

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND
UNITED STATES DEPARTMENT OF JUSTICE
CERCLA SECTION 122(h)(1) CASHOUT AGREEMENT FOR
ABILITY TO PAY PERIPHERAL PARTY PILE DRIVERS, INC.
AND FOR SETTLING FEDERAL AGENCIES**

24-3000-0517
SCD 950 711 279

TABLE OF CONTENTS

I.	<u>JURISDICTION</u>	3
II.	<u>BACKGROUND</u>	4
III.	<u>PARTIES BOUND</u>	5
IV.	<u>STATEMENT OF PURPOSE</u>	5
V.	<u>DEFINITIONS</u>	5
VI.	<u>REIMBURSEMENT OF RESPONSE COSTS</u>	7
VII.	<u>FAILURE TO COMPLY WITH AGREEMENT</u>	8
VIII.	<u>COVENANTS BY EPA</u>	9
IX.	<u>RESERVATIONS OF RIGHTS BY EPA</u>	10
X.	<u>COVENANT NOT TO SUE BY SETTLING PARTY</u>	11
XI.	<u>COVENANT BY SETTLING FEDERAL AGENCIES</u>	12
XII.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u>	12
XIII.	<u>SITE ACCESS AND INSTITUTIONAL CONTROLS</u>	13
XIV.	<u>RETENTION OF RECORDS</u>	14
XV.	<u>CERTIFICATION</u>	15
XVI.	<u>NOTICES AND SUBMISSIONS</u>	15
XVII.	<u>INTEGRATION/APPENDICES</u>	16
XVIII.	<u>PUBLIC COMMENT</u>	17
XIX.	<u>EFFECTIVE DATE</u>	17

II. BACKGROUND

3. This Agreement concerns the Geiger (C & M Oil) Site ("Site") located in Rantowles, Charleston County, South Carolina. From approximately 1969 to 1971, the Site was the location of a waste oil recycling and industrial waste incineration facility. Unlined lagoons were used to contain the waste oil prior to its use as fuel for the incinerator. Incineration activities at the Site ceased in 1971. The Site property was bought in 1982 by Settling Party, Pile Drivers, Inc., who filled in the lagoons so that the Site could be used to store equipment. Pile Drivers, Inc. currently owns the Site. The Site was placed on the National Priorities List in 1984. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future, as follows:

a. In 1985, EPA began a Remedial Investigation and Feasibility Study ("RI/FS") of the Site to define the nature and extent of the contamination at the Site. The RI was completed on July 1, 1986, and determined that the soil at the Site was contaminated with lead, chromium, mercury, and polychlorinated biphenyls ("PCBs"). Lead, cadmium, VOCs, and other organic compounds were found in the groundwater beneath the Site. An FS, completed in January 1987, developed alternatives for groundwater and soil remediation. The Record of Decision ("ROD") was signed in June 1987, and was subsequently amended in July 1993, and September 1998.

b. Remedial action was commenced on or about October 25, 1993. The ROD, as amended, provided for on-site stabilization and solidification of approximately 1 acre of contaminated soil, and monitored natural attenuation of residual groundwater contamination.

c. Currently, the stabilization and solidification is complete and a concrete monolith has solidified the soil contamination in place. Groundwater monitoring is ongoing. Additionally, the containment of the contaminated soil on Site requires a review every five years by the EPA to assure the continued protectiveness of the remedy.

5. In performing response actions at the Site, EPA has incurred response costs through September 16, 1999, of at least \$6,934,859.98, and will incur additional response costs in the future.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site. EPA further alleges that Settling Federal Agencies are potentially responsible parties with respect to this Site.

7. EPA has reviewed the Financial Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred and to be incurred at the

Site. Based upon this Financial Information, EPA has determined that Settling Party is able to pay the amounts specified in Section VI (Reimbursement of Response Costs) without undue financial hardship.

8. EPA, Settling Party and Settling Federal Agencies recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party and Settling Federal Agencies in accordance with this Agreement do not constitute an admission of any liability. Settling Party and Settling Federal Agencies do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

9. This Agreement shall be binding upon EPA, upon Settling Federal Agencies and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

10. By entering into this Agreement, the mutual objective of EPA and the Settling Party is to avoid difficult and prolonged litigation by allowing Settling Party to make a cash payment to resolve its alleged civil liability under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, subject to the reservations of rights included in Section IX (Reservations of Rights by EPA), and to establish institutional controls at the Site to preserve the integrity and protectiveness of the remedy. In addition, it is the mutual objective of the Parties to resolve potential claims which could be asserted against the Settling Federal Agencies with regard to this Site, as provided in this Agreement, by allowing Settling Federal Agencies to make a cash payment, which includes a premium, to address their potential liability for the Site, subject to the reservations of rights included in Section IX (Reservations of Rights by EPA).

V. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

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

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

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

e. "Financial Information" shall mean those financial documents identified in Appendix A.

f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

g. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

h. "Parties" shall mean EPA, Settling Party and Settling Federal Agencies.

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

j. "ROD" shall mean the EPA Record of Decision relating to the Site dated June 1, 1987, and subsequent amendments dated July 1993 and September 1998, and all attachments thereto.

k. "Section" shall mean a portion of this Agreement identified by a roman numeral.

l. "Settling Federal Agencies" shall mean those departments, agencies, and instrumentalities of the United States identified in Appendix B, which are resolving any claims which have been or could be asserted against them with regard to the Site as provided in this Agreement.

m. "Settling Party" shall mean Pile Drivers, Inc.

n. "Site" shall mean the Geiger (C&M Oil) Superfund Site, encompassing approximately 5 acres, located at 4530 South Carolina State Highway 162 in Rantowles,

Charleston County, South Carolina and depicted more clearly on the map attached as Appendix C.

o. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA, the Settling Federal Agencies and any federal natural resource trustee .

VI. REIMBURSEMENT OF RESPONSE COSTS

12. Within 30 days of the effective date of this Agreement as defined by Paragraph 52, Settling Party shall pay to the EPA Hazardous Substance Superfund \$40,000.00. Payment shall be made by Electronic Funds Transfer ("EFT") in accordance with instructions to be provided to Settling Party by EPA Region 4, and shall be accompanied by a statement identifying the name and address of Settling Party, the Site name, the EPA Region, Site/Spill ID # 0424, and the EPA docket number for this action.

13. As soon as reasonably practicable after the effective date of this Agreement, the United States, on behalf of the Settling Federal Agencies, shall:

a. Pay to the EPA Hazardous Substance Superfund \$5,830,505.58 in reimbursement of response costs incurred and to be incurred, including a premium on projected future response costs, at or in connection with the Site.

i. If the payment to the EPA Hazardous Substances Superfund required by this paragraph is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the effective date of this Agreement, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with procedures set forth in the letter agreement entitled "Agreement On Procedures To Address Consent Decree Payments By Federal PRPs to the Superfund," dated December 28, 1998.

ii. In the event that payment by the Settling Federal Agencies is not made within 120 days of the effective date of this Agreement, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the effective date of this Agreement and accruing through the date of the payment.

iii. The Parties to this Agreement recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Agreement can only be paid from appropriated funds legally available for such purpose. Nothing in this Agreement shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency

obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

14. At the time of payment, Settling Party and Settling Federal Agencies shall send notice that such payment has been made to:

Paula Batchelor
U.S. EPA, Region 4
Program Services Branch
Waste Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Jennifer Lewis
Assistant Regional Counsel
Environmental Accountability Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

15. Of the total amount to be paid pursuant to Paragraph 13, \$5,295,156.40 shall be deposited in the EPA Hazardous Substance Superfund as reimbursement for response costs incurred and paid at or in connection with the Site as of September 16, 1999 by the EPA Hazardous Substance Superfund, and \$535,349.18 shall be deposited in the Geiger (C&M Oil) Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site. Amounts paid by Settling Federal Agencies under this Agreement and deposited into the Geiger (C&M Oil) Special Account shall be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH AGREEMENT

16. If Settling Party fails to make any payment under Paragraph 12 by the required due date, Interest shall accrue on the unpaid balance commencing on the effective date of this Agreement through the date of payment.

17. If any amounts due under Paragraph 12 are not paid by the required date, Settling Party shall be in violation of this Agreement and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 16, \$500 per violation per day that such payment is late.

18. If Settling Party does not comply with Section XIII (Site Access and Institutional Controls), Settling Party shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, \$500 per violation per day of such noncompliance.

19. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of Settling Party, the Site name, the EPA Region, Site/Spill ID # 0424, and the EPA docket number for this action, and shall be sent to:

EPA Superfund
P.O. Box 100142
Atlanta, Georgia 30384
Attn: Superfund Collection Officer

Copies of the check should be sent to Paula Batchelor and Jennifer Lewis in accordance with Paragraph 14.

20. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

21. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with any term or condition of this Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

22. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Paragraph 12 or from performance of any other requirements of this Agreement.

VIII. COVENANTS BY EPA

23. Covenant Not to Sue Settling Party. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of all amounts required by Paragraph 12 of Section VI (Reimbursement of Response Costs), and any amount due under Section VII (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Party. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Party shall forfeit all payments made pursuant to this Agreement and the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of

action arising from Settling Party's false or materially inaccurate information. This covenant not to sue extends only to Settling Party and does not extend to any other person.

24. Covenant for Settling Federal Agencies. In consideration of the payment that will be made by the Settling Federal Agencies under the terms of this Agreement, except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to take administrative action against the Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. This covenant shall take effect upon receipt of the payments required under Paragraph 13 of Section VI (Reimbursement of Response Costs). This covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Agreement. This covenant extends only to the Settling Federal Agencies and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

25. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party and Settling Federal Agencies with respect to all matters not expressly included within the Covenants by EPA in Section VIII. Notwithstanding any other provision of this Agreement, the United States specifically reserves all rights against Settling Party, and EPA and the federal natural resources trustees reserve all rights against Settling Federal Agencies, with respect to:

- a. liability for failure of Settling Party or Settling Federal Agencies to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Agreement by Settling Party; and
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

26. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Agreement, if the Financial Information provided by Settling Party, or the financial certification made by Settling Party in Paragraph 48, is false or, in any material respect, inaccurate.

27. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to institute proceedings, or to issue an administrative order seeking to compel Settling Federal Agencies:

a. to perform further response actions relating to the Site if:

- i. conditions at the Site, previously unknown to EPA, are discovered, or
- ii. information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or this information together with other relevant information indicate that the remedial action chosen by the ROD is not protective of human health or the environment; or

b. to reimburse EPA for additional costs of response if:

- i. conditions at the Site, previously unknown to EPA, are discovered, or
- ii. information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or this information together with other relevant information indicate that the remedial action chosen by the ROD is not protective of human health or the environment.

28. For purposes of the previous paragraph, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of December 6, 1999, the date of the last groundwater sampling results.

29. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTY

30. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA 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 claims arising out of response activities at the Site; and

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.

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

32. Settling Party agrees not to assert any claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person.

XI. COVENANT BY SETTLING FEDERAL AGENCIES

33. The Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA §§106(b)(2), 107, 111, 112, 113, or any other provision of law with respect to the Site.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

34. Except as provided in Paragraph 32, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

35. The Parties agree that Settling Party and Settling Federal Agencies are entitled, as of the effective date of this Agreement, 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 Agreement. The "matters addressed" in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person.

36. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been addressed in this Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue Settling Party set forth in Paragraph 23.

XIII. SITE ACCESS AND INSTITUTIONAL CONTROLS

37. Commencing upon the effective date of this Agreement, Settling Party agrees to provide EPA and its representatives and contractors, and the State of South Carolina and its representatives, access at all reasonable times to the Site, and to any other property owned or controlled by Settling Party to which access is determined by EPA to be required for the implementation of this Agreement, or for the purpose of conducting any response activity related to the Site, including but not limited to:

- a. monitoring, investigation, removal, remedial or other activities at the Site;
- b. verifying any data or information submitted to EPA;
- c. conducting investigations relating to contamination at or near the Site;
- d. obtaining samples;
- e. assessing the need for, planning, or implementing response actions at or near the Site;
- f. assessing Settling Party's compliance with this Agreement; and
- g. determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Agreement.

38. Commencing upon the effective date of this Agreement, Settling Party shall refrain from using the Site in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures implemented pursuant to the ROD. Prohibited activities include, but are not limited to, disturbance of the surface or subsurface of the land in the location of the treated soil, as indicated on the attached map labeled Appendix D, in any manner, including but not limited to filling, drilling, excavation, anchoring, removal of topsoil, rock or minerals, plowing, planting, or cultivation (other than maintenance of groundcover), or change of the topography in any manner.

39. At the direction of the South Carolina Department of Health and Environmental Control ("SCDHEC") and/or EPA, Settling Party shall execute and record in the Register Mense Conveyance of Charleston County, South Carolina, a Declaration of Covenants and Restrictions, in substantially the same form as Appendix E, and enforceable under the laws of the State of South Carolina that grants a right of access running with the land for the purpose of inspection and to take samples. This Declaration of Covenants and Restrictions shall also provide to SCDHEC and its successor agencies the right to enforce the land use restrictions listed within the Declaration.

40. Within 30 days of recording the restrictive covenant, Settling Party shall provide EPA with a certified copy of the original recorded restrictive covenant showing the clerk's recording stamps.

41. With the exception of the Declaration of Covenants and Restrictions referred to in Paragraph 39, Settling Party agrees not to convey any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interest, unless the grantee(s) agree(s) to execute an Access Agreement consistent with the provisions in Paragraph 37 of this Agreement.

42. At least 30 days prior to the conveyance of any interest in the Site property, Settling Party shall give EPA written notice of (a) the forthcoming conveyance, (b) the name and address of the grantee(s), and (c) a copy of the contract under which the conveyance will be made, including an Access Agreement signed by the grantee(s).

43. If EPA determines that further land/water use restrictions in the form of state or local laws, regulations, ordinances, or other governmental controls are needed to implement the remedy selected in the Record of Decision (ROD), ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Party shall cooperate with EPA's and the State's effort to secure such governmental controls.

44. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, as well as all of their rights to require land use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIV. RETENTION OF RECORDS

45. Until 4 years after the effective date of this Agreement, Settling Party shall preserve and retain all documents or information now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

46. After the conclusion of the document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such documents or information, and, upon request by EPA, Settling Party shall deliver any such documents or information to EPA. Settling Party may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or information created or generated pursuant to the requirements of this

or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document or information, the document or information shall be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all documents or information that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor.

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

XV. CERTIFICATION

48. By signing this Agreement, Settling Party certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents or information, and has fully and accurately disclosed to EPA, all documents or information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage, or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any documents or information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site;

c. fully complied with any and all EPA requests for documents or information regarding the Site and Settling Party's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e); and

d. submitted to the United States Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Party executes this Agreement.

XVI. NOTICES AND SUBMISSIONS

49. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA, Settling Party, and Settling Federal Agencies.

As to EPA:

Jennifer Lewis
Assistant Regional Counsel
Environmental Accountability Division
U.S. EPA Region 4
61 Forsyth St., S.W.
Atlanta, Georgia 30303

Janice Thomas
Enforcement Project Manager
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

As to Settling Party:

Kay Shealy
Pile Drivers, Inc.
4530 Highway 162
Hollywood, South Carolina 29449

As to Settling Federal Agencies:

Peter Kushner, Esq.
U.S. Department of the Navy
Office of the General Counsel
Counsel for the Southern Division
Naval Facilities Engineering Command
2155 Eagle Drive
North Charleston, SC 29419-9010

Major Gregory Woods, Esq.
U.S. Department of Army
Army Environmental Law Division
901 North Stuart Street, Suite 713
Arlington, VA 22203-1837

XVII. INTEGRATION/APPENDICES

50. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or

understandings relating to the settlement other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement:

Appendix A is a list of the financial documents submitted to EPA by Settling Party.

Appendix B is a list of Settling Federal Agencies.

Appendix C is a map of the Site.

Appendix D is a plat of the concrete monolith.

Appendix E is a draft Declaration of Covenants and Restrictions.

XVIII. PUBLIC COMMENT

51. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States on behalf of EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

XIX. EFFECTIVE DATE

52. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 51 has closed and that comments received, if any, do not require modification of or withdrawal by the United States on behalf of EPA from this Agreement.

IT IS SO AGREED:

Pile Drivers, Inc.

By: Kay G. Shealy
[Name]

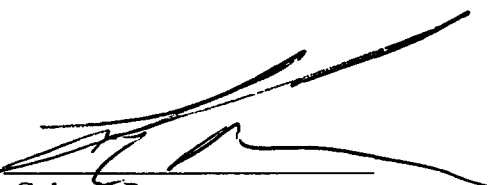
June 14, 2000
Date

Kay G. Shealy, Secretary-Treasurer

The Undersigned Settling Federal Agency enters into this Agreement in the matter relating to the Geiger (C & M Oil) Superfund Site located in Charleston County, South Carolina:

FOR SETTLING FEDERAL AGENCY:

United States Department of the Army
Colonel Rouse
Chief, Army Environmental Law Division

By: 
Colonel Rouse

25 June 2000
Date

The Undersigned Settling Federal Agency enters into this Agreement in the matter relating to the Geiger (C & M Oil) Superfund Site located in Charleston County, South Carolina:

FOR SETTLING FEDERAL AGENCY:

United States Department of the Navy
Captain R.E. Cellon, CEC USN
Commander, Southern Division Naval Facilities Engineering Command
Charleston, South Carolina

By: 

Captain R.E. Cellon



Date

U.S. Environmental Protection Agency

By: 

Franklin Hill
Chief, CERCLA Program Services Branch

Date 7-28-2000

U.S. Department of Justice

By: *Lois J. Schiffer*
LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
950 Penn Ave., N.W., Room 2718
Washington, D.C. 20530

7-28-00
Date

By: _____
VALERIE K. MANN
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Date