

SEVEN OUT TANK PRP GROUP AGREEMENT

The undersigned parties having agreed to join a group of entities identified by the U.S. Environmental Protection Agency ("EPA") as potentially responsible parties ("PRPs") for investigation and removal actions, and resolution of other claims, concerning the Seven Out Tank Site in Waycross, Georgia (the "Site"), hereby agrees to the allocation and other terms set forth below in this Seven Out Tank PRP Group Agreement (the "Agreement") to fund the removal action at the Site, reimburse EPA for past response costs, and comply with the Administrative Settlement Agreement and Order on Consent for Removal Action ("AOC") discussed herein. Therefore, the undersigned PRPs agree as follows:

1. Except as specifically provided below, the terms of the AOC, a copy of which is attached hereto as Exhibit A, are incorporated herein by reference;
2. Definitions:
 - a. The "PRP Group Members" shall mean the PRPs that have executed this Agreement and paid their Expected Individual Costs;
 - b. The "AOC" refers to the Administrative Settlement Agreement and Order on Consent for Removal Action dated 6-18 2008;
 - c. "Site" shall mean the Seven Out Tank Superfund Site, encompassing four contiguous parcels located at 901 Francis Street and Three Folks Street in Waycross, Ware County, Georgia, and more particularly described in Appendix C of the AOC;
 - d. "Removal Action" shall mean the work, described in Paragraph 15 of the AOC, to be performed at the Site;
 - e. "Removal Action Costs" shall mean the cost to fund performance of the Removal Action;
 - f. "Response Action" shall mean the work performed at the Site by EPA from January 2005 to July 2007;
 - g. "Past Response Action Costs" shall mean those costs, as defined in the AOC, incurred by EPA or the U.S. Department of Justice on behalf of EPA, paid at or in connection with the Site through July 11, 2007;
 - h. "EPA Oversight Costs" shall mean the costs to be incurred by EPA to provide oversight of the Removal Action;
 - i. "Trust Costs" shall mean the cost to engage a trustee to maintain the trust account, to which the PRP Group Members shall pay their Expected Oversight Costs and from which any Removal Action Costs and EPA Oversight Costs will be paid;
 - j. "Costs" shall refer to the aggregate of Past Response Action Costs, Removal Action Costs, Trust Costs, and EPA Oversight Costs;

k. "Schedule" shall mean the schedule attached hereto detailing the Percentage Allocation and Expected Individual Costs for each PRP Group Member;

l. "Percentage Allocation," as presented in the Schedule, shall mean that percentage of Costs for which each individual PRP Group Member is responsible;

m. "Expected Individual Costs," as presented in the Schedule, shall mean the amount due from each PRP Group Member at the time of execution of this Agreement, corresponding to that PRP Group Member's Percent Allocation multiplied by \$946,969, an estimated amount intended merely to be a conservative (meaning high) estimate of the Costs;

3. The undersigned PRP Group Members have committed to signing the AOC by June 18, 2008 and therefore have committed to paying the Costs described herein. It is anticipated that the Removal Action will be commenced in the third quarter of calendar year 2008.

4. The PRP Group Members agree to the Percentage Allocation assigned to them in the attached Schedule. Furthermore, each PRP Group Member commits that it has the ability to pay its Percentage Allocation of the Costs in a timely manner.

5. The PRP Group Members agree that if any funds remaining in the trust fund after receipt of EPA's Notice of Completion of Work, as set forth in Paragraph 85 of the AOC, those funds be refunded amongst the PRP Group Members from the trust account for which U.S. Bank will serve as trustee according to each PRP Group Member's Percentage Allocation.

6. If the Costs are greater than \$946,969, the difference will be allocated amongst the PRP Group Members according to each PRP Group Member's Percentage Allocation. If any party fails to fund its Percentage Allocation of any Costs greater than \$946,969, the resulting "orphan" share shall be allocated among the remaining PRP Group Members pro rata according to each PRP Group Member's Percentage Allocation multiplied by the divisor of 100% and the sum of Percentage Allocations of the remaining PRP Group Members. For example, if a PRP Group Member that has accepted a Percentage Allocation of 5% fails to fund projected shortfall, a PRP Group Member that had a Percentage Allocation of 10% will be required to fund 10.5263% of the project shortfall ($100 \div 95 = 1.05263$, multiplied by 10%) and a PRP Group Member that had a Percentage Allocation of 5% will be required to fund 5.2631% of the projected shortfall ($100 \div 95 = 1.05263$, multiplied by 5%). If a PRP Group Member fails to fund a projected shortfall in accordance with this Agreement, that PRP Group Member shall be deemed to have waived its protection from contribution under the AOC as it relates to the PRP Group Members that fund the Costs in accordance with this Agreement and shall waive any refund available pursuant to Paragraph 5 above.

7. This Agreement may be executed in counterparts by the PRP Group Members; provided, however, the Agreement shall only be effective with regard to the PRP Group Members who execute the Agreement and pay their Expected Individual Costs.

8. Upon execution, the PRP Group Members shall forward the executed Agreement and payment of that PRP Group Member's Expected Individual Costs to Richard L. Maguire as Chair of the PRP Group.

9. Payment of the Expected Individual Costs will be made by either check, payable to Rogers Towers Trust Account, or by wire, as follows:

WACHOVIA BANK, NATIONAL ASSOCIATION
(WACHOVIA CORPORATE ACCOUNT)
ABA# 063000021
FOR THE ACCOUNT OF ROGERS TOWERS, P.A.
ACCOUNT # 2189801542330
REFERENCE: C0818-44438 RLM
NOTIFY: LORI CONNELL (904) 346-5703

10. The Chair shall hold all AOCs executed by the PRPs and payments of Expected Individual Costs, in escrow until payment, executed AOCs, and executed Agreements have been received from all PRP Group Members.

11. Upon receipt of all payments, executed AOCs, and executed Agreements, the Chair of the PRP Group shall forward the executed AOCs to the EPA in accordance with the AOC, shall forward payment of \$368,857.96 for Past response Action Costs to the EPA also in accordance with the AOC, and shall transfer the remaining funds to U.S. Bank to be deposited in the trust account, in accordance with the Trust Agreement dated June 12, 2008, a copy of which is attached hereto as Exhibit B, for which U.S. Bank will serve as trustee.

12. Except as provided in Paragraph 6 above, the PRP Group Members waive all rights of contribution and indemnification against other PRP Group Members in connection with the Costs and/or the Site.

13. This Agreement and the AOC reflect the entire agreement between the PRP Group Members. All prior negotiations and agreements, written or oral, are merged into and superseded by this Agreement, which shall not be changed except in writing signed by the PRP Group Members.

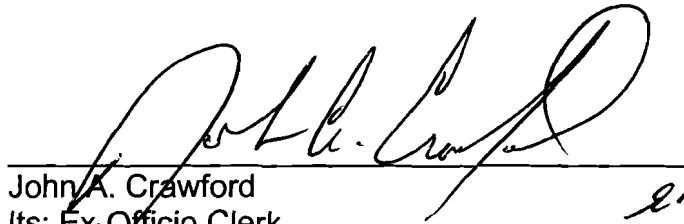
Nassau County Board of County Commissioners
Name of PRP Group Member

By: Marianne Marshall
Marianne Marshall, Chair

Date: June 18, 2008

David A. Hallman, County Attorney
Contact Person for PRP Group Member

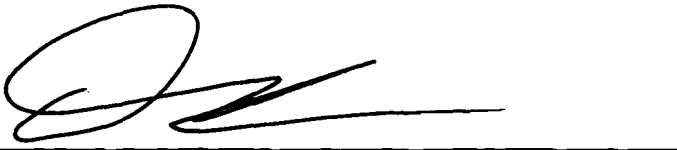
Attest as to Chair's Signature:



John A. Crawford
Its: Ex-Officio Clerk

ESK 6/18/08

Approved as to form by the Nassau County Attorney
Attorney:



David A. Hallman

**Allocation Schedule
Seven Out Tank PRP Group Agreement
Seven Out Tank Superfund Site
Waycross, Georgia**

PRP Group Member	Total Gallons	Percentage Allocation	Share of \$946,969 ¹ (Expected Individual Cost)
Arr-Maz ²	6,018	0.09%	\$852.66
Bold Corporation	337,582	2.53%	\$23,915.07
Broadhurst Environmental	96,300	1.44%	\$13,644.22
Cogen Cleaning Technology, Inc.*	13,200	0.20%	\$1,870.24
Colomer USA (Revlon, Inc.)	557,392	4.17%	\$39,486.90
Doncasters-Effingham	21,384	0.32%	\$3,029.78
Earl Industries* ²	2,200	0.033%	\$311.71
Effingham Power ^{2,4}	--	--	--
Envireneering ³	30,269	0.45%	\$4,288.68
Flocryl Inc.	335,525	5.02%	\$47,538.69
FUJIFILM Hunt Chemicals, U.S.A., Inc.	118,570	0.89%	\$8,399.77
Georgia Pacific	514,270	7.69%	\$72,864.09
Griffin LLC	442,943	6.63%	\$62,758.16
HydroChem*	--	4.50%	\$42,641.55
Kemira Chemicals	37,106	0.56%	\$5,257.34
Kik Georgia, Inc.	89,714	1.34%	\$12,711.08
Lake County Board of County Commissioners	883,935	13.23%	\$125,239.88
McBrayer Trucking ²	3,525	0.03%	\$249.72
MicroFlo (BASF) ²	5,500	0.08%	\$779.26
MOBRO Marine, Inc.	84,951	1.27%	\$12,036.24
Moran Environmental Recovery ²	--	0.03%	\$249.72
MRCX ²	1,000	0.01%	\$141.68
Nassau County Board of County Commissioners	1,514,529	22.66%	\$214,585.28
Nationwide Equipment Rental	16,311	0.18%	\$1,733.26
NuTek* ²	6,996	0.10%	\$991.22
Sam Purdon Generating Station (City of Tallahassee)	19,896	0.15%	\$1,409.48
Savannah Regional Industrial Landfill	287,002	4.29%	\$40,663.73
South Carolina Electric & Gas (SCANA)	873,040	8.71%	\$82,464.15
Southern States, LLC ²	6,800	0.10%	\$963.45
Strong Environmental*	--	10.08%	\$95,477.92
Surface Technology* ⁵	43,478	0.65%	\$6,160.11
Tecumseh Products Company	334,210	2.50%	\$23,676.19
Total Volume Contributed by PRP Group =	6,683,646		

Notes:

* Indicates transporter/broker

¹ [Estimated Cost of Removal Action (\$541,000) + Past Response Costs (\$520,000) + Estimated EPA Oversight Costs (\$54,000) + Cost of Financial Assurance (\$1,500; based on estimate of Trust Account)] - Orphan Share (\$135,482) - Navy share with 35% Premium (\$34,049.50) = \$946,969.

² Denoted PRP Group Members shall pay \$1,000 minimum for buy-in.

³ The "Total Gallons" listed for Envireneering reflects an agreement reached between Envireneering and the Navy. Agreements between Envireneering and other generators are reflected in Envireneering's "Percentage Allocation."

⁴ Per agreement with broker.

⁵ Per agreement with the Navy.

EXHIBIT A

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

SEVEN OUT TANK SITE,
WAYCROSS, WARE COUNTY,
GEORGIA

Arr-Maz Custom Chemicals;
Bold Corporation; Broadhurst
Environmental; City of Tallahassee;
Doncasters, Inc.; Cogen Cleaning
Technology, Inc.; Dupont Crop Protection
(Griffin, LLC); Earl Industries, LLC;
Effingham County Power, LLC;
Environeering, Inc.; Flocryl Inc.;
FUJIFILM Hunt Chemicals U.S.A., Inc.;
Georgia-Pacific, LLC;
HydroChem Industrial Services, Inc.;
Kemira Chemicals, Inc.;
KIK (Georgia) LLC; Lake County Board of
County Commissioners;
McBrayer Trucking;
Micro-Flo Company (BASF);
MOBRO Marine, Inc.;
Moran Environmental Recovery, LLC;
MRCX; Nassau County Board of County
Commissioners; Nationwide Equipment
Company, Inc.; NuTek & Associates, Inc.;
Roux Laboratories, Inc., d/b/a Colomer
USA; Savannah Regional Industrial
Landfill; South Carolina Electric & Gas
(SCANA); Southern States, LLC;
Strong Environmental, Inc.;
Surface Technologies Corporation; and
Tecumseh Products Company,
RESPONDENTS

and

United States Department of the Navy,
SETTLING FEDERAL AGENCY

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

U.S. EPA Region 4
CERCLA Docket Number _____

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

TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS	1
II.	PARTIES BOUND	1
III.	DEFINITIONS	2
IV.	FINDINGS OF FACT	4
V.	CONCLUSIONS OF LAW AND DETERMINATIONS	5
VI.	SETTLEMENT AGREEMENT AND ORDER	6
VII.	DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR	7
VIII.	WORK TO BE PERFORMED	8
IX.	SITE ACCESS	11
X.	ACCESS TO INFORMATION	12
XI.	RECORD RETENTION	13
XII.	COMPLIANCE WITH OTHER LAWS	14
XIII.	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES	14
XIV.	AUTHORITY OF ON-SCENE COORDINATOR	15
XV.	PAYMENT OF RESPONSE COSTS	15
XVI.	DISPUTE RESOLUTION	19
XVII.	FORCE MAJEURE	20
XVIII.	STIPULATED PENALTIES	21
XIX.	COVENANT BY EPA	24
XX.	RESERVATIONS OF RIGHTS BY EPA	24
XXI.	COVENANT NOT TO SUE BY RESPONDENTS	25
XXII.	OTHER CLAIMS	27
XXIII.	CONTRIBUTION	27
XXIV.	INDEMNIFICATION	28
XXV.	INSURANCE	29
XXVI.	FINANCIAL ASSURANCE	29
XXVII.	MODIFICATIONS	31
XXVIII.	NOTICE OF COMPLETION OF WORK	31
XXIX.	PUBLIC COMMENT	32
XXX.	ATTORNEY GENERAL APPROVAL	32
XXXI.	INTEGRATION/APPENDICES	32
XXXII.	EFFECTIVE DATE	32

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"), the United States Department of the Navy ("Settling Federal Agency"), and the entities listed in *Appendix A* ("Respondents"). This Settlement Agreement provides for the performance of a removal action by Respondents and the reimbursement by Respondents and the Settling Federal Agency of certain response costs incurred by the EPA or the United States Department of Justice on behalf of EPA at or in connection with the "Seven Out Tank Site" (the "Site") generally located at 901 Francis Street and Three Folks Street in Waycross, Ware County, Georgia.

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

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

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

II. PARTIES BOUND

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

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

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

III. DEFINITIONS

8. Unless otherwise expressly provided 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 Enforcement Action Memorandum relating to the Site signed on May _____, 2008, by the Director of the Superfund Division, EPA Region 4, the Regional Administrator's delegate. The Action Memorandum is attached as *Appendix B*.

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

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

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

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

f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the EPA or the U.S. Department of Justice on behalf of EPA incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 24 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), and Paragraph 34 (emergency response), and Paragraph 63 (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 July 11, 2007, to the Effective Date.

g. "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.

h. "Interim Response Costs" shall mean all costs, including direct and indirect costs: (i) paid by the EPA or the U.S. Department of Justice on behalf of EPA in connection with the Site between July 11, 2007, and the Effective Date; or (ii) incurred prior to the Effective Date, but paid after that date.

i. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

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

k. "Parties" shall mean EPA, Settling Federal Agency, and Respondents.

l. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the EPA or the U.S. Department of Justice on behalf of EPA paid at or in connection with the Site through July 11, 2007, plus Interest on all such costs through such date.

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

n. "Respondents" shall mean those Parties identified in *Appendix A*.

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

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

q. "Settling Federal Agency" shall mean the United States Department of the Navy.

r. "Site" shall mean the Seven Out Tank Superfund Site, encompassing four contiguous parcels located at 901 Francis Street and Three Folks Street in Waycross, Ware County, Georgia, and more particularly described in *Appendix C*.

s. "State" shall mean the State of Georgia.

t. "Waste Material" shall mean: (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (iv) any "hazardous waste" or "hazardous constituent" under Georgia's Hazardous Waste Management Act, O.C.G.A. § 12-8-62.

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

IV. FINDINGS OF FACT

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

a. The Site is the location of an abandoned tank farm made up of at least 37 tanks surrounded by a low concrete containment wall.

b. The Site has been owned by Seven Out, LLC, a Florida limited liability company, since 2002.

c. From January of 2003 until sometime in 2004, BCX, Inc. ("BCX"), a Georgia corporation, operated a storage and treatment facility for industrial wastewater at the Site.

d. On March 1, 2004, the City of Waycross terminated the facility's permitted connection to the publicly owned treatment works ("POTW").

e. The facility continued to accept wastewater even after its connection to the POTW was severed.

f. When BCX ceased operations at the Site, all of its storage tanks were full, as were four temporary tanks stored on the neighboring property.

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

h. On January 21, 2005, EPA was called in by the State to contain the overflow and spillage of an industrial wastewater/rainwater mixture from open tanks and the secondary containment area at the Site. EPA stabilized the tanks and the secondary containment walls and then pumped, treated and disposed of approximately 350,000 gallons of liquid waste.

i. Sampling and analysis of the waste in the tanks revealed that it contained acetone, benzene, sulfuric acid, and sodium hydroxide, among other corrosive hazardous wastes and hazardous substances listed in Section 302.4 of Title 40 of the Code of Federal Regulations, as referred to in Section 101(14) of CERCLA.

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

k. In its Action Memorandum, EPA has made findings that conditions at the Site pose an imminent and substantial endangerment to the public health or welfare and to the environment and that a delay in action would increase the actual or potential threat to the public and the environment.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

c. Each Respondent 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 Settling Federal Agency is a liable party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

i. Respondents Arr-Maz Custom Chemicals; Bold Corporation; Broadhurst Environmental; City of Tallahassee; Doncasters, Inc.; Dupont Crop Protection (Griffin, LLC); Effingham County Power, LLC; Flocryl Inc.; FUJIFILM Hunt Chemicals U.S.A., Inc.; Georgia-Pacific, LLC; Kemira Chemicals, Inc.; KIK (Georgia) LLC; Lake County Board of County Commissioners; McBrayer Trucking; Micro-Flo Company (BASF); MOBRO Marine, Inc.; MRCX; Nassau County Board of County Commissioners; Nationwide Equipment Company, Inc.; Roux Laboratories, Inc., d/b/a Colomer USA; Savannah Regional Industrial Landfill; South Carolina Electric & Gas (SCANA); Southern States, LLC; Tecumseh Products Company, and the Settling Federal Agency, United States Department of the Navy, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances that ended up at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3).

ii. Respondents Cogen Cleaning Technology, Inc.; Earl Industries, LLC; Environeering, Inc.; HydroChem Industrial Services, Inc.; Moran Environmental Recovery, LLC; NuTek & Associates, Inc.; Strong Environmental, Inc.; and Surface Technologies Corporation, accepted hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

e. The conditions described in Paragraphs 9(h)-(k) 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 Work 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, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Settling Federal Agency and Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

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

11. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 14 days of the Effective Date. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least two days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within seven days of EPA's disapproval.

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

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

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

14. EPA and Respondents shall have the right, subject to Paragraph 12, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA seven days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

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

- a. Removal of Waste Material from all tanks, drums, and other containers on the Site, as well as from the secondary containment area;
- b. Decontamination and/or disposal of all tanks, drums, and other containers on the Site, as well as decontamination of the secondary containment area; and
- c. Disposal of the Waste Material removed from the Site, including any sampling and analysis necessary to determine proper treatment and disposal methods.

16. **Work Plan and Implementation.**

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

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within 20 days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 16(b).

17. Health and Safety Plan. Within 30 days after the Effective Date, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

18. Quality Assurance and Sampling.

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

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

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

19. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondents shall submit a proposal for post-removal site control consistent with Section 300.415(I) 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. Any tank that remains on-Site upon completion of the Work in a condition that meets the definition of a "Permanently Closed" container according to 40 C.F.R. § 112.2, will not require post-removal site controls.

20. Reporting.

a. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 14th day after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

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

21. Final Report. Within 45 days after completion of all Work required by this Settlement Agreement, Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

22. Off-Site Shipments.

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

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

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action. Respondents shall provide the information required by Paragraph 22(a) and 22(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

IX. SITE ACCESS

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

24. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best

efforts to obtain all necessary access agreements within 45 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access, except that no money need be paid to: Seven Out, LLC; BCX, Inc.; or any of the current or former officers, lenders, directors, or investors of either of those entities. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the EPA or the U.S. Department of Justice on behalf of EPA in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

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

X. ACCESS TO INFORMATION

26. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

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

28. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or

information; (d) the name and title of each addressee and recipient; (e) a description of the contents of the document, record, or information; and (f) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

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

XI. RECORD RETENTION

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

31. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such records or documents not previously produced by Respondents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

32. Respondents.

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

of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

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

XII. COMPLIANCE WITH OTHER LAWS

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

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

34. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Region 4 Emergency Response and Removal Branch, (404) 562-8700, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

35. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the OSC at (404) 562-8700 and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of,

reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

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

XV. PAYMENT OF RESPONSE COSTS

37. Payment by Respondents for Past Response Costs.

a. Within 30 days after the Effective Date, Respondents shall pay to EPA three hundred seventy thousand, seven hundred one dollars and thirty cents (\$370,701.30) for Past Response Costs. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") and shall be accompanied by a statement identifying the name and address of the parties making payment, the Site name, the EPA Region, the Site/Spill ID Number (A4FY), and the EPA docket number for this action.

Send EFT to: Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

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

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

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

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

iv. and by electronic mail to acctsreceivable.cinwd@epa.gov.

c. The total amount to be paid by Respondents pursuant to Paragraph 37(a) shall be deposited by EPA in the EPA Hazardous Substance Superfund.

38. Payment by Settling Federal Agency for Past Response Costs.

a. As soon as reasonably practicable after the Effective Date, and consistent with Paragraph 38.b., the United States, on behalf of Settling Federal Agency, shall:

i. Pay to the EPA ten thousand, nine hundred forty-one dollars and seventy cents (\$10,941.70), in reimbursement of Past Response Costs. In the event that payment required by this Paragraph are not made within 120 days of the Effective Date, the United States, on behalf of the Settling Federal Agency, shall pay Interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the Effective Date and accruing through the date of the payment.

ii. The total amount to be paid by Settling Federal Agency pursuant to this Paragraph shall be deposited in the EPA Hazardous Substance Superfund.

iii. If the payment to EPA required by this Paragraph is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the Effective Date,

EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

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

39. Payment by Respondents for Future Response Costs.

a. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a SCORPIOS report, which includes direct and indirect costs incurred by EPA and its contractors. Respondents shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 41 of this Settlement Agreement.

b. Respondents shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referring to the name and address of the parties making payment and EPA Site/Spill ID number A4FY. Respondents shall send the check(s) by overnight or express delivery to:

U.S. Environmental Protection Agency
Region 4 Superfund Payments
Cincinnati Finance Center
Post Office Box 979076
St. Louis, MO 63197-9000

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

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

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

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

iv. and by electronic mail to acctsreceivable.cinwd@epa.gov.

d. The total amount to be paid by Respondents pursuant to Paragraph 39(a) shall be deposited by EPA in the EPA Hazardous Substance Superfund.

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

41. Respondents may contest payment of any Future Response Costs billed under Paragraph 39 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 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 39. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Georgia and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 39. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in

Paragraph 39. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

42. Payment by Settling Federal Agency for Future Response Costs.

a. The United States, on behalf of the Settling Federal Agency, and consistent with Paragraph 38.b. above, shall pay twenty-three thousand, one hundred seven dollars and seventy-nine cents (\$23,107.79) to the Respondents, which includes payment of the Settling Federal Agency's allocated share of Future Response Costs, plus a small premium payment to account for the risk that the Removal Action will cost more than anticipated.

b. Payment shall be made as soon as reasonably practicable after the Effective Date of this Settlement Agreement.

c. Payment shall be made by Electronic Funds Transfer to the account of The Seven Out Tank Site Trust Fund in accordance with generally accepted electronic transfer business practices and procedures.

d. On the date that The Seven Out Tank Site Trust Fund receives the payment made on behalf of the Settling Federal Agency, the trustee of that fund shall notify the Settling Federal Agency and EPA, in writing, that the payment has been received.

e. The United States, on behalf of the Settling Federal Agency, shall not be responsible for any Stipulated Penalties, as described in Section XVIII.

XVI. DISPUTE RESOLUTION

43. 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.

44. 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 30 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 60 days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

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

XVII. FORCE MAJEURE

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

47. 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 four days of when Respondents first knew that the event might cause a delay. Within seven days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

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

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

XVIII. STIPULATED PENALTIES

49. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 50 and 51 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

50. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 50(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 14th day
\$1,000.00	15th through 30th day
\$1,500.00	31st day and beyond

b. Compliance Milestones:

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

51. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 20 and 21:

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

52. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 63 of Section XX, Respondents shall be liable for a stipulated penalty in the amount of fifty-five thousand dollars (\$55,000.00).

53. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Division Director level or higher, under Paragraph 45 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

54. 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.

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

U.S. Environmental Protection Agency
Region 4 Superfund Payments
Cincinnati Finance Center
Post Office Box 979076
St. Louis, MO 63197-9000

and shall refer to the name and address of the parties making payment, the EPA Docket Number, and the EPA Site/Spill ID number (A4FY). Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to:

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

- b. Karen Coleman
Enforcement Project Manager
SD-SEIMB, 11th Floor
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
- c. Paula V. Painter
Environmental Protection Specialist
SD-SEIMB, 11th Floor
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

d. and by electronic mail to acctsreceivable.cinwd@epa.gov.

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

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

58. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 55. 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 Section XX, Paragraph 63. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT BY EPA

59. Covenant Not to Sue Respondents. 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, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XV of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV and XVIII 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. This covenant not to sue extends only to Respondents and does not extend to any other person.

60. Covenant for Settling Federal Agency by EPA. Except as specifically provided in Section XX (Reservations of Rights by EPA), EPA covenants not to take administrative action against Settling Federal Agency pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all payments required by Paragraph 38. This covenant is conditioned upon the satisfactory performance by Settling Federal Agency of its obligations under this Agreement. This covenant extends only to Settling Federal Agency and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

61. 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 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 in the future to perform additional activities pursuant to CERCLA or any other applicable law.

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

- a. claims based on a failure by Respondents of Settling Federal Agency 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; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

63. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the EPA or the U.S. Department of Justice on behalf of EPA in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

64. 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 Georgia 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.

Except as provided in Paragraph 67 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 62(b), (c), and (e)-(g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

65. None of the covenants granted by the preceding Paragraph shall take effect with respect to the Settling Federal Agency until the date described in Paragraph 42, when the Respondents receive payment of Future Response Costs from the United States, on behalf of the Settling Federal Agency.

66. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

67. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

68. This waiver in Paragraph 67 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. That such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6972;

b. That such person has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site;

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

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

XXII. OTHER CLAIMS

69. 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.

70. Except as expressly provided in Section XXI, Paragraph 67 (De Micromis Waiver) and Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

71. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

72. Contribution.

a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Federal Agency and Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for

“matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work, 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 Settling Federal Agency and 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. Except as provided in Section XXI, Paragraph 67 of this Settlement Agreement (Non-exempt De Micromis Waiver), 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).

XXIV. INDEMNIFICATION

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

74. 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.

75. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of

Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. Any waiver or indemnification granted by this Paragraph shall not take effect with respect to the Settling Federal Agency until the date described in Paragraph 42, when the Respondents receive payment of Future Response Costs from the United States, on behalf of the Settling Federal Agency.

XXV. INSURANCE

76. At least seven days prior to commencing any on-Site work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit, naming EPA as an additional insured. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificates and 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.

XXVI. FINANCIAL ASSURANCE

77. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security for the benefit of EPA in the amount of five hundred forty-one thousand, nine hundred twenty dollars (\$541,920) in one or more of the following forms:

- a. A surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. One or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;
- c. A trust fund administered by a trustee acceptable in all respects to EPA;

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

e. A written guarantee to pay for or perform the Work provided by one or more parent companies of Respondents, or by one or more unrelated companies that have a substantial business relationship with at least one of Respondents; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. A demonstration of sufficient financial resources to pay for the Work made by one or more of Respondents, which shall consist of a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

78. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 77, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

79. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 77(e) or 77(f) of this Settlement Agreement, Respondents shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of \$541,920 for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondent or guarantor to EPA by means of passing a financial test.

80. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 77 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a

proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondents may seek dispute resolution pursuant to Section XVI (Dispute Resolution). Respondents may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

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

XXVII. MODIFICATIONS

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

83. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 82.

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

XXVIII. NOTICE OF COMPLETION OF WORK

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

XXIX. PUBLIC COMMENT

86. 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 of this Settlement Agreement if comments received disclose facts or considerations that indicate that Section XV of this Settlement Agreement is inappropriate, improper or inadequate. Otherwise, Section XV shall become effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XV of this Settlement Agreement.

XXX. ATTORNEY GENERAL APPROVAL

87. The Attorney General or his/her 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).

XXXI. INTEGRATION/APPENDICES

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

- a. *Appendix A*, List of Respondents
- b. *Appendix B*, Enforcement Action Memorandum
- c. *Appendix C*, Legal Description of Site Property

XXXII. EFFECTIVE DATE

89. This Settlement Agreement shall be effective on the day the Settlement Agreement is signed by the Regional Administrator or his/her delegate, with the exception of Section XV (Payment of Response Costs), which shall be effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XV of this Settlement Agreement.

[SIGNATURES ON THE FOLLOWING PAGES]

In the Matter of the Seven Out Tank Superfund Site
Waycross, Ware County, Georgia

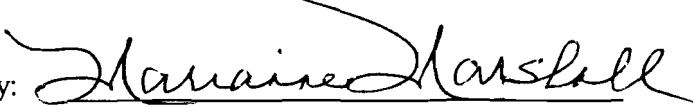
ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

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

FOR RESPONDENT:

Name of Respondent: Nassau County Board of County Commissioners

It is so AGREED this 18th day of June, 2008.

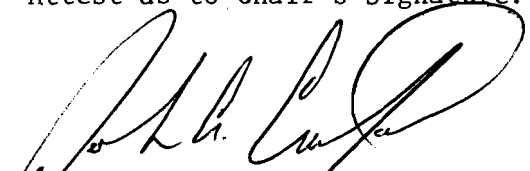
By: 
(Signature)

Printed Name: Marianne Marshall

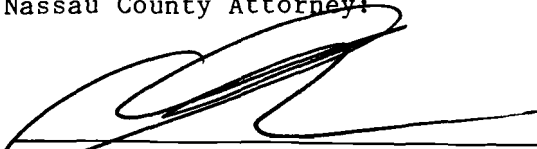
Title: Chair

Address: Post Office Box 1010
Fernandina Beach, FL 32035

Attest as to Chair's Signature:


John A. Crawford
Its: Ex-Officio Clerk *edc/6/18/08*

Approved as to form by the
Nassau County Attorney:


David A. Hallman

In the Matter of the Seven Out Tank Superfund Site
Waycross, Ware County, Georgia

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

FOR SETTLING FEDERAL AGENCY:

UNITED STATES DEPARTMENT OF THE NAVY

It is so AGREED this _____ day of _____, 2008.

By: _____
(Signature)

Printed Name: _____

Title: _____

Address: _____

In the Matter of the Seven Out Tank Superfund Site
Waycross, Ware County, Georgia

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

It is so ORDERED and AGREED this _____ day of _____, 2008.

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

Appendix A
List of Respondents

Arr-Maz Custom Chemicals
Bold Corporation
Broadhurst Environmental
City of Tallahassee
Cogen Cleaning Technology, Inc.
Doncasters, Inc.
Dupont Crop Protection (Griffin, LLC)
Earl Industries, LLC
Effingham County Power, LLC
Environeering, Inc.
Flocryl Inc.
FUJIFILM Hunt Chemicals U.S.A., Inc.
Georgia-Pacific, LLC
HydroChem Industrial Services, Inc.
Kemira Chemicals, Inc.
KIK (Georgia) LLC
Lake County Board of County Commissioners
McBrayer Trucking
Micro-Flo Company (BASF)
MOBRO Marine, Inc.
Moran Environmental Recovery, LLC
MRCX
Nassau County Board of County Commissioners
Nationwide Equipment Company, Inc.
NuTek & Associates, Inc.
Roux Laboratories, Inc., d/b/a Colomer USA
Savannah Regional Industrial Landfill
South Carolina Electric & Gas (SCANA)
Southern States, LLC
Strong Environmental, Inc.
Surface Technologies Corporation
Tecumseh Products Company
United States Department of the Navy

Appendix B
Enforcement Action Memorandum

Appendix C
Legal Description of Site Property

The following four parcels together make up the Seven Out Tank Superfund Site:

PARCEL ONE (WA11-06-012): All that tract or parcel of land situate, lying and being in the City of Waycross, Ware County, Georgia, and more particularly described as follows: All of lot No. 3 of Block Number 84 of the City of Waycross, Ware County, Georgia, as laid out and platted by the S.F. & W. Railroad Company, all as shown by the plat of survey recorded in the office of the Clerk of Ware Superior Court in Plat Book "A," Page 42, and fronting on Folks Street a distance of 100 feet and extending back of uniform width in a westerly direction 150 feet. (Deed Reference: Book 39Z at Page 191.)

PARCEL TWO (formerly WA11-06-011, now combined with WA11-06-012): All of that unimproved tract or parcel of land situate, lying and being in the City of Waycross, Ware County, Georgia, same being a part of original lot of land No. 202 in the 8th land District of said State and County, more particularly described as follows: To reach the beginning point start at the southwest corner point of the intersection of Francis and Folks Street; thence run in a westerly direction and along the southern margin of Francis Street a distance of 202.2 feet to a steel pin; thence run in a southerly direction and parallel with Folks Street a distance of 100 feet to a point which is the point of beginning for the realty hereby affected; thence run in an easterly direction and parallel with Francis Street a distance of 50 feet to a point; thence run in a southerly direction and parallel with Folks Street a distance of 100 feet to a point; thence run in a westerly direction and parallel with Francis Street a distance of 50 feet to a point; thence run in a northerly direction and parallel with Folks Street a distance of 100 feet to a point, which point is the place of beginning. This parcel is alternately described as being all of lot No. 4 of Block Number 84 of the City of Waycross, Ware County, Georgia, as laid out and platted by the S.F. & W. Railroad Company, all as shown by the plat of survey recorded in the office of the Clerk of Ware Superior Court in Plat Book "A," Page 42. (Deed Reference: Book 39Z at Page 191.)

PARCEL THREE (WA11-06-009): All the following tract or parcel of land contained in Lot One (1) (also known as Lot "A"), Block Number 128, situated, lying and being in the City of Waycross, Ware County, Georgia, and commencing at the southwest corner of Francis Street and McDonald Street, thence westerly along said Francis Street a distance of 125 feet; thence southerly and parallel with McDonald Street a distance of 200 feet to SCL Railroad right-of-way; thence easterly and parallel with Francis Street along SCL Railroad right-of-way a distance of 125 to a point; thence northerly and parallel with McDonald Street a distance of 200 feet to Francis Street at the point of beginning. This parcel houses

the building formerly used by the Waycross Coca-Cola Bottling Company. (Deed Reference: Book 40D at Page 145.)

PARCEL FOUR (WA11-06-020 and WA11-06-010): All that tract or parcel of land situate, lying and being in the City of Waycross, Ware County, Georgia, and more particularly described as follows: Beginning at the southwest corner of the intersection of Francis Street and McDonald Street (closed) and run thence south 200.58 feet parallel with McDonald Street (closed); thence run east parallel with Francis Street 181.66 feet; thence run north 200.58 feet to the southern margin of Francis Street; thence run west 181.66 feet to the POINT OF BEGINNING. Said tract is shown on that plat of survey prepared for W. Wade Raulerson by Franklin Miles, G.R.L.S. No. 1847, dated December 15, 2000, and recorded in Plat Book "A," at Page 3008, which plat is incorporated by reference herein for all legal purposes. (Deed Reference: Book 40D at Page 145.)

EXHIBIT B

TRUST AGREEMENT
Seven Out Tank Superfund Site
Dated: June 12, 2008

This Trust Agreement (this "Agreement") is entered into as of June 12, 2008 by and between **ROGERS TOWERS, P.A.**, a professional association, organized and existing under the laws of the State of Florida (the "Grantor"), as Chair of The **SEVEN OUT SITE PRP GROUP**, an unincorporated association (the "Group") and **U.S. BANK**, a national banking association, organized and existing under the laws of the State of Florida (the "Trustee").

Whereas, the United States Environmental Protection Agency ("EPA"), an agency of the United States federal government, and individual members of the Group (the "Settling Members") have entered into Administrative Settlement Agreements and Orders on Consent for Removal Action, for the Seven Out Tank Superfund Site (hereinafter collectively the "Settlement Agreement");

Whereas, the Settlement Agreement provides that the Settling Members shall provide assurance that funds will be available as and when needed for performance of the Work required by the Settlement Agreement;

Whereas, in order to provide such financial assurance, the Settling Members, through Grantor have agreed to establish and fund the trust created by this Agreement; and

Whereas, the Grantor, as authorized by the Group, has selected the Trustee to be the trustee under this Agreement, and the Trustee has agreed to act as trustee hereunder.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Beneficiary" shall have the meaning assigned thereto in Section 3 of this Agreement.

(b) The term "Business Day" means any day, other than a Saturday or a Sunday, that banks are open for business in Jacksonville, Florida, USA.

(c) The term "Claim Certificate" shall have the meaning assigned thereto in Section 4(a) of this Agreement.

(d) The term "Fund" shall have the meaning assigned thereto in Section 3 of this Agreement.

(e) The term "Grantor" shall have the meaning assigned thereto in the first paragraph of this Agreement.

(f) The term "Objection Notice" shall have the meaning assigned thereto in" Section 4(b) of this Agreement.

(g) The term "Site" shall have the meaning assigned thereto in Section 2 of this Agreement.

(h) The term "Trust" shall have the meaning assigned thereto in Section 3 of this Agreement.

(i) The term "Trustee" shall mean the trustee identified in the first paragraph of this Agreement, along with any successor trustee appointed pursuant to the terms of this Agreement.

(j) The term "Work" shall have the meaning assigned thereto in the Settlement Agreement.

Section 2. Identification of Facilities and Costs. This Agreement pertains to costs for Work required at the Seven Out Tank site in Ware County, Georgia (the "Site"), pursuant to the above referenced Settlement Agreement.

Section 3. Establishment of Trust Fund. The Grantor and the Trustee hereby establish a trust (the "Trust"), for the benefit of EPA (the "Beneficiary"), to assure that funds are available to pay for performance of the Work as such Work is performed by Grantor and in the event that Grantor fails to conduct or complete the Work required by, and in accordance with the terms of, the Settlement Agreement. The Grantor and the Trustee intend that no third party shall have access to monies or other property in the Trust except as expressly provided herein. The Trust is established initially as consisting of funds in the amount of Five Hundred Ninety-Six Thousand and 00/100 U.S. Dollars (\$596,000.00). Such funds, along with any other monies and/or other property hereafter deposited into the Trust, are referred to herein collectively as the "Fund." The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor owed to the United States.

Section 4. Payment for Work Required Under the Settlement Agreement. The Trustee shall make payments from the Fund in accordance with the following procedures.

(a) From time to time, the Grantor may request that the Trustee make payment from the Fund for Work performed under the Settlement Agreement by delivering to the Trustee and EPA a written invoice from the contractor or other supplier and a certificate (together, a "Claim Certificate") signed by an officer or other authorized representative of the Grantor certifying:

(i) that the invoice is for Work performed at the Site in accordance with the Settlement Agreement;

(ii) a description of the Work that has been performed, the amount of the claim, and the identity of the payee(s); and

(iii) that the Grantor has sent a copy of such Claim Certificate to the EPA attorney and the EPA RPM at their respective addresses shown in this Agreement, the date on which such copy was sent, and the date on which such copy was received by EPA as evidenced

by a return receipt (which return receipt may be written, as in the case of overnight delivery, certified mail, or other similar delivery methods, or electronic, as in the case of e-mail, facsimile, or other similar delivery methods).

(b) EPA may object to any payment requested in a Claim Certificate submitted by the Grantor (or its representatives), in whole or in part, by delivering to the Trustee a written notice (an "Objection Notice") within thirty (30) days after the date of EPA's receipt of the Claim Certificate as shown on the relevant return receipt. An Objection Notice sent by EPA shall state (i) whether EPA objects to all or only part of the payment requested in the relevant Claim Certificate; (ii) the basis for such objection, (iii) that EPA has sent a copy of such Objection Notice to the Grantor and the date on which such copy was sent; and (iv) the portion of the payment requested in the Claim Certificate, if any, which is not objected to by EPA, which undisputed portion the Trustee shall proceed to distribute in accordance with Section 4(d) below. EPA may object to a request for payment contained in a Claim Certificate only on the grounds that the requested payment is either (x) not for the costs of Work under the Settlement Agreement or (y) otherwise inconsistent with the terms and conditions of the Settlement Agreement.

(c) If the Trustee receives a Claim Certificate and does not receive an Objection Notice from EPA within the time period specified in Section 4(b) above, the Trustee shall, after the expiration of such time period, promptly make the payment from the Fund requested in such Claim Certificate.

(d) If the Trustee receives a Claim Certificate and also receives an Objection Notice from EPA within the time period specified in Section 4(b) above, but which Objection Notice objects to only a portion of the requested payment, the Trustee shall, after the expiration of such time period, promptly make payment from the Fund of the uncontested amount as requested in the Claim Certificate. The Trustee shall not make any payment from the Fund for the portion of the requested payment to which EPA has objected in its Objection Notice.

(e) If the Trustee receives a Claim Certificate and also receives an Objection Notice from EPA within the time period specified in Section 4(b) above, which Objection Notice objects to all of the requested payment, the Trustee shall not make any payment from the Fund for amounts requested in such Claim Certificate.

(f) If, at any time during the term of this Agreement, EPA implements a "Work Takeover" pursuant to the terms of the Settlement Agreement and intends to direct payment of monies from the Fund to pay for performance of Work during the period of such Work Takeover, EPA shall notify the Trustee in writing of EPA's commencement of such Work Takeover. Upon receiving such written notice from EPA, the disbursement procedures set forth in Sections 4(a)-(e) above shall immediately be suspended, and the Trustee shall thereafter make payments from the Fund only to such person or persons as the EPA may direct in writing from time to time for the sole purpose of providing payment for performance of Work required by the Settlement Agreement. Further, after receiving such written notice from EPA, the Trustee shall not make any disbursements from the Fund at the request of the Grantor, including its representatives and/or contractors, or of any other person except at the express written direction

of EPA. If EPA ceases such a Work Takeover in accordance with the terms of the Settlement Agreement, EPA shall so notify the Trustee in writing and, upon the Trustee's receipt of such notice, the disbursement procedures specified in Sections 4(a)-(e) above shall be reinstated.

(g) While this Agreement is in effect, disbursements from the Fund are governed exclusively by the express terms of this Agreement.

(h) **Trust Management.** The Trustee shall hold all funds as uninvested cash.

Section 5. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(b) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the U.S. federal government or any U.S. state government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund; and

(c) to deposit any cash in the Fund in accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the U.S. federal government.

Section 6. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund shall be paid from the Fund. All other expenses and charges incurred by the Trustee in connection with the administration of the Fund and this Trust shall be paid by the Grantor.

Section 7. Annual Valuation. The Trustee shall annually, no more than thirty (30) days after the anniversary date of establishment of the Fund, furnish to the Grantor and to the Beneficiary a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The annual valuation shall include an accounting of any fees or expenses levied against the Fund. The Trustee shall also provide such information concerning the Fund and this Trust as EPA may request from time to time.

Section 8. Advice of Counsel. The Trustee may from time to time consult with counsel with respect to any question arising as to the construction of this Agreement or any

action to be taken hereunder; provided, however, that any counsel retained by the Trustee for such purposes may not, during the period of its representation of the Trustee, serve as counsel to the Grantor.

Section 9. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing with the Grantor and as notified in writing to the Beneficiary.

Section 10. Trustee and Successor Trustee. The Trustee and any replacement Trustee must be approved in writing by EPA and must not be affiliated with the Grantor. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee approved in writing by EPA and this successor accepts such appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to EPA or a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the Fund and the Trust in a writing sent to the Grantor, the Beneficiary, and the present Trustee by certified mail no less than 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 8.

Section 11. Instructions to the Trustee. All instructions to the Trustee shall be in writing, signed by such persons as are empowered to act on behalf of the entity giving such instructions. The Trustee shall be fully protected in acting without inquiry on such written instructions given in accordance with the terms of this Agreement. The Trustee shall have no duty to act in the absence of such written instructions, except as expressly provided for herein.

Section 12. Amendment of Agreement. This Agreement may be amended only by an instrument in writing executed by the Grantor and the Trustee, and with the prior written consent of EPA.

Section 13. Irrevocability and Termination. This Trust shall be irrevocable and shall continue until terminated upon the earlier to occur of (a) the written direction of EPA to terminate, consistent with the terms of the Settlement Agreement and (b) the complete exhaustion of the Fund comprising the Trust as certified in writing by the Trustee to EPA and the Grantor. Upon termination of the Trust pursuant to Section 15(a), all remaining trust property (if any), less final trust administration expenses, shall be delivered to the Grantor.

Section 14. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor from and against any personal liability to which the Trustee may be subjected by reason

of any act or conduct made by the Trustee in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 15. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Florida

Section 16. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

Section 17. Notices. All notices and other communications given under this agreement shall be in writing and shall be addressed to the parties as follows or to such other address as the parties shall by written notice designate:

(a) If to the Grantor, to: Seven Out PRP Group
Richard L. Maguire, Chairman
Rogers Towers, P.A.
1301 Riverplace Blvd., Suite 1500
Jacksonville, FL 32207
Facsimile: (904) 396-0663

(b) If to the Trustee, to: U.S. Bank
225 Water Street, 7th Floor
Jacksonville, FL 32202
Attn: Ray Aaronian
Facsimile: 904-358-5362

(c) If to EPA, to: Matthew Huyser
U.S. EPA Region 4
OEA, 13th Floor
61 Forsyth Street, SW
Atlanta, GA 30303

and: Stacey A. Haire
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their respective officers duly authorized and attested as of the date first above written.

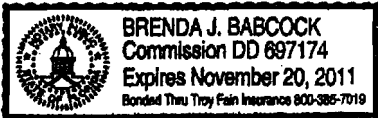
GRANTOR

SEVEN OUT PRP GROUP

By: [Signature]
Print Name: Richard L. Maguire
Rogers Towers, P.A.
Title: Chairman

STATE OF FLORIDA
COUNTY OF DUVAL

On this 10th day of June, 2008, before me personally came Richard L. Maguire to me known, who, being by me duly sworn, did depose and say that he is a shareholder of Rogers Towers, P.A., a Florida professional association, described in and which executed the above instrument; and that he signed his name thereto.



[Signature]
Notary Public, State of Florida
at Large
My Commission Expires: 11/20/11

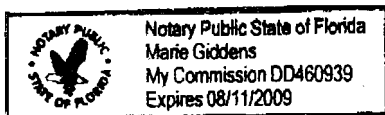
TRUSTEE

U.S. BANK

By: [Signature]
Print Name: Ray Harrison
Title: Assistant U.P.

STATE OF FLORIDA
COUNTY OF DUVAL

On this 12 day of June, 2008, before me personally came Ray Harrison, to me known, who, being by me duly sworn, did depose and say that he is Assistant U.P. of U.S. Bank, a national banking association, described in and which executed the above instrument; and that he signed his name thereto.



[Signature]
Notary Public, State of Florida
at Large
My Commission Expires: _____

**Request for Taxpayer
Identification Number and Certification**

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific instructions on page 2.

Name (as shown on your income tax return)
Rogers Towers, P.A.

Business name, if different from above

Check appropriate box: Individual/
Sole proprietor Corporation Partnership Other ▶ Exempt from backup
withholding

Address (number, street, and apt. or suite no.)
1301 Riverplace Blvd, Ste 1500

City, state, and ZIP code
Jacksonville, FL 32207

List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

--	--	--	--	--	--	--	--	--	--

or

Employer identification number

5941163815177

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here Signature of U.S. person ▶ Romela B... Date ▶

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,