

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

ELLSWORTH INDUSTRIAL PARK SITE  
DOWNERS GROVE, ILLINOIS

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER  
PURSUANT TO  
SECTIONS 104, 107 AND 122 OF CERCLA

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

IN THE MATTER OF:	)	Docket No.
	)	
ELLSWORTH INDUSTRIAL PARK SITE	)	ADMINISTRATIVE SETTLEMENT
	)	AGREEMENT AND ORDER
DOWNERS GROVE, ILLINOIS	)	PURSUANT TO SECTIONS
	)	104, 107 & 122 OF THE
	)	COMPREHENSIVE ENVIRONMENTAL
Respondents:	)	RESPONSE, COMPENSATION, AND
	)	LIABILITY ACT, as amended,
Listed in Attachment A	)	42 U.S.C. §§ 9604, 9607 and
	)	9622

**I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order (the "Settlement Agreement and Order") is entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and the Respondents. The Settlement Agreement and Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9607 and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

2. This Settlement Agreement and Order provides for the Respondents' funding and U.S. EPA's performance of certain response actions related to the conduct of a Remedial Investigation and Feasibility Study ("RI/FS") to investigate the nature and extent of contamination at the industrial park portion of the Ellsworth Industrial Park Site in Downers Grove, Illinois (the "Site"), which is generally depicted in Attachment B, and to develop and evaluate potential remedial alternatives. The RI/FS will evaluate response actions consistent with 40 CFR Part 300.430, to address the environmental concerns in connection with the areas of contamination located within and surrounding the industrial park portion of the Site. Remedial action(s) selected through the RI/FS process will be implemented pursuant to a Record of Decision to be issued by U.S. EPA.

3. A copy of this Settlement Agreement and Order will also be provided to the State of Illinois, which has been notified of the issuance of this Settlement Agreement and Order. The U.S. EPA has also notified the Federal Natural Resource trustees of the

negotiations in this action pursuant to the requirements of Section 122(j) of CERCLA.

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

## **II. PARTIES BOUND**

5. This Settlement Agreement and Order applies to and is binding upon U.S. EPA and upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Settlement Agreement and Order. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement and Order. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement and Order, the remaining Respondents shall complete all such requirements and shall be entitled to seek recovery or bring any other action allowed by law or pursuant to separate agreement among the Respondents regarding their participation in this Settlement Agreement and Order against those Respondents who fail to comply with the Settlement Agreement and Order for any reason, notwithstanding the contribution protection provision in Section XVI, paragraph 63, of this Settlement Agreement and Order.

6. Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Settlement Agreement and Order. Respondents shall be responsible for any noncompliance with their obligations under this Settlement Agreement and Order.

## **III. STATEMENT OF PURPOSE**

7. In entering into this Settlement Agreement and Order, the objectives of U.S. EPA and the Respondents are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release

or threatened release of hazardous substances, pollutants or contaminants at or from the industrial park portion of the Site by performance of a remedial investigation as more specifically set forth in the Statement of Work ("SOW") attached as Attachment A to this Settlement Agreement and Order; and (b) to determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the industrial park portion of the Site, by preparation of a feasibility study as more specifically set forth in the SOW appended as Attachment C to this Settlement Agreement and Order. In addition, by entering into this Settlement Agreement and Order, Respondents also seek to resolve some or all of the State of Illinois claims in People of the State of Illinois v. Precision Brands, et al., No. 2003 CH 000979, in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois, insofar as that action seeks further investigation of the conditions at the industrial park portion of the Site.

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

8. Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds, and, for purposes of enforceability of this Settlement Agreement and Order only, the Respondents stipulate that the factual statutory prerequisites under CERCLA necessary for entry of this Settlement Agreement and Order have been met. U.S. EPA's findings and this stipulation include the following:

- a. The industrial park portion of the Site is located in Downers Grove, Illinois. The approximate borders of the industrial park are Burlington Avenue on the north, Belmont Road on the east, Elmore and Inverness Avenues on the south, and I-355 on the west. St. Joseph's Creek runs through the northern end of the Site. The Site also includes areas to the south and east of the industrial park where groundwater contamination has come to be located. A map depicting the general location of the Site is appended as Attachment B.
- b. The industrial park portion of the Site was developed beginning in the early 1960s. Prior to that development, the property was used as farmland. The industrial park is now surrounded by residential development.
- c. Respondents are present or past owners and/or operators of industrial properties at the Site.
- d. Respondents have allegedly used solvents containing volatile organic compounds ("VOCs") in their plant operations or own properties where VOCs were allegedly used, and releases of VOCs have been detected or are suspected at those properties.

- e. Soil and groundwater sampling results obtained during Site investigations by U.S. EPA and the Illinois Environmental Protection Agency ("IEPA") identified the presence of the VOCs trichloroethylene ("TCE"), tetrachloroethylene ("PCE") and 1,1,1-trichloroethane ("TCA") in soil and groundwater at the Site at levels of potential concern. Sampling data collected by IEPA also indicates that TCE, PCE and TCA contamination from the Site migrated to residential drinking water wells located to the south and east of the industrial park portion of the Site. These results are summarized in reports dated August 2002 and August 3, 2004, prepared for U.S. EPA by Weston Solutions, Inc.
- f. On August 8, 2003, a group of potentially responsible parties ("PRPs"), including many of the Respondents, entered a CERCLA settlement with U.S. EPA in the form of an Administrative Order on Consent. Under that settlement, certain of the PRPs (all of whom denied liability) agreed to repay loans to the Village of Downers Grove up to \$4.275 million to hook up approximately 800 residences to the south and east of the industrial park to a public drinking water supply.
- g. Concurrent with the signing of the August 8, 2003 Administrative Order on Consent, U.S. EPA and the PRPs entered into an Agreement in Principle ("AIP"). The AIP provides that, assuming continued cooperation from the Group through the OU1 RA process (which will include consideration of the no further action alternative, among others), U.S. EPA staff will recommend forgiving its past costs as part of the final OU1 settlement.

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

9. Based on the Findings of Fact set forth above, and the Administrative Record in this matter, U.S. EPA has determined that:
- a. The Ellsworth Industrial Park Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
  - b. TCE, PCE and TCA are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
  - c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
  - d. Respondents are: (1) the "owners" and/or "operators" of portions of the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1); and/or (2) the "owners" and/or "operators" of portions of the Site

at the time of disposal of hazardous substances at the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2);

- e. The presence of hazardous substances at the Site or the past, and present or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" of hazardous substances from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).
- f. The actions required by this Settlement Agreement and Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the National Contingency Plan ("NCP") and CERCLA.

#### VI. SETTLEMENT AGREEMENT AND ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that each Respondent shall comply with all of their obligations under this Settlement Agreement and Order, including but not limited to their obligations under all attachments to this Settlement Agreement and Order, and all documents incorporated by reference into this Settlement Agreement and Order.

##### 1. Designation of Project Coordinator and Remedial Project Manager

10. Within 10 calendar days after the effective date of this Settlement Agreement and Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Settlement Agreement and Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA and IEPA. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If U.S. EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within 14 calendar days following U.S. EPA's disapproval and shall notify U.S. EPA and IEPA of that person's name and qualifications within 14 calendar days of U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement and Order shall constitute receipt by all Respondents.

11. The U.S. EPA has designated Ross delRosario of Remedial Response Section #5 of Remedial Response Branch #2, Region 5, as its Remedial Project Manager ("RPM"). Respondents shall direct all submissions required by this Settlement Agreement and Order to

the RPM along with the required copies in accordance with Section XIX (Submittals/Correspondence) in accordance with the provisions of this Settlement Agreement and Order. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

12. U.S. EPA and Respondents shall have the right, subject to the provisions of this section, to change their designated RPM or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice within 4 calendar days of oral notification.

## 2. Work to Be Performed

13. a. Respondents shall provide \$1,000,000 to U.S. EPA for performance by U.S. EPA of an RI/FS, development of RI and FS reports, and other deliverables consistent with the attached SOW and subject to the alternate provisions described in this paragraph. The funding shall be provided as described in detail in Section VIII of this Settlement Agreement and Order.

b. Using the funds provided by Respondents, U.S. EPA will expeditiously prepare a draft Conceptual Site Model, data gap evaluation, project planning report and RI/FS Work Plan as described in the SOW. Respondents may comment on those draft documents as provided in paragraph 15 below. Within 14 days of U.S. EPA's approval of the Conceptual Site Model, data gap evaluation, project planning report and RI/FS Work Plan Respondents may notify U.S. EPA in writing that they have elected to perform the remainder of the RI/FS in its entirety in accordance with the schedules in the RI/FS Work Plan and the SOW.

c. If the Respondents make a timely election to perform the remainder of the RI/FS, the supplemental provisions to this Settlement Agreement and Order contained in Appendix A ("Supplement") shall immediately take effect.

d. If the Respondents do not make a timely election to perform the remainder of the RI/FS, U.S. EPA will continue with its performance of the RI/FS as provided in this Settlement Agreement and Order.

14. Except as specifically noted in the SOW, this RI/FS is limited to the industrial park portion of the Site. Other areas of the Site and all areas where hazardous substances, pollutants or contaminants from the Site have migrated or have been come to be located, will be addressed in a subsequent RI/FS process. The performance of the RI/FS described in this Settlement

Agreement and Order and all related activities shall be referred to as the "Work." The U.S. EPA will have its contractors use their best efforts, consistent with the terms of their contracts, to complete the RI field work described in the attached SOW by December 31, 2005.

15. U.S. EPA will provide to Respondents' Project Coordinator and to Illinois EPA copies of all draft and final plans, reports, and other deliverables developed for the RI/FS. Respondents will be provided with an opportunity to comment on all draft deliverables and U.S. EPA (in consultation with Illinois EPA) will consider all timely comments. Respondents shall also be provided an opportunity to participate in the TRIAD process that U.S. EPA is using to perform the OUI RI/FS, and U.S. EPA will also work with the Respondents to tailor the investigation of individual parcels to take into account reliable sampling data that has already been gathered

16. In developing the RI, U.S. EPA in coordination with the Respondents may also identify and evaluate potential interim response activities that may be implemented to reduce or eliminate human exposures to contamination at or from the industrial portion of the Site prior to completion of the RI. Such interim response activities may proceed under a separate order and/or agreement.

17. Any Respondent that owns any portion of the Site shall, at least 20 calendar days prior to the conveyance of any interest in real property at the Site, give written notice of this Settlement Agreement and Order to the transferee and written notice of the proposed conveyance to U.S. EPA and IEPA. The notice to U.S. EPA and IEPA shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section VI.3. (Access to Property and Information).

#### 2.1 Additional Work

18. In the event that one or more of the Respondents determines that additional work beyond the scope of the SOW is necessary to accomplish the objectives of the RI/FS, Respondent(s) may propose such additional work to U.S. EPA for approval.

#### 2.2 Community Involvement and Technical Assistance Plan

19. U.S. EPA will prepare a Community Involvement Plan, in consultation with IEPA and in accordance with U.S. EPA guidance and the NCP. Respondents shall provide information and conduct other activities as requested by U.S. EPA to support community relations programs. If a community group requests funding for technical assistance, U.S. EPA may in its discretion provide and administer up to \$50,000 of the funds paid by Respondents under this Settlement Agreement and Order to be used by selected

qualified representatives of the community to hire independent technical advisors during the Work conducted pursuant to this Settlement Agreement and Order. U.S. EPA may also provide and administer any additional amounts needed if U.S. EPA, in its discretion, determines that the selected community group has demonstrated such a need (under the standards provided in 40 C.F.R. §35.4065) prior to U.S. EPA's issuance of the ROD based on the RI/FS conducted pursuant to this Settlement Agreement and Order. Technical Assistance Plan (TAP) funds may not be used to support litigation activities and the Citizen's Advisory Group for the Site is not eligible to receive funding under the TAP.

### 3. Access to Property and Information

20. At reasonable times and after appropriate notice, Respondents shall provide access to all portions of the Site and all off-site areas to which access is necessary to implement this Settlement Agreement and Order that are owned or controlled by any Respondent. Respondents shall also provide access to all non-privileged records and documentation in their possession or control, or that of their contractors or agents, related to the conditions at the Site and the actions conducted pursuant to this Settlement Agreement and Order. Such access shall be provided to U.S. EPA, IEPA, and their employees, contractors, agents, consultants, designees, and representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas for which Respondents have ownership or control in order to conduct actions which U.S. EPA determines to be necessary, provided, however, that these individuals shall attempt to minimize interference with Respondents' business activities at the Site to the extent practicable. U.S. EPA will work in good faith with Respondents to accommodate Respondents' concerns regarding the timing and nature of Site access. Respondents shall submit to U.S. EPA and IEPA, upon receipt, the results of all sampling or tests and all other data generated by Respondents or their contractor(s), or on the Respondents' behalf during implementation of this Settlement Agreement and Order, provided, however, that U.S. EPA and Illinois EPA and their respective contractors shall not provide that data to third parties unless and until that data is finalized and validated. No claim of privilege shall be made with respect to any sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data evidencing conditions at or around the Site.

21. Where work or action under this Settlement Agreement and Order is to be performed in areas owned by or in possession of someone other than Respondents, U.S. EPA will be responsible for obtaining access. The costs of obtaining access may be funded from the payments made by Respondents under this Settlement Agreement and Order.

22. Respondents shall provide to U.S. EPA and the State, upon request, copies of all non-privileged documents and information within their possession or control or that of their agents relating to the Work. Respondents shall also make available to U.S. EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work. Prior to requesting any such access to individuals, U.S. EPA shall make reasonable efforts to secure such information from Respondents' Project Coordinator.

23. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to U.S. EPA and the State under this Settlement Agreement and Order 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 U.S. 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 U.S. EPA and the State, or if U.S. 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.

24. 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 a Respondent asserts such a privilege in lieu of providing documents, it shall provide U.S. EPA with the following information, to the extent that such information is not covered by the applicable privilege: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no sampling data developed during the time the RI/FS is underway and no documents, reports or other information required to be submitted pursuant to this Settlement Agreement and Order shall be withheld on the grounds that they are privileged.

#### 4. Record Retention, Documentation, Availability of Information

25. Until six years after U.S. EPA's issuance of the final RI/FS Report for the industrial park portion of the Site, each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the

performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until six years after U.S. EPA's issuance of the final RI/FS Report for the industrial park portion of the Site, 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. Any information that Respondents are required to provide or maintain pursuant to this Settlement Agreement and Order is not subject to the Paperwork Reduction Act of 1995,

44 U.S.C. §3501 et seq.

26. At the conclusion of this document retention period, Respondents shall notify U.S. EPA and IEPA at least 90 days prior to the destruction of any such records or documents, and, upon request by U.S. EPA or IEPA, Respondents shall deliver any such records or documents to U.S. EPA or the State. 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 U.S. EPA or the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no sampling data developed during the time the RI/FS is underway and no documents, reports or other information required to be submitted pursuant to this Settlement Agreement and Order shall be withheld on the grounds that they are privileged.

27. 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 U.S. EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all U.S. 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.

#### 5. Compliance With Other Laws

28. Respondents shall perform all activities required pursuant to this Settlement Agreement and Order in accordance with all the requirements of all federal and state laws and regulations. U.S. EPA has determined that the activities required by this Order are consistent with the NCP.

29. Except as provided in Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the activities conducted entirely on-site.

30. This Settlement Agreement and Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

#### **VII. AUTHORITY OF THE U.S. EPA REMEDIAL PROJECT MANAGER**

31. The RPM shall be responsible for overseeing the implementation of this Settlement Agreement and Order. The RPM shall have the authority vested in an RPM and an On-Scene Coordinator by the NCP, including the authority to halt, conduct, or direct any activities required by this Settlement Agreement and Order, or to direct any other response action undertaken by U.S. EPA or Respondents at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

#### **VIII. PAYMENT OF RESPONSE COSTS**

32. Respondents shall pay a total of \$1,000,000 to the EPA Hazardous Substance Superfund to fund the performance of the RI/FS and associated activities by U.S. EPA. The payment shall be made as follows: (a) by the earlier of August 15, 2005 or 15 days after the Effective Date of this Settlement Agreement and Order, Respondents shall pay \$60,000; (b) by 10 days after the deadline for the Respondents' election under paragraph 13 of this Settlement Agreement and Order, Respondents shall pay an additional \$500,000; and (c) by November 15, 2005, Respondents shall establish an escrow account or other financial mechanism ("Escrow Account") to be approved by U.S. EPA through which U.S. EPA may withdraw, as U.S. EPA determines to be necessary, up to an additional \$440,000 to fund the performance of the RI/FS and associated activities by U.S. EPA. Notwithstanding any other provisions of this Section, if the Respondents make a timely election to perform the RI/FS pursuant to paragraph 13 of this Settlement Agreement and Order, Respondents shall only be obligated to finance the direct costs incurred in preparing and completing a draft Conceptual Site Model, data gap evaluation, project planning report and RI/FS Work Plan as described in the SOW.

33. The payments described in subparagraphs 32(a) and 32(b) shall be made into the Ellsworth Industrial Park Special Account within the U.S. EPA Hazardous Substance Superfund by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondents by U.S. EPA, and shall be accompanied by a statement identifying the names and addresses of the parties making payment, the Site name, the U.S. EPA Region 5 Site/Spill ID # 05B52A, and the docket number for this Settlement

Agreement and Order. Respondents shall simultaneously transmit a notice of the payment to U.S. EPA in accordance with Section XIX (Submittals/Correspondence).

34. The total amount to be paid by Respondents under this Section and deposited in the Ellsworth Industrial Park Special Account within the U.S. EPA Hazardous Substance Superfund and in the Escrow Account will be retained and used to finance the direct costs incurred in performing the RI/FS and related response actions at or in connection with the industrial park portion of Site. If any funds remain in the Special Account after all Work performed by U.S. EPA consistent with this Settlement Agreement and Order has been completed and paid for, those funds will be returned to the Respondents. To the extent that the payments made by Respondents under this Section are not sufficient to cover all of the costs of the RI/FS and related activities described in this Settlement Agreement and Order, U.S. EPA expects to complete those activities with funding obtained from the U.S. EPA Hazardous Substance Superfund. The Parties to this Settlement Agreement and Order recognize and acknowledge that use of funds from the U.S. EPA Hazardous Substance Superfund is subject to the availability and legal authorization for use of such funds. Nothing in this Settlement Agreement and Order shall be interpreted or construed as a commitment or requirement that U.S. EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law. The Respondents shall have no liability under this Settlement Agreement and Order for the payment of costs of the performance of the Work required by this Settlement Agreement and Order beyond the payments specified in paragraph 32. In the event the payments in paragraph 32 are insufficient to pay all of the costs of performing the RI/FS and related activities required by this Settlement Agreement and Order, (a) such incremental response costs shall be included as costs subject to the provisions of the AIP referenced in paragraph 8(g) above; and (b) consistent with the AIP, U.S. EPA intends to seek to recover any such incremental response costs from other PRPs before pursuing the Respondents for those response costs.

35. In the event that any payment is not made within the deadlines described above, Respondents shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to accrue on the date the Respondents' payment is due. Interest shall accrue at the rate specified through the date of the 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.

**IX. DISPUTE RESOLUTION**

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

37. Respondents may dispute or object to Work performed by U.S. EPA at the Site only if they contend such Work is clearly inconsistent with or beyond the scope of the SOW. If the Respondents object to any U.S. EPA action taken pursuant to this Settlement Agreement and Order, the Respondents shall notify U.S. EPA in writing of their objection(s) within 10 calendar days of such action, unless the objection(s) have been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which the Respondents rely. U.S. EPA shall submit its Statement of Position, including supporting documentation, within 15 business days of receipt of the written notice of dispute. In the event that these time periods for exchange of written documents may cause a delay in the Work, they shall be shortened upon, and in accordance with, notice by U.S. EPA.

38. U.S. EPA and Respondents shall within 15 calendar days of U.S. EPA's receipt of the Respondents' Statement of Position, attempt to resolve the dispute through formal negotiations ("Negotiation Period"). The Negotiation Period of 15 calendar days may be extended at the sole discretion of U.S. EPA. U.S. EPA's decision regarding an extension of the Negotiation Period shall not constitute a U.S. EPA action subject to dispute resolution or a final Agency action giving rise to judicial review.

39. Any agreement reached by the parties pursuant to this Section shall be in writing, signed by all parties, and shall upon the signature by the parties be incorporated into and become an enforceable element of this Settlement Agreement and Order.

40. U.S. EPA shall maintain an administrative record of any formal dispute under this Section. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to paragraph 37. If the parties are unable to reach an agreement within the Negotiation Period, upon review of the administrative record, the Director of the Superfund

Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement and Order. The decision of U.S. EPA shall be incorporated into and become an enforceable element of this Settlement Agreement and Order upon Respondents' receipt of the decision regarding the dispute.

41. Respondents' obligations under this Settlement Agreement and Order shall not be tolled by submission of any objection for dispute resolution under this Section. Respondents' invocation of the dispute resolution provisions of this Settlement Agreement and Order shall not require U.S. EPA to cease or delay any Work it is performing related to the RI/FS. U.S. EPA may in its unreviewable discretion decide to cease or delay Work directly related to such a dispute. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill any of their obligations that were the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs. No U.S. EPA decision made pursuant to this Section shall constitute a final Agency action giving rise to judicial review.

#### **X. FORCE MAJEURE**

42. Respondents agree to perform all of their obligations under this Settlement Agreement and Order within the time limits established under this Settlement Agreement and Order, unless the performance is delayed or prevented by a force majeure. For purposes of this Settlement Agreement and Order, 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 and Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to perform, increased cost of performance, or normal weather events.

43. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement and Order, whether or not caused by a force majeure event, Respondents shall notify U.S. EPA orally within 24 hours of when Respondents first knew that the event might cause a delay. Within 7 business days thereafter, Respondents shall provide to U.S. 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 notice provision of this Section shall

be grounds for U.S. EPA to deny Respondents an extension of time for performance. Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay to the satisfaction of U.S. EPA.

44. If U.S. EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the Respondents' obligations under this Settlement Agreement and Order that are affected by the force majeure event will be extended by U.S. 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 that is not so affected. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, U.S. EPA will notify Respondents in writing of its decision. If U.S. EPA agrees that the delay is attributable to a force majeure event, U.S. 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.

**XI. STIPULATED AND STATUTORY PENALTIES**

45. Respondents shall be liable to U.S. EPA for stipulated penalties in the amounts set forth below for failure to comply with the requirements of this Settlement Agreement and Order specified below, unless excused under Section X, or modified by written agreement of the parties under Section XVIII:

<u>Deliverable/Activity</u>	<u>Penalty For</u> <u>Days 1-7</u>	<u>Penalty For</u> <u>&gt; 7 Days</u>
Failure to Meet any Scheduled Deadline in the Settlement Agreement and Order	\$250/Day	\$ 500/Day

46. Unless the failure to perform is excused or the timing for performance is otherwise modified by the parties, 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. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement and Order.

47. Following U.S. EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement and Order, U.S. EPA may give Respondents written notification of the failure and describe the noncompliance. U.S. EPA may send

Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding paragraphs regardless of whether U.S. EPA has notified Respondents of a violation. Penalties accrue and are assessed per violation per day.

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

U.S. Environmental Protection Agency  
Program Accounting & Analysis Section  
P.O. Box 70753  
Chicago, Illinois 60673

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Stipulated Penalties - Ellsworth Industrial Park Site" and shall reference the payers' name and address, the U.S. EPA site identification number (05B52A), and the docket number of this Settlement Agreement and Order.

49. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of all requirements of this Settlement Agreement and Order.

50. 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 U.S. EPA's decision determining that payment is due.

51. If Respondents fail to pay stipulated penalties when due, U.S. 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 47. Nothing in this Settlement Agreement and Order shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement and Order, including, but not limited to, penalties pursuant to Sections 122(1) and 109 of CERCLA, 42 U.S.C. §§ 9622(1) and 9609, and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that, U.S. EPA shall not seek civil penalties pursuant to Section 106(b) or 122(1) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated

penalty is provided herein, except in the case of a willful violation of this Settlement Agreement and Order. Should Respondents violate this Settlement Agreement and Order or any portion hereof, U.S. EPA may carry out all or part of the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §§ 9604. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement and Order.

## **XII. RESERVATION OF RIGHTS**

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

U.S. EPA reserves its rights in regard to claims, prior actions, orders, or agreements with Respondents. The covenant not to sue by U.S. EPA set forth in Section XIV does not pertain to any matters other than those expressly identified therein. The United States and U.S. EPA reserve, and this Settlement Agreement and Order is without prejudice to, all rights against the Respondents with respect to all other matters, including but not limited to:

a. liability for failure of Respondents to meet a requirement of this Settlement Agreement and Order;

b. liability for response costs incurred or to be incurred for response actions that are outside the scope of this Settlement Agreement and Order;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, excluding work performed under the terms of this Settlement Agreement and Order;

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.

### **XIII. OTHER CLAIMS**

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

54. Except as expressly provided in Section XIV (Covenant Not To Sue), nothing in this Settlement Agreement and Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Settlement Agreement and Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a). Nothing in this Settlement Agreement and Order is intended or shall be construed to diminish or impair the protections afforded to Respondents under the August 8, 2003, Administrative Order on Consent or the expectations of the parties set forth in the AIP.

55. No action or decision by U.S. EPA pursuant to this Settlement Agreement and Order 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).

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

### **XIV. COVENANT NOT TO SUE BY U.S. EPA**

57. Except as reserved in Section XII of this Settlement Agreement and Order, 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 Order, and except as

otherwise specifically provided in this Settlement Agreement and Order, U.S. 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 performance of the Work to the extent such Work is funded by the Respondents under this Settlement Agreement and Order. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement and Order, including, but not limited to, payment of Response Costs pursuant to Section VIII. This covenant not to sue extends only to Respondents and does not extend to any other person.

**XV. COVENANT NOT TO SUE BY RESPONDENTS**

58. 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, RI/FS Response Costs expended by U.S. EPA, or this Settlement Agreement and Order, including, but not limited to:

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

b. any claim arising out of the Work or arising out of the response actions for which Response Costs have or will be incurred, including any claim under the United States Constitution, the Illinois Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

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

59. 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 52 (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.

60. The Respondents reserve, and this Settlement Agreement and Order is without prejudice to, their potential claims against the United States for intentional or willful torts committed by any employee of the United States while acting within the scope of their office or employment, to the extent such claims are otherwise allowed by any statute other than CERCLA and for which

the waiver of sovereign immunity is found in a statute other than CERCLA. Respondents' reservation does not include any claim based on U.S. EPA's selection of response actions, or U.S. EPA's oversight or approval of the Work. The Respondents reserve whatever rights they may have to pursue potential claims against U.S. EPA's contractors for acts or omissions in performing the Work under this Settlement Agreement and Order.

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

62. Respondents agree not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of response actions under this Settlement Agreement and Order in any way affected the basis for listing the Site.

#### **XVI. CONTRIBUTION RIGHTS AND PROTECTIONS**

63. The Parties agree that this Settlement Agreement and Order constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement and Order. The "matters addressed" in this Settlement Agreement and Order are the Work required under this Settlement Agreement and Order to the extent such Work is funded by the Respondents.

The Parties agree that this Settlement Agreement and Order constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have resolved their liability to the United States for the Work to the extent such Work is funded by the Respondents. As discussed in Paragraph 8.f, Section IV (Findings of Fact), certain Respondents entered an Administrative Order on Consent with EPA on August 8, 2003, which also constituted an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

Except as provided in Section XXI (Covenant Not to Sue by Respondent), nothing in this Settlement Agreement and Order precludes the United States or Respondents from asserting any claims, causes of action, or demands against any person not a party to this Settlement Agreement and Order for indemnification, contribution, or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to

enter into settlements that provide contribution protection to such persons. Nothing in this Settlement Agreement and Order precludes Respondents from asserting any claims, causes of action, or demands against any Respondents who fail to comply with this Settlement Agreement and Order for any reason, or any action allowed by separate agreement among the Respondents regarding their participation in this Settlement Agreement and Order.

#### **XVII. INDEMNIFICATION**

64. 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 their obligations pursuant to this Settlement Agreement and Order.

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 and Order. 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 and Order. Neither Respondents nor any such contractor shall be considered an agent of the United States. The Respondents shall not be held out as a party to any contract entered into by or on behalf of the U.S. EPA in carrying out activities pursuant to this Settlement Agreement and Order. Respondents shall not be considered an agent of the U.S. EPA's contractor(s).

65. 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.

66. 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 activities related to this Settlement Agreement and Order. 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 activities related to this Settlement Agreement and Order.

**XVIII. MODIFICATIONS**

67. If any party believes modifications to any plan or schedule are necessary during the course of this project, they shall conduct informal discussions regarding such modifications with the other parties. Any agreed-upon modifications to any plan or schedule shall be memorialized in writing within 10 calendar days; however, the effective date of the modification shall be the date of the RPM's oral direction. Any other requirements of this Settlement Agreement and Order may be modified in writing by mutual agreement of the parties. Any modification to this Settlement Agreement and Order shall be incorporated into and made an enforceable part of this Settlement Agreement and Order.

68. If Respondents seek permission to deviate from any approved schedule, Respondents' Project Coordinator shall submit a written request to U.S. EPA for approval (in consultation with IEPA) outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to paragraph 67.

69. No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Settlement Agreement and Order, and to comply with all requirements of this Settlement Agreement and Order unless it is formally modified.

**XIX. SUBMITTALS/CORRESPONDENCE**

70. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement Agreement and Order, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile in accordance with this section.

71. Correspondence and communications from U.S. EPA and IEPA shall be addressed to:

[insert names]

Three copies of all correspondence, communication, and submittals from Respondents shall be directed to the following, and additional copies to other individuals he may identify:

Ross delRosario  
Remedial Project Manager  
United States Environmental Protection Agency  
77 West Jackson Blvd., Mailcode SR-6J  
Chicago, Illinois 60604-3590  
Phone (312) 886-7167  
FAX (312) 353-5541  
Email "delrosario.rosauero@epa.gov"

Two copies of all correspondence, communication, and submittals from Respondents shall be directed to the following, and additional copies to other individuals he may identify:

Fred W. Nika, Jr.  
Remedial Project Manager  
Illinois Environmental Protection Agency  
Division of Remediation Management  
1021 North Grand Avenue East  
Springfield, Illinois 62702  
Phone (217) 782-3983  
FAX (217) 782-3258  
E-mail "Fred.Nika@epa.state.il.us"

One copy of all correspondence, communication, and submittals from Respondents shall be directed to:

Thomas Krueger  
Associate Regional Counsel  
U.S. EPA - Region 5  
77 West Jackson Boulevard, C-14J  
Chicago, Illinois 60604-3590  
Phone (312) 886-0562  
FAX (312) 886-0747  
E-mail "krueger.thomas@epa.gov"

**XX. SEVERABILITY**

72. If a court of competent jurisdiction issues an order that invalidates any provision of this Settlement Agreement and Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement and Order, Respondents shall remain bound to comply with all provisions of this Settlement Agreement and Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

**XXI. FINANCIAL ASSURANCE AND INSURANCE**

73. Respondents shall establish and maintain a financial instrument or trust account or other financial mechanism

acceptable to U.S. EPA, funded sufficiently to perform the Respondents' payment obligations under this Settlement Agreement and Order.

74. Within 15 days after the effective date of this Settlement Agreement and Order, Respondents shall fund the financial instrument or trust account sufficiently to perform the payment obligations required under this Settlement Agreement and Order.

75. If at any time the net worth of the financial instrument or trust account is insufficient to perform the remaining payment obligations under the Settlement Agreement and Order, Respondents shall provide written notice to U.S. EPA within 7 days after the net worth of the financial instrument or trust account becomes insufficient. The written notice shall describe why the financial instrument or trust account is funded insufficiently and explain what actions have been or will be taken to fund the financial instrument or trust account adequately.

76. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by U.S. EPA, provided that U.S. EPA determines that the new form of assurance meets the requirements of this Section.

77. For the duration of this Settlement Agreement and Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of the Respondents, in furtherance of this Settlement Agreement and Order. U.S. EPA shall also require that each of its contractors and their subcontractors name each of the Respondents as additional insureds on their insurance policies covering the Work to be performed under this Settlement Agreement and Order.

#### **XXII. EFFECTIVE DATE AND COMPUTATION OF TIME**

78. This Settlement Agreement and Order shall be effective upon signature by the Director, Superfund Division, U.S. EPA Region 5. For the purposes of this Order, the term "day" shall mean a calendar day. In computing any period of time under this and Order, where the last day of the period would fall on a Saturday or Sunday, the period shall run until noon, Central Time of the following Monday.

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

**SIGNATORIES**

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

IT IS SO AGREED AND ORDERED

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

Richard C. Karl, Director  
Superfund Division  
United States Environmental Protection Agency  
Region 5

**ATTACHMENT A**

To be developed

**ATTACHMENT B**

To be developed

