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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

V-W-12-C-005

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| IN THE MATTER OF: |) | Docket No. _____ |
| |) | |
| WPSC Marinette MGP Site |) | ADMINISTRATIVE SETTLEMENT |
| Marinette, Marinette County, Wisconsin |) | AGREEMENT AND ORDER ON |
| |) | CONSENT FOR ENGINEERING |
| |) | EVALUATION/COST ANALYSIS |
| Wisconsin Public Service Corporation, |) | |
| Respondent |) | Proceeding Under Sections 104, 106, 107, |
| |) | and 122 of the Comprehensive |
| |) | Environmental Response, Compensation, |
| |) | and Liability Act, as amended, 42 U.S.C. |
| |) | §§ 9604, 9606(a), 9607, and 9622 |

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” or “Agency”) and Wisconsin Public Service Corporation (“Respondent” or “WPSC”). This Settlement Agreement is issued pursuant to 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, as amended (“CERCLA”), 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated to the Regional Administrators by 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 requires the Respondent to conduct an Engineering Evaluation and Cost Analysis (“EE/CA”) Report of alternative response actions pursuant to 40 C.F.R. § 300.415(b)(4)(i) and the Superfund Accelerated Cleanup Model (“SACM”) guidance to address the environmental concerns in connection with the former WPSC Manufactured Gas Plant (“MGP”) property located at 1603 Ely Street, Marinette, Marinette County, Wisconsin (the “Site”).

3. A copy of this Settlement Agreement will also be provided to the State of Wisconsin (“State”), which has been notified of the issuance of this Settlement Agreement pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. Respondent’s participation in this Settlement Agreement shall not constitute an admission of liability or admission of EPA’s findings or determinations contained in this Settlement Agreement except in a proceeding to enforce the terms of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement.

Respondent further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

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

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. FINDINGS OF FACT

7. Based on available information, including the Administrative Record in this matter, EPA hereby finds, and for purposes of enforceability of this Settlement Agreement, Respondent stipulates, that the factual statutory prerequisites under CERCLA necessary for issuance of this Settlement Agreement have been met. EPA's findings and Respondent's stipulation include the following:

a. The Site is located at 1609 Ely Street in Marinette, Wisconsin. The four-acre former MGP facility is about 750 feet south of the Menominee River and 1.5 miles upstream from the river mouth at Green Bay. The Site is currently owned by the City of Marinette ("City"), which operates a wastewater treatment plant ("WWTP") on the Site. The City also built a boat launch called Boom Landing along the Menominee River adjacent to the property; a former slough ran from the Site through Boom Landing to the river. The Site also includes adjacent or nearby areas of the Menominee River where hazardous substances, contaminants, or pollutants associated with former MGP operations at the WPSC Marinette MGP have come to be located.

b. The former MGP facility was constructed between 1901 and 1910 and operated through 1960. In 1922, WPSC acquired control of Menominee and Marinette Light and Traction Company and operated it as a wholly owned subsidiary until 1953 when it merged with the parent company. The WPSC Marinette MGP used two methods to produce coal gas: retort and carbureted water gas processes. In 1962, the property was purchased by the City, which converted the property into a WWTP.

c. MGP operations conducted by WPSC resulted in the release of hazardous substances, including volatile organic compounds ("VOC"), polynuclear aromatic hydrocarbons ("PAH"), metals, and cyanide into the soil, water, groundwater, and sediments on the Site.

d. Contaminants such as VOCs, specifically benzene, toluene, ethylbenzene, and xylene ("BTEX"), PAHs, metals, and cyanide were detected in sediment, soil, and groundwater samples collected in various locations at the WPSC Marinette MGP Site, as summarized by Natural Resource Technology Inc., on behalf of WPSC, in the May 2009

Completion Report. Impacts including staining, odors, and tar saturation were observed in sediment, soil, and groundwater.

e. Based on results from investigations performed to date, sediment contaminated with PAHs, BTEX, metals, and cyanide is present in the Menominee River. Contaminated sediment is located less than 10 feet from the shore and is at 0-3.5 feet in depth. Evidence of impacts, including tar-colored sediment and debris and sheen have been observed.

f. The Site has not been proposed to the National Priorities List (“NPL”). It is, however, designated as a Superfund Alternative (“SA”) site, requiring the Site to go through the Superfund remedial cleanup process, as described in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended (“NCP”).

g. In May 2006, EPA and Respondent entered into an Administrative Order on Consent for Respondent to conduct a remedial investigation and feasibility study of the Site.

h. The Respondent has designated Narendra Prasad of Integrys Business Support, LLC as its project coordinator. Mr. Prasad can be reached via email at nmprasad@integrysgroup.com; via telephone at (312) 240-4569; and via mail at 130 East Randolph Street, 22nd Floor, Chicago, IL 60601. The EPA has designated Margaret Gielniewski of the Remedial Response Branch as the Remedial Project Manager. Ms. Gielniewski can be reached via email at Gielniewski.margaret@epa.gov; via telephone at (312) 886-6244; and via mail at 77 West Jackson Boulevard, SR-6J, Chicago, IL 60604-3507.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

8. Based on the Findings of Fact set forth above and the Administrative Record in this matter, EPA has determined that:

a. The Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. There are “hazardous substances” at the Site as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a “Person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a person that produced hazardous waste as a by-product of the manufactured gas processes, which was released into the environment at the Site. Respondent, therefore, may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

e. Respondent was the “owner” and/or “operator” 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); and/or a person who arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the Site, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3); and/or a person who accepts

or accepted hazardous substances for transport to the Site, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

f. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility into the “environment” as defined by Sections 101(22) and (8) of CERCLA, 42 U.S.C. §§ 9601(22) and (8), respectively.

g. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the NCP, 40 C.F.R. § 300.415(b)(2). These factors include, but are not limited to, the following:

i. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants – this factor is present at the Site due to the existence of elevated concentrations of manufactured gas by-products, including BTEX and PAHs, in river sediment. Concentration ranges, from sediment samples from July 1995, are as follows: benzo(a)pyrene: 8.6-95,000 micrograms/kilogram (“ug/Kg”); pyrene: 26-171,000 ug/Kg; benzo(b)fluoranthene: 3.2-5,000 ug/Kg; chrysene: 4.7-15,000 ug/Kg.

ii. Actual or potential contamination of sensitive ecosystems – this factor is present at the Site due to the existence of elevated concentrations of manufactured gas by-products, including BTEX and PAHs. The Menominee River near the Site supports spawning habitat, and fish also pass through Site-impacted sediments en route to Lake Michigan.

iii. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released – this factor is present at the Site due to the existence of elevated concentrations of manufactured gas by-products, including BTEX and PAHs, that may migrate. Marinette, Wisconsin is in the temporal zone that experiences significant winter precipitation that later results in significant spring thaw events that can lead to flooding conditions. There is also the potential for flooding due to other precipitation events. Thunderstorms and drought conditions can also allow for contamination to migrate further off-site.

iv. Other situations or factors that may pose threats to public health or welfare or the environment – this factor is present at the Site due to the Site being located in a Great Lakes National Program Office (“GLNPO”) Area of Concern (“AOC”), and upstream from a Resource Conservation and Recovery Act (“RCRA”) facility that also requires dredging of the river to remove contaminated sediments. In order to remove this portion of the Menominee River from the AOC by 2014, GLNPO is working closely with RCRA and Superfund to address contaminated sediment from our respective sites. From mid-2012 to late 2013, Ansul Inc., a facility under RCRA cleanup oversight, is to begin dredging arsenic-contaminated sediment from the Menominee River, immediately downstream from the Site. In order to avoid recontamination of the RCRA dredged sediment sections of the river, simultaneous removal of MGP wastes is necessary.

h. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

i. The actions required by this Settlement Agreement, if properly performed, are consistent with the NCP, 40 C.F.R. Part 300, as amended, and with CERCLA, and are reasonable and necessary to protect the public health, welfare, and the environment.

V. SETTLEMENT AGREEMENT AND ORDER

9. 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 Respondent shall comply with the following provisions, including but not limited to all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement, and perform the following actions.

10. Designation of Contractor, Project Coordinator, EPA Remedial Project Manager

a. Respondent shall perform the actions required by this Settlement Agreement itself, or retain a contractor(s) to undertake and complete the requirements of this Settlement Agreement. Respondent shall notify EPA of Respondent's qualifications or the name and qualifications of such contractor(s), whichever is applicable, within five business days of the Effective Date of this Settlement Agreement. Respondent shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Settlement Agreement at least five business days prior to commencement of such work. EPA retains the right to disapprove of Respondent or any of the contractors and/or subcontractors retained by Respondent. If EPA disapproves a selected contractor, Respondent shall retain a different contractor within five business days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications within five business days of EPA's disapproval.

b. Within five business days after the Effective Date of this Settlement Agreement, Respondent shall designate a Project Coordinator who shall be responsible for administration of all Respondent's actions required by the Settlement Agreement. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. EPA retains the right to disapprove of any Project Coordinator named by Respondent. If EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within five business days following EPA's disapproval and shall notify EPA of that person's name and qualifications within five business days of EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent. Respondent has designated Narendra Prasad as the Project Coordinator for the Site, whose contact information is provided above in Paragraph 7(h).

c. With respect to any proposed contractor or Project Coordinator, Respondent shall demonstrate that the proposed contractor or proposed Project Coordinator has a quality management system that is in compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Environmental Data Collection and Environmental Technology Programs,"

(American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's or proposed Project Coordinator's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation approved by EPA. If at any time Respondent proposes to use a different contractor or Project Coordinator, Respondent shall notify EPA at least ten days prior to that contractor or Project Coordinator beginning work under this Settlement Agreement.

d. The EPA has designated Margaret Gielniewski of the Remedial Response Branch, Region 5, as its On-Scene Coordinator ("OSC") and Remedial Project Manager ("RPM"), as listed in the Findings of Fact. Respondent shall direct all submissions required by this Settlement Agreement to the RPM at 77 West Jackson Boulevard (SR-6J), Chicago, Illinois 60604-3507, by certified or express mail. Respondent shall also send a copy of all submissions to John Tielsch of Regional Counsel, 77 West Jackson Boulevard (C-14J), Chicago, Illinois 60604-3507. Respondent is encouraged to make its submissions to EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

e. EPA and Respondent shall have the right, subject to the immediately preceding paragraph, to change their designated RPM or Project Coordinator. EPA shall notify Respondent, and Respondent shall notify 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 two business days of oral notification.

11. Work to Be Performed

a. Respondent shall develop and submit to EPA an EE/CA Report in accordance with the requirements of this Settlement Agreement.

b. The EE/CA Report shall be consistent with, at a minimum, EPA guidance entitled, "Guidance on Conducting Non-Time Critical Removal Actions Under CERCLA," EPA/540-R-93-057, Publication 9360.32, PB 93-963402, dated August 1993.

12. Health and Safety Plan

During the pendency of on-site work under this Settlement Agreement, Respondent shall implement the August 2, 2007 Multi-Site Health and Safety Plan – Revision 2, which was previously reviewed by EPA pursuant to the Administrative Settlement Agreement and Order on Consent for Remedial Investigations and Feasibility Studies for the WPSC Wisconsin MGP Sites, CERCLA Docket No. V-W-06-C-847, effective May 5, 2006.

13. 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, and to the September 4, 2007 Multi-Site Quality Assurance Project Plan – Revision 2, which was

previously submitted to EPA pursuant to the Administrative Settlement Agreement and Order on Consent for Remedial Investigations and Feasibility Studies for the WPSC Wisconsin MGP Sites, CERCLA Docket No. V-W-06-C-847, effective May 5, 2006. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with EPA guidance. Respondent 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. Respondent 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, Respondent shall have such a laboratory analyze samples submitted by EPA for quality assurance monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also ensure provision of analytical tracking information consistent with, at a minimum, OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Settlement Agreement. Respondent shall notify EPA not less than five business days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

14. Reporting

a. Respondent shall submit a monthly written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement, beginning 30 calendar days after the Effective Date of this Settlement Agreement, until termination of this Settlement Agreement, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Settlement Agreement to the transferee and written notice of the proposed conveyance to EPA and the State. The notice to EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee provide access as described in Section V.17 (Access to Property).

15. Additional Work

In the event that the EPA or Respondent determines that additional work, including EE/CA support sampling and/or an engineering evaluation, is necessary to accomplish the objectives of the EE/CA Report, notification of such additional work shall be provided to the other party in writing. Any additional work that Respondent determines to be necessary shall be subject to EPA's written approval prior to commencement of the additional work. Respondent shall complete, in accordance with standards, specifications, and schedules EPA has approved, any additional work Respondent has proposed and has provided written notice of pursuant to this paragraph and which EPA has approved in writing or that EPA has determined to be necessary.

16. EE/CA Report

a. Within 14 calendar days after the Effective Date, Respondent shall submit to EPA for approval a draft EE/CA Report that is consistent with this Settlement Agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft EE/CA Report. If EPA requires revisions, Respondent shall submit a revised EE/CA Report incorporating all of EPA's required revisions within five business days of receipt of EPA's notification of the required revisions. In the event of EPA disapproval of the revised EE/CA Report, Respondent may be deemed in violation of this Settlement Agreement; however, approval shall not be unreasonably withheld by EPA. In such event, EPA retains the right to terminate this Settlement Agreement, conduct a complete EE/CA, and obtain reimbursement for costs incurred in conducting the EE/CA from Respondent. The revised 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 this EE/CA Report, the information submitted is true, accurate, and complete.

c. Respondent shall not commence or undertake any removal actions at the Site without prior EPA approval.

17. Access to Property

a. Respondent shall provide or obtain access to the Site and off-site areas to which access is necessary to implement this Settlement Agreement, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Settlement Agreement. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Wisconsin representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas to which Respondent has access in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, upon request/receipt, the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on Respondent's behalf during implementation of this Settlement Agreement.

b. Where work/action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 14 calendar days after the Effective Date of this Settlement Agreement or as otherwise specified in writing by the RPM. Respondent shall notify EPA within two business days if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. EPA may, in its discretion, then assist Respondent in gaining access, to the extent necessary to effectuate the actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney fees incurred by the United States in obtaining such access.

18. Record Retention, Documentation, Availability of Information

a. Respondent shall preserve all documents and information in its possession relating to work performed under this Settlement Agreement, or relating to the hazardous substances found on or released from the Site, for six years following completion of the actions required by this Settlement Agreement. At the end of this 6-year period and at least 60 days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection and, upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide copies of any such non-privileged documents and information retained under this section at any time before expiration of the six year period at the written request of EPA. Any information that Respondent is required to provide or maintain pursuant to this Settlement Agreement is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

b. If Respondent asserts a privilege in lieu of providing documents, it shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports, or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

19. Off-Site Shipments

All hazardous substances, pollutants, or contaminants removed off-site pursuant to this Settlement Agreement for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with the EPA Revised Off-Site Rule, 40 C.F.R. § 300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

20. Compliance With Other Laws

a. Respondent shall perform all activities required pursuant to this Settlement Agreement in accordance with all the requirements of all federal and state laws and regulations. EPA has determined that the activities contemplated by this Settlement Agreement are consistent with the NCP.

b. 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. Where any portion of the activities requires a federal or state permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

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

21. Emergency Response and Notification of Releases

a. If any incident, or change in Site conditions, during the activities conducted pursuant to this Settlement Agreement causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, Respondent shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the RPM or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions.

b. If Respondent fails to respond, EPA may respond to the release or endangerment and reserve the right to recover costs associated with that response.

c. Respondent shall submit a written report to EPA within seven business 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. Respondent shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §11004.

VI. AUTHORITY OF THE EPA REMEDIAL PROJECT MANAGER

22. The RPM shall be responsible for overseeing the implementation of this Settlement Agreement. The RPM shall have the authority vested in an RPM by the NCP, including the authority to halt, conduct, or direct any activities required by this Settlement Agreement, or to direct any other response action undertaken by EPA or Respondent at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

VII. REIMBURSEMENT OF COSTS

23. Respondent shall pay EPA all oversight costs not inconsistent with the NCP. "Oversight Costs" are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement. On a periodic basis, EPA will send Respondent a bill requiring payment of oversight costs, along with an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 27 of this

Settlement Agreement, according to the following procedures: Electronic Fund Payments (wire transfers) should be sent to the Federal Reserve Bank of New York, 33 Liberty Street, New York, NY 10045, and include the ABA No. 021030004, Account No. 68010727 and SWIFT address FRNYUS33. In the Field Tag 4200 of the Fedwire message enter: "D 68010727 Environmental Protection Agency." A note identifying the name and address of the party making payment, the Site name, EPA Region 5, the WPSC Marinette MGP Site/B5BT shall also be included.

24. Respondent shall simultaneously transmit a copy of the check or bank form for payment by EFT to the Director, Superfund Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3507. Payments shall be designated as "Response Costs WPSC Marinette MGP Site" and shall reference the payer's name and address, and the EPA site identification number (Site/Spill ID Number B5BT).

25. In the event that any payment is not made within the deadlines described above, Respondent 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 of Respondent's receipt of the bill (or for past response costs, on the Effective Date of this Settlement Agreement).

26. 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 Respondent's failure to make timely payments under this section.

27. Respondent may contest payment of any oversight costs billed under Paragraph 23 if it determines that EPA has made an accounting error or if it believes 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 EPA Project Coordinator. Any such objection shall specifically identify the contested oversight costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested oversight costs to EPA in the manner described in Paragraph 23. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State Wisconsin and remit to that escrow account funds equivalent to the amount of the contested oversight costs. Respondent shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested oversight 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.

28. Simultaneously with establishment of the escrow account, Respondent shall initiate the dispute resolution procedures in Section VIII (Dispute Resolution). If EPA prevails in the dispute, within five days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 23. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the

costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 23.

29. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this paragraph in conjunction with the procedures set forth in Section VIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its oversight costs.

30. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the RPM. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

VIII. DISPUTE RESOLUTION

31. The parties to this Settlement Agreement shall attempt to resolve, expeditiously and informally, any disagreements concerning this Settlement Agreement.

32. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for response costs, Respondent shall notify EPA in writing of its objection(s) within ten calendar days of such action, unless the objection(s) has (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 Respondent's position, and all supporting documentation on which Respondent relies (hereinafter the "Statement of Position").

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

34. An administrative record of any dispute under this section shall be maintained by EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph.

35. 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. If the parties are unable to reach an agreement within the Negotiation Period, EPA will issue a written decision on the dispute to Respondent. The decision of EPA shall be incorporated into and become an enforceable element of this Settlement Agreement upon Respondent's receipt of the EPA decision regarding the dispute.

36. Respondent's 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, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No EPA decision made pursuant to this section shall constitute a final Agency action giving rise to judicial review.

IX. FORCE MAJEURE

37. Respondent agrees to perform all requirements under 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 Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

38. Respondent shall notify EPA orally within 24 hours after Respondent becomes aware of any event that Respondent contends constitute a force majeure and in writing within 7 calendar days after Respondent becomes aware of any events which constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay, estimate the anticipated length of delay (including necessary demobilization and re-mobilization), state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of the measures.

39. Respondent shall take all reasonable measures to avoid and minimize the delays. Failure to comply with the notice provision of this section shall be grounds for EPA to deny Respondent an extension of time for performance/waive any claim of force majeure by Respondent.

40. Respondent 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.

41. If EPA determines a delay in performance of a requirement under this Settlement Agreement is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Settlement Agreement that are not directly affected by the force majeure.

X. STIPULATED AND STATUTORY PENALTIES

42. For each calendar day, or portion thereof, that Respondent fails to fully perform any requirement of this Settlement Agreement in accordance with the schedule established pursuant to this Settlement Agreement, Respondent shall be liable as follows:

- a. Failure to Submit a Draft EE/CA Report:
\$1,000/day for the first 7 days; \$2,500/day for each day thereafter.
- b. Failure to Submit a Revised EE/CA Report:
\$1,000/day for the first 7 days; \$2,500/day for each day thereafter.
- c. Failure to Submit Progress Reports or Other Miscellaneous Reports/Submittals:
\$250/day for the first 7 days; \$500/day for each day thereafter.
- d. Failure to Meet any Scheduled Deadline in the Settlement Agreement:
\$250/day for the first 7 days; \$500/day for each day thereafter.

43. Upon receipt of written demand by EPA, Respondent shall make payment to EPA within 20 calendar days and interest shall accrue on late payments in accordance with Section VII (Reimbursement of Costs) of this Settlement Agreement.

44. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Settlement Agreement. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or an act of noncompliance.

45. The payment of penalties shall not alter in any way Respondent's obligation(s) to complete the performance of the work required under this Settlement Agreement. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondent prevail(s) upon resolution, Respondent shall pay only such penalties as the resolution requires. In its unreviewable discretion, EPA may waive its rights to demand all or a portion of the stipulated penalties due under this section.

46. The stipulated penalties set forth above shall not be the sole or exclusive remedy for violations of this Settlement Agreement. Violation of any provision of this Settlement Agreement may subject Respondent to civil penalties of up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1).

47. Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Settlement Agreement or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

XI. OTHER CLAIMS

48. 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 Respondent. The United States or EPA shall not be a party or be held out as a party to any

contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Settlement Agreement. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Settlement Agreement.

49. Except as expressly provided in Section XII (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 the Respondent or any person not a party to this Settlement Agreement, 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) or 9607(a).

50. This Settlement Agreement does not constitute a preauthorization of funds under Section 111(a) (2) of CERCLA, 42 U.S.C. § 9611(a) (2). Respondent waive(s) any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Settlement Agreement.

51. 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).

XII. COVENANT NOT TO SUE BY EPA

52. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the work that is required to be performed under this Settlement Agreement and as described in Section V (Settlement Agreement and Order) and for oversight costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, the work set forth in Section V (Settlement Agreement and Order), and payment of oversight costs pursuant to Section VII (Reimbursement of Costs). This covenant not to sue extends only to Respondent and does not extend to any other person.

53. Except as otherwise specifically provided in this Settlement Agreement, upon issuance of the EPA notice referred to in Section XVIII (Notice of Completion), EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to perform actions agreed to in this Settlement Agreement except as otherwise reserved herein.

54. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement. These covenants not to sue extend only to Respondent and do not extend to any other person.

XIII. RESERVATIONS OF RIGHTS BY EPA

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

56. The covenant not to sue set forth in Section XII (Covenant Not to Sue By EPA) above does not pertain to any matters other than those expressly identified therein. EPA reserves and this Settlement Agreement is without prejudice to all rights against Respondent with respect to all other matters, including but not limited to:

- (a) claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- (b) liability for costs other than Oversight Costs as defined in Section VII (Reimbursement of Costs) of this Settlement Agreement;
- (c) liability for performance of response action other than the work required to be performed hereunder;
- (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.

57. Work Takeover

In the event EPA determines that Respondent has ceased implementation of any portion of the work required to be performed hereunder, is seriously or repeatedly deficient or late in its performance of the work, or is implementing the work in a manner that may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the work as EPA determines necessary. Respondent may invoke the procedures set forth in Section VIII (Dispute Resolution) to dispute EPA's determination that takeover of the work is warranted under this paragraph. Costs incurred by the United States in performing the work pursuant to this paragraph shall be considered future response costs that Respondent shall pay in accordance with the procedures described in Section VII (Reimbursement of 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.

XIV. COVENANT NOT TO SUE BY RESPONDENT

58. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the work or other requirements of 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 Wisconsin 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 Site.

59. Except as provided in Paragraph 61 of this section, 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 Subparagraphs 56(b), (c), and (e)-(g) but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

61. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site or (ii) 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site.

62. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person that has entered into a final de minimis settlement under Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), with EPA with respect to the Site as of the Effective Date.

XV. CONTRIBUTION

63. The parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the work required to be performed under this Settlement Agreement as described in Section V (Settlement Agreement and Order) and oversight costs as described in Section VII (Reimbursement of Costs).

64. 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 Respondent has, as of the Effective Date, resolved its liability to the United States for the work required under this Settlement Agreement and oversight costs.

65. Nothing in this Settlement Agreement precludes the parties from asserting any claims, causes of action, or demands against any persons not parties to this Settlement Agreement for indemnification, contribution, or cost recovery.

XVI. INDEMNIFICATION

66. Respondent agrees to 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:

- (a) arising from, or on account of, acts or omissions of Respondent and Respondent’s officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors, or assigns in carrying out actions pursuant to this Settlement Agreement; and
- (b) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any persons for performance of work on or relating to the Site, including claims on account of construction delays.

Nothing in this Settlement Agreement, however, requires indemnification by Respondent for any claim or cause of action against the United States based on negligent action taken solely and directly by EPA (not including oversight or approval of plans or activities of Respondent).

XVII. MODIFICATIONS

67. Except as otherwise specified in Section V (Settlement Agreement and Order) of this Settlement Agreement, if any party believes modifications to any plan or schedule are necessary during the course of this project, it shall conduct informal discussions regarding such modifications with the other party. Any agreed-upon modifications to any plan or schedule shall be memorialized in writing within seven business 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 may be modified in writing by mutual agreement of the parties. Any modification to this Settlement Agreement shall be incorporated into and made an enforceable part of this Settlement Agreement.

68. If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

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

XVIII. NOTICE OF COMPLETION

70. When EPA determines, after EPA's review of the EE/CA Report or the revised EE/CA Report, that all work has been fully performed in accordance with this Settlement Agreement, except for certain continuing obligations required by this Settlement Agreement (e.g., record retention, payment of costs), EPA will provide written notice to Respondent. If EPA determines that any activities have not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies and require that Respondent modify the EE/CA Report or revised EE/CA Report if appropriate to correct such deficiencies. Respondent shall implement the modified and approved revised EE/CA Report and shall submit a modified final report in accordance with the EPA notice. Failure to implement the approved modified revised EE/CA Report shall be a violation of this Settlement Agreement.

XIX. SUBMITTALS/CORRESPONDENCE

71. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to the other under this Settlement Agreement 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.

Submissions to Respondent shall be addressed to:

Mr. Narendra Prasad
Senior Environmental Engineer
Integrus Business Support, LLC
130 East Randolph Street, 22nd Floor
Chicago, IL 60601

With copies to:

Mr. Brian Bartoszek
Manager-Remediation & Solid Waste
Integrays Business Support, LLC
700 North Adams Street
Post Office Box 19001
Green Bay, WI 54307-9001

Submissions to EPA shall be addressed to:

Ms. Margaret Gielniewski
EPA - Region 5
77 West Jackson Boulevard, SR-6J
Chicago, IL 60604-3507

With copies to:

Mr. John Tielsch
EPA - Region 5
77 West Jackson Boulevard, C-14J
Chicago, IL 60604-3507

XX. SEVERABILITY

72. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent has sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated by the court's order.

XXI. EFFECTIVE DATE

73. This Settlement Agreement shall be effective upon signature by the Director, Superfund Division, EPA Region 5 ("Effective Date").

[Signature Page Follows]

IN THE MATTER OF:

WPSC Marinette MGP Site
Marinette, Marinette County, Wisconsin

SIGNATORIES

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

Agreed this 26 day of July, 2012

For Respondent:

WISCONSIN PUBLIC SERVICE CORPORATION

By: Connie Lawniczak
Connie Lawniczak
Director of Environmental Services

IT IS SO ORDERED AND AGREED this 27 day of July, 2012.

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