

State of Missouri  
Department of Natural Resources

In the matter of:	)	<b>Administrative Settlement and</b>
	)	<b>Abatement Order on Consent</b>
Former Hulett Lagoon Site,	)	<b>for Supplemental Remedial</b>
Camdenton, Missouri	)	<b>Investigation and Feasibility</b>
	)	<b>Study</b>
Hamilton Sundstrand Corporation, a	)	
subsidiary of United Technologies	)	
Corporation	)	
	)	Proceeding under Sections 107
	)	and 122 of the Comprehensive
Modine Manufacturing Company,	)	Environmental Response,
	)	Compensation, and Liability Act,
and	)	as amended, 42 U.S.C. §§ 9607,
	)	and 9622, and § 260.530
	)	
City of Camdenton,	)	
	)	
Respondents	)	

## TABLE OF CONTENTS

- I. JURISDICTION AND GENERAL PROVISIONS
- II. PARTIES BOUND
- III. STATEMENT OF PURPOSE
- IV. DEFINITIONS
- V. FINDINGS OF FACT
  - Facility Background
  - Previous Investigations and Findings
- VI. CONCLUSIONS OF LAW AND DETERMINATIONS
- VII. ORDER
  - Designation of Contractors and Project Coordinators
  - Work To Be Performed:
    - Supplemental RI/FS Activities
    - Health and Safety Plan
    - Quality Assurance and Sampling
    - Progress Reports and Meetings
    - Final Report
  - Access to Property and Information
  - Record Retention, Documentation, Availability of Information
  - Off-Site Shipments
  - Compliance with Other Laws
  - Emergency Response and Notification of Releases
- VIII. MDNR APPROVAL OF SUBMITTALS
- IX. AUTHORITY OF MDNR'S PROJECT COORDINATOR
- X. REIMBURSEMENT OF COSTS
- XI. STIPULATED AND STATUTORY PENALTIES
- XII. MDNR RESERVATION OF RIGHTS
- XIII. FORCE MAJEURE

- XIV. OTHER CLAIMS
- XV. COVENANT NOT TO SUE
- XVI. CONTRIBUTION PROTECTION
- XVII. INDEMNIFICATION
- XVIII. MODIFICATIONS
- XIX. NOTICE OF COMPLETION
- XX. ADDITIONAL WORK
- XXI. PUBLIC PARTICIPATION
- XXII. DISPUTE RESOLUTION
- XXIII. SEVERABILITY
- XXIV. EFFECTIVE DATE AND COMPUTATION OF TIME

**FIGURES**

Figure 1: Facility Location Map, Former Hulett Lagoon Site, Camdenton, Missouri

**APPENDIX**

APPENDIX 1 – Supplemental Remedial Investigation/Feasibility Study, Statement of Work for the Former Hulett Lagoon Site, Camdenton, Missouri

**I. JURISDICTION AND GENERAL PROVISIONS**

1. This Abatement Order on Consent (“Order”) as defined in Section IV, is entered into by the Missouri Department of Natural Resources (“MDNR”) and Hamilton Sundstrand Corporation (“Hamilton”), a subsidiary of United Technologies Corporation, Modine Manufacturing Company (“Modine”), and the City of Camdenton (“Respondents”). This Order pertains to the Former Hulett Lagoon Site.

2. The Former Hulett Lagoon Site, as depicted in Figure 1 attached hereto, is defined in paragraph 13.f. and includes the Hulett Lagoon Facility and Sunset Drive Facility for the purposes of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
3. The Hulett Lagoon Facility is defined in paragraph 13.j.
4. This Order requires the Respondents to conduct a Supplemental Remedial Investigation Feasibility Study in furtherance of the objectives set forth at 40 C.F.R. 300.430 of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (“NCP”). It further requires the Respondents to reimburse all unreimbursed Past Response Costs and Future Response Costs incurred by MDNR in overseeing this action.
5. This Order is issued pursuant to § 260.530 RSMo, and pursuant to the authority provided to the states under § 107 of CERCLA, 42 U.S.C. § 9607. For purposes of entering into this Order, Respondents agree that MDNR has jurisdiction to issue this Order and jurisdiction over the activities required by this Order. Respondents’ participation in this Order shall not constitute or be construed as an admission of liability or of the findings or determinations contained in this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents consent to and agree not to contest MDNR’s authority or jurisdiction to issue or to enforce this Order. Respondents further agree not to contest the basis or validity of this Order or any of its terms.

## **II. PARTIES BOUND**

6. This Order applies to and is binding upon MDNR and upon the Respondents and Respondents’ successors and assigns, trustees and receivers and anyone acting under or on behalf of Respondents. The signatories to this Order certify that they are authorized to execute and legally bind the parties that they represent to this Order.
7. Respondents shall be responsible for and liable for any failure to carry out any activities required by Respondents pursuant to this Order, regardless of Respondents’ use of employees, agents, contractors or consultants to perform such tasks.

8. No change in ownership or corporate or partnership status relating to the Hulett Lagoon Facility or Sunset Drive Facility shall in any way alter Respondents' responsibility under this Order. Respondents shall give written notice of this Order to any successor in interest prior to transfer of ownership or operation of either facility (or any portion thereof) and shall notify MDNR in writing thirty (30) days prior to such transfer. Respondents shall include, as a condition in any such transfer, that Respondents have a right of access to the Former Hulett Lagoon Site in order to conduct the Work required under this Order.
9. Respondents shall provide a copy of this Order to its contractors, subcontractors, laboratories, consultants and other representatives retained to conduct any work performed under this Order within ten (10) working days of the effective date of this Order or the date of retaining their services, whichever is later. Respondents shall condition any such contracts for work to be performed under this Order upon satisfactory compliance with this Order to the extent it is applicable to the work to be performed by such person. Respondents shall be responsible for any noncompliance with this Order and are responsible for ensuring that their contractors, subcontractors, laboratories, consultants, and other representatives comply with this Order to the extent that it is applicable to work to be performed by such persons.

### **III. STATEMENT OF PURPOSE**

10. This Order concerns the Former Hulett Lagoon Site.
11. By entering into this Order, the mutual objectives of the Parties are: (a) to determine the nature and extent of contamination caused by the actual or threatened releases of Hazardous Substances, pollutants or contaminants at or from the Former Hulett Lagoon Site, and/or the past or present handling, storage, treatment, transportation, or deposition by Respondents, or their predecessors, of any solid wastes or Hazardous Substances at or from the Former Hulett Lagoon Site by conducting a remedial investigation; (b) to identify and evaluate alternatives for remedial actions, if any, necessary to prevent, mitigate or otherwise respond to or remedy any release or threatened release of Hazardous Substances, pollutants or contaminants or solid wastes at or from the Former Hulett Lagoon Site by conducting a feasibility study;

and (c) to reimburse past and future response and oversight costs incurred by MDNR as set forth in this Order.

12. The activities conducted under this Order are subject to approval by MDNR and shall provide all appropriate necessary information for the Supplemental RI/FS (defined in Section IV) that is consistent with CERCLA and the NCP, 40 C.F.R. Part 300. The activities conducted under this Order shall be conducted in compliance with all applicable state laws and regulations, and all applicable state and EPA guidance, policies, and procedures.

#### IV. DEFINITIONS

13. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in said statutes or their implementing regulations. Whenever terms listed below are used in this Order or in the exhibits or appendices attached hereto and incorporated hereunder, the following definitions shall apply:
  - a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.
  - b. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" or "business day" shall mean a day other than a Saturday, Sunday, or federal or state holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.
  - c. "Effective Date" shall mean the date this Order is effective, pursuant to Section XXIV of this Order.
  - d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
  - e. "Feasibility Study" or "FS" shall mean a study undertaken to identify and evaluate alternatives for remedial action.

- f. "Former Hulett Lagoon Site" or "Site" shall mean the Hulett Lagoon Facility, the Sunset Drive Facility, and any location damaged or injured as a result of releases or threatened releases of Hazardous Substances from either the Hulett Lagoon Facility or the Sunset Drive Facility and where such Hazardous Substances have become known to be located.
- g. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs that the State of Missouri incurs on or after January 1, 2015, in reviewing or developing plans, reports, and other items pursuant to this Order; compliance monitoring including the collection and analysis of samples, inspection of activities, and visits to the Former Hulett Lagoon Site; public outreach activities; verifying the Work; or otherwise implementing, overseeing, or enforcing this Order (including, but not limited to attorney's fees and any monies paid to secure access and/or to secure institutional controls, including the amount of just compensation).
- h. "Hazardous Substances" shall have the same meaning as in Section 101(14) of CERCLA, 42 U.S.C. § 9604(14).
- i. "Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- j. "Hulett Lagoon Facility" shall mean the publicly-owned treatment works operated by the City of Camdenton from 1961 through 1989, pursuant to a Missouri State Operating Permit held by the City and the areas surrounding the Hulett Lagoon that have been damaged or injured as a result of releases or threatened releases of Hazardous Substances, which is currently owned and operated by the City of Camdenton.
- k. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).
- l. "Matters Addressed" shall mean all Work performed and all payments made pursuant to this Order.

- m. "MDHSS" shall mean the Missouri Department of Health and Senior Services and any successor departments or agencies of the State.
- n. "MDNR" shall mean the Missouri Department of Natural Resources and any successor departments or agencies of the State.
- o. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.
- p. "Order" shall mean this Administrative Settlement and Abatement Order on Consent and all appendices attached hereto or incorporated by reference. In the event of a conflict between this Order and any appendix, the Order shall control.
- q. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral or an upper or lower case letter.
- r. "Parties" shall mean the State of Missouri and the Respondents.
- s. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the State of Missouri paid at or in connection with the Former Hulett Lagoon Site on or after December 31, 2009, through December 31, 2014. Notwithstanding the foregoing, "Past Response Costs" shall not include any costs arising out of the RCRA Corrective Action conducted at the Sunset Drive Facility.
- t. "Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of this Order as set forth in this Order and any modified standards established by MDNR.
- u. "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).
- v. "Remedial Investigation" or "RI" shall mean a process undertaken to

determine the nature and extent of the contamination caused by releases of Hazardous Substances, pollutants or contaminants. The Remedial Investigation includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for remedial action and to support the evaluation of remedial action alternatives.

- w. "Respondents" shall mean Hamilton Sundstrand Corporation, a subsidiary of United Technologies Corporation, Modine Manufacturing Company, the City of Camdenton, and all of their successors and assigns.
- x. "RI/FS" shall mean Remedial Investigation/Feasibility Study.
- y. "Section" shall mean a portion of this Order identified by a Roman numeral.
- z. "State" shall mean the State of Missouri.
- aa. "Statement of Work" or "SOW" shall mean the Statement of Work for implementation of the Supplemental RI/FS, as set forth in Appendix 1 to this Order, and any modifications made thereto in accordance with this Order.
- bb. "Supplemental RI/FS" shall mean all activities to be conducted for the completion of the Supplemental Remedial Investigation/Feasibility Study for the Former Hulett Lagoon Site.
- cc. "Sunset Drive Facility" shall mean the metals manufacturing facility located at 179 Sunset Dr., Camdenton, Missouri that discharged Hazardous Substances to the Hulett Lagoon Facility from 1967 to 1990 and discharged Hazardous Substances to groundwater.
- dd. "United States" shall mean the United States of America, including all of its departments, agencies and instrumentalities.
- ee. "Work" shall mean all work and other activities Respondents are required to perform under this Order.

## V. FINDINGS OF FACT

### Former Hulett Lagoon Site Background

14. This Order pertains to the Former Hulett Lagoon Site.
15. The Hulett Lagoon Facility was constructed of clay with berms approximately twenty-five feet wide and fifteen-feet high. The Hulett Lagoon Facility received both industrial and residential wastewater until the City of Camdenton closed it in 1989.
16. Hamilton or its predecessor operated the Sunset Drive Facility until 1990. Modine purchased the Sunset Drive Facility in August 1990 and continued manufacturing at the Sunset Drive Facility until its closure in 2012.
17. The Sunset Drive Facility began discharging untreated wastewater to the Hulett Lagoon Facility in 1967.
18. From 1967 to 1989, the Hulett Lagoon Facility received storm water and untreated wastewater containing a number of Hazardous Substances associated with Hamilton's manufacturing operations, including trichloroethylene ("TCE") and other volatile organic compounds.
19. MDNR alleges that Hazardous Substances have been disposed or released at the Former Hulett Lagoon Site.
20. MDNR alleges that the conditions at or associated with the Former Hulett Lagoon Site constitute a "hazardous substance emergency" as that term is defined in § 260.500(6) RSMo.
21. MDNR has the authority to: (1) require reasonable actions to clean up Hazardous Substances; (2) investigate and clean up releases associated with the Former Hulett Lagoon Site; (3) recover all response costs not inconsistent with the NCP; (4) recover natural resource damages resulting from the releases or threatened releases of Hazardous Substances from the Former Hulett Lagoon Site; and (5) enter into agreements with respect to the elimination of alleged violations of environmental laws and the cleanup of real property contaminated by Hazardous Substances. The Missouri Attorney General has the

authority to bring an action to abate any public nuisance present at a site.

22. Respondents have taken the following actions at the Former Hulett Lagoon Site:
- a. In April 1986, the Sunset Drive Facility's wastewater pre-treatment infrastructure became operational.
  - b. After the City of Camdenton constructed a new publicly-owned treatment works in 1986, the Sunset Drive Facility was connected to the new treatment plant.
  - c. In 1989, the City of Camdenton closed the Hulett Lagoon Facility with the approval and oversight of MDNR.
  - d. In February 1997, the City of Camdenton discovered TCE in its Mulberry Street municipal water supply well ("Mulberry Well").
  - e. The City of Camdenton responded to the discovery of TCE in the Mulberry Well by instituting a groundwater containment system (the "Containment System") that involved the discontinuation of the Mulberry Well as a municipal water supply. The City of Camdenton pumped the TCE-contaminated groundwater from the Mulberry Well and discharged it to waste through a ravine which eventually discharged to the Lake of the Ozarks. The discharged water is regulated pursuant to a Missouri State Operating Permit issued by MDNR. The City of Camdenton continues to operate the Containment System as a means of hydraulic control, preventing the spread of groundwater contamination.
  - f. In July 1999, MDNR and Modine entered into an Abatement Order on Consent, wherein Modine agreed to perform certain work to further characterize the extent of soil contamination on certain real property owned by Modine. The investigation resulted in approximately 10,400 cubic yards of contaminated soil being excavated and disposed as a special waste at an area landfill.
  - g. In 2000, Hamilton entered into a voluntary letter of agreement with MDNR's Hazardous Waste Program to enter the Superfund Section's State Cooperative Program to conduct an RI/FS with

MDNR oversight to investigate groundwater contamination caused by historic releases of TCE and other volatile organic compounds at the Former Hulett Lagoon Site, and to evaluate remedial action alternatives.

- h. Hamilton completed three Remedial Investigation phases from 2000 to 2003 and summarized findings in the RI Summary Report, November 24, 2003, submitted to the MDNR.
- i. Hamilton submitted a Feasibility Study to the MDNR on October 18, 2004. MDNR conditionally approved Hamilton's Feasibility Study on July 27, 2005.
- j. The Hamilton Feasibility Study included (by appendix) a Groundwater Flow Model Report dated September 10, 2004.
- k. The Hamilton Feasibility Study also included (by appendix) a Target Risk Assessment, consisting of a Baseline Human Health Risk Assessment, and a Qualitative Screening Level Ecological Risk Assessment.
- l. After requesting additional investigation that was later completed by Hamilton, MDNR approved Hamilton's Notice of Intent to Implement Final Remedial Investigation Activities for Camdenton, MO by letter dated July 30, 2007. An Investigation Addendum Report was submitted to MDNR in April 2008.
- m. On November 5, 2007, at the request of MDNR, as part of the overall Remedial Action for the groundwater and subsurface soils affected by releases of TCE and other volatile organic compounds at the Former Hulett Lagoon Site, Hamilton properly abandoned a private drinking water well at the Bruneau residence, at its sole cost and expense.
- n. Respondents do not admit any liability to the State arising out of the transactions or occurrences alleged herein, nor do Respondents acknowledge that the releases or threatened releases of Hazardous Substances at or from the Former Hulett Lagoon Site constitute an imminent or substantial endangerment to the public health or welfare or the environment.

- o. Based on the information presently available to the State, the State believes that the Work outlined in this Order and the Statement of Work (hereinafter defined and/or attached hereto as Appendix "A"), as may be amended from time to time, will be properly and promptly conducted by Respondents if conducted in accordance with the requirements of this Order and its appendices.
- p. Additionally, for the purposes of Section 113 (j) of CERCLA, the Work performed by Respondents shall constitute a response action taken or ordered by the State.
- q. The Parties recognize that this Order has been negotiated by the Parties in good faith, and implementation of this Order will expedite the cleanup of releases at or from the Former Hulett Lagoon Site and will avoid prolonged and complicated litigation between the Parties, and that this Order is fair, reasonable, and in the public interest.

#### Previous Investigations and Findings

- 23. The Hulett Lagoon Facility was constructed in 1961 and was operated by the City of Camdenton until its closure was approved by MDNR in 1989. During its operation, the lagoon received both domestic and industrial wastewater and storm runoff from the area.
- 24. TCE contamination was detected as early as 1994 in the City of Camdenton's Mulberry Well. In 1997 the measured levels of TCE exceeded the Maximum Contaminant Level (MCL) for drinking water. The well was taken off line and the decision made to pump the well periodically to discharge, thereby maintaining hydrologic control of the contamination, preventing the contamination from spreading to other city wells.
- 25. In 1999 MDNR conducted a soil gas investigation in the area of the Former Hulett Lagoon Site. The investigation was expanded upon in 2000 by Hamilton. The combined investigations did not discover any area that could be considered a contributing source area to the TCE groundwater contamination.
- 26. Modine conducted an investigation of soil contamination at the Sunset Drive Facility during the period from 1997 to 2000. The investigation

resulted in the excavation and disposal of approximately 10,400 cubic yards of contaminated soil.

27. Hamilton conducted three phases of groundwater investigation in the area of the Former Hulett Lagoon Site during 2000 through 2003, installing a total of 22 monitoring wells. The investigation indicated that shallow and deep groundwater contamination is limited to an approximate area of one (1) square mile.
28. The three phases of investigation by Hamilton lead to the development of a Feasibility Study which indicated a remedy of pumping contaminated groundwater to maintain hydrologic control and treating the water prior to surface drainage.
29. Hamilton conducted supplemental groundwater investigation activities in the area of the Former Hulett Lagoon Site in 2007, installing three (3) additional monitoring wells, resulting in a total of 25 monitoring wells in the area of the Former Hulett Lagoon Site.
30. Additional investigation and evaluation of remedial action alternatives will be conducted under this Order.

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

31. Based on the Findings of Fact set forth above, and the Administrative Record supporting this action, MDNR makes the following Conclusions of Law and Determinations.
  - a. The Hulett Lagoon Facility and Sunset Drive Facility are “facilities” as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
  - b. The contaminants found at the Former Hulett Lagoon Site, as set out in the Findings of Fact above, include Hazardous Substances.
  - c. The Respondents are “persons” as defined by and within the meaning of Sections 101(21) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(21) and 9607(a), and Section 260.500(7) and (8), RSMo.
  - d. The Respondents may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and Section 260.530, RSMo as those terms

are used in Section 107 of CERCLA, 42 U.S.C. § 9607 and Section 260.530, RSMo.

- e. The conditions described in the Findings of Fact constitute an actual or threatened “release” of a Hazardous Substance from the Former Hulett Lagoon Site as that term is defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) and Section 260.500(9), RSMo.
- f. The actual and/or threatened “releases” of Hazardous Substances from the Former Hulett Lagoon Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
- g. The Respondents have been, and are currently, in control of handling, storage, treatment, transportation and/or deposition of solid wastes and/or hazardous substances at the Former Hulett Lagoon Site.
- h. The conditions described above in the Findings of Fact constitute a “hazardous substance emergency” as that term is defined in Section 260.500(6), RSMo.
- i. The actions required by this Order are necessary to protect the public health, welfare or the environment, and are consistent with the NCP and CERCLA.

## VII. ORDER

32. Based on the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this matter, MDNR hereby orders that Respondents shall comply with the following provisions, including but not limited to, all attachments to this Order, and all documents incorporated by reference into this Order, and shall perform the following actions.

### Designation of Project Coordinator

33. Respondents shall provide the name, qualifications, and contact information of their selected Project Coordinator to perform the

Supplemental RI/FS, within ten (10) business days after the effective date of this Order.

34. Respondents shall utilize Missouri licensed and/or certified contractors/subcontractors (as applicable) for all Supplemental RI/FS activities.
35. Respondents' Project Coordinator shall be responsible for administration of all of Respondents' actions required by this Order. To the greatest extent possible, Respondents' Project Coordinator shall be present on site or readily available during site work. The MDNR retains the right to disapprove of any Project Coordinator named by the Respondents. If MDNR disapproves of a proposed Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify MDNR of that person's name, address, telephone number, and qualifications within forty-five (45) days following receipt of MDNR's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from MDNR pertaining to this Order shall constitute receipt by Respondents.
36. The MDNR has designated Don Van Dyke of the MDNR, Division of Environmental Quality (DEQ), Hazardous Waste Program (HWP), Superfund Section as its Response Project Coordinator. Respondents shall direct all submissions and communications required by this Order to MDNR's Response Project Coordinator at the following.

Name and Title:

Don Van Dyke, Project Manager

Mailing Address:

MDNR Hazardous Waste Program

Superfund Section

P.O. Box 176

Jefferson City, Missouri 65102-0176

Physical Address:

MDNR Hazardous Waste Program

Superfund Section

1730 East Elm Street

Jefferson City, Missouri 65101

Telephone number: 573-522-3351

Facsimile number: 573-751-7869

Electronic mail address: don.van.dyke@dnr.mo.gov

37. The MDNR and Respondents shall have the right, subject to the immediately preceding paragraphs, to change their Project Coordinators. Respondents shall notify MDNR ten (10) business days before such a change is made. The initial notification may be made verbally, but it shall be promptly followed by a written notice.

Work To Be Performed: Supplemental RI/FS Activities

38. Respondents shall perform, at a minimum, the following Supplemental RI/FS activities. All activities required by this Order shall be conducted in accordance with CERCLA, the Missouri Hazardous Waste Management Law, Section 260.350, et seq., RSMo, its implementing regulations, the NCP, and all applicable or relevant and appropriate EPA and state laws, regulations, guidance, policies, and procedures, including any amendments or revisions to such guidance, policies, and procedures.
39. Respondents shall complete the Supplemental RI/FS activities in accordance with the applicable sections of the NCP as published in 40 CFR Part 300, including but not limited to Subparagraph 300.430 and the EPA Guidance for Conducting Remedial Investigations and Feasibility Studies, dated October 1988.
40. The MDNR recognizes that a great deal of investigation has been accomplished for the Former Hulett Lagoon Site. Any such work previously performed using proper data quality procedures may be used to supplement additional work and may be consolidated into the required documents. All previously completed reports, data, and other information that Respondents plan to use in completing the Supplemental RI/FS shall be identified by reference in the Supplemental RI/FS Work Plan.
41. The objective of the Supplemental RI/FS will be to investigate the water producing zones of the aquifer that are contributing to the groundwater contamination and develop alternatives for optimizing the use of the City of Camdenton's Mulberry Well to prevent the migration of TCE.

42. Respondents shall conduct Supplemental RI/FS activities and submit deliverables as provided by the attached Supplemental RI/FS Statement of Work, which is incorporated by reference herein, for the development of the Supplemental RI/FS. All such work shall be conducted in accordance with CERCLA, the NCP, applicable state laws and regulations, and state and EPA guidance and policies including, but not limited to, the “Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA” (OSWER Directive # 9355.3-01), “Guidance for Data Usability in Risk Assessment” (OSWER Directive #9285.7-05) and guidance referenced therein, and guidance referenced in the Statement of Work, as may be amended or modified by EPA.
43. The general activities that Respondents are required to perform are identified below. The tasks that Respondents must perform are described more fully in the Statement of Work and the EPA guidance referenced in Paragraph 39 of this Supplemental AOC. The activities and deliverables identified below shall be developed as provisions in the Supplemental RI/FS Work Plan and shall be submitted to MDNR as provided in the Statement of Work. All work performed under this Order shall be in accordance with the schedules herein, and in full accordance with the standards, specifications, and other requirements of the Supplemental RI/FS Work Plan and existing MDNR approved sampling and analysis procedures utilized during previous RI/FS activities, as initially approved or modified by MDNR, and as may be amended or modified by MDNR from time to time.
- a. Task I: Project Planning or Scoping. Respondents shall conduct scoping activities as described in the attached Statement of Work and referenced guidance. Following approval or modification by MDNR, the Supplemental RI/FS Work Plan, the Supplemental RI/FS Health and Safety Plan, and the Supplemental RI/FS Investigation-Derived Waste Plan shall be incorporated by reference herein. At the conclusion of the project planning phase, Respondents shall provide MDNR with the following deliverables:
1. Supplemental RI/FS Work Plan. Within sixty (60) days of the Effective Date of this Order, Respondents shall submit to MDNR for review and approval a complete Supplemental RI/FS Work Plan and a reference list of

applicable previously submitted documents used for purposes of completing the Supplemental RI/FS, including any reports the Respondents propose to use as part of the Supplemental RI/FS.

2. Supplemental RI/FS Sampling and Analysis Procedures. The Respondents will conform to the existing MDNR approved sampling and analysis procedures utilized during previous investigation activities for the Former Hulett Lagoon Site throughout the implementation of the Supplemental RI/FS.
  3. Supplemental RI/FS Health and Safety Plan (HASP). Within sixty (60) days of the Effective Date of this Order, Respondents shall submit to MDNR for review and comment a Supplemental RI/FS Health and Safety Plan.
  4. Supplemental RI/FS Investigation-Derived Waste Plan (IDWP). Within sixty (60) days of the Effective Date of this Order, Respondents shall submit to MDNR for review and approval the Supplemental RI/FS Investigation-Derived Waste Plan.
  5. Supplemental RI/FS Schedule. Respondents shall follow the schedule for Work set forth in the Statement of Work.
- b. Task II: Community Relations Plan. The MDNR will prepare a Community Relations Plan in accordance with EPA guidance and the NCP. Respondents shall provide information supporting MDNR's community relations programs within twenty (20) days of receiving a request for data.
- c. Task III: Supplemental RI/FS Activities. Following MDNR approval or modification of the Supplemental RI/FS Work Plan and associated documents, the Respondents shall implement the provisions of these plans as part of the RI/FS to investigate the water producing zones of the aquifer that are contributing to the groundwater contamination and develop

alternatives for optimizing the City of Camden's Mulberry Well to prevent the migration of TCE. The Respondents shall complete the Supplemental RI/FS investigation and evaluation within nine (9) months of MDNR approval or modification of the Supplemental RI/FS Work Plan and associated plans.

- d. Task IV: Supplemental RI/FS Sample Analysis and Data Validation. As a continuing part of the Supplemental RI/FS, any and all samples collected by the Respondents shall be analyzed and the results validated.
- e. Task V: Supplemental RI/FS Data Evaluation. As a continuing part of the Supplemental RI/FS, the validated data will be used as applicable to support the Supplemental RI/FS.
- f. Task VI: Supplemental RI Report/Addendum. Also, within one hundred fifty (150) days after completion of Tasks III – V, the Respondents shall submit to MDNR for review and approval the Supplemental RI Report/Addendum consistent with the Statement of Work, RI/FS Work Plan, and associated documents.
- g. Task VII: Supplemental FS Report/Addendum. Within sixty (60) days of the presentation to MDNR and after the approval of Task VI, the Respondents shall submit for MDNR review and approval a Supplemental FS Report/Addendum that incorporates the findings of the Supplemental RI/FS (as applicable to the development of a plan to contain and treat the contamination).

44. Respondents shall not proceed further with any subsequent activities or tasks until receiving MDNR's approval for the following deliverables: Supplemental RI/FS Work Plan and associated plans, the Supplemental RI Report/Addendum, and the Supplemental FS Report/Addendum. Notwithstanding any other provision in this Order, the parties acknowledge and agree that some interim measures may be appropriate at the Former Hulett Lagoon Site. It is expressly agreed that no such measures shall be implemented without prior written approval from MDNR.

45. Upon receipt of the Supplemental FS Report/Addendum, MDNR will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed.
46. In the event that MDNR takes over some of the tasks, but not the preparation of the Supplemental RI/FS Report/Addendum, Respondents shall incorporate and integrate information supplied by MDNR into the final Supplemental RI/FS Report/Addendum.

### Health and Safety Plan

47. Within sixty (60) days after the Effective Date of this Order, the Respondents shall submit for MDNR review and comment a plan that ensures the protection of the public health and safety during performance of Work under this Order. This plan shall be prepared in accordance with EPA's current Standard Operating Safety Guide, dated November 1984, and updated July 1988. If the guide is updated while this Order is in effect, then the Health and Safety Plan shall be updated to reflect changes in the guidance. In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. Respondents shall incorporate all changes to the plan recommended by MDNR and implement the plan during the pendency of the Supplemental RI/FS.

### Quality Assurance and Sampling

48. The Respondents will conform to the existing MDNR-approved sampling and analysis procedures utilized during previous investigation activities for the Former Hulett Lagoon Site throughout the implementation of the Supplemental RI/FS. All sampling and analyses performed pursuant to this Order shall conform to MDNR direction, approval, and guidance regarding sampling, Quality Assurance/Quality Control (QA/QC), data validation, and chain of custody procedures. Respondents shall ensure that each laboratory used to perform analyses is National Environmental Laboratory Accreditation Conference (NELACP) certified.
49. All sampling and analyses performed pursuant to this Order shall conform to MDNR direction, approval, and guidance regarding

sampling and the procedures utilized during previous investigation activities for the Former Hulett Lagoon Site throughout the implementation of the Supplemental RI/FS. Upon request by MDNR, Respondents shall allow MDNR or its authorized representatives, including but not limited to MDNR's Project Coordinator, to take split and/or duplicate samples of any samples collected by Respondents, its contractor(s), or anyone on behalf of Respondents while performing work under this Order. Respondents shall notify MDNR not less than ten (10) days in advance of any sample collection activity.

50. Respondents shall maintain all analytical data developed in connection with this Order in a searchable electronic database (Microsoft Access, EQUIS or equivalent). The database shall incorporate pertinent sample-specific information that includes, at a minimum: sample matrix (soil, surface water, groundwater, etc.); type (grab, composite, split spoon, etc.); location (including GPS location); depth; date collected; date reported; parameter; concentration; units; detection limits; error range; analytical method; laboratory qualifiers; and any departures from applicable Standard Operating Procedures. Respondents shall enter the analytical data within twenty (20) business days of receipt by Respondents and shall provide an updated copy of the database to MDNR's Project Coordinator on the last business day of each calendar month.

#### Progress Reports and Meetings

51. Respondents shall submit quarterly written progress reports to MDNR concerning all actions undertaken pursuant to this Order, unless otherwise directed by MDNR's Project Coordinator in writing. These reports shall describe all significant developments during the preceding period, including, but not limited to: the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated for the next two (2) reporting periods, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems period.
52. Respondents shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Former Hulett Lagoon Site, give written notice that the property is subject to this Order to the transferee and written notice to MDNR of the proposed conveyance,

including the name and address of the transferee. Respondents agree to require that its successor comply with the immediately preceding sentence and the Access to Property and Information requirements of this Order.

53. Respondents shall make presentations at, and participate in, meetings at the request of MDNR during the initiation, implementation, and completion of the Work. In addition to the discussion of the technical aspects of the Work, topics will include anticipated problems or new issues. Meetings will be scheduled at MDNR's discretion.

#### Final Report – Supplemental RI/FS Report/Addendum

54. The Respondents shall submit for MDNR review and approval a Final Supplemental RI/FS Report/Addendum, detailing the actions taken to comply with this Order. The Supplemental RI/FS Report/Addendum shall generally conform to, as applicable, the guidelines set forth in EPA "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" and the "Risk Assessment Guidelines for Superfund." The Final Supplemental RI/FS Report/Addendum shall include, if applicable, a listing of quantities and types of materials removed off-site or handled on-site-all relevant documentation generated during the response action (e.g., manifests, laboratory reports and permits).
55. The Final Supplemental RI/FS Report/Addendum shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

#### Access to Property and Information

56. Respondents shall provide, and/or obtain access to the Former Hulett Lagoon Site and off-site areas to which access is necessary to implement this Order, and provide access to all records and

documentation related to the conditions at the Former Hulett Lagoon Site and the actions conducted pursuant to this Order. Such access shall be provided to MDNR employees, contractors, agents, consultants, designees, representatives, and state of Missouri representatives. These individuals shall be permitted to access the Former Hulett Lagoon Site and appropriate off-site areas in order to conduct actions, which MDNR determines to be necessary. Nothing herein shall be interpreted as limiting or affecting MDNR's right of entry or inspection authority under state and federal law.

57. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use its "reasonable best efforts" to obtain all necessary access agreements within forty-five (45) days after the approval of the Supplemental RI/FS Work Plan by MDNR, or as otherwise specified in writing by MDNR.
58. For purposes of this Order, "reasonable best efforts" include the following: agreeing, upon request, to provide splits or duplicates of all samples collected on the property; agreeing, upon request, to provide results of all analyses of samples collected on the property; and providing reasonable compensation to any property owner from whom access is sought.
59. Any such access agreements shall be incorporated by reference into this Order. Respondents shall immediately notify MDNR if, after using its reasonable best efforts, it is unable to obtain such agreements. Respondents shall describe in writing its efforts to obtain access. The MDNR may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as MDNR deems appropriate. Respondents shall reimburse MDNR for all costs and attorney's fees incurred by the State of Missouri in obtaining such access, in accordance with the procedures in Section X (Reimbursement of Response Costs).

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

60. Respondents shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances, pollutants or contaminants found on or released from the Former Hulett Lagoon Site, for ten (10) years following the Notice of

Completion issued pursuant to Section XIX of this Order. If during such ten-year period, MDNR requests in writing to review or copy any such documentation or information, Respondents shall provide the original or copies of such documents or information to MDNR within thirty (30) days of receipt of the written request. At the end of this ten (10) year period and thirty (30) days before any document or information is destroyed, Respondents shall notify MDNR that such documents and information are available to MDNR for inspection, and upon request, shall provide the originals or copies of such documents and information to MDNR.

61. Respondents may assert a business confidentiality claim pursuant to Section 260.430, RSMo with respect to part or all of any information submitted to MDNR pursuant to this Order, provided such claim is allowed by applicable law. The MDNR may, at any time, challenge claims of business confidentiality or privilege.
62. Respondents may assert that certain documents or records required to be submitted to MDNR pursuant to this Order are privileged under the attorney-client privilege or are attorney work product. If Respondents assert such a privilege in lieu of providing documents, Respondents shall provide MDNR with the following: (a) the title of the document or record; (b) the date of the document or record; (c) the name and title of the author of the document or record; (d) the name and title of each addressee and recipient; (e) a description of the subject matter of the document or record sufficient for purposes of identification of the document, except that no description so specific as to constitute a waiver of the privilege shall be required; and (f) an identification of the privilege claimed and the basis for assertion of the privilege. However, no document or record created or generated pursuant to the requirements of this Order shall be withheld on the grounds that it is privileged. Any document or record for which Respondents assert such a privilege shall not be destroyed until Respondents receive a notification from MDNR authorizing such destruction. Respondents shall maintain a running log of privileged documents on a document-by-document basis, containing the date, author(s), addressee(s), subject, the privilege or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondents shall keep the "privilege log" on file and available for inspection. The MDNR may at any time challenge claims of privilege.

### Off-Site Shipments

63. All hazardous substances, pollutants or contaminants removed off site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by MDNR, with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Upon request, MDNR's Project Coordinator will provide information to the Respondents on the acceptability of a facility under Section 121(d)(3) of CERCLA and the above rule.
64. Unless impracticable, prior notification of out-of-state waste shipments should be given consistent with OSWER Directive 9330.2-07.

### Compliance with Other Laws

65. Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. Section 300.415(i), and 40 C.F.R. § 300.430.

### Emergency Response and Notification of Releases

66. If any incident or change in the conditions of the Former Hulett Lagoon Site occurs during the implementation of actions conducted pursuant to this Order that causes or threatens to cause an additional release of Hazardous Substances from the Former Hulett Lagoon Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action. The Respondents shall take such action in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify MDNR's Project Coordinator or, in the event of his/her unavailability:

Duty Officer  
Environmental Emergency Response Section  
Environmental Services Program  
Missouri Department of Natural Resources  
2701 West Main Street  
P.O. Box 176

Jefferson City, MO 65102-0176  
573-634-2436 (24-hour number)

of the incident or Former Hulett Lagoon Site conditions. If Respondents fail to adequately respond, MDNR may respond to the release or endangerment and reserves the right to pursue cost recovery.

67. Respondents shall submit a written report to MDNR within seven (7) days after each release, incident, or change in Former Hulett Lagoon Site conditions setting forth the events that occurred and the measures taken or to be taken to mitigate any release or potential release or endangerment caused or threatened by the release or potential release and to prevent the reoccurrence of such a release or potential release. This reporting requirement is in addition to, not in lieu of, reporting required under Section 103(c) of CERCLA and 48 C.F.R. 23, of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11001 et seq.

#### VIII. MDNR APPROVAL OF SUBMITTALS

68. The following procedure will apply to the review and approval of all documents submitted to MDNR for review and approval pursuant to the requirements of this Order. The MDNR will review each such document and notify Respondents, in writing, as to its approval or disapproval thereof. In the event MDNR does not approve any such document, it will provide a written statement as to the basis of the disapproval. Within thirty (30) business days of receipt of MDNR comments, or such other time period as agreed to by the Parties, Respondents shall revise any document not approved by MDNR addressing MDNR's written comments and resubmit it to MDNR. Revised submittals are subject to MDNR approval, approval with conditions, disapproval or disapproval with modifications by MDNR, subject to dispute resolution. Subject only to the outcome of any dispute resolution proceeding, MDNR will make the final determination as to whether the document submitted by Respondents is in compliance with the requirements of this Order. At that time when MDNR determines that the document is in compliance with the requirements of this Order, MDNR will transmit to Respondents a written statement to that effect.
69. The MDNR reserves the right to comment on, modify, and direct

changes for all deliverables. At MDNR's discretion Respondents must fully correct all deficiencies and incorporate and integrate all information and comments supplied by MDNR either in subsequent or resubmitted deliverables.

70. Neither failure of MDNR to expressly approve or disapprove of Respondents' submissions within a specified time period(s), nor the absence of comments, shall be construed as approval by MDNR. Whether or not MDNR gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables acceptable to MDNR.
71. In the event that Respondents amend or revise a report, plan or other submittal upon receipt of MDNR comments, if MDNR subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect MDNR's directions for changes, MDNR retains the right to seek stipulated or statutory penalties; perform its own studies, complete the Work (or any portion of the Work) under CERCLA and the NCP, and seek reimbursement from the Respondents for its costs; and/or seek any other appropriate relief.
72. MDNR-approved documents shall be deemed incorporated into and made part of this Order. Prior to this written approval, no work plan, report, specification, or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by MDNR representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

#### **IX. AUTHORITY OF MDNR'S PROJECT COORDINATOR**

73. The MDNR's Project Coordinator shall be responsible for overseeing the Respondents' proper and complete implementation of this Order. The MDNR's Project Coordinator shall have the authority vested in an OSC and a RPM by the NCP, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other response action undertaken by MDNR or Respondents at the Site. The absence of MDNR's Project Coordinator or designee(s) from the Site shall not be cause for stoppage of work unless specifically directed by MDNR's Project Coordinator.

#### **X. REIMBURSEMENT OF COSTS**

74. Within ninety (90) days of the effective date of this Order, Respondents shall reimburse MDNR for all Past Response Costs totaling \$34,065.84, not inconsistent with the NCP, incurred by MDNR with respect to this Order, pursuant to the payment instructions set forth in Paragraphs 75 and 76.
75. On a periodic basis, MDNR shall submit to the Respondents a standard accounting of all Future Response Costs incurred by the State at the Former Hulett Lagoon Site with respect to this Order per the State's SAMII accounting system. The Respondents shall, within forty-five (45) days of receipt of each accounting for Future Response Costs, remit a corporate check to MDNR for the amount of those future costs, made payable to the "Missouri Hazardous Waste Fund." Interest shall accrue from the date the payment is due at the rate determined by the Secretary of the Treasury on the unpaid balance until such costs and accrued interest have been paid in full. On October 1 of each subsequent fiscal year, any unpaid balance will begin accruing interest at the rate determined by the Secretary of the Treasury. Interest will be compounded annually.
76. Respondents' checks for Past and Future Response Costs shall identify the name of the Site, the EPA site identification number if applicable, the title and MDNR Docket Number for this Order, and be forwarded to:
- Missouri Department of Natural Resources  
Attention: Chief, Superfund Section  
Hazardous Waste Program  
P.O. Box 176  
Jefferson City, Missouri 65102-0176.
77. Respondents may dispute all or part of a bill for Future Response Costs submitted under this Order if Respondents allege that MDNR has made an accounting error, or if a cost is not a Future Response Cost. If any dispute over any Future Response Costs is resolved before payment is due, then the amount due will be adjusted accordingly. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs into the Missouri Hazardous Waste Fund as specified above on or before the due date. Within the same time period, Respondents shall pay

the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to MDNR Project Coordinator. Respondents shall ensure that the prevailing party receives the amount due from the escrow fund, within thirty (30) days after the date the dispute is resolved.

## XI. STIPULATED AND STATUTORY PENALTIES

78. In the event the Respondents fail to meet any requirement of this Order, Respondents shall pay stipulated penalties as set forth below. Compliance by Respondents shall include completion of an activity under this Order or a Plan approved under this Order or any matter under this Order in accordance with the requirements of this Order and within the specified time schedules in and approved under this Order.
79. For each day, or portion thereof, that Respondents fail to provide major deliverables, i.e. the Supplemental RI/FS Work Plan, Draft Supplemental RI Report/Addendum, Draft Supplemental FS Report/Addendum, and/or Supplemental RI/FS Final Report/Addendum, Respondents shall be liable as follows:
- a. \$200 per day for the first through seventh day of noncompliance;
  - b. \$350 per day for the eight through the fourteenth day of noncompliance;
  - c. \$750 per day for the fifteenth through the thirtieth day of noncompliance; and
  - d. \$1,500 per day for the thirty-first day and each succeeding day of noncompliance thereafter.
80. For each day, or portion thereof, that Respondents fail to provide lesser documents, for example memoranda, reports and work plans, in accordance with the schedules established pursuant to this Order, Respondents shall be liable as follows:
- a. \$100 per day for the first through seventh day of noncompliance;
  - b. \$250 per day for the eight through the fourteenth day of noncompliance;
  - c. \$450 per day for the fifteenth through the thirtieth day of

noncompliance; and

- d. \$750 per day for the thirty-first day and each succeeding day of noncompliance thereafter.

81. For each day, or portion thereof, that Respondents fail to perform or provide actions or deliverables, not described in the above two preceding paragraphs, in accordance with the schedules established pursuant to this Order, Respondents shall be liable as follows:

- a. \$100 per day for the first through the fourteenth day of noncompliance;
- b. \$200 per day for the fifteenth through the thirtieth day of noncompliance;
- c. \$400 per day for the thirtieth through the forty-fifth day of noncompliance; and
- d. \$800 per day for the forty-sixth day and each succeeding day of noncompliance thereafter.

82. All penalties shall begin to accrue on the date that performance is due or a violation occurs and shall continue to accrue through the final day of correction of the noncompliance.

83. Upon receipt of written demand by MDNR, Respondents shall make payment to MDNR within forty-five (45) calendar days. Interest shall accrue on late payments as of the 31st day after receiving notice the payment is due.

84. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether MDNR has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation(s) to complete the performance of the Work required under this Order.

85. Except for those violations for which stipulated penalties have been assessed by MDNR and paid by Respondents, violation of any provision of this Order may subject Respondents to civil penalties of up to ten thousand dollars (\$10,000) per violation per day, as provided in Section 260.425, RSMo. Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the

State of Missouri as a result of such violation, as provided in section 260.530, RSMo. The payment of penalties shall not alter in any way Respondents' obligation(s) to complete the performance of the Work required under this Order.

86. Respondents shall make all penalty payments by forwarding a corporate check, payable to "State of Missouri (Camden County)" to the Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri, 65102-0899, Attention Collections Specialist, Financial Services Division.
87. Checks must identify the name of the Former Hulett Lagoon Site, the location of the Former Hulett Lagoon Site, the EPA identification number for the Former Hulett Lagoon Site and MDNR docket number of this Order. A copy of the check and transmittal letter shall be forwarded to MDNR's Project Coordinator.

## **XII. MDNR RESERVATION OF RIGHTS**

88. Except as specifically provided in this Order, nothing herein shall limit the power and authority of the Missouri Department of Natural Resources or the State of Missouri to take, direct, or order all actions necessary to protect public health, welfare or the environment, or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants or contaminants or hazardous or solid waste on, at, or from the Former Hulett Lagoon Site.
89. Further, except as specifically provided in this Order, nothing herein shall prevent MDNR from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from seeking to require Respondents in the future to perform additional activities or to reimburse the state for any injury to its natural resources pursuant to CERCLA, Section 260.500, et seq., RSMo, or any other applicable law, including the common law of public nuisance.
90. The MDNR reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607 and/or § 260.530, RSMo, for recovery of any Future Response Costs incurred by the State of Missouri related to the Former Hulett Lagoon Site and not reimbursed by Respondents.

91. Notwithstanding any other provision of this Order, MDNR reserves the right to perform its own studies, complete the work (or any portion of the work) required by this Order, and seek reimbursement from Respondents for its costs, or seek appropriate relief. Respondents reserve all defenses to any such action.
92. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand at law or in equity against any person not a party to this Order for any liability arising out of or relating in any way to the Former Hulett Lagoon Site.
93. In the event a court issues an order that invalidates any provisions of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by such court's order.

### **XIII. FORCE MAJEURE**

94. Respondents agree to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure event. For purposes of this Order, a force majeure event is defined as any event arising from causes not foreseeable and beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to, its consultants, contractors, subcontractors or agents, that delays or prevents performance of any obligation under this Order despite Respondents' reasonable best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work, unanticipated or increased costs of performance, normal precipitation events, changed economic circumstances or failure to obtain federal, state or local permits unless Respondents have diligently pursued and applied for such permits. Force majeure does include the inability to perform any Work because such Work would be inconsistent with any order entered by any court.
95. Respondents shall immediately notify MDNR orally, and shall also notify MDNR in writing within five (5) days after Respondents become aware of events that constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the

anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures.

96. Respondents shall exercise reasonable best efforts to avoid and minimize any delay caused by a force majeure. Failure to comply with the notice provision of this section shall waive any claim of force majeure by the Respondents.
97. If MDNR determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by MDNR. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

#### XIV. OTHER CLAIMS

98. By entering into this Order, MDNR assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The MDNR shall not be deemed a party to any contract entered into by Respondents or its directors, officers, employees, agents, successors, representatives, assigns, contractors or consultants in carrying out actions pursuant to this Order.
99. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, RCRA, or other statutes, or the common law, including but not limited to any claims of MDNR for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).
100. This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondents waive any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.
101. No action or decision by MDNR pursuant to this Order shall give rise to

any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## **XV. COVENANT NOT TO SUE**

102. Upon receipt of the full amount of Past Response Costs as set out above in Paragraph 104, MDNR covenants not to sue Respondents for Past Response Costs. In consideration of the Work that will be performed and the payments that will be made by the Respondents under the terms of this Order, and except as specifically reserved in Section XII (MDNR Reservation of Rights) of this Order, MDNR covenants not to sue and agrees not to assert any claims or causes of action or take administrative action against Respondents for Matters Addressed pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, or Section 260.530, et seq., RSMo. The MDNR's covenants shall take effect with respect to Respondents upon MDNR's issuance of a Notice of Completion pursuant to Section XIX of this Order. The MDNR's covenants in this paragraph extend only to Respondents and do not extend to any other persons.

## **XVI. CONTRIBUTION PROTECTION**

103. With regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that the Respondents are entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. Sections 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes MDNR or the Respondents from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

## **XVII. INDEMNIFICATION**

104. Respondents agree to indemnify, save and hold harmless MDNR, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (a) arising from, or on account of, acts or omissions of Respondents, Respondents' officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (b) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between

Respondents, and any persons for performance of work on or relating to the Former Hulett Lagoon Site, including claims on account of construction delays. In addition, Respondents agree to pay MDNR all costs incurred by MDNR, including litigation costs arising from or on account of claims made against MDNR based on any of the acts or omissions referred to in the preceding paragraph.

### **XVIII. MODIFICATIONS**

105. Minor modifications to any plan or schedule may be made in writing by MDNR Project Coordinator and Respondents' Project Coordinator. The remainder of the Order or any portion of the Order, including the attached Statement of Work may only be modified in writing by signature of the delegated MDNR signatory or his/her designee and by signature of the parties.
106. If Respondents seek permission to deviate from any approved plan or schedule (or the Statement of Work), Respondents' Project Coordinator shall submit a written request to MDNR for approval outlining the proposed modification and its basis.
107. No informal advice, guidance, suggestion or comment by MDNR regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve the Respondents of their obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless and until this Order is formally modified.

### **XIX. NOTICE OF COMPLETION**

108. When MDNR determines, after MDNR's review of the Final Reports and other deliverables, that all actions and requirements have been fully performed in accordance with this Order, with the exception of any continuing obligations such as the record retention requirements of the Order, MDNR will provide a Notice of Completion to Respondents. If MDNR determines that any work has not been completed in accordance with this Order, MDNR will notify Respondents in writing, providing a list of the deficiencies and a schedule for completing the work. If appropriate, MDNR notification may require Respondents to modify a work plan to correct such deficiencies in accordance with the schedule contained in MDNR's notice. Any required modified work

plan is subject to MDNR's review and approval pursuant to Section VIII. Respondents shall implement any such modified work plan as finally approved or modified by MDNR, complete the work, and submit a modified Final Report in accordance with the schedule set forth in MDNR notice. Failure by Respondents to implement an MDNR-approved or modified work plan and complete the work shall be a violation of this Order.

## **XX. ADDITIONAL WORK**

109. If MDNR determines that additional work not included in an approved plan is necessary in order to complete the Supplemental RI/FS, MDNR will notify Respondents of that determination. Respondents shall confirm its willingness to perform the additional work in writing to MDNR within thirty (30) days of receipt of MDNR request, or Respondents shall invoke the dispute resolution provisions of Paragraph XXII of this Order. Subject to resolution of any dispute, Respondents shall implement the additional tasks, which MDNR determines are necessary. Unless otherwise stated by MDNR, or unless Respondents invokes dispute resolution, within sixty (60) days of receipt of notice from MDNR that additional work is necessary, Respondents shall submit for approval by MDNR a Work Plan for the additional work. This work plan shall conform to the applicable requirements of Section VII of this Order. Upon MDNR's approval of the Work Plan, or MDNR's modification of the Work Plan, pursuant to Section VIII (Agency Approval of Submittals) of this Order, Respondents shall implement the plan for additional work in accordance with the provisions and schedules contained therein. The MDNR reserves the right to conduct the work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

## **XXI. PUBLIC PARTICIPATION**

110. The MDNR will provide the public an opportunity to review and comment on the Proposed Plan as defined in Appendix 1 that the MDNR will develop based on the Supplemental RI/FS Report/Addendum.
111. Following the public comment period, MDNR shall determine any appropriate changes to the Proposed Plan as a result of the public

participation and notify Respondents pursuant to Section IX of any additional work required.

## XXII. DISPUTE RESOLUTION

112. The Parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.
113. If any Respondent(s) objects to any MDNR action taken pursuant to this Order, including billings for Future Response Costs, Respondent(s) shall notify MDNR in writing of its/their objection within thirty (30) calendar days of such action, unless the objection has been informally resolved. This notice shall set forth the specific points of the dispute, the position it is maintaining should be adopted as consistent with the requirements of this Order, the factual and legal bases for its position, and all matters it considers necessary for MDNR's determination.
114. The Parties shall have thirty (30) calendar days from MDNR's receipt of the Respondents' written objections to attempt to resolve the dispute through formal negotiations ("Negotiation Period"). The Negotiation Period may be extended by agreement of the Parties.
115. Any agreement reached by the Parties pursuant to this section shall be in writing, signed by parties to the dispute, and shall, upon the signature by all parties to the dispute, be incorporated into and become an enforceable element of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, the Director, Division of Environmental Quality, MDNR, will issue a written decision on any dispute to the Respondents. The decision of MDNR shall be incorporated into and become an enforceable element of this Order upon Respondents' receipt of MDNR decision regarding the dispute. Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this section, unless otherwise agreed to by the Parties, taking into account Respondents' good faith in invoking the Dispute Resolution procedure.
116. The MDNR decision shall be binding on the Respondents unless, within 30 days of receipt of the decision, the Respondents file with a court of competent jurisdiction and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule,

if any, within which the dispute must be resolved to ensure orderly implementation of the Order. The MDNR may file a response to Respondents' motion. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

117. Following resolution of the dispute, as provided by this section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached, with MDNR's decision, or the court's order, whichever occurs.

### **XXIII. SEVERABILITY**

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

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

119. This Order shall become effective upon MDNR's signature, as the final signatory, to this Order. All times for performance of ordered activities shall be calculated from this effective date.

IT IS SO AGREED:

**Missouri Department of Natural Resources:**

3/21/16  
Date

  
Leanne Tippet Mosby, Director  
Division of Environmental Quality

**Missouri Attorney General's Office:**

3/6/16  
Date

  
Chris Koster  
Attorney General

Thais Ann Folta  
Assistant Attorney General

**For Hamilton Sundstrand Corporation, a subsidiary of  
United Technologies Corporation:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**For City of Camdenton:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

---

**For Modine Manufacturing Company:**

Date: \_\_\_\_\_

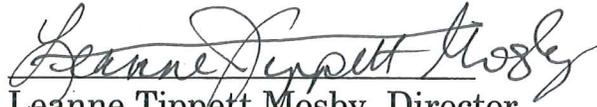
\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

IT IS SO AGREED:

**Missouri Department of Natural Resources:**

3/21/16  
Date

  
Leanne Tippet Mosby, Director  
Division of Environmental Quality

**Missouri Attorney General's Office:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chris Koster  
Attorney General

Daren R. Eppley  
Assistant Attorney General

**For Hamilton Sundstrand Corporation, a subsidiary of  
United Technologies Corporation:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Name

Title \_\_\_\_\_

**For City of Camdenton:**

Date: 3/2/16

  
Name

Title MAYOR

**For Modine Manufacturing Company:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Name

Title \_\_\_\_\_

IT IS SO AGREED:

**Missouri Department of Natural Resources:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Leanne Tippett Mosby, Director  
Division of Environmental Quality

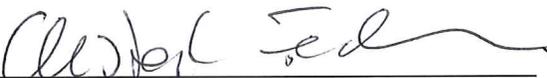
**Missouri Attorney General's Office:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chris Koster  
Attorney General  
  
Daren R. Eppley  
Assistant Attorney General

**For Hamilton Sundstrand Corporation, a subsidiary of  
United Technologies Corporation:**

Date: Feb. 22, 2016

  
\_\_\_\_\_  
Name Christoph Feddersen  
Title Vice President - General Counsel

**For City of Camdenton:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Name  
  
Title \_\_\_\_\_

**For Modine Manufacturing Company:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Name  
  
Title \_\_\_\_\_

IT IS SO AGREED:

**Missouri Department of Natural Resources:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Leanne Tippett Mosby, Director  
Division of Environmental Quality

**Missouri Attorney General's Office:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chris Koster  
Attorney General

Daren R. Eppley  
Assistant Attorney General

**For Hamilton Sundstrand Corporation, a subsidiary of  
United Technologies Corporation:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Name

Title \_\_\_\_\_

**For City of Camdenton:**

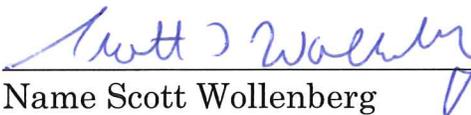
Date: \_\_\_\_\_

\_\_\_\_\_  
Name

Title \_\_\_\_\_

**For Modine Manufacturing Company:**

Date: 2/28/16

  
\_\_\_\_\_  
Name Scott Wollenberg

Title Vice President - Americas