

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

IN THE MATTER OF: )

GENICOM FACILITY )  
WAYNESBORO, VA )

Docket No.: RCRA-03-2001-0272

UNDER THE AUTHORITY OF THE )  
COMPREHENSIVE ENVIRONMENTAL )  
RESPONSE, COMPENSATION, AND )  
LIABILITY ACT OF 1980, 42 U.S.C. )  
§§ 9601-9678, AS AMENDED )  
AND THE SOLID WASTE DISPOSAL ACT, )  
42 U.S.C. §§ 6901, et seq, AS AMENDED. )

AGREEMENT AND COVENANT  
NOT TO SUE SOLUTIONS WAY  
MANAGEMENT

**TABLE OF CONTENTS**

**I. INTRODUCTION** ..... 1

**II. DEFINITIONS** ..... 2

**III. STATEMENT OF FACTS** ..... 5

**IV. WORK TO BE PERFORMED** ..... 7

**V. ACCESS / CONVEYANCE OF PROPERTY / NOTICE TO SUCCESSORS IN INTEREST** ..... 19

**VI. DUE CARE / COOPERATION** ..... 23

**VII. CERTIFICATION** ..... 24

**VIII. INDEMNIFICATION AND HOLD HARMLESS** ..... 25

**IX. FORCE MAJEURE** ..... 26

**X. DISPUTE RESOLUTION** ..... 29

**XI. STIPULATED PENALTIES** ..... 31

**XII. UNITED STATES' COVENANT NOT TO SUE** ..... 34

**XIII. RESERVATION OF RIGHTS** ..... 34

**XIV. SOLUTIONS WAY MANAGEMENT'S COVENANT NOT TO SUE** ..... 36

**XV. PARTIES BOUND / TRANSFER OF COVENANT** ..... 37

**XVI. DISCLAIMER** ..... 38

**XVII. DOCUMENT RETENTION** ..... 38

**XVIII. PAYMENT OF COSTS** ..... 41

**XIX. NOTICES AND SUBMISSIONS** ..... 41

**XX. EFFECTIVE DATE** ..... 42

**XXI. MODIFICATION AND TERMINATION** ..... 43

**XXII. CONTRIBUTION PROTECTION** ..... 44

**XXIII. APPENDICES** ..... 44

**XXIV. PUBLIC COMMENT AND RELATED SUBSEQUENT MODIFICATIONS** ... 45

**XXV. COUNTERPART ORIGINALS** ..... 46

## **I. INTRODUCTION**

1. This Agreement (“Agreement”) is made and entered into by and between the United States, on behalf of the Environmental Protection Agency (“EPA”), and Solutions Way Management, LLC (“Solutions Way Management”) (collectively the “Parties”).
2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9601, et seq., and Section 7003 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6973, and the authority of the Attorney General of the United States to compromise and settle claims of the United States.
3. Solutions Way Management’s proposed use for the Site, as defined in Section II of this Agreement, below, is to lease space for purposes of warehousing of finished goods, light manufacturing and assembly, and office space to various tenants.

## II. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA and/or RCRA or in regulations promulgated under CERCLA and/or RCRA shall have the meaning assigned to them in CERCLA and/or RCRA or in such regulations. Whenever terms listed below are used in this Agreement, the following definitions shall apply:
- a. "Day" shall mean a calendar day unless expressly stated to be a Working day.
  - b. "Duly Authorized Representative" shall mean a person set forth or designated in accordance with the procedures set forth in 40 C.F.R. § 270.11(b).
  - c. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
  - d. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants, present or existing on or under the Site as of the effective date of this Agreement.
  - e. "Existing Groundwater Treatment System" shall mean the groundwater pump and treat system existing on the Site as of the effective date of this Agreement, and shall include but not be limited to the existing groundwater pump, associated groundwater well (known as well #MW-51B), associated groundwater treatment system and any and all associated piping and any modifications made to any portion of this overall groundwater pump and treat system as required by EPA and/or VADEQ.



- f. "Genicom RCRA Permit" shall mean the Post-Closure Permit issued for the Site by VADEQ on February 16, 1999, pursuant to Chapter 14, Section 10.1-1426, Code of Virginia (1950), as amended, and regulations promulgated thereunder by the VADEQ.
- g. "Parties" shall mean the United States on behalf of EPA, and Solutions Way Management.
- h. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral.
- 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. "RCRA Cap" shall mean the Hazardous Waste Management Units described in Part III.B1. of the Genicom RCRA Permit.
- k. "Section" shall mean a portion of this Agreement identified by a capitalized roman numeral.
- l. "Site" shall mean the Genicom RCRA Site, encompassing approximately 114 acres, located at Genicom Drive, Waynesboro, Virginia and described in Appendix 1 attached hereto, and depicted generally on the map attached as Appendix 2. The Site shall include all Solid Waste Management Units ("SWMUs"), Hazardous Waste Management Units ("HWMUs") and all areas to which solid wastes, hazardous wastes, hazardous substances and/or pollutants or contaminants, have come to be located.

- m. "Solutions Way Management" shall mean Solutions Way Management, LLC and for purposes of this Agreement shall include any of its successors and assigns.
- n. "Solutions Way Management Work Coordinator" shall mean the principal person retained by Solutions Way Management to supervise and direct the implementation of the Work under this Agreement.
- o. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.
- p. "VADEQ" shall mean the Virginia Department of Environmental Quality and any successor departments or agencies of the Commonwealth of Virginia.
- q. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and/or (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
- r. "Work Plan" shall mean any submission required pursuant to this Agreement which describes or relates to the implementation of any Work, other than a Progress Report required pursuant to Section IV (Work To Be Performed) of this Agreement.
- s. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. 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.

### **III. STATEMENT OF FACTS**

5. On August 10, 1990, pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928, EPA issued an Initial Administrative Order, U.S. EPA Docket Number RCRA-III-036-CA (hereinafter referred to as “the Unilateral Administrative Order”), to Genicom Corporation (“Genicom”). This Order required Genicom to perform, among other work:
  - i) Interim Measures at the Facility, if appropriate, to mitigate any threat to human health or the environment; ii) a RCRA Facility Investigation (“RFI”) to determine fully the nature and extent of any release of hazardous wastes or hazardous constituents at or from the Site; and iii) a Corrective Measures Study (“CMS”) to identify and evaluate alternatives for the corrective action necessary to prevent or mitigate any migration or release of hazardous wastes or hazardous constituents at or from the Facility.
6. On February 16, 1999, the Virginia Department of Environmental Quality (“VADEQ”) issued Genicom a Post-Closure Permit (the “Genicom RCRA Permit”) pursuant to Chapter 14, Section 10.1-1426, Code of Virginia (1950), as amended, and regulations promulgated thereunder by the VADEQ. The Genicom RCRA Permit became effective on March 18, 1999. This permit requires the implementation of certain tasks relating to closure and post-closure care for the two surface impoundments at the Site, including maintenance of financial assurance for the annual cost of post-closure monitoring and maintenance of the two surface impoundments at the Site. Pursuant to the requirements of the Genicom RCRA Permit, Genicom established a surety bond with the Hartford Fire Insurance Company, Surety Bond # 452691.



7. On March 10, 2000, Genicom filed a voluntary petition for protection under Chapter 11 of the U.S. Bankruptcy Code in this Court.
8. By letter to EPA dated October 12, 2000, Solutions Way Management indicated its interest in negotiating an agreement with Genicom, the current owner of the Site, for its purchase of the Site and described its past involvement at the Site.
9. On or about January 5, 2001, Genicom filed a proposed Debtor's Plan of Liquidation ("Debtor's Plan"). Among other things, Debtor's Plan states that Debtor has entered into a contract to sell the Site, but that if there has been no closing on the contract of sale by the Effective Date of Debtor's Plan, "the contract shall terminate and the [Site] shall be deemed abandoned as of the Effective Date within the meaning of section 554 of the Code."
10. By letter to EPA dated March 22, 2001, Solutions Way Management, by and through Lake Polan, III and its counsel, indicated its interest in negotiating an agreement with EPA, pursuant to which it may purchase the Site and obtain a covenant not to sue and contribution protection (hereinafter referred to as "PPA Request").
11. Pursuant to the Bankruptcy Court's Order of March 23, 2001, the confirmation hearing on Debtor's Plan is scheduled for May 31, 2001, having been postponed from April 4, 2001.
12. By letter to EPA, dated March 29, 2001, Solutions Way Management provided EPA with certain information relating to its PPA Request.
13. Presently, in addition to the preparation of an RFI, work required at the Facility relating to Existing Contamination includes operation and maintenance of an Existing Groundwater

Treatment System ("Existing GWTS") and maintenance of a Hazardous Waste

Management Unit. EPA has been informed that, in addition to Genicom, a prior owner of the Site is funding a portion of the above on-going work relating to Existing Contamination.

#### **IV. WORK TO BE PERFORMED**

14. Solutions Way Management agrees to perform the Work it is required to perform as specified in this Section IV (Work To Be Performed), Section V (Access / Conveyance of Property / Notice to Successors In Interest), Section VI (Due Care/Cooperation), and Section XVII (Document Retention) of this Agreement.
15. Solutions Way Management shall provide a copy of this Agreement to each contractor hired to perform the Work required by this Agreement, and to each person representing Solutions Way Management with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Agreement. Solutions Way Management or its contractors shall provide written notice of the Agreement to all subcontractors hired to perform any portion of the Work required by this Agreement. Solutions Way Management shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Agreement.

16. All activities undertaken by Solutions Way Management pursuant to this Agreement shall be performed in accordance with the requirements of all applicable federal, state and local laws and regulations.
17. Solutions Way Management's Work Coordinator And EPA's Project Coordinator
  - a. All aspects of the Work to be performed by Solutions Way Management pursuant to this Agreement, shall be under the direction and supervision of the Solutions Way Management's Work Coordinator. Within ten (10) days after the effective date of this Agreement, Solutions Way Management shall notify EPA in writing of the name, title, telephone and telefax numbers and mailing address of the person proposed to be Solutions Way Management's Work Coordinator. If at any time thereafter, Solutions Way Management proposes to change its Work Coordinator, Solutions Way Management shall give such notice to EPA before Solutions Way Management's new Work Coordinator performs, directs, or supervises any Work under this Agreement. Solutions Way Management's Work Coordinator may assign another representative, including another contractor, to serve as a Site representative for oversight of performance of daily operations during the implementation of Work conducted in accordance with this Agreement.
  - b. Notwithstanding Solutions Way Management's selection of a Work Coordinator, Solutions Way Management shall remain responsible for complying with all terms and conditions of this Agreement for which it is liable to perform.



- c. The EPA Project Coordinator for this Site is:

Mr. Andrew Fan (3WC23)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-3426 (telephone)  
(215) 814-3113 (telefax)

- d. EPA may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Agreement.

18. Solutions Way Management's General Work Requirements

On and after the effective date of this Agreement, Solutions Way Management shall perform and finance the following work:

- a. Maintain and preserve at the Site: (1) all documents required to be preserved or otherwise maintained pursuant to Section XVII (Document Retention) of this Agreement; and (2) all documents generated by Genicom and/or General Electric Company ("GE") and provided to Solutions Way Management by either GE or Genicom, which are required to be preserved or otherwise maintained pursuant to RCRA and/or its implementing regulations, and/or any order or permit issued by EPA pursuant to RCRA and/or its implementing regulations.
- b. Perform periodic maintenance of the Final Cover of the RCRA Cap by completing the following activities in accordance with Part I.H.6. (Proper Operation and Maintenance) of the Genicom RCRA Permit:
- i. conduct a visual inspection of the RCRA Cap once a month and identify



- any deterioration, malfunction, damage or improper operation of the RCRA Cap;
- ii. mow the grass covering the RCRA Cap once a month during the growing season (May through October);
  - iii. remove vegetative species having roots reasonably expected to extend more than four (4) inches deep into the vegetative layer;
  - iv. fertilize the grass in accordance with the recommendations of the local office of the U.S. Department of Agriculture's Soil Conservation Service;
  - v. water the grass covering the RCRA Cap as needed;
  - vi. maintain and ensure the integrity of any fencing surrounding the RCRA Cap;
  - vii. implement Security procedures at the Site necessary to ensure that no activity at or near the Site interferes with the operation, maintenance, effectiveness and/or integrity of any Solid Waste Management Unit(s), Hazardous Waste Management Unit(s) and/or Existing GWTS located at the Site; and,
  - viii. submit to EPA semi-annual progress reports describing the status of implementation of, including any EPA-approved modifications to, the work described in this Section.

19. Requirements Relating To Proposed Development

- a. Prior to the initiation of any construction activity, including any significant disturbance of soil at the Site, Solutions Way Management shall submit to EPA for review a notification of any such activity (Proposed Development Notification) which includes, at a minimum, the following components:
  - i. a description of the anticipated activity;
  - ii. a description of the area of the property which may be affected by such anticipated activity;
  - iii. a tentative and approximate schedule for the performance of any critical or significant tasks which are included as part of any such activity.
  
- b. Prior to the initiation of any activity described in any Proposed Development Notification submitted to EPA pursuant to this Section, Solutions Way Management shall submit to EPA for review, comment and/or approval a work plan for such Proposed Development (Draft Proposed Development Workplan) which includes at a minimum the following:
  - i. a environmental media sampling plan;
  - ii. a Quality Assurance / Quality Control ("QA/QC") plan; and
  - iii. a Health and Safety Plan, which, at a minimum, addresses protection of those persons involved with the anticipated activity from any and all contaminated environmental media.

- c. Within thirty (30) days of receipt of EPA's approval of any Draft Proposed Development Workplan, Solutions Way Management shall submit to EPA for comment a Final Development Workplan which incorporates and reflects any EPA comments or modifications of such Draft Proposed Development Workplan and which includes a clear and specific schedule for implementation of the tasks described in the Final Development Workplan.
- d. Upon receipt of notification of EPA's approval of any Final Development Workplan, Solutions Way Management shall implement any such EPA-approved Final Development Workplan in accordance with the terms and schedule contained therein.
- e. Solutions Way Management shall not undertake, direct or consent to any activity at the Site which includes the significant disturbance of soil prior to receipt of notification of EPA's approval of any Final Development Workplan.
- f. Solutions Way Management shall provide any entity required to perform tasks to address Existing Contamination pursuant to an administrative order or a permit issued by EPA or VADEQ with one duplicate of any Notification, Certification or Workplan submitted by Solutions Way Management to EPA, pursuant to this Paragraph of this Section IV.

- g. Any work undertaken in accordance with any EPA-approved Proposed Development Notification and/or EPA-approved Final Development Workplan shall be performed in accordance with, at a minimum, RCRA, its implementing regulations and applicable and/or relevant EPA guidance documents..
- h. Sampling and Analysis Requirements Relating To Proposed Development
- i. Any QA/QC plan submitted in accordance with this Agreement shall be developed in accordance with and shall be consistent with quality assurance, quality control, and chain of custody procedures set forth in "EPA Requirements for Quality Assurance QA Project Plans for Environmental Data Operation," (US EPA Quality Assurance Management Staff: August 1994 Interim Final, November 1999) (EPA QA/R-5); "Guidance on Quality Assurance Project Plans (G-5)", EPA/600/R-98/018, February 1998, and subsequent amendments to such guidelines upon notification by EPA to Solutions Way Management of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.
- ii. Solutions Way Management shall ensure that all sample collection and analysis activities undertaken at the Site shall be performed in accordance with the applicable EPA-approved QA/QC plan.
- iii. Solutions Way Management shall make best efforts to ensure that EPA personnel and EPA's authorized representatives are allowed access at



reasonable times to all laboratories utilized by Solutions Way Management in implementing this Agreement. In addition, Solutions Way

Management shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring.

- iv. Solutions Way Management shall ensure that any laboratories they utilize for the analysis of samples taken pursuant to this Agreement perform all analyses according to accepted EPA methods.
- v. Upon request from EPA, the Solutions Way Management shall allow split or duplicate samples to be taken by EPA or their authorized representatives. Solutions Way Management shall notify EPA not less than fourteen (14) days in advance of any sample collection activity unless shorter notice is agreed to by EPA in writing. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Solutions Way Management to take split or duplicate samples of any samples it takes as part of the EPA's oversight of Solutions Way Management's implementation of the Work.
- vi. Solutions Way Management shall submit to EPA two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Solutions Way Management with respect to the Site and/or the implementation of this Agreement unless EPA agrees in writing otherwise.

- i. Solutions Way Management shall ensure that any activity undertaken, directed or consented to by Solutions Way Management at the Site shall be consistent with an EPA-approved Final Development Workplan.
  - j. Solutions Way Management shall ensure that any activity undertaken, directed or consented to by Solutions Way Management at the Site shall be consistent with and not interfere with any corrective action and/or remedial action which may be required by EPA and/or VADEQ for the Site and any activity required by EPA and/or VADEQ which relates to any Existing Contamination, existing HWMU, existing SWMU and/or the Existing GWTS.
20. If at any time following the effective date of this Agreement, Solutions Way Management discovers any defects, abnormalities or problems with any systems or structures, including but not limited to, the Hazardous Waste Management Units and/or the Existing GWTS which are located at the Site, Solutions Way Management shall provide EPA's Project Coordinator with: a) oral notification of such defect, abnormality or problem within twenty-four (24) hours of Solutions Way Management's discovery of such defect, abnormality or problem, and b) written notification of such defect, abnormality or problem within three (3) days of Solutions Way Management's discovery of such defect, abnormality or problem. These reporting requirements are in addition to any reporting requirements set forth at CERCLA § 103, 42 U.S.C. § 6903, and/or EPCRA § 304, 42 U.S.C. § 11004.

21. All reports and other documents submitted by Solutions Way Management to EPA (other than the progress reports referred to in paragraph 18 above), which purport to document Solutions Way Management's compliance with the terms of this Agreement shall include a certification signed by a Duly Authorized Representative of Solutions Way Management.

- a. For purposes of this Agreement, a person is a "duly authorized representative" only if: i) the authorization is made in writing; ii) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and iii) the written authorization is submitted to the Project Coordinator designated by EPA pursuant to this Section XIII (Project Coordinators).
- b. The certification required by this Paragraph shall be in the following form:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_



22. EPA Review and Approval Of Plans And Other Submissions

- a. Except for any Health and Safety Plans and Progress Reports, EPA will review each document submitted pursuant to this Agreement (hereinafter collectively referred to as "Submission") and EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission conditioned upon certain modifications and/or revisions and request that Solutions Way Management modify the submission and comply with the modified submission and resubmit the revised submission (Conditional Approval); (iii) disapprove, in whole or in part, the submission, directing the settling party submitting the submission to modify and resubmit the submission; or (iv) any combination of the above. EPA shall specify in writing any comments, deficiencies, approval, disapproval or request for modification. No approval, conditional approval or disapproval pursuant to this Paragraph shall be subject to the Dispute Resolution procedures of Section X (Dispute Resolution). Notwithstanding any notice of disapproval, Respondent shall implement, at the direction of EPA and within the time periods set forth in any applicable schedule, any task required by any non-deficient portion of a submission.
- b. Any conditional approval of any submission made to EPA pursuant to this Agreement shall be considered a disapproval of such submission unless and until Solutions Way Management notifies EPA in writing that any and all conditions for approval have been fully and completely satisfied.
- c. Within thirty (30) days of receipt of EPA's comments on any Submission, Solutions Way Management shall submit to EPA for approval a revised Submission which



responds to EPA's comments and/or corrects any deficiencies identified by EPA. In the event that EPA disapproves any portion of a revised Submission, Solutions Way Management may invoke the dispute resolution procedures set forth in Section X (Dispute Resolution) of this Agreement. However, EPA reserves the right to prepare such Submission in lieu of Solutions Way Management and to seek to recover from Solutions Way Management the costs thereof, in accordance with CERCLA, and any other applicable laws, and/or to take any other appropriate action under RCRA, CERCLA, or any other legal authority.

- d. All plans, reports, and other items required to be submitted to EPA under this Agreement shall, upon approval or modification by EPA, be enforceable under this Agreement. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Agreement, the approved or modified portion shall be enforceable under this Agreement. Solutions Way Management shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section X (Dispute Resolution).

**V. ACCESS / CONVEYANCE OF PROPERTY / NOTICE TO SUCCESSORS IN INTEREST**

23. Access

- a. As of the effective date of this Agreement, Solutions Way Management shall:
  - i. provide to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Site and to any other property to which access is required for the implementation of response actions and/or corrective actions at the Site;
  - ii. ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation as is required of Solutions Way Management pursuant to the terms of this Agreement;
  - iii. ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement;
  - iv. ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with the terms of this Agreement; and
  - v. commencing upon the effective date of this Agreement, provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Agreement including, but not limited to:
    - (1) Monitoring the Work;

- (2). Verifying any data or information submitted to the United States;
  - (3) Conducting investigations relating to contamination at or near the Site;
  - (4) Obtaining samples;
  - (5) Assessing the need for, planning, or implementing additional response actions and/or corrective actions at or near the Site;
  - (6) Implementing corrective action or response actions at the Site pursuant to CERCLA and/or RCRA, and their implementing regulations;
  - (7) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Solutions Way Management or its agents, consistent with this Agreement;
  - (8) Assessing Solutions Way Management compliance with this Agreement; and
  - (9) Determining whether the Site or other property 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.
24. Commencing on the effective date of this Agreement, Solutions Way Management and any of its successors in interest and assigns shall refrain from using the Site, or such other property, in any manner that would: a) interfere with or adversely affect the integrity or protectiveness of the Hazardous Waste Management Units and/or the Existing GWTS located at the Site or b) be inconsistent with the terms of this Agreement. Such restrictions include, but are not limited to, any activity at the Site which would disturb the integrity of the final cover, liners, any components of the containment system, or the function of the groundwater pump and treat and/or monitoring systems located at the Site.
25. Notice to Successors In Interest
- a. Within thirty (30) days following the effective date of this Agreement, Solutions Way Management shall submit to EPA for review and approval a notice to be filed with the



Recorder's Office [or Registry of Deeds or other appropriate office], Augusta County, Commonwealth of Virginia, which shall provide notice to all successors-in-title that the property is part of the Site and that Solutions Way Management has entered into this Agreement requiring implementation of the Work pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973. Such notice(s) shall identify the names and addresses of the Parties to this Agreement, the Docket number of this Agreement, and the date this Agreement became effective. Such notice(s) shall also recite Solutions Way Management's specific obligations to provide access to and restrict use of the Site pursuant to this Agreement. Solutions Way Management shall not modify or release such notice(s) without prior written approval of EPA. Solutions Way Management shall record such notice(s) within ten (10) days of EPA's approval of such notice(s). Solutions Way Management shall provide EPA with a certified copy of the recorded notice(s) within ten (10) days of recording such notice(s).

26. Notice of Conveyance of Interest

- a. At least thirty (30) days prior to the conveyance by Solutions Way Management of any interest in property which is located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, Solutions Way Management shall give the grantee: (1) a copy of this Agreement; (2) written notice of any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to this Agreement, and (3) written notice of any instrument by which an interest in real property has been conveyed



that confers a right to enforce restrictions on the use of such property (hereinafter referred to as “restrictive easements”) pursuant to this Agreement. At least thirty (30) days prior to any such conveyance, Solutions Way Management shall also give written notice to the U.S. Department of Justice (“DOJ”), EPA and any entity required to perform tasks to address Existing Contamination pursuant to an administrative order or a permit issued by EPA or VADEQ of the proposed conveyance, which notice shall include: (1) the name, address and telephone number of the grantee; (2) the date on which notices of the Agreement, access easements, and/or restrictive easements was given to the grantee; and (3) the proposed effective date of any such proposed conveyance.

- b. In the event of any such conveyance, except as provided in Section XXI (Modification and Termination) of this Agreement, Solutions Way Management shall continue to be obligated under this Agreement, including, but not limited to, providing or securing access and institutional controls, as well as abiding by such institutional controls, pursuant to Section V (Access/Conveyance of Property/Notices To Successors In Interest) of this Agreement. In no event shall the conveyance release or otherwise affect the liability of Solutions Way Management to comply with all provisions of this Agreement, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Agreement.
- c. Notwithstanding any provision of this Agreement, the United States retains all of its access authorities and rights, as well as its rights to require land/water use restrictions,

including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations, including any amendments thereto.

27. This Agreement may be modified pursuant to Section XXI (Modification And Termination) to assign or transfer all of the rights, benefits, and obligations conferred upon Solutions Way Management under this Agreement to any successor in interest. DOJ's and EPA's decision to consent to any such modification shall be in its unreviewable discretion which shall not be subject to dispute resolution under this Agreement.

#### **VI. DUE CARE / COOPERATION**

28. Upon the occurrence of any event during performance of the Work which Solutions Way Management is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, and/or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004, ("reportable event"), Solutions Way Management shall within twenty-four (24) hours of having knowledge of the onset of such reportable event orally notify the EPA Project Coordinator or (in the event of the unavailability of the EPA Project Coordinator) the EPA Region III Hotline at (215) 814-3255. These reporting requirements are in addition to the reporting required by CERCLA § 103 and/or EPCRA § 304 and EPA reserves the right to enforce these requirements as violations of the statutory provisions in lieu of and/or in addition to enforcing this agreement.

29. Within seventy-two (72) hours of learning of such a reportable event, Solutions Way Management shall furnish to the EPA Project Coordinator a written report setting forth the events which occurred and the measures taken in response thereto.
30. Solutions Way Management shall ensure that any activity undertaken, directed or consented to by Solutions Way Management at the Site shall be consistent with and not interfere with any corrective action and/or remedial action at the Site, including, but not limited to, any activity required by EPA and/or VADEQ which relates to Existing Contamination.

#### **VII. CERTIFICATION**

31. By entering into this agreement, the Solutions Way Management certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Solutions Way Management and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of solid wastes, hazardous wastes, hazardous substances, pollutants and/or contaminants at or from the Site and to its qualification for this Agreement. Solutions Way Management also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of solid wastes, hazardous wastes, hazardous substances, pollutants and/or contaminants at the Site. If the United States determines that information provided by Solutions Way Management is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.



**VIII. INDEMNIFICATION AND HOLD HARMLESS**

32. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Solutions Way Management as EPA's authorized representatives under Section 104(e) of CERCLA. Solutions Way Management shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, any acts or omissions of Solutions Way Management, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Agreement. Further, Solutions Way Management agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on any acts or omissions of Solutions Way Management, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Solutions Way Management in carrying out activities pursuant to this Agreement. Neither Solutions Way Management nor any such contractor shall be considered an agent of the United States.
33. The United States shall give Solutions Way Management notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 32 of this Section above, and shall consult with Solutions Way Management prior to settling such claim.



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

#### **IX. FORCE MAJEURE**

35. "*Force majeure*," for purposes of this Agreement, is defined as any event arising from causes beyond the control of Solutions Way Management, of any entity controlled by Solutions Way Management, or of any contractor of Solutions Way Management, that delays or prevents the performance of any obligation under this Agreement despite Solutions Way Management's best efforts to fulfill the obligation. The requirement that Solutions Way Management exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring, and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force

Majeure" does not include financial inability to complete the Work, a failure to attain the Performance Standards, or increased costs.

36. If any event occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a force majeure event, Solutions Way Management shall orally notify EPA's Project Coordinator within forty-eight (48) hours of when Solutions Way Management first knew that the event might cause a delay in the performance of any obligation under this Agreement. Within five (5) days thereafter, Solutions Way Management shall provide to EPA a written Force Majeure Notification which includes, at a minimum, an explanation and description of the reasons for the delay; the obligation under this Agreement the performance of which may be delayed; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Solutions Way Management's rationale for attributing such delay to a force majeure event; if it intends to assert such a claim; and a statement as to whether, in the opinion of Solutions Way Management, such event may cause or contribute to an endangerment to public health, welfare or the environment. Solutions Way Management shall include with any notice all available documentation supporting their claim that the delay was attributable to force majeure. Failure to comply with the above requirements shall preclude Solutions Way Management from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Solutions Way Management shall be deemed to know of any

circumstance of which any entity controlled by Solutions Way Management, or Solutions Way Management's contractor(s) knew or should have known.

37. If EPA agrees that the delay or anticipated delay in the performance of an obligation(s) is attributable to a force majeure event, the time for performance of such obligation(s) under this Agreement that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete such obligation(s) on an expedited basis. An extension of the time for performance of such obligation(s) affected by a force majeure event shall not, of itself, extend the time for performance of any other obligation required pursuant to this Agreement. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Solutions Way Management in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Solutions Way Management in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.
38. If Solutions Way Management elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Solutions Way Management shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that it complied with the requirements of Paragraphs 35 and 36 of this Section, above. If Solutions Way Management



carries this burden, the delay at issue shall be deemed not to be a violation by Solutions Way Management of the affected obligation of this Agreement identified to EPA.

## **X. DISPUTE RESOLUTION**

39. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between EPA and Solutions Way Management arising under or with respect to this Agreement. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Solutions Way Management that have not been disputed in accordance with this Section.
40. Any dispute which arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is extended by written agreement of the Parties. The dispute shall be considered to have arisen when Solutions Way Management sends EPA and the United States a written Notice of Dispute. Any agreement relating to a Notice of Dispute which is reached as a result of informal negotiations shall be in writing and signed by EPA and Solutions Way Management.
41. In the event that a Notice of Dispute relates to EPA's disapproval or modification of a submission, any such Notice of Dispute shall be submitted to EPA by Solutions Way Management within fourteen (14) days of receipt of EPA's disapproval or modification of such submission, and shall set forth the specific point(s) of dispute and the position which



Solutions Way Management asserts should be adopted as consistent with the requirements of this Agreement.

42. In the event that the Parties cannot resolve a dispute by informal negotiations, EPA shall provide Solutions Way Management a written decision on the dispute. Thereafter, EPA may pursue whatever remedies they may have under law, including the right to seek judicial enforcement of this Agreement.
43. The existence of a dispute, as defined in this Section, and EPA's consideration of matters placed into dispute shall not excuse, toll or suspend any compliance obligation or deadline required pursuant to this Agreement during the pendency of the dispute resolution process. Stipulated penalties with respect to any disputed matter shall continue to accrue, but payment shall be stayed pending either resolution of the dispute as a result of informal negotiations or receipt of EPA's written decision on the dispute and EPA's demand for payment. Notwithstanding any such stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable requirement of this Agreement.
44. Notwithstanding any other provision of this Agreement, any action or decision by EPA pursuant to this Agreement shall not constitute final agency action giving rise to any rights to judicial review prior to EPA's initiation of judicial action to compel Solutions Way Management's compliance with this Agreement.

**XI. STIPULATED PENALTIES**

45. Solutions Way Management shall be liable to the United States for stipulated penalties in the amounts set forth in this Section with respect to its failure to comply with the requirements of this Agreement specified below applicable to it, unless excused under Section IX (Force Majeure). "Compliance" by Solutions Way Management shall include completion of the activities under this Agreement or any work plan or other plan approved under this Agreement identified below in accordance with all applicable requirements of law, this Agreement, and any plans or other documents approved by EPA pursuant to this Agreement and within the specified time schedules established by and approved under this Agreement.
46. The following stipulated penalties shall accrue per violation per day for any noncompliance with any requirement of this Agreement:

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
<i>\$1,000.00</i>	<i>1<sup>st</sup> through 14<sup>th</sup> day</i>
<i>\$2,000.00</i>	<i>15<sup>th</sup> through 30<sup>th</sup> day</i>
<i>\$5,000.00</i>	<i>31<sup>st</sup> day and beyond</i>

47. In the event that EPA assumes performance of a portion or all of the Work, Solutions Way Management shall be liable for a stipulated penalty in the amount of \$5,000 for each day EPA performs such work.

48. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.
49. Following EPA's determination that Solutions Way Management has failed to comply with a requirement of this Agreement, EPA may give Solutions Way Management written notification of the same and describe the noncompliance. EPA may send Solutions Way Management a written notice demanding payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Solutions Way Management of such non-compliance.
50. All penalties accruing under this Section XI (Stipulated Penalties) shall be due and payable to the United States within thirty (30) days of Solutions Way Management's receipt from EPA of a written demand for payment of the penalties, unless Solutions Way Management invokes the Dispute Resolution procedures under Section X (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "Treasurer, United States of America," shall indicate that the payment is for stipulated penalties, and shall reference EPA Region III and the Genicom Site, the DOJ Docket Number of this Agreement (# 90-7-1-07125), the name and address of the party making payment and shall be mailed to:

U.S. EPA, Region III  
P. O. Box 360515  
Pittsburgh, PA 15251-6515.



Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XIX (Notices and Submissions) of this Agreement, and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

51. The payment of penalties shall not alter in any way Solutions Way Management's obligation to complete the performance of the Work required under this Agreement.
52. If Solutions Way Management fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Solutions Way Management shall pay Interest on its unpaid balance, which shall begin to accrue on the date of demand.
53. Nothing in this Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Solutions Way Management's violation of this Agreement or of the statutes and regulations upon which it is based.
54. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Agreement.



**XII. UNITED STATES' COVENANT NOT TO SUE**

55. Subject to the Reservation of Rights in Section XIII (Reservations of Rights) of this Agreement and contingent upon satisfactory compliance with the terms of this Agreement, on and subsequent to the effective date of this Agreement, the United States covenants not to sue or take any other civil or administrative action against Solutions Way Management for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), or Sections 3008(h) or 7003 of RCRA, 42 U.S.C. §§ 6928 or 6973, with respect to the Existing Contamination.

**XIII. RESERVATION OF RIGHTS**

56. The covenant not to sue set forth in Section XII (United States' Covenant Not to Sue), above, does not pertain to any matters other than those expressly specified in Section XII (United States' Covenant Not to Sue). The United States reserves and this Agreement is without prejudice to all rights against Solutions Way Management with respect to all other matters, including, but not limited to, the following:
- a. claims based on a failure by Solutions Way Management to meet any requirement of this Agreement, including, but not limited to, Section V (Access/Conveyance of Property/Notice To Successors In Interest), and, Section IV (Work To Be Performed).

- b. any liability resulting from past or future releases of solid wastes, hazardous wastes, hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Solutions Way Management, its successors, assignees, lessees or sublessees;
  - c. any liability resulting from exacerbation by Solutions Way Management, its successors, assignees, lessees or sublessees, of Existing Contamination;
  - d. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;
  - e. any liability or statutory or regulatory obligation resulting from the handling, treatment, storage and/or disposal of solid waste, hazardous waste, hazardous waste constituents or hazardous substances by Solutions Way Management at the Site.
  - f. criminal liability;
  - g. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and
  - h. liability for violations of local, State or federal law or regulations.
57. With respect to any claim or cause of action asserted by the United States, Solutions Way Management shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

58. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.
59. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel persons or entities other than Solutions Way Management to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Party Solutions Way Management acknowledges that it is purchasing a Site where response and/or corrective actions may be required.

**XIV. SOLUTIONS WAY MANAGEMENT'S COVENANT NOT TO SUE**

60. In consideration of the United States' Covenant Not To Sue in Section XII of this Agreement, Solutions Way Management hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including, but not limited to: any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law; any claim against the United States, including any department, agency or instrumentality of the United States



under CERCLA Sections 107 or 113 related to the Site; or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

61. Solutions Way Management reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of Solutions Way Management's plans or activities, that are brought pursuant to any statute other than CERCLA and/or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA and/or RCRA. Nothing herein shall be deemed to constitute 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).

#### **XV. PARTIES BOUND / TRANSFER OF COVENANT**

62. This Agreement applies to and is binding upon the United States, Solutions Way Management, and any successors and assigns of Solutions Way Management. Any change in ownership or corporate status of Solutions Way Management or any successor including, but not limited to, any transfer of assets or real or personal property, except as provided in Section XXI (Modification and Termination) of this Agreement, shall in no way alter Solutions Way Management's, its successors and/or assigns responsibilities under this Agreement.
63. The rights, benefits and obligations conferred upon Solutions Way Management under this Agreement may be assigned or transferred to any other person or entity only after prior

written approval from the United States, in its sole discretion, and subsequent to modification of this Agreement as provided by Section XXI (Modification and Termination) of this Agreement.

64. Each signatory of Solutions Way Management to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind Solutions Way Management.

#### **XVI. DISCLAIMER**

65. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

#### **XVII. DOCUMENT RETENTION**

66. Unless otherwise agreed to in writing by the DOJ, EPA, and Solutions Way Management, Solutions Way Management agrees to retain and make available to EPA all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Site in its possession, for at least ten (10) years, following the effective date of termination of such Solutions Way Management's obligations to comply with this Agreement pursuant to Section XXI (Modification and Termination) of this Agreement. Solutions Way Management shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner

to the performance of the Work or liability of any person for Work conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years following the effective date of termination of Solutions Way Management's obligations to comply with this Agreement pursuant to Section XXI (Modification and Termination) of this Agreement, Solutions Way Management shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature, or description relating to the performance of the Work.

67. At the conclusion of any document retention period set forth in this Section, Solutions Way Management shall provide written notice to the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Solutions Way Management shall deliver any such records or documents to EPA. If the United States has not responded to Solutions Way Management's written notice prior to the time Solutions Way Management intends to destroy any such records or documents, Solutions Way Management shall deliver all such records and documents to EPA no earlier than ten (10) days after providing an additional written notice that such records and documents will be delivered, unless EPA provides otherwise after receiving such notice.
68. Solutions Way Management may assert business confidentiality claims covering part or all of the documents or information submitted to the EPA under this Agreement to the extent permitted by and in accordance with 40 C.F.R. Part 2, Subpart B. Documents or information determined to be confidential by EPA, in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B, will be afforded the protection specified in 40 C.F.R. Part 2,



Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Solutions Way Management that the documents or information are not confidential under the standards set forth in 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Solutions Way Management.

69. Solutions Way Management may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Solutions Way Management asserts such a privilege, it shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Solutions Way Management. However, no documents, reports, or other information created or generated pursuant to the requirements of the Agreement shall be withheld on the grounds that they are privileged.
70. No claim of confidentiality or privilege shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

**XVIII. PAYMENT OF COSTS**

71. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Work To Be Performed) of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

**XIX. NOTICES AND SUBMISSIONS**

72. Whenever under the terms of this Agreement written notice is required to be given 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. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Agreement with respect to the United States, EPA, and Solutions Way Management, respectively.

*As to the United States:*

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
Re: DOJ # 90-7-1-07125

and

Kathleen J. Root  
Senior Assistant Regional Counsel (3RC43)  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

As to EPA:

Andrew Fan (3WC23)  
EPA Project Coordinator  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

As to Solutions Way Management:

Lake Polan, III  
Managing Member  
Solutions Way Management, LLC  
P.O. Box 1700  
Huntingdon, WV 25717  
Phone Number: 304-525-9125  
Facsimile Transmission Number: 304-697-5511

73. All other written documents required under the terms of this Agreement to be sent by one Party to another shall be directed to the respective Project Coordinator or Work Contact identified pursuant to Section IV (Work To Be Performed) of this Agreement.

**XX. EFFECTIVE DATE**

74. The effective date of this Agreement shall be the date upon which EPA issues written notice to Solutions Way Management that EPA has fully executed the Agreement after review of and response to any public comments received.



**XXI. MODIFICATION AND TERMINATION**

75. Minor modifications to the requirements of the work required by Section IV of this Agreement, specifically those modifications which do not materially or significantly affect the nature or scope of the work to be performed, may be made by written mutual agreement between the EPA Project Coordinator and Solutions Way Management's Work Contact. Modifications to any Work Plan or any other plan approved by EPA under this Agreement that do not materially alter the requirements of such work plan or this Agreement shall be deemed Minor Modifications for purposes of this Agreement. Any Minor Modification shall be signed by both EPA Project Coordinator and Solutions Way Management's Work Contact and shall be effective on the date on which it is signed by the EPA Project Coordinator.
76. Except as otherwise provided in this Section, no modifications shall be made to provisions of this Agreement without written notification to and written approval of the United States and Solutions Way Management.
77. Solutions Way Management's, its successors' and/or its assigns' obligations to comply with any and all terms set forth in this Agreement shall continue until and unless this Agreement is modified pursuant to this Section.

## **XXII. CONTRIBUTION PROTECTION**

78. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Agreement. With the exception of any matters described in Section XIII (Reservation of Rights), above, the matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.
79. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.
80. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within ten (10) days of service of the complaint on it.

## **XXIII. APPENDICES**

81. Appendix 1 shall mean the description of the Property which is the subject of this Agreement.
82. Appendix 2 shall mean the map depicting the Site.

**XXIV. PUBLIC COMMENT AND RELATED SUBSEQUENT MODIFICATIONS**

83. Through notice published in the Federal Register, EPA shall announce the availability of this Agreement to the public for review and comment. EPA shall accept comments from the public for a period of fourteen (14) calendar days after such announcement. If requested, a public meeting will be held. At the end of the comment period, EPA shall review all comments received during the above defined fourteen (14) day period and/or at such public meeting and shall:
- a. determine that the Agreement should be made effective in its present form, in which case EPA shall notify Solutions Way Management in writing and send them a copy of this Agreement executed by the Parties;
  - b. withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate; or
  - c. determine that modification of the Agreement is necessary, in which case EPA shall notify Solutions Way Management in writing as to the nature of all required changes. If the Parties agree in writing to such modifications, the Agreement shall be so modified
84. In the event that, following its review of all comments received during the above defined fourteen (14) day period, EPA determines that modification of the Agreement is necessary and the Parties are unable to agree on modifications required by EPA as a result of public comments, this Agreement shall be withdrawn by EPA.



**XXV. COUNTERPART ORIGINALS**

85. This document may be executed by the Parties by signing counterpart originals.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

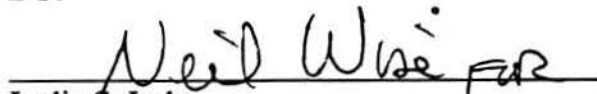
  
\_\_\_\_\_

Kathleen J. Root  
Sr. Assistant Regional Counsel  
EPA, Region III

5/4/01

Date

BY:

  
\_\_\_\_\_

Lydia S. Isaacs  
Acting Regional Counsel  
EPA, Region III

5/4/01

Date

BY:

  
\_\_\_\_\_

Thomas C. Voltaggio  
Acting Regional Administrator  
EPA, Region III

5/11/01

Date

BY:

\_\_\_\_\_  
Sylvia K. Lowrance  
Acting Assistant Administrator, OECA

\_\_\_\_\_  
Date

**XXV. COUNTERPART ORIGINALS**

85. This document may be executed by the Parties by signing counterpart originals.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

\_\_\_\_\_  
Kathleen J. Root  
Sr. Assistant Regional Counsel  
EPA, Region III

\_\_\_\_\_  
Date

BY:

\_\_\_\_\_  
Lydia S. Isales  
Acting Regional Counsel  
EPA, Region III


\_\_\_\_\_  
Date

BY:

\_\_\_\_\_  
Thomas C. Voltaggio  
Acting Regional Administrator  
EPA, Region III

\_\_\_\_\_  
Date

BY:

  
\_\_\_\_\_  
Sylvia K. Lowrance  
Acting Assistant Administrator, OECA

5/10/01  
Date

Agreement and Covenant Not To Sue To Solutions Way Management  
EPA Docket No.: RCRA-03-2001-0272

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

\_\_\_\_\_  
David S. Street, Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

\_\_\_\_\_  
Date

BY:

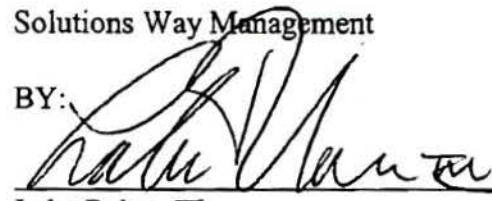
\_\_\_\_\_  
John C. Cruden  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

\_\_\_\_\_  
Date

IT IS SO AGREED:

Solutions Way Management

BY:

  
\_\_\_\_\_

Lake Polan, III  
Managing Member  
Solutions Way Management, LLC

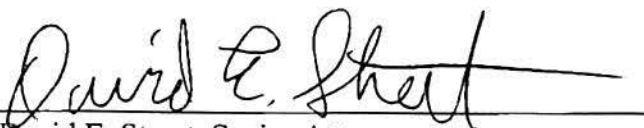
*May 7, 2011*  
Date



IT IS SO AGREED:


UNITED STATES DEPARTMENT OF JUSTICE

BY:

  
David E. Street, Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

5/7/01  
Date

BY:

  
Bruce S. Gelber  
Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

5/7/01  
Date

IT IS SO AGREED:

Solutions Way Management

BY:

\_\_\_\_\_  
Lake Polan, III  
Managing Member  
Solutions Way Management, LLC

\_\_\_\_\_  
Date