenance, and monitoring activities required by EPA and/or MDE, unless Current Owner demonstrates in writing to EPA and MDE that such use will not pose a threat to human health or the environment or adversely affect or interfere with the Final Remedy, and EPA, in consultation with MDE, provides prior written approval for such use.

(c) **On-Property Monitoring Wells.** No removal, disturbance, or alteration shall occur to any monitoring well located on the Property unless Current Owner demonstrates to EPA that such removal, disturbance or alteration will not pose a threat to human health or the environment or adversely affect or interfere with the Final Remedy, and Current Owner obtains prior written approval from EPA for such removal, disturbance, or alteration.

(d) **Soil Management Plan.** Any planned subsurface soil disturbance activities (including trenching, grading, excavation, drilling, construction, or other physical movement or exposure of subsurface impacted soils) at the "MW-42 Area of Concern" ("MW-42 AOC") and the "Still Bottom Disposal Area" ("SBDA") must comply with an EPA-approved Soil Management Plan. TPC will prepare the initial Soil Management Plan for EPA approval but EPA may approve amendments to reflect changed conditions. The MW-42 AOC and the SBDA are designated as such on **Exhibits C1, C2, D1, and D2**.

(e) **Cap Maintenance.** The cap of the SBDA, located in the area designated as such in **Exhibits D1 and D2**, shall be maintained in compliance with an EPA-approved Cap Maintenance Plan. TPC will prepare the initial Cap Maintenance Plan for EPA approval but EPA may approve amendments to reflect changed conditions.

(f) **Vapor Mitigation.** Owners shall not construct or allow occupancy of any building or structure at the Property, unless such person obtains prior EPA approval of, and implements, a Vapor Intrusion ("VI") Assessment Plan, pursuant to which such person provides EPA with data and analysis demonstrating to the EPA's satisfaction that there is no unacceptable risk to human health within anticipated buildings or structures via the vapor intrusion exposure pathway. In lieu of a VI Assessment Plan, such person may install, operate, and maintain a Vapor Mitigation System within the building or structure. A "**Vapor Mitigation System**" means a system that, after taking into account the size, nature, and use of any building or structure at the Property, is designed and, if applicable, operated to prevent hazardous substances in vapor form in any environmental media from migrating into such building or structure, consistent with requirements governing vapor mitigation as set forth in a plan prepared by such person and approved by EPA prior to construction.

(g) **EPA Consent**. Any approvals granted by EPA under this Paragraph 7 for deviations from or modifications to the restrictions shall be in writing in advance, shall contain a reference to this instrument, shall be in recordable form, and shall be filed with the Cecil County Register of Deeds.

8. **Notice of Limitations in Future Conveyances**. This Environmental Covenant runs with the land, shall pass with every portion of the Property (including any portions that may be separately improved, used, occupied, leased, sold, or transferred), and shall be binding on Current Owners including successors in interest. Each instrument hereafter conveying any interest in the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and shall provide the recorded location of this Environmental Covenant. Current Owner shall notify the Department, EPA, and all Holders listed in Paragraph 3 in writing at least thirty (30) days prior to any transfer of the Property, or of any portion of the Property. Such written notice shall include the name, address, and telephone numbers of the transferee to whom such interest is conveyed.

9. **Access by Holders/Agencies**. In addition to any rights already possessed by the Department, EPA, or any Holder listed in Paragraph 3, this Environmental Covenant grants the Department, EPA, and any Holder listed in Paragraph 3, and their respective successors, assigns, and contractors a right of access to the Property to monitor, implement, or enforce this Environmental Covenant.

10. **Recordation & Filing with Registry**. TPC shall record this Environmental Covenant in the Land Records of Cecil County within 30 days of receipt of EPA's executed signature page for this Environmental Covenant and shall send proof of the recording to the Department and EPA within 30 days of recordation. This Environmental Covenant shall be filed as soon as possible after execution in the Registry of Environmental Covenants maintained by

the Department. This Environmental Covenant may be found electronically on the Department's website at: https://mde.maryland.gov/programs/Land/MarylandBrownfieldVCP/Pages/ueca.aspx.

11. **Termination or Modification**. This Environmental Covenant runs with the land unless terminated or modified in accordance with § 1-808 or § 1-809 of the Environment Article. Current Owner agrees to provide the Department and EPA with written notice of the pendency of any proceeding that could lead to a foreclosure referred to in § 1-808(a)(4) of the Environment Article, within seven (7) calendar days of the Current Owner's becoming aware of the pendency of such proceeding.

12. **EPA's Address**. Any document or communication that is required to be provided to the parties to this Environmental Covenant shall be submitted to EPA Region III's RCRA Corrective Action digital repository for institutional control and reporting documents: R3_RCRAPOSTREM@epa.gov. All documents shall reference the RCRA Facility name and RCRA ID Number. In addition, a file-stamped copy of this Environmental Covenant shall be sent to Chief of U.S. EPA Region III, RCRA Corrective Action Branch 1, Land, Chemicals, and Redevelopment Division, Four Penn Center, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103-2852.

13. **The Department's Address**. All written communications with the Department regarding this Environmental Covenant shall be sent to the following address: Registry of Environmental Covenants, Maryland Department of the Environment, Land and Materials Administration, Land Restoration Program, 1800 Washington Blvd., Baltimore, MD 21230.

14. **Administrative Record**. The Administrative Record pertaining to the remedy selected by EPA in the Final Decision and Response to Comments ("FDRTC") is located at the United States Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103-2852.

15. **Enforcement**. A civil action for injunctive or other equitable relief for violating this Environmental Covenant may be maintained by the Department or by the Attorney General of the United States, on behalf of EPA. In addition, the Department and EPA reserve their regulatory authorities under any law to enforce the activity and use limitations described in Paragraph 7, above.

16. **Compliance Reporting**. Within twenty-one (21) days after written request by the Department or EPA, Current Owner of the property shall submit to the Department, EPA, and to any Holder listed in Paragraph 3, written documentation stating whether or not the activity and use limitations set forth in Paragraph 7 of this Environmental Covenant are being abided by. In addition, within twenty-one (21) days after any of the following events: (a) transfer of title of the Property or of any part of the Property affected by this Environmental Covenant; (b) noncompliance with Paragraph 7, and (c) an application for a permit or other approval for any building or site work that could affect contamination on any part of the Property, Current Owners shall send notice and a report to the Department, EPA, and any Holder listed in

Paragraph 3. The report will state whether there is compliance with Paragraph 7. If there is noncompliance, the report will state the actions that will be taken to assure compliance and the proposed schedule for those actions.

17. **Notification of Newly-Discovered Contamination**. Whenever Current Owner identifies a newly-discovered Solid Waste Management Unit or release of hazardous waste and/or hazardous constituents at or from the Property not previously identified, or discovers an immediate or potential threat to human health and/or the environment at the Property, Current Owner shall notify EPA and MDE orally within forty-eight (48) hours of discovery and notify EPA and MDE in writing within three (3) calendar days of such discovery summarizing the potential for the migration or release of hazardous wastes, solid wastes and/or hazardous constituents at and/or from the Property and the immediacy and magnitude of the potential threat(s) to human health and/or the environment, as applicable.

**18. Notification to the Department and EPA**. Current Owner shall provide the Department and EPA written notice of:

(a) any judicial action referred to in § 1-808(a)(5) (eminent domain) of the Environment Article, Ann. Code of Md. (2014 Repl. Vol.), within seven (7) calendar days of the owner's receiving notice of such judicial action;

(b) any judicial action referred to in § 1-808(b) of the Environment Article, Ann. Code of Md. (2014 Repl. Vol.), within seven (7) calendar days of the owner's receiving notice of such judicial action; and

(c) termination or amendment of this Environmental Covenant pursuant to §1-809 of the Environment Article, Ann. Code of Md. (2014 Repl. Vol.), within seven (7) calendar days of the owner's becoming aware of such termination or amendment.

19. **Severability.** The paragraphs of this Environmental Covenant shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Environmental Covenant to be executed and delivered as of the day and year first above written.

*[Counterpart Signature Pages Follow]*

ACKNOWLEDGMENTS by Grantor/Owner, any Grantee(s)/Holder(s), and EPA in the following form:

ATTEST:

FOR THE GRANTOR/OWNER:

Transport Pool Corporation

Date:_____ By: _____
Name: Marian E. Whiteman
Title: Vice President, Real Estate

STATE OF CONNECTICUT )
COUNTY OF FAIRFIELD )

On this_____ day of _____, 2022, before me, the undersigned, personally appeared Marian E. Whiteman, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

_____
(***Name of notary public typewritten or printed***)
Notary Public

My commission expires: _____

ACKNOWLEDGMENTS by Grantor/Owner, any Grantee(s)/Holder(s), and EPA in the following form:

ATTEST:

FOR THE GRANTEE/HOLDER:

General Electric Company

Date:_____ By: _____
Name: Marian E. Whiteman
Title: Delegated Signatory, Executive Counsel

STATE OF CONNECTICUT )
COUNTY OF FAIRFIELD )

On this_____ day of _____, 2022, before me, the undersigned, personally appeared Marian E. Whiteman, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

_____
(***Name of notary public typewritten or printed***)
Notary Public

My commission expires: _____

ACKNOWLEDGMENTS by Grantor/Owner, any Grantee(s)/Holder(s), and EPA in the following form:

APPROVED, by United States Environmental Protection Agency, Region III

Date: _____, 2022

By: _____
Dana Aunkst
Director
Land, Chemicals, and Redevelopment Division
United States Environmental Protection Agency
Region III

COMMONWEALTH OF PENNSYLVANIA )

COUNTY OF [***Insert County***] )

On this_____ day of _____, 2022, before me, the undersigned, personally appeared Dana Aunkst, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

_____
(***Name of notary public typewritten or printed***)
Notary Public

My commission expires: _____

# EXHIBIT A

## Complete Metes and Bounds Description of the Property

All those parcels of land situate in Cecil County, State of Maryland and described as follows:

PARCEL ONE:

BEGINNING for the same at the intersection of the centerline of Zeitler's Lane with the centerline of the paved road leading westerly to the southerly side of the property conveyed to Maryland Cork Company by Deed recorded among the Land Records of Cecil County in Liber R.R.C. No. 64, folio 211, said road also running along the northerly line of the lands conveyed to Central Chemical Corporation by Deed recorded among the aforesaid Land Records in Liber W.A.S. No. 199, folio 61, said point of beginning being approximately 2,565 feet southerly along Zeitler's Lane from Blue Ball Road; thence, with said point of beginning so fixed and binding on the centerline of the paved road leading to said southerly side of Maryland Cork Company, (1) North 63 degrees 11 minutes 55 seconds West, 749.00 feet, to a point in the easterly right-of-way line of Penn Central Railroad Company, said right of way line being located ten feet from the centerline of the existing track; thence, leaving said paved road, with and binding on said easterly right of way line of Penn Central Railroad Company the following three courses: (2) North 11 degrees 35 minutes 05 seconds East 89.81 feet to a point of curvature; thence, (3) 430.60 feet along the arc of a curve to the left having a radius of 910.40 feet and a chord bearing North 01 degrees 57 minutes 55 seconds West 426.61 feet to a point of tangency; thence, (4) North 15 degrees 30 minutes 55 seconds West 636.25 feet to a point; thence, leaving said railroad right of way (5) South 63 degrees 44 minutes 53 seconds East 1,035.00 feet to a point in the centerline of Zeitler's Lane; thence, along said centerline of Zeitler's Lane; the following two courses; (6) South 06 degrees 20 minutes 25 seconds West 448.75 feet to a point, and (7) South 04 degrees 25 minutes 05 seconds West 563.00 feet to the point of beginning and containing 17.8311 acres of land according to a survey conducted by MCA Engineering Corporation, Engineers and Land Surveyors, in November 1975. Tax Account No. 03-032760

PARCEL TWO:

BEGINNING for the same at a point in the centerline of Zeitler's Lane approximately 1,550 feet southerly along Zeitler's Lane from Blue Ball Road, said point being at the end of the fifth course in the description of Parcel One, proceeding, thence, with said point of beginning so fixed, reversely with and binding in the fifth course of Parcel One, (1) North 63 degrees 44 minutes 53 seconds West 1,035.00 feet to a point in the easterly right of way line of Penn Central Railroad Company; thence, with and binding on said easterly right of way line of Penn Central Railroad

Company, (2) North 15 degrees 30 minutes 55 seconds West 354.88 feet to a point; thence, leaving said railroad right of way, (3) South 24 degrees 45 minutes 24 seconds East 80.81 feet to a point; thence, parallel to and approximately seven feet southeasterly from a chain link fence defining the property leased to Thiokol Chemical Corporation, (4) North 52 degrees 17 minutes 41 seconds East 306.60 feet to an iron pipe found at the end of a farm fence defining the property conveyed to Richard A. Herron by Deed recorded among the Land Records of Cecil County in Liber W.A.S. No. 236, folio 645; thence, with and binding on the southerly line of the said lands of Herron the following two courses, (5) South 53 degrees 05 minutes 25 seconds East 526.44 feet to a point; thence, (6) South 78 degrees 50 minutes 18 seconds East 371.63 feet to a point in the centerline of Zeitler's Lane; thence, along said centerline of Zeitler's Lane, (7) South 04 degrees 13 minutes 02 seconds West 527.21 feet to the point of beginning and containing 10.6832 acres of land according to a survey conducted by MCA Engineering Corporation, Engineers and Land Surveyors, in January 1976.

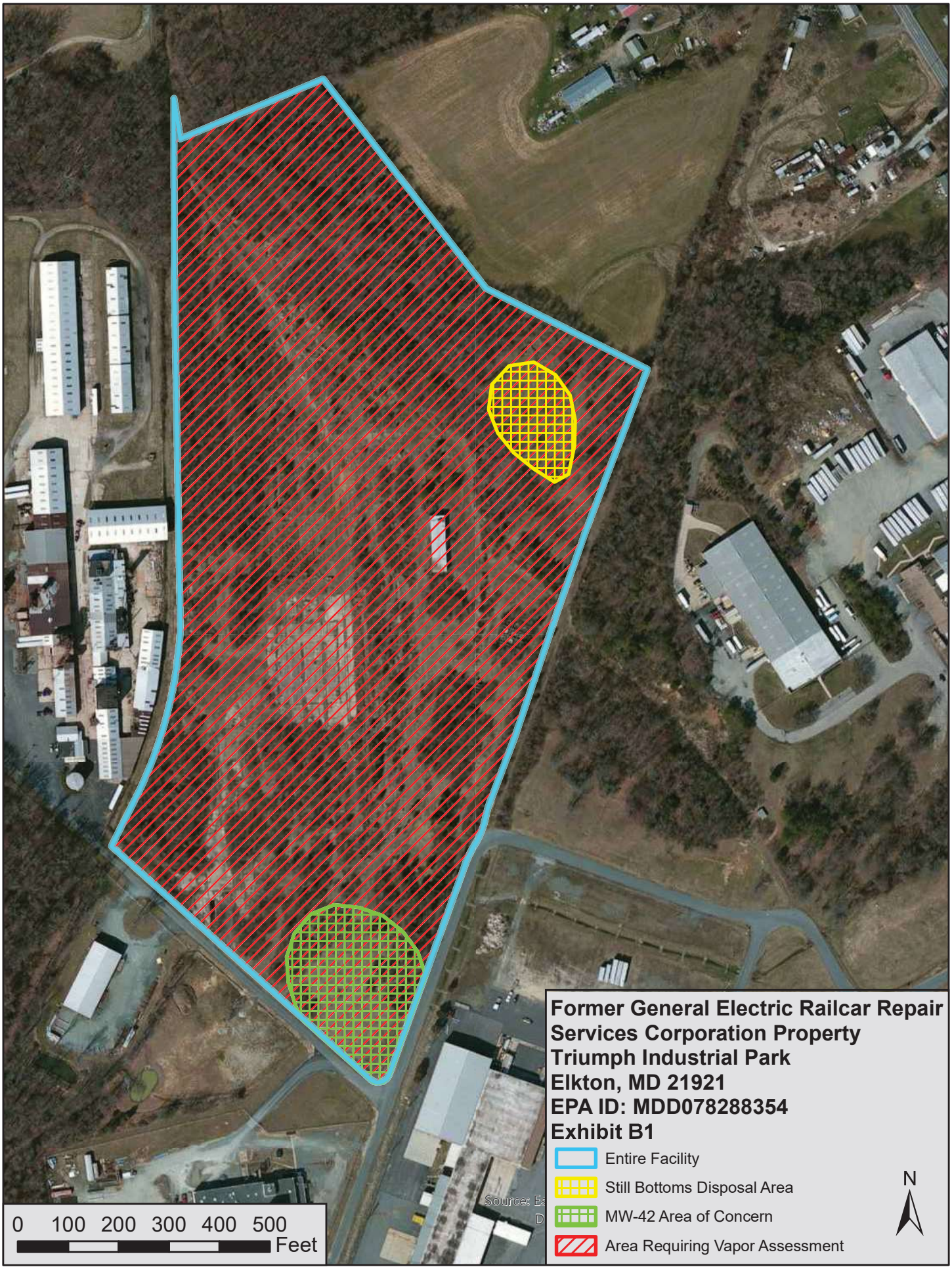
Tax Account No. 03-055191

Parcels One and Two to comprise a tract of land containing 28.5143 acres, more or less as shown on the plat by said MCA Engineering Corporation attached to Deed from Trinco, Inc. to P&R Rail Car Service Corp., Inc. dated March 2, 1976 and recorded among the Land Records of Cecil County in Liber W.A.S. No. 357, folio 170.

Subject to and together with the benefit of those easements set forth in the Deed from Trinco, Inc. to P&R Rail Car Service Corp., Inc. dated March 2, 1976 and recorded among the Land Records of Cecil County in Liber W.A.S. No. 357, folio 170.

# EXHIBITS B-1 AND B-2

## Map of the Property & Location Coordinates


Former General Electric Railcar Repair Services Corporation Property
Triumph Industrial Park
Elkton, MD 21921
EPA ID: MDD078288354
Exhibit B1
Entire Facility
Still Bottoms Disposal Area
MW-42 Area of Concern
Area Requiring Vapor Assessment
N
0 100 200 300 400 500
Feet

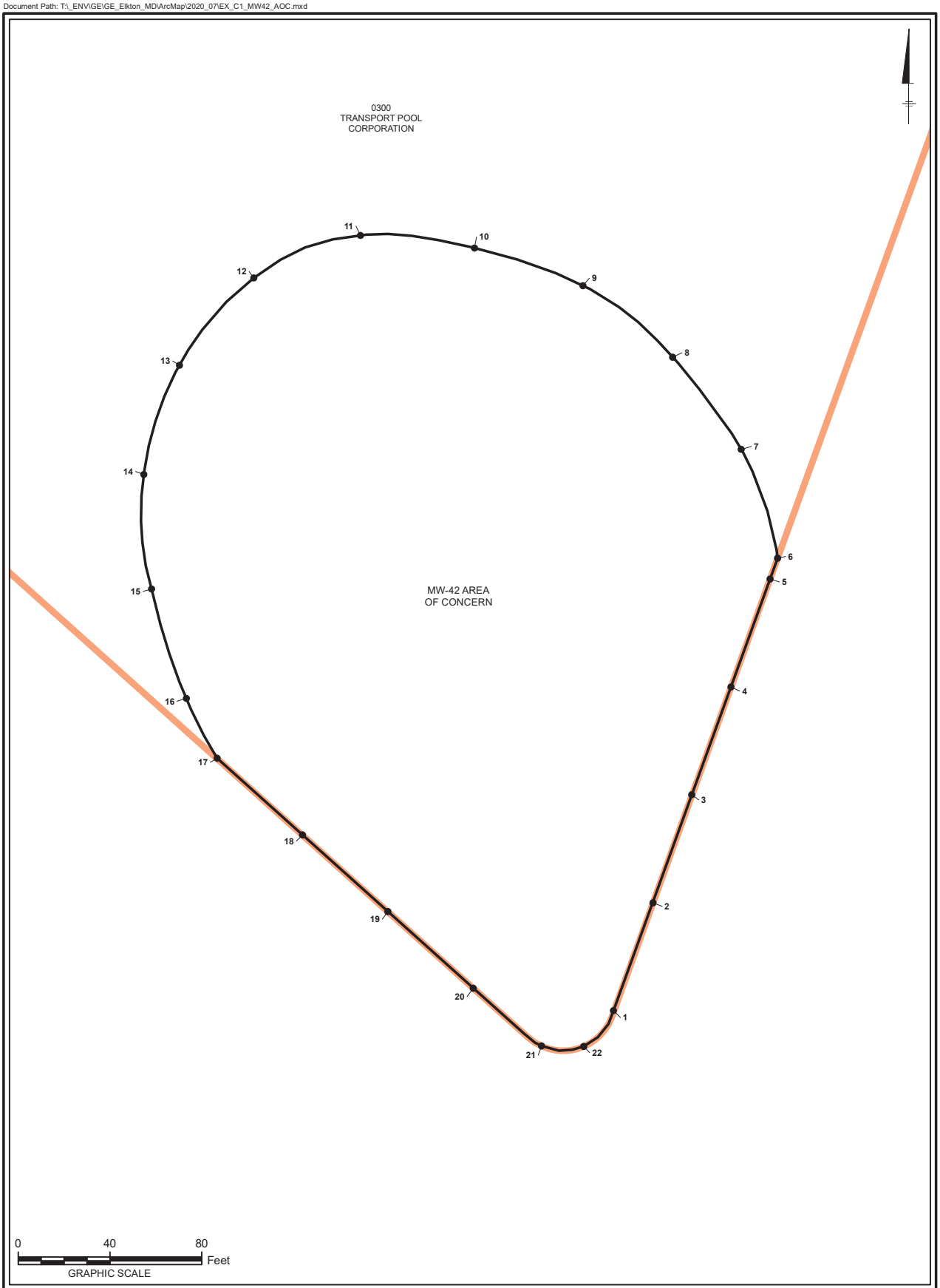
Environmental Covenant
Exhibit B2
Site Layout Coordinates

| Coordinate Table (WGS 84) | | |
|---|---|---|
| **Label** | **X Longitude** | **Y Latitude** |
| 1 | -75.85843033 | 39.61953545 |
| 2 | -75.8602352 | 39.62082325 |
| 3 | -75.86008786 | 39.62104189 |
| 4 | -75.86005171 | 39.62109553 |
| 5 | -75.86002462 | 39.62113788 |
| 6 | -75.85999023 | 39.62119499 |
| 7 | -75.85993488 | 39.62129659 |
| 8 | -75.85990606 | 39.62135551 |
| 9 | -75.8598793 | 39.62141502 |
| 10 | -75.85985463 | 39.62147506 |
| 11 | -75.85983207 | 39.62153559 |
| 12 | -75.85981177 | 39.6215961 |
| 13 | -75.85979367 | 39.62165669 |
| 14 | -75.85977744 | 39.62171856 |
| 15 | -75.85976346 | 39.62178032 |
| 16 | -75.85975172 | 39.62184258 |
| 17 | -75.85974404 | 39.62188989 |
| 18 | -75.85973766 | 39.62193801 |
| 19 | -75.85973129 | 39.62200082 |
| 20 | -75.85974247 | 39.62391302 |
| 21 | -75.85702888 | 39.6221679 |
| 22 | -75.85738811 | 39.62138644 |
| 23 | -75.85756927 | 39.62103423 |
| 24 | -75.85758401 | 39.62099909 |
| 25 | -75.85761105 | 39.62091636 |
| 26 | -75.85763274 | 39.62087097 |
| 27 | -75.85766053 | 39.62082761 |
| 28 | -75.85769412 | 39.62078679 |
| 29 | -75.85771749 | 39.62075225 |
| 30 | -75.85773775 | 39.62071656 |
| 31 | -75.85830024 | 39.61955945 |
| 32 | -75.85831727 | 39.61953872 |
| 33 | -75.85834456 | 39.61952386 |
| 34 | -75.85838313 | 39.61951927 |
| 35 | -75.85840845 | 39.61952436 |
| 36 | -75.85973078 | 39.62488718 |
| 37 | -75.85968781 | 39.62466785 |
| 38 | -75.85867859 | 39.62498299 |
| 39 | -75.85754915 | 39.6238329 |
| 40 | -75.85642157 | 39.62338162 |
| 41 | -75.85686298 | 39.62251583 |

# EXHIBITS C-1 AND C-2

## Map of the MW-42 Area of Concern & Location Coordinates

CITY: MPLS/CITRIX DIV/GROUP: IMDV DB: MG LD: AS
GE ELKTON MD
Document Path: T:_ENV\GE\GE_Elkton_MD\ArcMap\2020_07\EX_C1_MW42_AOC.mxd




LEGEND:

- FORMER GE RAILCAR PROPERTY BOUNDARY
- AREA OF CONCERN
- 2 LOCATION OF COORDINATES PROVIDED IN EXHIBIT C2

FORMER GE RAILCAR PROPERTY
ELKTON, MARYLAND
**ENVIRONMENTAL COVENANT**

## MW-42 Area of Concern

ARCADIS Design & Consultancy for natural and built assets

**EXHIBIT C1**

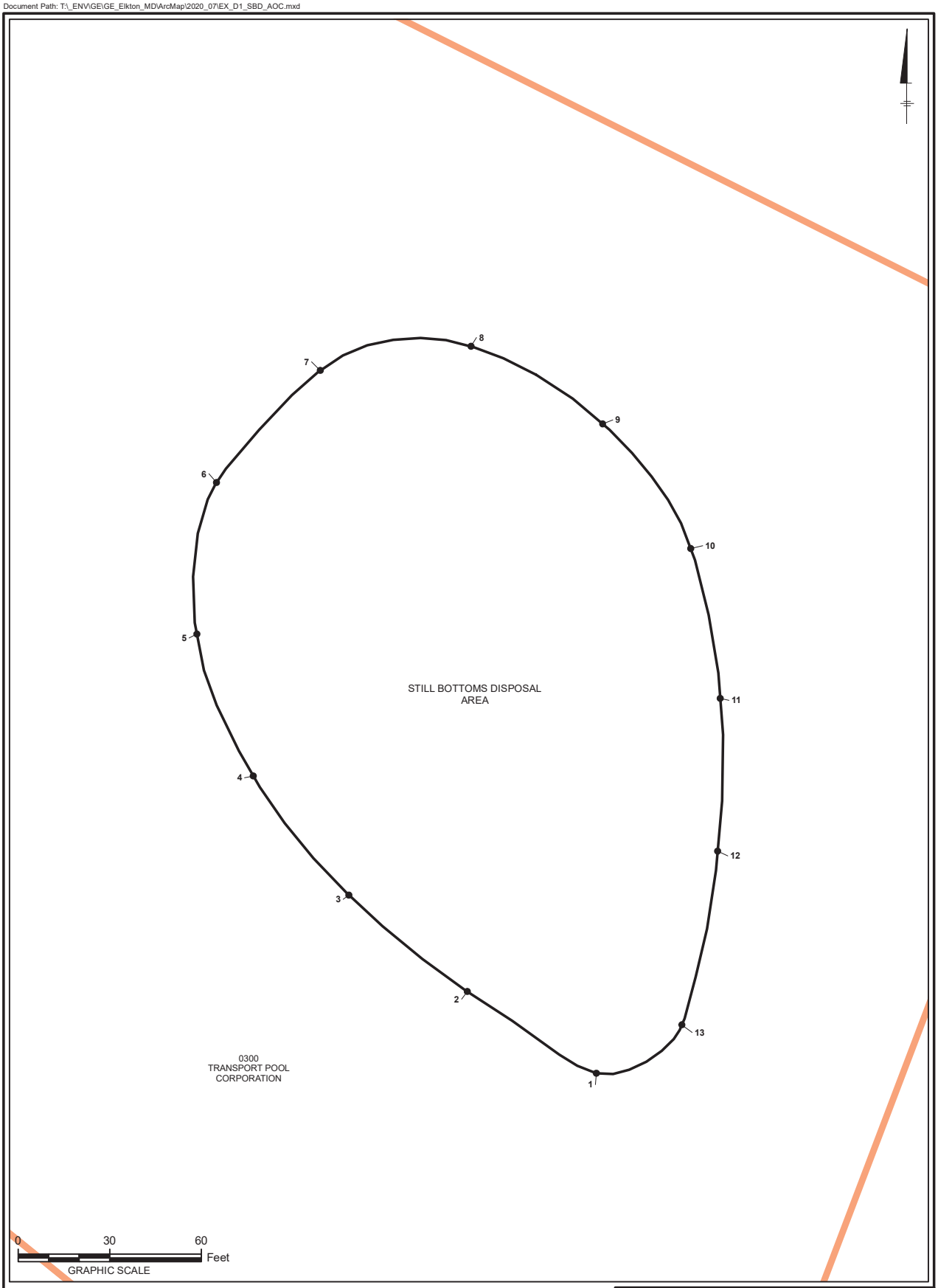
Environmental Covenant
Exhibit C2
MW-42 AOC Coordinates

| Coordinate Table (WGS 84) | | |
|---|---|---|
| **Label** | **X_Longitude** | **Y_Latitude** |
| 1 | -75.85829624 | 39.61955824 |
| 2 | -75.85823282 | 39.61968643 |
| 3 | -75.8581709 | 39.61981507 |
| 4 | -75.85810823 | 39.61994348 |
| 5 | -75.85804556 | 39.6200719 |
| 6 | -75.85803351 | 39.62009659 |
| 7 | -75.85808772 | 39.62022729 |
| 8 | -75.85819185 | 39.62033844 |
| 9 | -75.85832931 | 39.62042527 |
| 10 | -75.85849622 | 39.62047195 |
| 11 | -75.85867237 | 39.62048871 |
| 12 | -75.85883807 | 39.62043952 |
| 13 | -75.85895492 | 39.62033621 |
| 14 | -75.85901203 | 39.62020625 |
| 15 | -75.8590023 | 39.6200692 |
| 16 | -75.85895058 | 39.61993789 |
| 17 | -75.85890421 | 39.61986599 |
| 18 | -75.85877361 | 39.61977305 |
| 19 | -75.858643 | 39.61968012 |
| 20 | -75.85851247 | 39.61958711 |
| 21 | -75.85840805 | 39.61951701 |
| 22 | -75.85834274 | 39.61951591 |

# EXHIBITS D-1 AND D-2

## Map of the Still Bottoms Disposal Area of Concern & Location Coordinates

CITY: MPLS/CITRIX DIV/GROUP: IMDV DB: MG LD: AS
GE ELKTON MD
Document Path: T:_ENV\GE\GE_Elkton_MD\ArcMap\2020_07\EX_D1_SBD_AOC.mxd




LEGEND:

- FORMER GE RAILCAR PROPERTY BOUNDARY
- AREA OF CONCERN
- 2 LOCATION OF COORDINATES PROVIDED IN EXHIBIT D2

FORMER GE RAILCAR PROPERTY
ELKTON, MARYLAND
**ENVIRONMENTAL COVENANT**

## Still Bottoms Disposal Area of Concern

ARCADIS Design & Consultancy for natural and built assets

**EXHIBIT D1**

Environmental Covenant
Exhibit D2
Still Bottoms Disposal Area Coordinates

| Coordinate Table (WGS 84) | | |
|---|---|---|
| **Label** | **X_Longitude** | **Y_Latitude** |
| 1 | -75.85708374 | 39.62277402 |
| 2 | -75.85723252 | 39.62284886 |
| 3 | -75.85736882 | 39.62293677 |
| 4 | -75.85747812 | 39.62304492 |
| 5 | -75.85754157 | 39.62317311 |
| 6 | -75.85751659 | 39.623309 |
| 7 | -75.85739441 | 39.62340857 |
| 8 | -75.85721882 | 39.62342855 |
| 9 | -75.857067 | 39.62335745 |
| 10 | -75.85696641 | 39.62324436 |
| 11 | -75.85693421 | 39.62310938 |
| 12 | -75.85693948 | 39.62297218 |
| 13 | -75.85698348 | 39.62281658 |