



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF:

NUCLEAR METALS, INC. SUPERFUND
SITE

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR NON-TIME CRITICAL
REMOVAL ACTION

Textron Inc., Whittaker Corporation,
United States Army and United States
Department of Energy,

U.S. EPA Region 1
CERCLA Docket No.: CERCLA-01-2011-
004

Respondents

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

Superfund Records Center
SITE: NUCLEAR METALS
BREAK: 10.7
OFFER: 485961

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), Respondents and Settling Federal Agencies. This Settlement Agreement provides for the performance of a non-time critical removal action ("NTCRA"), and the reimbursement of certain response costs incurred by the United States at or in connection with the Nuclear Metals, Inc. Superfund Site (the "Site") located at 2229 Main Street, Concord, Middlesex County, Massachusetts.

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

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

4. EPA, Respondents and Settling Federal Agencies recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents and Settling Federal Agencies in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents and Settling Federal Agencies do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondents and Settling Federal Agencies agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

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

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

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

III. DEFINITIONS

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

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on September 23, 2008, by the Deputy Director of the Office of Site Remediation and Restoration ("OSRR"), EPA Region 1, and all attachments thereto. The "Action Memorandum" is attached as Appendix A.

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

c. "Commonwealth" shall mean the Commonwealth of Massachusetts.

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 XXXIV.

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

g. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 44 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 55 (emergency response), and Paragraph 98 (work takeover). Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Respondents have agreed to reimburse under this Settlement Agreement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from May 19, 2009 to the Effective Date.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Interim Response Costs" shall mean all costs, including direct and indirect costs, unrelated to the work being performed pursuant to the AOC for RI/FS (as defined in Paragraph 14), (a) paid by the United States in connection with the Site between May 19, 2009 and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.

j. "MassDEP" shall mean the Massachusetts Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

k. "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.

l. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent for Non-Time Critical Removal Action and all appendices attached hereto (listed in Section XXXIII). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

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

n. "Parties" shall mean EPA, Settling Federal Agencies and Respondents.

o. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, unrelated to the work being performed pursuant to the AOC for RI/FS (as defined in Paragraph 14), that the United States paid at or in connection with the Site through May 19, 2009, plus Interest on all such costs through such date.

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

q. "Respondents" shall mean Textron Inc. and Whittaker Corporation.

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

s. "Settling Federal Agencies" shall mean the United States Army and the United States Department of Energy, including all of their component agencies and entities.

t. "Site" shall mean the Nuclear Metals, Inc. Superfund Site, encompassing approximately 46 acres, located at 2229 Main Street, in Concord, Middlesex County, Massachusetts and depicted generally on the map attached as Appendix B.

u. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the NTCRA, as set forth in Appendix C to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

v. "United States" shall mean the United States of America, including without limitation EPA, the Settling Federal Agencies, any federal natural resources trustee and all of the other departments, agencies, and instrumentalities of the United States.

w. "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 "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); 4) any "hazardous material" or "oil" under the Massachusetts Oil and Hazardous Release Prevention and Response Act, Mass. Gen. L. ch. 21E, § 2; and (5) any "hazardous waste" under Mass. Gen. L. ch. 21C, § 2

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

IV. FINDINGS OF FACT

A. Description of the Site

9. The Nuclear Metals, Inc. Superfund Site (the "Site") is located at 2229 Main Street (Route 62) in Concord, Middlesex County, Massachusetts. The 46-acre Site is bordered by Main Street and commercial and residential properties to the north; by woodland and residential properties to the east and south; and by woodland and commercial/industrial properties to the west.

10. The Site has several structures, including but not limited to a two-story, five-section interconnected building (Buildings A, B, C, D, and E), a tank house, a hydrogen peroxide tank house, two gas cylinder storage huts, and four "Butler" metal storage buildings, which altogether have a current footprint of approximately 185,000 square feet. The buildings are in poor condition. In many areas, the roofs are approaching 50 years old, are deteriorating and have multiple leaks.

11. From 1958 to the present, the Site was used by various operators at various times as a specialized research and metal manufacturing facility, which was licensed to possess low-level radioactive substances. At various times, Site operators used depleted uranium, beryllium, titanium, zirconium, copper, acids, solvents, and other substances at the Site. From 1958 to 1985, Site operators disposed of manufacturing by-products, including waste solutions containing depleted uranium mixed with copper, spent acid, and lime, into an unlined holding basin located

on-site. Other areas of the Site, including but not limited to the sphagnum bog, the cooling water recharge pond, septic leaching fields, a sweepings pile, and the small landfill, are also believed to have been used for the disposal of manufacturing wastes.

12. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 14, 2001, 66 Fed. Reg. 32235, 32241.

13. From April 2002 to April 2003, EPA performed a time-critical removal action at the Site which included, among other things, the installation of a temporary cover over the holding basin and the installation of a temporary cap over the small landfill.

14. On June 13, 2003, EPA and certain potentially responsible parties for the Site entered into an Administrative Order By Consent For Remedial Investigation/Feasibility Study (“RI/FS”) (U.S. EPA Docket No. CERCLA 01-2003-0021) for the Site, which was amended on February 13, 2008 as set forth in the Amendment to Administrative Order By Consent for RI/FS, U.S. EPA Docket No. CERCLA 01-2008-0007 (jointly, these two agreements are referred to herein as the “AOC for RI/FS”).

15. Since June 13, 2003, the respondents to the AOC for RI/FS have been performing the RI/FS. The AOC for RI/FS also requires the respondents to that agreement to perform one or more Engineering Evaluation and Cost Analyses (“EE/CAs”), if requested to do so by EPA.

16. In 2004, MassDEP and the United States Army (“Army”) entered into an agreement whereby the Army financed the removal of approximately 3,800 drums of depleted uranium and other Waste Materials that were stored at the Site. MassDEP performed this drum removal from September 2005 to March 2007.

17. On June 26, 2007, a small fire occurred at the Site, causing minimal damage to the buildings. Following the fire, the Concord Fire Department requested that EPA remove hazardous materials present inside the buildings that posed a fire safety threat.

18. From January 7, 2008 to September 24, 2008, EPA performed a second time-critical removal action at the Site to remove hazardous substances from inside the buildings that posed a threat of fire or explosion.

B. The Selected Non-Time Critical Removal Action

19. In December 2007, EPA signed an approval memorandum for performance of an EE/CA to evaluate various alternatives to address the buildings located on-site and their contents.

20. The respondents to the AOC for RI/FS performed the EE/CA, as required by EPA. EPA issued the completed EE/CA in February 2008.

21. As provided in the EE/CA, the buildings at the Site are contaminated with high levels of depleted uranium. On the exterior of the buildings, depleted uranium contamination is found on the roof-tops. On the interior of the buildings, depleted uranium contamination is found on floors, walls, heavy equipment and machinery. The buildings are dilapidated, with leaking roofs in many places. There are also large cracks in the building foundation which likely allow contamination within the buildings to reach the soils under the foundation.

22. The contamination on the roofs of the buildings, the cracks in the building foundation, as well as the potential for fire, building collapse or vandalism at these highly contaminated buildings constitute a release or threat of release of hazardous substances from the buildings to the environment.

23. In April 2008, EPA issued a fact sheet providing notice of the completion of the EE/CA and EPA's proposed NTCRA to address the deteriorating, contaminated buildings. EPA provided an opportunity to the public to comment on the proposed NTCRA.

24. On September 23, 2008, EPA issued an Action Memorandum which authorizes the performance of a NTCRA at the Site, including, but not limited to, the demolition of the buildings at the Site.

C. Description of Respondents and Settling Federal Agencies

25. Since 1972, Starmet Corporation (formerly known as Nuclear Metals, Inc.), its wholly-owned subsidiary, Starmet NMI Corporation, and several related entities (including Applied Materials Science, Inc., Advanced Specialty Metals, Inc., and Applied Technology Management, LLC), have owned and/or operated the Site, and have owned and/or operated the Site at the time of alleged disposal of hazardous substances at the Site.

26. From 1966 to 1972, Respondent Whittaker Corporation was an owner and operator of the Site at the time of alleged disposal of hazardous substances at the Site.

27. From 1958 to 1966, Respondent Textron Inc. ("Textron"), either directly or as a corporate successor, was an operator of the Site at the time of alleged disposal of hazardous substances at the Site. From March to September 1966, Respondent Textron was also an owner of the Site at the time of disposal of hazardous substances at the Site.

28. Settling Federal Agencies Army and United States Department of Energy ("DOE") (as successor agency to the United States Atomic Energy Commission), allegedly arranged for disposal of hazardous substances at the Site, and/or were allegedly former owners and/or operators of the Site at the time of alleged disposal of hazardous substances at the Site.

29. Each Respondent and each Settling Federal Agency is a corporation or governmental entity or agency.

V. LEGAL DETERMINATIONS

30. Based on the Findings of Fact set forth above, and the Administrative Record supporting the NTCRA, EPA has determined that:

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

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

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

d. Each Respondent and each Settling Federal Agency is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

e. The conditions described in Paragraphs 21 and 22 of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The NTCRA required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

Based upon the foregoing Findings of Fact, Legal Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents and Settling Federal Agencies 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.

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

31. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within fourteen (14) days of the Effective Date, unless a longer period of time is agreed to by EPA. Respondents shall also

notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least seven (7) days prior to commencement of the portion of the Work for which such contractor(s) or subcontractor(s) has been retained. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within seven (7) days of EPA's disapproval.

32. Within fourteen (14) days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within seven (7) days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

33. EPA has designated Melissa Taylor of OSRR, EPA Region 1, as its On-Scene Coordinator ("OSC") and Remedial Project Manager. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the OSC at EPA Region 1, 5 Post Office Square, Suite 100 (OSRR 07-4), Boston, MA 02109-3912.

34. EPA and Respondents shall have the right, subject to Paragraph 32, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA five days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

35. Respondents shall perform, at a minimum, all actions necessary to implement the requirements of this Settlement Agreement, the SOW and the Action Memorandum. The actions to be implemented generally include, but are not limited to, the following: Respondents shall demolish the buildings at the Site down to their slab foundation, and place a temporary cap over the remaining slab foundation. Construction debris shall either be disposed off-site at an appropriately-licensed disposal facility or potentially on-site, if EPA determines, consistent with the provisions of the SOW, that such debris does not contain hazardous substances.

36. Plans and Implementation.

a. Consistent with the deadlines established under the SOW, Respondents shall submit to EPA for approval all of the draft plans and other deliverables required by the SOW for performing the NTCRA generally described in Paragraph 35 above.

b. EPA may approve, disapprove, require revisions to, or modify the draft plans and other deliverables required by the SOW in whole or in part. If EPA requires revisions, Respondents shall submit such required revisions within seven (7) days of receipt of EPA's notification of the required revisions. Respondents shall implement the plans and other deliverables as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the plans and other deliverables, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the plans or other deliverables developed hereunder until receiving written EPA approval pursuant to Paragraph 36.b.

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

38. Quality Assurance and Sampling.

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

documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program as meeting the Quality System requirements.

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

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

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

40. Reporting.

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

b. Respondents shall submit three copies to EPA and two copies to the Commonwealth of all plans, reports or other submissions required by this Settlement Agreement, the Statement of Work, or any approved plan. Upon request by EPA or the Commonwealth, Respondents shall submit such documents in electronic form.

c. Respondents who own real property at the Site shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the Commonwealth of the proposed conveyance, including the name and address of the transferee. Respondents who own or control real property at the Site also agree to require that

their successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

41. Final Report. Within thirty (30) days after completion of all Work required by this Settlement Agreement, Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

42. Off-Site Shipments.

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

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

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the NTCRA. Respondents shall provide the information required by Paragraphs 42.a and 42.b as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before the shipment of any Waste Material from the Site to an off-site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Waste Material shall only be sent from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

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

44. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within twenty-one (21) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access; provided, however, that Respondents shall not be required to pay any money in consideration of such access to property to any person that (i) is not a Party to this Settlement Agreement whom EPA has identified as a potentially responsible party prior to the Effective Date, (ii) has a presence at 2229 Main Street, Concord, MA, or (iii) acquires an interest in 2229 Main Street, Concord, MA (and such payment(s), if any, shall be subject to prior EPA notice and approval). Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondents shall (i) make payment(s) of money, if any, in consideration of access using funds from the NTCRA Trust Fund, as defined in Section XVI (Trust Fund; Additional Payments), and (ii) reimburse EPA from the NTCRA Trust Fund, as defined in Section XVI (Trust Fund; Additional Payments), for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

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

X. ACCESS TO INFORMATION

46. Respondents shall provide to EPA and the Commonwealth, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement

Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA and the Commonwealth, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

47. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and the Commonwealth under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the Commonwealth, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

48. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege in lieu of providing documents, they shall provide EPA and the Commonwealth 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 Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

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

XI. RECORD RETENTION

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

records, and information of whatever kind, nature or description relating to performance of the Work.

51. At the conclusion of this document retention period, Respondents shall notify EPA and the Commonwealth at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA or the Commonwealth, Respondents shall deliver any such records or documents to EPA or the Commonwealth. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA or the Commonwealth with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

52. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the Commonwealth 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.

53. Each Settling Federal Agency acknowledges that it is (1) subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

54. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (“ARARs”) under federal environmental or state environmental or facility siting laws, but Respondents shall not be required to obtain any federal, state or local permit for any portion of the Work conducted entirely on site as provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP. Respondents shall identify ARARs in the project plan subject to EPA approval. Respondents may seek relief under the provisions of Section XVIII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or delay in obtaining any federal, state

or local permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other action necessary to obtain all such permits or approvals.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

55. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents, using funds from the NTCRA Trust Fund, as defined in Section XVI (Trust Fund; Additional Payments), shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Planning and Response Branch, EPA Region 1 (617) 918-1236 and the EPA Regional Emergency 24-hour telephone number at (617) 723-8928 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA from the NTCRA Trust Fund, as defined in Section XVI (Trust Fund; Additional Payments) for all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

56. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the OSC at 617-918-1332 and the National Response Center at (800) 424-8802. Respondents 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.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

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

XV. PAYMENT OF RESPONSE COSTS

58. Payment by Respondents for Past Response Costs.

a. Within thirty (30) days after the Effective Date of this Settlement Agreement, Respondents shall pay to EPA \$82,300 for Past Response Costs. Payment shall be made to EPA by Electronic Funds Transfer (“EFT”) in accordance with current EFT procedures to be provided to Respondents by EPA Region 1, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number 01-7D, and the EPA docket number for this action.

b. At the time of payment, Respondents shall send notice that such payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

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

c. The total amount to be paid by Respondents pursuant to Paragraph 58.a shall be deposited by EPA in the Nuclear Metals Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

d. Respondents certify, subject to the penalties of the False Claims Act, 31 U.S.C. §§ 3729 et seq., and other applicable law, that no portion of the payment being made under this Paragraph reflects payment for response costs that already have been reimbursed by the United States through contracts or otherwise. Respondents further agree that they shall not seek or accept reimbursement for any costs related to the Work, Past Response Costs, or Future Response Costs, either directly or in connection with any past, existing or future contracts or other agreements with or grants or subsidies funded by or received from, the United States. If any one of Respondents becomes aware of or is offered any such reimbursement or other benefit, it shall promptly give notice of the terms of this Settlement Agreement to the individual, agency or other entity that is offering or has provided such reimbursement or other benefit, and shall simultaneously notify the United States at the following address:

Chief, Environmental Defense Section
United States Department of Justice
Environment & Natural Resources Division
P.O. Box 23986
Washington, DC 20026-3986
Re: DJ # 90-11-3-09598

e. In the event that the payment for Past Response Costs is not made within thirty (30) days of the Effective Date, Respondents shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XIX (Stipulated Penalties).

59. Payments by Respondents for Future Response Costs.

a. Respondents shall pay EPA from the NTCRA Trust Fund, as defined in Section XVI (Trust Fund; Additional Payments), all Future Response Costs not inconsistent with the NCP. On an annual basis, EPA will send Respondents a bill requiring payment that consists of a Region 1 standard cost summary, which is a line item summary of costs in dollars by category of costs (including not limited to payroll, travel, indirect costs, cooperative agreement costs with the Commonwealth, and contracts) incurred by the United States. Respondents shall make all payments within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 61 of this Settlement Agreement.

b. Respondents shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number 01-7D. Respondents shall send the check(s) to:

(For Delivery by First Class Mail)
U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

(For Delivery by Overnight Mail)
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

c. At the time of payment, Respondents shall send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

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

d. The total amount to be paid by Respondents pursuant to Paragraph 59.a shall be deposited by EPA in the Nuclear Metals Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

60. In the event that the payments for Future Response Costs are not made within thirty (30) days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XIX (Stipulated Penalties).

61. Respondents may contest payment of any Future Response Costs billed under Paragraph 59 if they determine that EPA has made a mathematical error, or if they believe EPA incurred excess 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 OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 59. Respondents shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs. Simultaneously with the payment of uncontested Future Response Costs, Respondents shall initiate the Dispute Resolution procedures in Section XVII (Dispute Resolution). If EPA prevails in the dispute, within five (5) days of the resolution of the dispute, Respondents shall pay the sums due (with Interest) to EPA in the manner described in Paragraph 59. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus Interest) for which they did not prevail to EPA in the manner described in Paragraph 59. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

62. Payments by Settling Federal Agencies for Past Response Costs. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall:

a. Pay to EPA \$4,032,700 for Past Response Costs. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Settling Federal Agencies by EPA Region 1, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 01-7D, and the EPA docket number for this action.

b. At the time of payment or shortly thereafter, Settling Federal Agencies shall send notice that such payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

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

c. The total amount to be paid by Settling Federal Agencies pursuant to Paragraph 62.a shall be deposited by EPA in the Nuclear Metals Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

d. In the event that payment required by Paragraph 62.a. is not made within thirty (30) days of the Effective Date, Settling Federal Agencies shall pay Interest on the unpaid balance accruing from the Effective Date and continuing until the date of payment.

63. Payments by Settling Federal Agencies for the Work and Future Response Costs.
As soon as reasonably practicable after EPA's approval of the NTCRA Trust Agreement, as defined in Section XVI (Trust Fund; Additional Payments), the United States, on behalf of Settling Federal Agencies, shall:

a. Pay to the NTCRA Trust Fund \$68,600,000 (sixty-eight million, six hundred thousand dollars), representing 98.0% of the estimated total costs to perform the Work and to reimburse EPA for estimated Future Response Costs required under this Settlement Agreement, in the form of a check, or current EFT procedures to be provided to Settling Federal Agencies by EPA Region 1. This payment amount is based on the estimated total costs to perform the Work and to reimburse EPA for estimated Future Response Costs, of \$70,000,000 (seventy million dollars).

b. At the time of payment or shortly thereafter, Settling Federal Agencies shall send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

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

c. In the event that payment required by Paragraph 63.a is not made within 30 days of approval of the NTCRA Trust Agreement, Settling Federal Agencies shall pay Interest on the unpaid balance accruing from the date of approval of the NTCRA Trust Agreement and continuing until the date of payment.

64. The Parties recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Settlement Agreement can only be paid from appropriated funds legally available for such purpose. Nothing in this Settlement Agreement shall be interpreted or construed as a commitment or requirement that Settling Federal Agencies obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

XVI. TRUST FUND; ADDITIONAL PAYMENTS

65. a. Within ten (10) days of the Effective Date, Respondents shall submit to EPA for approval a fully executed trust agreement (the "NTCRA Trust Agreement") establishing the "Nuclear Metals NTCRA Trust" (hereafter, the "NTCRA Trust Fund"), in substantially the form attached hereto as Appendix D, and shall notify EPA of the identity and qualifications of the trustee. The NTCRA Trust Agreement shall confer upon the trustee powers and authorities required or sufficient to finance the obligations of Respondents under this Settlement Agreement, including performance of the NTCRA. EPA, after providing Settling Federal Agencies with an opportunity to comment, shall notify Respondents, in writing, of its approval or disapproval of the proposed NTCRA Trust Agreement, any part thereof, or the proposed trustee. Within thirty (30) days after any disapproval of the NTCRA Trust Agreement or the proposed trustee, Respondents shall submit a revised NTCRA Trust Agreement to EPA or shall provide a notice of dispute pursuant to Section XVII (Dispute Resolution). The estimated total costs to perform the Work and to reimburse EPA for Future Response Costs required under this Settlement Agreement are \$70,000,000 (seventy million dollars). Within one hundred eighty (180) days of EPA's approval of the NTCRA Trust Agreement, or within one hundred eighty (180) days after resolution of any dispute regarding the NTCRA Trust Agreement under which the NTCRA Trust Agreement is approved (hereafter this date is referred to as the "Approval of the NTCRA Trust"), Respondents shall pay into the NTCRA Trust Fund \$700,000 (seven hundred thousand dollars). Within one year after such payment is made, Respondents shall pay into the NTCRA Trust Fund \$700,000 (seven hundred thousand dollars) (together, these two payments amount to \$1,400,000 (one million four hundred thousand dollars), which is 2.0% of the estimated total costs to perform the Work and to pay Future Response Costs).

66. Money paid into the NTCRA Trust Fund by Respondents as provided in Section XVI (Trust Fund; Additional Payments), and by Settling Federal Agencies as provided in Paragraph 63 and Section XVI (Trust Fund; Additional Payments), shall be used solely to pay for the Work performed by Respondents pursuant to this Settlement Agreement, including expenses (a) of administering the NTCRA Trust Fund, (b) incurred with respect to the insurance policy described in Paragraph 118, including premiums and deductibles, (c) to retain a third-party contractor to be identified as the generator of wastes in accordance with Section II.B.2.a.(v) of the Statement of Work, and (d) for reimbursement of Future Response Costs. In the event of denial of insurance coverage under the policy described in Paragraph 118, Respondents may submit a request to EPA for use of up to 25% of Respondents' contribution to the NTCRA Trust Fund for reasonable and necessary fees to enforce the terms of the insurance policy. EPA will make a determination whether to approve such a request in whole or in part. Respondents may object to

EPA's determination by following the procedures for dispute resolution in Section XVII (Dispute Resolution). The NTCRA Trust Fund may not be used to pay stipulated penalties that may be required to be paid pursuant to Section XIX (Stipulated Penalties), indemnification that may be required to be paid pursuant to Section XXV (Indemnification) and shall not be used to pay attorneys' fees or other litigation costs of Respondents, except as to the extent that such fees and costs are recoverable response costs under Key Tronic Corp. v. United States, 511 U.S. 809 (1994), and other applicable authorities.

67. Notwithstanding the terms of the NTCRA Trust Agreement, Respondents shall be jointly and severally liable for compliance with this Settlement Agreement. Respondents shall provide EPA with written notice at least ten (10) days in advance of any proposed change in the NTCRA Trust Agreement or of the trustee, and shall secure EPA's approval of any such revisions. EPA has the authority to remove any trustee based on evidence of fraud, misrepresentation, bad faith or failure to reasonably exercise its fiduciary duties in connection with the administration of the NTCRA Trust Fund. Within five (5) business days of receipt by Respondents of written notice from EPA (i) stating that there is evidence with respect to the trustee of fraud, misrepresentation, bad faith, or failure to reasonably exercise its fiduciary duties in connection with the administration of the NTCRA Trust Fund, and (ii) requesting the trustee's removal, Respondents shall exercise its rights under Paragraph 14.b. of the NTCRA Trust Agreement and deliver written notice to the trustee to effect the trustee's removal in accordance with the terms of the NTCRA Trust Agreement. EPA, through its acceptance of the terms and conditions of the NTCRA Trust Agreement or otherwise, does not guarantee the monetary sufficiency of the NTCRA Trust Fund for its purposes, nor the legal sufficiency of the NTCRA Trust Agreement.

68. The NTCRA Trust Agreement shall provide that the trustee shall, within sixty (60) days of its appointment and every ninety (90) days thereafter, submit to Respondents, Settling Federal Agencies and EPA financial reports ("Trustee's Report") that include: (a) the amount of money currently in the NTCRA Trust Fund, including the income on Permitted Investments (as that term is defined in the approved NTCRA Trust Agreement), at the end of the period covered by the report; (b) cash flow projections showing the amount of funds that will be necessary to pay for the obligations of Respondents to perform the Work under this Settlement Agreement, including reimbursement to EPA for Future Response Costs, for at least the next eighteen (18) months; (c) any revisions to the estimate of the total costs for the Work accompanied by an explanation of any cost increases from the original \$70,000,000 (seventy million dollars) estimate referenced in Paragraph 65 herein ("Revised Cost Estimate"); and (d) if there is a Revised Cost Estimate, the estimated amount of money needed for Respondents to complete the Work under this Settlement Agreement, including reimbursement to EPA of Future Response Costs. The Project Coordinator designated in accordance with Paragraph 32 of this Settlement Agreement, within thirty (30) days of the trustee's appointment, and every ninety (90) days thereafter, shall submit to the trustee, Settling Federal Agencies and EPA a report that provides the necessary cash flow projections and the Revised Cost Estimate, if any.

69. If the amount of money in the NTCRA Trust Fund, including all income earned on Permitted Investments, as that term is defined in the approved NTCRA Trust Agreement, is less than the sum of the amount projected in the Trustee's Report to be needed to perform the Work, including reimbursement to EPA of Future Response Costs, for the next eighteen (18) months, the trustee shall prepare a proposed request for additional contributions to the NTCRA Trust Fund ("Additional Funding Request"). The trustee shall submit the proposed Additional Funding Request to Respondents, Settling Federal Agencies and EPA for review. The proposed Additional Funding Request shall indicate the specific amounts to be requested from Settling Federal Agencies and Respondents, and shall include: (1) a summary of expenditures made from the NTCRA Trust Fund to date that is sufficiently detailed to demonstrate whether or not the expenditures have been made in accordance with the requirements of Paragraph 66 herein; (2) a summary of the contributions made by Respondents and Settling Federal Agencies and the income earned on Permitted Investments; (3) the Revised Cost Estimate; and (4) based on the Revised Cost Estimate, the estimated amount of money needed for Respondents to complete the Work under this Settlement Agreement, including reimbursement to EPA of Future Response Costs. The proposed Additional Funding Request presented to the Settling Federal Agencies shall be in the amount of 98% of the difference between the amount of money then present in the NTCRA Trust Fund and the amount of money needed for Respondents to complete the Work, including reimbursement to EPA of Future Response Costs. The proposed Additional Funding Request presented to Respondents shall be in the amount of 2% of the difference between the amount of money then present in the NTCRA Trust Fund and the amount of money needed for Respondents to complete the Work, including reimbursement to EPA of Future Response Costs. In addition, in calculating the proposed Additional Funding Request, the trustee shall provide Respondents and Settling Federal Agencies with an appropriate credit for: (1) all income on Permitted Investments as of the date of the proposed Additional Funding Request; and (2) the estimated future income on Permitted Investments as of the date of the proposed Additional Funding Request until the conclusion of the next eighteen (18) months (based on the then-current rate of return on U.S. Government securities).

70. Within seven (7) days of issuance of any proposed Additional Funding Request, Respondents' Project Coordinator shall submit to Settling Federal Agencies and EPA a report ("Certified Summary Report") detailing and itemizing: (1) the estimated costs for performance of the Work as of the Effective Date; (2) the Work performed as of the date of the proposed Additional Funding Request; (3) the actual costs incurred and paid for the performance of the Work, as of the date of the proposed Additional Funding Request; (4) the Revised Cost Estimate provided as part of the proposed Additional Funding Request; and (5) the basis for the Revised Cost Estimate provided as part of the proposed Additional Funding Request. Each Certified Summary Report shall include the following certification signed by a principal of the Project Coordinator's firm, other than the Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I further certify that in my professional judgment the actual costs summarized in this submission were incurred and paid for necessary Work in

compliance with the requirements of the Settlement Agreement, the SOW, and EPA-approved deliverables. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

71. The amount of the Revised Cost Estimate provided by the trustee in any proposed Additional Funding Request shall be subject to EPA approval. Within three (3) days of receipt of EPA approval of such Revised Cost Estimate, the trustee shall present the Additional Funding Request to Respondents and Settling Federal Agencies for payment, with a copy to EPA.

72. Subject to the limitations of Paragraph 76 herein, Respondents shall, within forty-five (45) days of receipt of any trustee's request for payment of an Additional Funding Request, deposit the amount requested from Respondents into the NTCRA Trust Fund.

73. a. Upon receipt of any trustee's request for payment of an Additional Funding Request, Settling Federal Agencies shall have thirty (30) days to present to Respondents, with a copy to EPA, any objections they have to the Additional Funding Request. Any such objections shall be limited to the following issues: (1) whether expenditures from the NTCRA Trust Fund were made in accordance with the requirements of Paragraph 66 herein; (2) whether proper credit was given for Settling Federal Agencies' initial payment and income earned thereon; (3) whether there has been any fraud, misrepresentation or bad faith in the administration of the NTCRA Trust Fund or in the conduct of the Work by Respondents; and (4) whether Settling Federal Agencies require any additional information or backup documentation to assess any of these issues. If no such objections to the Additional Funding Request are presented by Settling Federal Agencies, then, subject to the limitations of Paragraph 76 herein, the United States, on behalf of Settling Federal Agencies, shall deposit the amount requested into the NTCRA Trust Fund as soon as reasonably practicable after receipt of the Additional Funding Request, in accordance with the procedures described in Paragraph 63 herein. In the event the payments required by this Paragraph are not made within forty-five (45) days after receipt of any Additional Funding Request, interest on such payments shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the date of receipt of the trustee's request for payment of the Additional Funding Request and accruing through the date of the payment.

b. In the event that the NTCRA Trust Fund suffers any losses due to actions of the trustee, Respondents shall attempt to recover such losses from the trustee pursuant to remedies available under the NTCRA Trust Agreement in the first instance, but thereafter, the Parties agree that the sole mechanism for recouping any remaining losses to the NTCRA Trust Fund shall, to the extent necessary to fund remaining Work under this Settlement Agreement, be through an Additional Funding Request. No objection to such an Additional Funding Request may be based on allegations that Respondents were negligent in their selection of the trustee, provided that the selected trustee was approved by EPA pursuant to Paragraphs 65 or 67 of this Settlement Agreement.

74. If Settling Federal Agencies present objections to an Additional Funding Request, as described in the preceding paragraph, then Respondents and Settling Federal Agencies shall attempt informally to resolve the dispute within thirty (30) days from the date the objections are presented to Respondents (“Informal Resolution Period”). Respondents shall make their Project Coordinator available to meet with the Parties and/or to provide information relevant to such negotiations upon request. If the dispute cannot be resolved within the thirty (30) day Informal Resolution Period, then Settling Federal Agencies shall have the right to reduce any portion of the Additional Funding Request to the extent that Settling Federal Agencies can establish that expenditures were not made in accordance with the requirements of Paragraph 66 herein, that there is insufficient documentation to show whether or not expenditures were made in accordance with the requirements of Paragraph 66 herein, or that there was fraud, misrepresentation, or bad faith in the performance of the Work performed to date. Fraud, misrepresentation, or bad faith may be established by a showing that a specific expenditure was so excessive and outside ordinary market prices and practices that it overcomes the presumption of good faith in the performance of work being overseen by EPA. Mere inefficiency in performance of the Work or mere failure to obtain a competitive or market price shall not by itself be sufficient to establish fraud, misrepresentation or bad faith. The collective amount of any such challenged expenditures shall be referred to as the “Objection Amount.” As soon as reasonably practicable after the conclusion of the Informal Resolution Period, the United States, on behalf of Settling Federal Agencies, shall, subject to the limitations specified in Paragraph 76 herein, deposit the uncontested portion of the Additional Funding Request (*i.e.*, the total amount of the Additional Funding Request minus the Objection Amount) into the NTCRA Trust Fund, in accordance with the procedures described in Paragraph 63 herein. If such payment is not made by Settling Federal Agencies within forty-five (45) days after the conclusion of the Informal Resolution Period, interest on such payment shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the last day of the Informal Resolution Period and accruing through the date of payment.

75. Following completion of the NTCRA, any money remaining in the NTCRA Trust Fund that is attributable to Respondents’ contributions to the NTCRA Trust Fund (including income of Permitted Investments on such amount), shall be returned to Respondents in accordance with the terms of the NTCRA Trust Agreement. Following completion of the NTCRA, any money remaining in the NTCRA Trust Fund that is attributable to contributions by Settling Federal Agencies (including income on Permitted Investments on such amount) shall only be applied to credit the further liability of Settling Federal Agencies, if any, for EPA’s reserved claims at the Site. Upon agreement by EPA and Settling Federal Agencies, such money shall be deposited in the Nuclear Metals Superfund Site Special Account within the Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site.

76. Notwithstanding any other provision of this Settlement Agreement, nothing herein shall be construed to require the United States, on behalf of Settling Federal Agencies, to make more than \$73,500,000 (seventy-three million five hundred thousand dollars) in total payments to the NTCRA Trust Fund (exclusive of income on Permitted Investments), nor to require

Respondents to make more than \$1,500,000 (one million five hundred thousand dollars) in total payments to the NTCRA Trust Fund (exclusive of income on Permitted Investments). In the event that Settling Federal Agencies have presented an objection to an Additional Funding Request that was not resolved during the Informal Resolution Period, the \$73,500,000 (seventy-three million five hundred thousand dollars) ceiling on total Settling Federal Agency payments shall be reduced by the Objection Amount, as those terms are described in Paragraph 74 herein. In the event that any Additional Funding Request asks Settling Federal Agencies or Respondents to make additional contributions that would result in total payments exceeding these amounts, Settling Federal Agencies and Respondents shall be required to make the portion of those payments that will not exceed a total of \$73,500,000 (seventy-three million five hundred thousand dollars) (as adjusted by any Objection Amount) and \$1,500,000 (one million five hundred thousand dollars), respectively, in accordance with Paragraphs 72 through 74 herein. In addition, in the event an Additional Funding Request is presented that exceeds these amounts, Respondents, EPA, and Settling Federal Agencies shall immediately commence negotiations to address the payment of costs for the most current Revised Cost Estimate that are not addressed by this Settlement Agreement. If such negotiations prove necessary, to the extent that the NTCRA Trust Fund has suffered any unrecovered losses due to actions of the trustee referenced in Paragraph 73.b herein, Settling Federal Agencies will not contend that Respondents' share of the costs that are the subject of the negotiations should be increased based on allegations that Respondents were negligent in their selection of the trustee, provided that the selected trustee was approved by EPA pursuant to Paragraphs 65 or 67 of this Settlement Agreement.

77. If either Respondent fails to make timely payments into the NTCRA Trust Fund of the amounts required of the Respondent under Paragraphs 65 and 72, within forty-five (45) days after such Respondent fails to make such timely payments, the other Respondent shall pay the unpaid amount due from the Respondent that has not submitted its payment. The failure of either Respondent to pay for its share of the necessary expenses of Respondents under this Settlement Agreement, shall not excuse timely completion of any obligation under this Settlement Agreement (except as provided in Section XVIII (Force Majeure) regarding the failure of Settling Federal Agencies to make payments to the NTCRA Trust Fund in accordance with Section XVI (Trust Fund; Additional Payments) and Paragraph 63), and shall subject only the non-paying Respondent to stipulated penalties hereunder, provided the other Respondent makes the payments required pursuant to this Paragraph.

XVII. DISPUTE RESOLUTION

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

79. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within seven (7) days of such action, unless the objection(s) has/have been resolved

informally. Notwithstanding the preceding sentence, if Respondents contest payment of any Future Response Costs pursuant to Paragraph 61, Respondents shall notify EPA in writing of their objection(s) within thirty (30) days of receipt of a bill issued in accordance with Paragraph 59. EPA and Respondents shall have seven (7) days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

80. Any agreement reached by Respondents and EPA pursuant to this Section shall be in writing and shall, upon signature by Respondents and EPA, be incorporated into and become an enforceable part of this Settlement Agreement. If Respondents and EPA are unable to reach an agreement within the Negotiation Period, the Director of OSRR, EPA Region 1, will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVIII. FORCE MAJEURE

81. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance. Notwithstanding the foregoing, excusable delay under the provisions of this Paragraph for Respondents' failure to comply with any interim or final time deadline required under this Settlement Agreement shall exist due to the failure of (i) Settling Federal Agencies to make payments to the NTCRA Trust Fund in accordance with Section XVI (Trust Fund; Additional Payment) and Paragraph 63, but only for the period of time by which the federal payment is delayed, or (ii) an insurer to bind the policy described in the first sentence of Paragraph 118, but only for the period of time by which binding of the policy is delayed. Under no circumstances can Respondents be required to perform any work under this Settlement Agreement for which funds are not available in the NTCRA Trust Fund, provided that Respondents have paid into the NTCRA Trust Fund all funding requests required of them under this Settlement Agreement.

82. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within 24 hours of when Respondents first knew that the event might cause a delay. Within three (3) days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the

delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

83. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XIX. STIPULATED PENALTIES

84. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 85 and 86 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVIII (*Force Majeure*). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any plan approved under this Settlement Agreement in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

85. Stipulated Penalty Amounts - Work. The following stipulated penalties shall accrue per violation per day for any noncompliance except those identified in Paragraph 86:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$3,000	31st day and beyond

86. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate monthly reports pursuant to Paragraph 40:

Penalty Per Violation Per Day
\$500

Period of Noncompliance
1st day and beyond

87. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 98 of Section XXI, Respondents shall be liable for a stipulated penalty in the amount of \$500,000.

88. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue with respect to: 1) a deficient submission under Section VIII (Work to Be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and 2) a decision by the Director of OSRR, EPA Region 1, under Paragraph 80 of Section XVII (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 in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate failures to comply with the requirements of this Settlement Agreement.

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

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

(For Delivery by First Class Mail)
U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

(For Delivery by Overnight Mail)
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Each payment shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID 01-7D, the EPA Docket Number CERCLA-01-2011-004, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 59.c.

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

92. Penalties shall continue to accrue during any dispute resolution period, but need be paid only if the dispute is resolved by an agreement which provides for the payment of penalties or by a decision favorable to EPA issued in accordance with Paragraph 80. In such instances, accrued penalties shall be paid to EPA within fifteen (15) days of the effective date of the agreement or the receipt of EPA's decision.

93. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest thereon. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 89. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 98 of Section XXI (Reservation of Rights by EPA). 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.

XX. COVENANTS BY EPA

94. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work completed under this Settlement Agreement and for Past Response Costs, and Future Response Costs required under this Settlement Agreement, not exceeding the cost ceilings specified in Paragraph 76. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs required from Respondents under Section XV (Payment of Response Costs) of this Settlement Agreement and any Interest or Stipulated Penalties that may accrue for failure to pay Past Response Costs as required by Sections XV (Payment of Response Costs) and XIX (Stipulated Penalties) of this Settlement Agreement. This

covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV (Payment of Response Costs). Respondents are not released from liability, if any, for the performance of the Work or payment of Future Response Costs that exceed the cost ceilings specified in Paragraph 76 herein. This covenant not to sue extends only to Respondents and does not extend to any other person.

95. In consideration of the payments that will be made by Settling Federal Agencies under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to take administrative action against Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work completed under this Settlement Agreement and for Past Response Costs and Future Response Costs required under this Settlement Agreement, not exceeding the cost ceilings specified in Paragraph 76. This covenant shall take effect upon receipt by EPA of the Past Response Costs required from Settling Federal Agencies under Section XV (Payment of Response Costs) of this Settlement Agreement and any Interest that may accrue for failure to pay Past Response Costs as required by Sections XV (Payment of Response Costs) of this Settlement Agreement. This covenant is conditioned upon the complete and satisfactory performance by Settling Federal Agencies of their obligations under this Settlement Agreement. Settling Federal Agencies are not released from liability, if any, for the payment of costs for Work or Future Response Costs that exceed the cost ceilings specified in Paragraph 76 herein. This covenant extends only to Settling Federal Agencies and does not extend to any other person.

XXI. RESERVATIONS OF RIGHTS BY EPA

96. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents and Settling Federal Agencies in the future to perform additional activities pursuant to CERCLA or any other applicable law.

97. The covenants set forth in Section XX (Covenants by EPA) above do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents and Settling Federal Agencies with respect to all other matters, including, but not limited to:

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

- b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site;
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site; and
- h. liability for costs of the Work that exceed the cost ceilings specified in Paragraph 76.

98. Work Takeover.

- a. In the event EPA determines that Respondents have (1) ceased implementation of any portion of the Work, or (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Except in potential endangerment situations where EPA determines that Respondents are implementing the Work in a manner which may cause an endangerment to human health or the environment, any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondents a period of ten (10) days within which to remedy the circumstances giving rise to EPA's issuance of such notice.
- b. If, after expiration of the ten-day notice period specified in Paragraph 98.a, Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 98.b.
- c. Respondents may invoke the procedures set forth in Section XVII (Dispute Resolution), to dispute EPA's implementation of a Work Takeover under Paragraph 98.b. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 98.b until the earlier of (1) the date that Respondents remedy,

to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Section XVII (Dispute Resolution) requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any money in the NTCRA Trust Fund in accordance with the provisions of Paragraph 7 of the NTCRA Trust Agreement.

99. 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. COVENANTS BY RESPONDENTS AND SETTLING FEDERAL AGENCIES

100. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Commonwealth of Massachusetts 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, Past Response Costs, or Future Response Costs.

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 97.b., 97. c. and 97.e. to 97.h., but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

101. The covenants set forth in Paragraph 100 do not pertain to any matters other than those expressly identified therein. Respondents reserve, and this Settlement Agreement is without prejudice to, all rights against Settling Federal Agencies with respect to all other matters, including but not limited to any claims arising from the off-site disposal or on-site reuse of materials used and/or wastes generated during the NTCRA.

102. EPA and Settling Federal Agencies agree that Respondents have not and do not admit to any future generator liability arising from or in connection with the handling, processing and off-site disposal or on-site reuse of materials used and/or waste generated during the NTCRA.

103. Specifically with respect to off-site disposal of Waste Material, Respondents do not concede that they have or will have liability relating to off-site disposal.

104. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 107, 111, 112, 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law with respect to the Work, Past Response Costs and Future Response Costs as defined herein. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

105. The covenants set forth in Paragraph 104 do not pertain to any matters other than those expressly identified therein. Settling Federal Agencies reserve, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including but not limited to any claims arising from the off-site disposal or on-site reuse of materials used and/or wastes generated during the NTCRA.

106. EPA and Respondents agree that Settling Federal Agencies have not and do not admit to any future generator liability arising from or in connection with the handling, processing and off-site disposal or on-site reuse of materials used and/or waste generated during the NTCRA.

107. Specifically with respect to off-site disposal of Waste Material, Settling Federal Agencies do not concede that they have or will have liability relating to off-site disposal.

108. Nothing in this Settlement 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).

109. Respondents agree not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XXIII. OTHER CLAIMS

110. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

111. Except as expressly provided in Section XX (Covenants by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

112. 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; ABSENCE OF ALLOCATION

113. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. § 9613(f)(2) and 9622(h)(4), and that Respondents and Settling Federal Agencies are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs.

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

c. Nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

114. Nothing in this Settlement Agreement shall be construed as an indication that the Parties hereto have agreed to an allocation as between themselves, either under CERCLA Section 113, 42 U.S.C. § 9613, or otherwise, of any costs incurred or to be incurred in connection with the Site other than costs relating to the Work, Past Response Costs, or Future Response Costs. Each Party expressly acknowledges that the commitments undertaken pursuant to this Settlement Agreement are without prejudice to any position that any Party may take in the course of further litigation or discussions regarding contribution for costs other than costs for the Work, Past Response Costs and Future Response Costs required by this Agreement, up to the cost ceilings specified in Paragraph 76 herein, and without admission that any particular allocation is appropriate.

XXV. INDEMNIFICATION

115. Respondents shall indemnify, save and hold harmless the United States (with the exception of Settling Federal Agencies) its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States (with the exception of Settling Federal Agencies) all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

117. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of the Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of the Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVI. INSURANCE

118. Within seven (7) days of Settling Federal Agencies making payment to the NTCRA Trust Fund in accordance with Paragraph 63, Respondents shall secure a contractor controlled insurance program wrap up policy with limits of \$50,000,000 providing commercial general liability, pollution liability, contractor's pollution liability, professional liability and site pollution incident legal liability coverage which will respond, among other things, to claims for bodily injury, property damage and cleanup costs arising on or off the Site out of the performance of the Work by all contractors or arising out of a pollution incident (as defined in such policy) whether as a result of contractor or third-party activity or an "act of God." The policy shall name the United States as an additional insured. At least seven days prior to commencing any on-site work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, automobile insurance with limits of one million dollars, combined single limit, naming

the United States as an additional insured. Within the same time period, Respondents shall provide EPA with certificates of each such insurance and upon request a copy of each insurance policy. Respondents shall submit such certificates and upon request copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVII. FINANCIAL ASSURANCE

119. Following the Approval of the NTCRA Trust, EPA's receipt of written confirmation from the trustee of the NTCRA Trust Fund that all payments required by Paragraphs 63 and 65 of this Settlement Agreement have been made shall satisfactorily demonstrate to EPA that the Respondents have met the financial assurance requirements for the estimated costs of the Work to be performed by the Respondents under this Settlement Agreement. Thereafter, until Respondents' receipt of EPA's notification pursuant to Section XXX (Notice of Completion of Work) or until the cost ceilings under Paragraph 76 have been reached, EPA's receipt of written confirmation from the trustee of the NTCRA Trust Fund that payments required by Paragraphs 65, 72 and 73 have been made shall satisfactorily demonstrate to EPA that Respondents continue to meet the financial assurance requirements for any Revised Cost Estimate of the Work to be performed by Respondents under this Settlement Agreement.

XXVIII. MODIFICATIONS

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

121. If Respondents seek permission to deviate from any approved work plan or schedule or Statement of Work, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 36

122. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by

this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXIX. NOTICES AND SUBMISSIONS

123. Whenever, under the terms of this Settlement Agreement, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. As directed by EPA, electronic transmission may be used for notices and submissions. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

As to EPA:

Melissa Taylor
Remedial Project Manager
EPA Region 1
5 Post Office Square, Suite 100
Mail Code OSRR 07-4
Boston, MA 02109-3912
Taylor.Melissag@epamail.epa.gov

As to the Commonwealth:

Site Manager
Nuclear Metals Site
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108

As to the Respondents:

Jamieson M. Schiff, Esq.
Textron Inc.
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As to the Settling Federal Agencies:

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XXX. NOTICE OF COMPLETION OF WORK

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

XXXI. PUBLIC COMMENT

125. Final acceptance by EPA of Section XV (Payment of Response Costs) of this Settlement Agreement shall be subject to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all or part of Section XV (Payment of Response Costs) of this Settlement Agreement if comments received disclose facts or considerations that indicate that Section XV (Payment of Response Costs) of this Settlement Agreement is inappropriate, improper or inadequate. Otherwise, Section XV (Payment of Response Costs) shall become effective when EPA issues notice to Respondents and Settling Federal Agencies that public comments received, if any, do not require EPA to modify or withdraw from Section XV (Payment of Response Costs) of this Settlement Agreement.

XXXII. ATTORNEY GENERAL APPROVAL

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

XXXIII. INTEGRATION/APPENDICES

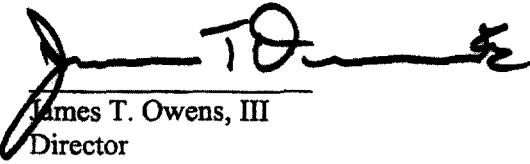
127. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: Appendix A is the Action Memorandum; Appendix B is a map of the Site; Appendix C is the SOW; and Appendix D is the form of the NTCRA Trust Agreement.

XXXIV. EFFECTIVE DATE

128. This Settlement Agreement shall be effective when EPA issues notice to Respondents and Settling Federal Agencies that public comments received, if any, do not require EPA to modify or withdraw from Section XV (Payment of Response Costs) of this Settlement Agreement. The undersigned representative(s) of Respondents and Settling Federal Agencies certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Parties they represent to this document.

Administrative Settlement Agreement and Order on Consent
EPA Docket No. CERCLA-01-2011-004
Nuclear Metals, Inc. Superfund Site, Concord, MA

It is so ORDERED and AGREED this 20~~th~~ day of June, 2011.

BY: 
James T. Owens, III
Director
Office of Site Remediation & Restoration
Region 1
U.S. Environmental Protection Agency

DATE: 6/20/11

**Administrative Settlement Agreement and Order on Consent
EPA Docket No. CERCLA-01-2011-004
Nuclear Metals, Inc. Superfund Site, Concord, MA**

IT IS SO AGREED,

Name of Settling Federal Agency: United States Army

By:

David H. Boulet
for Allison A. Polchek *Acting Chief,
Env'tl Law Div.*

Title:

Acting Chief, Environmental Law Division

Date:

22 June 2011

Administrative Settlement Agreement and Order on Consent
EPA Docket No. CERCLA-01-2011-004
Nuclear Metals, Inc. Superfund Site, Concord, MA

IT IS SO AGREED,

Name of Settling Federal Agency:

Department of Energy

By:

Steven R. Miller

Title:

Deputy AEC for Environment

Date:

6/24/11

Administrative Settlement Agreement and Order on Consent
EPA Docket No. CERCLA-01-2011-004
Nuclear Metals, Inc. Superfund Site, Concord, MA

IT IS SO AGREED,

Name of Respondent:

Textcon Inc.

By:

[Signature]

Title:

Deputy General Counsel &
Assistant Secretary

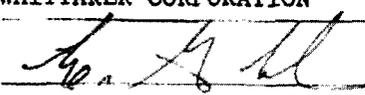
Date:

12/13/2011

OK
[Signature]
1/13/11

Administrative Settlement Agreement and Order on Consent
EPA Docket No. CERCLA-01-2011-004
Nuclear Metals, Inc. Superfund Site, Concord, MA

IT IS SO AGREED,

Name of Respondent: WHITTAKER CORPORATION
By: 
Title: Eric G. Lardiere, President and Secretary
Date: January 10, 2011