

In the United States District Court  
for the Eastern District of Missouri  
Southeastern Division

-----	X	
United States of America,	:	
	:	
and	:	
	:	
State of Missouri,	:	Civil No. _____
	:	(Consolidated)
Plaintiffs,	:	
	:	
v.	:	US Draft 11Aug2023
	:	
Ameren, et al.,	:	
	:	
Defendants.	:	
-----	X	

**CONSENT DECREE**

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Appendix A: Map of the Missouri Electric Works Superfund Site

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## I. BACKGROUND

A. The United States of America (United States), on behalf of the Administrator of the U.S. Environmental Protection Agency (EPA), filed a complaint against the Settling Defendants in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9607, as amended, seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Missouri Electric Works Superfund Site in Cape Girardeau, Cape Girardeau County, Missouri (Site). The Settling Defendants assert or allege that the Settling Federal Agencies are liable to the Settling Defendants for contribution at the Site under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

B. The State also filed a complaint against the Settling Defendants and the United States in this Court alleging that Settling Defendants and Settling Federal Agencies are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and applicable state law. The State in its complaint seeks reimbursement of its past and future response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances and other pollutants and contaminants associated with the Site.

C. In response to the release or threatened release of hazardous substances at or from the Site, EPA and the State have undertaken response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions in the future.

D. In performing response actions at the Site, EPA and the State have incurred response costs and will incur additional response costs in the future.

E. The Settling Defendants do not admit any liability arising out of the transactions or occurrences alleged in the complaints or with respect to any facts which may be alleged in connection with the exercise by the United States or State of any of the Reservations by Plaintiffs set forth in Section IX. Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by Settling Defendants or any claim by the State or with respect to any facts which may be alleged in connection with the exercise by the United States or State of any of the Reservations by Plaintiffs set forth in Section IX.

F. On or before August \_\_, 2023, in anticipation of the Parties potentially entering into this Consent Decree, General Star Insurance, on behalf of Settling Defendants, deposited \$6,700,000 into an interest-bearing escrow account in a duly chartered bank or trust company that is insured by the Federal Deposit Insurance Corporation (the "Escrow Account"). The escrow agreement provides that such funds will be disbursed in accordance with this Consent Decree; except that in the event this Consent Decree is not entered by the Court, and the time for any appeal of that decision has run, or if the Court's denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to General Star Insurance.

G. The United States, the State, and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in

good faith, that settlement of this matter without further litigation and without any further admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties to this Decree, it is hereby ORDERED, ADJUDGED, and DECREED:

## **II. JURISDICTION**

1. This Court has subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367 and 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and the State, and upon Settling Defendants and their heirs, successors, and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

3. Settling Defendants are jointly and severally liable for the payment of the amounts due under this Consent Decree and any other requirements hereunder which apply to them. In the event of the insolvency or other failure of any one or more Settling Defendants to pay the amounts due under this Consent Decree that apply to the Settling Defendants, the remaining Settling Defendants shall pay all such amounts. Notwithstanding the foregoing, the Settling Defendants shall have no liability to the United States or the State of Missouri to pay any amounts the Settling Federal Agencies are obligated to pay pursuant to this Consent Decree, and the Settling Federal Agencies shall have no liability to the United States or the State of Missouri to pay any amounts the Settling Defendants are obligated to pay pursuant to this Consent Decree.

## **IV. DEFINITIONS**

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

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-75.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, 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.

“DOD” shall mean the U.S. Department of Defense, as described in 10 U.S.C. § 111.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

“EPA” shall mean the U.S. Environmental Protection Agency and any of its successor departments or agencies.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Escrow Interest” shall mean interest at the rate specified in the escrow agreement creating the Escrow Account.

“Future Response Costs” means all costs (including direct, indirect, payroll, enforcement costs, contractor, travel, and laboratory costs) that the United States: (a) pays between the Date of Lodging and the Effective Date; and (b) pays after the Effective Date, in connection with the Site. Future Response Costs also includes all Interest accrued after the Date of Lodging on EPA’s unreimbursed costs (including Past Response Costs) under section 107(a) of CERCLA.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“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, and any amendments thereto.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper- or lower-case letter.

“Past Response Costs” means all costs (including direct, indirect, payroll, contractor, enforcement costs, travel, and laboratory costs) that the United States paid in connection with the Site through the Date of Lodging, plus all interest on such costs accrued under section 107(a) of CERCLA through such date.

“Parties” shall mean the United States, the State, and the Settling Defendants.

"Plaintiffs" shall mean the United States and the State.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901–6992 (also known as the Resource Conservation and Recovery Act).

"Missouri Electric Works Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendants" shall mean those parties identified in Appendix B.

"Settling Federal Agencies" shall mean the DOD, to include the Department of the Air Force, the Department of the Army, and the Defense Logistics Agency, and their successor departments, agencies, or instrumentalities.

"Site" shall mean the Missouri Electric Works Superfund Site, encompassing approximately 6.4 acres, located adjacent to U.S. Highway 61 (South Kings Highway) in Cape Girardeau, Missouri, as depicted on the map included in Appendix A, including all areas where hazardous substances and other pollutants or contaminants released at the Site have come to be located.

"State" shall mean the State of Missouri.

"State Response Costs" shall mean all costs, including direct and indirect costs, incurred by the State prior to the Date of Lodging or to be incurred by the State on or after the Date of Lodging, in connection with the Site.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and Settling Federal Agencies.

## **V. STATEMENT OF PURPOSE**

5. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants and Settling Federal Agencies to pay response costs, which include a premium with respect to Future Response Costs, to resolve their alleged civil liability under federal and Missouri law for the Site under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Missouri law, as provided in the Covenants by Plaintiffs in Section VIII, subject to the Reservation of Rights by Plaintiffs in Section IX. In addition, it is the mutual intent of the Parties to resolve the claims that have been or could have been asserted against the United States with regard to this Site and resolve all the Settling Federal Agencies' alleged civil liability to the Settling Defendants for the Site under Sections 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(f). It is also the mutual intent of the Parties to effectuate protection from contribution actions or claims for the Settling Defendants and Settling Federal Agencies under Section 113(f)(2) and (f)(3)(B) of CERCLA, 42 U.S.C. § 9631(f)(2) and (f)(3)(B), as provided in Section XI (Effect of Settlement/Contribution). § 9613(f).

## **VI. PAYMENT OF RESPONSE COSTS**

6. **Payment of Response Costs by Settling Defendants.** Within 30 days after the Effective Date, Settling Defendants shall cause the monies in the Escrow Account, together with accrued Escrow Interest thereon, to be paid in accordance with this Paragraph and Paragraphs 7 and 8:

a. \$6,074,739 to EPA, plus Escrow Interest accrued thereon, in payment of Past Response Costs and Future Response Costs.

b. \$625,261 to the State, plus Escrow Interest accrued thereon, in payment of State Response Costs.

### **7. Method/Form of Payments by Settling Defendants.**

a. Settling Defendants shall cause payment to be made to EPA at <https://www.pay.gov> in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit (FLU) of the U.S. Attorney's Office for the Eastern District of Missouri after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (CDCS) Number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The Settling Defendants shall timely provide their anticipated date of payment upon request from the FLU. The FLU will then transmit the payment instructions for the Settling Defendants to:

Ellen Goldman  
Executive Director  
MEW Site Donor Trust  
c/o  
Seigfreid Bingham  
2323 Grand Ave. STE. 1000  
Kansas City Mo. 64108  
EGoldman@sb-kc.com

With a copy to:

Timothy J. Bergere  
Armstrong Teasdale LLP  
2005 Market St., 29<sup>th</sup> Floor  
One Commerce Square  
Philadelphia, PA 19103  
Tel. (267) 780-2024  
TBergere@atllp.com

Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice to DOJ and EPA of such change in accordance with Section XIV (Notices and Submissions).

b. Settling Defendants shall cause payment to be made to the State in the form of an official bank check. The check shall be made payable to the Missouri Department of

Natural Resources and shall reference *United States v. Ameren, et al.*, Civil Action No. \_\_\_\_\_ . Settling Defendants shall send the check to:

Missouri Department of Natural Resources  
Attn: Environmental Remediation Program, Superfund Section  
P.O. Box 176  
Jefferson City, Missouri 65102-0176

**8. Notices of Payment.**

a. At the time of payment to EPA, Settling Defendants shall send notice that payment has been made to both EPA and DOJ in accordance with Section XIV(Notices and Submissions). Such notice shall reference the CDCS Number, Site/Spill ID Number 076R, and DJ Number 90-11-2-614/4.

b. At the time of payment to the State, Settling Defendants shall send notice that payment has been made to the State in accordance with Section XIV(Notices and Submissions).

**9. Payments by Settling Federal Agencies.**

a. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall pay:

(1) To EPA \$600,798, in payment of Past Response Costs and Future Response Costs.

(2) To the State \$61,839, in payment of State Response Costs.  
Payment to the State shall be by Automatic Clearing House (ACH) Electronic Funds Transfer in accordance with instructions provided by the State.

b. **Interest.** If any payment required by Paragraph 9.a is not made within 120 days after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall pay Interest on the unpaid balance, with such Interest commencing on the 121st day after the Effective Date and accruing through the date of the payment.

c. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

**10. Deposit of Payments.** The total amount to be paid to EPA pursuant to Paragraphs 6 and 9 shall be deposited by EPA in the Missouri Electric Works Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.



## VII. FAILURE TO COMPLY WITH CONSENT DECREE

11. **Interest on Late Payments.** If Settling Defendants fail to cause the payments required by Paragraph 6 (Payment of Response Costs) to be made by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

12. **Stipulated Penalty for Late Payments.**

a. If any amounts due to EPA or the State under Paragraph 6 (Payment of Response Costs) are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 11 (Interest on Late Payments):

<u>Penalty Per Violation</u>	<u>Period of Noncompliance</u>
Per Day	
\$500	1st through 14th day
\$1,000	15th through 30th day
\$2,000	31st through 60th day
\$4,000	61st day and beyond

b. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA or the State. Settling Defendants shall make all payments to EPA at <https://www.pay.gov> in accordance with the procedures under Paragraph 7 (Method/Form of Payments by Settling Defendants) and send notice of this payment to the United States and State in accordance with Paragraph 8 (Notices of Payment). Settling Defendants shall indicate in the comment field on the <https://www.pay.gov> payment form that the payment is for stipulated penalties.

All payments to the State under this Paragraph shall be identified as "stipulated penalties" and shall also be made in accordance with the procedures under Paragraph 7.

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the State has notified Settling Defendants of the violation or made a demand for payment but need only be paid upon demand. All penalties shall begin to accrue on the day after the payment is due and shall continue to accrue through the date of payment; provided that, if the Settling Defendants have timely provided the FLU with the anticipated date of payment (upon request by the FLU) and the FLU has not provided payment instructions in accordance with Paragraph 7 before the 30<sup>th</sup> Day after the Effective Date, penalties shall not accrue until ten (10) days after the FLU provides payment instructions to the Settling Defendants.

13. Except with respect to actions against individual Settling Defendants under Section XIII and Paragraph 36, if the United States or the State brings an action to enforce this Consent Decree against the Settling Defendants, the Settling Defendants shall reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

14. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

15. The obligations of Settling Defendants to pay amounts owed the United States and the State under Paragraphs 6, 11, 12, and 13 (except as otherwise specified therein) of this Consent Decree are joint and several. In the event of the insolvency of any Settling Defendant or the failure by any Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

16. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

### **VIII. COVENANTS BY PLAINTIFFS**

17. **Covenants for Settling Defendants by the United States and the State.** Except as specifically provided in Section IX (Reservation of Rights by Plaintiffs), the United States and the State covenant not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and, with respect to the State, applicable Missouri law, with regard to the Site. With respect to present liability, these covenants shall take effect upon the Effective Date. With respect to future liability, these covenants shall take effect upon completion of all remedial action at the Site. Remedial action shall be considered complete when EPA issues the Final Close-Out Report for the Site. These covenants are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs), and any additional Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Consent Decree). These covenants extend only to Settling Defendants and their successors and assigns, but only to the extent that the alleged liability of a successor or assign is based on its status and in its capacity as a successor or assign of a Settling Defendant, and not to the extent that the alleged liability arose independently of the alleged liability of any Settling Defendant, and do not extend to any other person.

18. **Covenants for Settling Federal Agencies by EPA.** Except as specifically provided in Section IX (Reservation of Rights by Plaintiffs), EPA covenants not to take administrative action against Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present liability, this covenant shall take effect upon the Effective Date. With respect to future liability, this covenant shall take effect upon completion of all remedial action at the Site. Remedial action shall be considered complete when EPA issues the Final Close-Out Report for the Site. This covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. This covenant extends only to Settling Federal Agencies and does not extend to any other person.

19. **Covenant for Settling Federal Agencies by the State.** Except as specifically provided in Section IX (Reservation of Rights by Plaintiffs), the State covenants not to sue or take administrative action against Settling Federal Agencies with regard to the Site. With respect to present liability, this covenant shall take effect upon the Effective Date. With respect to future liability, this covenant shall take effect upon completion of all remedial action at the Site.

Remedial action shall be considered complete when EPA issues the Final Close-Out Report for the Site. This covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. This covenant extends only to Settling Federal Agencies and does not extend to any other person.

## **IX. RESERVATION OF RIGHTS BY PLAINTIFFS**

### **20. United States Pre-Closeout Reservations.**

a. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to issue an administrative order or to institute proceedings in this action or in a new action seeking to compel Settling Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies, to perform response actions relating to the Site, to pay the United States for additional costs of response, or any combination thereof. The United States may exercise this reservation only if, (a) prior to issuance of the Final Close-Out Report, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

21. Prior to the issuance of the Final Close-Out Report, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date that the ROD for Operable Unit 3 was signed and as set forth in the RODs for Operable Units 1, 2 and 3; the administrative records supporting the RODs for Operable Units 1, 2 and 3; existing post-ROD decision documents; or the post-ROD administrative records for such post-ROD decision documents.

### **22. United States' Post-Closeout Reservations.**

a. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to issue an administrative order or to institute proceedings in this action or in a new action seeking to compel Settling Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies, to perform response actions relating to the Site, to pay the United States for additional costs of response, or any combination thereof. The United States may exercise this reservation only if, (a) subsequent to issuance of the Final Close-Out Report, (1) conditions at the Site, previously unknown to EPA, are discovered, (2) information, previously unknown to EPA is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

b. After issuance of the Final Close-Out Report, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of the Final Close-Out Report and set forth in the RODs for Operable Units 1, 2, and 3; the administrative records supporting the RODs for Operable Units 1, 2, and 3; post-ROD decision documents existing as of the date of the Final Close-Out Report; the post-ROD administrative records for Operable Units 1, 2, and 3; or in any information received by EPA pursuant to the requirements of this CD prior to the issuance of the Final Close-Out Report.

23. **General Reservations.** Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and EPA and the federal natural resource trustee reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to:

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

24. **Final Close-Out Report.** As soon as reasonably practicable after performance standards have been attained, EPA will issue a Final Close-Out Report for the Site, which will confirm in writing that the Remedial Action has been performed fully. This report shall constitute the Final Close-Out Report for purposes of Paragraphs 17, 18, 19, 20 and 21 above.

#### **X. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES**

25. **Covenants by Settling Defendants.** Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site and this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution; the Missouri Constitution; the Tucker Act, 28 U.S.C. § 1491; the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended; or at common law; or
- c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613; Section 7002(a) of RCRA, 42 U.S.C. § 6972(a); or state law, relating to the Site.

26. **Covenants by Settling Federal Agencies.** Settling Federal Agencies agree not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections §§ 106(b)(2), 107, 111, 112, and 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, and 9613, or any other provision of law with respect to the Site and this Consent Decree. These covenants do not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the NCP.

27. Except as provided in Paragraph 29 (Claims Against Other PRPs) and Paragraph 34 (*Res Judicata* and Other Defenses), the covenants in this Section shall not apply in the event the United States or the State brings a cause of action or issues an order or directive pursuant to any of the reservations set forth in Section IX (Reservation of Rights by Plaintiffs), other than in Paragraph 23.a (liability for failure to meet a requirement of the Consent Decree) or 23.b (criminal liability), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States or the State is seeking pursuant to the applicable reservation.

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

29. **Claims Against Other PRPs.** Each Settling Defendant agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613) that it may have for response costs relating to the Site against each other. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant. Nothing in this Paragraph 28 shall waive or compromise any specific contractual rights or undertakings between or among the Settling Defendants.

## **XI. EFFECT OF SETTLEMENT/CONTRIBUTION**

30. Except as provided in Paragraph 29 (Claims Against Other PRPs), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section X (Covenants by Settling Defendants and Settling Federal Agencies), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA.

31. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement pursuant to which each Settling Defendant and each Settling Federal Agency has, as of the Effective Date, resolved its liability to the United States and the State within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and each Settling Defendant and Settling Federal Agency is entitled, as of the

Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person; provided, however, that, if the United States exercises rights under the reservations in Section IX (Reservation of Rights by Plaintiffs), other than in Paragraphs 23.a (liability for failure to meet a requirement of Consent Decree) or 23.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

32. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant and each Settling Federal Agency has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

33. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA, DOJ, and the State in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA, DOJ, and the State in writing within 30 days after service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA, DOJ, and the State within 15 days after service or receipt of any Motion for Summary Judgment, and within 15 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

34. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants and, with respect to a State action, Settling Federal Agencies, shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiffs set forth in Section VIII, including the Settling Defendants’ right to assert that the claims raised by the United States or State in such subsequent proceeding are within the scope of the Covenants by Plaintiffs set forth in Section VIII and do not fall within the scope of any Reservation of Rights by Plaintiffs set forth in Section IX.

35. **Effect on Prior Order.** Upon the Effective Date of this Consent Decree Settling Defendants’ obligations under the Administrative Settlement and Order on Consent, Docket No. CERCLA 07-2016-0018 (“OU3 RI/FS ASAOC”) are deemed satisfied and all actions have been fully performed in accordance with the terms of the RI/FS ASAOC. This Paragraph shall serve as EPA’s written Notice of Completion to Settling Defendants, in accordance with the terms of the OU3 RI/FS ASAOC.

## **XII. ACCESS TO INFORMATION**

36. Each Settling Defendant shall provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") then within its possession or control, or that of its contractors or agents, relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

### **37. Privileged and Protected Claims.**

a. Settling Defendants may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 37.b, and except as provided in Paragraph 37.c.

b. If Settling Defendants assert a claim of privilege or protection, they shall provide Plaintiffs with the following information regarding such Record: its title; its date; the name, title, affiliation (*e.g.*, company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Defendants shall provide the Record to Plaintiffs in redacted form to mask the privileged or protected information only. Settling Defendants shall retain all Records that they claim to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Defendants' favor.

c. Settling Defendants may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

(2) the portion of any Record that Settling Defendants are required to create or generate pursuant to this Consent Decree.

38. **Business Confidential Claims.** Settling Defendants may assert that all or part of a Record submitted to Plaintiffs under this Section or Section XIII (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Defendants shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendants assert a business confidentiality claim. Records that Settling Defendants claim to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

39. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

### **XIII. RETENTION OF RECORDS**

40. Until three (3) years after the Effective Date, each Settling Defendant shall preserve and retain all non-identical copies of Records now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that, if a Settling Defendant is potentially liable as owner or operator of the Site, that Settling Defendant must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site, for a period of ten (10) years from the Effective Date. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

41. After the conclusion of the record retention period, Settling Defendants shall notify EPA, DOJ, and the State at least 90 days prior to the destruction of any such Records, and, upon request by EPA, DOJ, or the State, except as provided in Paragraph 37 (Privileged and Protected Claims), Settling Defendants shall deliver any such Records to EPA or the State.

42. Each Settling Defendant certifies that, to the best of its knowledge and belief, after reasonable inquiry, since January 1, 2020, it has:

a. not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State, and that it has fully complied with any and all EPA and State requests for information regarding the Site and each Settling Defendant's financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B); Section 3007 of RCRA, 42 U.S.C. § 6927; and state law; and

b. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

43. The United States acknowledges that each Settling Federal Agency: (a) is subject to all applicable federal record retention laws, regulations, and policies; and (b) has certified that it has fully complied with any and all EPA and State requests for information regarding the Site under Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B); Section 3007 of RCRA, 42 U.S.C. § 6927; and state law.

### **XIV. NOTICES AND SUBMISSIONS**

44. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, with a preference for email, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.



**As to DOJ by email:**

[eescasemanagement.enrd@usdoj.gov](mailto:eescasemanagement.enrd@usdoj.gov)  
[MailProcessing\\_EDS.ENRD@usdoj.gov](mailto:MailProcessing_EDS.ENRD@usdoj.gov)

**As to DOJ by regular mail:**

EES Case Management Unit  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-2-614/4

Chief  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Defense Section  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-2-614/4

**As to EPA:**

Katie Gulley, Attorney-Adviser  
RE: Missouri Electric Works Superfund Site  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Blvd.  
Lenexa, Kansas 66219  
[gulley.katherine@epa.gov](mailto:gulley.katherine@epa.gov)  
(913) 551-7880

Hoai Tran  
Remedial Project Manager  
RE: Missouri Electric Works Superfund Site  
Superfund Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Blvd.  
Lenexa, Kansas 66219  
[tran.hoi@epa.gov](mailto:tran.hoi@epa.gov)  
(913) 551-7330

**As to the State:**

Missouri Department of Natural Resources  
Environmental Remediation Program  
Superfund Section  
P.O. Box 176  
Jefferson City, MO 65102-0176

**As to Settling Defendants:**

Ellen Goldman  
Executive Director

MEW Site Donor Trust  
c/o  
Seigfreid Bingham  
2323 Grand Ave. STE. 1000  
Kansas City Mo. 64108  
EGoldman@sb-kc.com

With copies to:

Timothy J. Bergere  
Armstrong Teasdale LLP  
2005 Market St., 29<sup>th</sup> Floor  
One Commerce Square  
Philadelphia, PA 19103  
Tel. (267) 780-2024  
TBergere@atllp.com

Cara Duffield  
Hume Ross  
Wiley Rein LLP  
2050 M Street NW  
Washington DC 20036  
(202) 719-7000  
cduffield@wiley.law  
hross@wiley.law

**As to Settling Federal Agencies:**

#### **XV. RETENTION OF JURISDICTION**

45. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

#### **XVI. INTEGRATION/APPENDICES**

46. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the Map of the Missouri Electric Works Superfund Site.

“Appendix B” is the List of Settling Defendants.

## **XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

47. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

48. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

## **XVIII. SIGNATORIES/SERVICE**

49. Each undersigned representative of Settling Defendants, the Assistant Attorney General for the Environment and Natural Resources Division, and the Assistant Attorney General for the State certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

50. Settling Defendants agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

51. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of each Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendants agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

## **XIX. FINAL JUDGMENT**

52. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State, and the Settling Defendants. The Court enters this judgment under Fed. R. Civ. P. 58.

SO ORDERED THIS \_\_ DAY OF \_\_\_\_\_ 2023.

\_\_\_\_\_  
Honorable \_\_\_\_\_  
United States District Judge

Signature Page for Consent Decree Regarding Missouri Electric Works Superfund Site

**FOR THE UNITED STATES OF AMERICA:**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Todd S. Kim  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division

P.O. Box 7611  
Washington, D.C. 20044-7611

\_\_\_\_\_  
Eric D. Albert  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044-7611

\_\_\_\_\_  
Daniel Pinkston  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Defense Section  
P.O. Box 7611  
Washington, D.C. 20044-7611

Signature Page for Consent Decree Regarding Missouri Electric Works Superfund Site

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Regional Administrator, Region 7  
U.S. Environmental Protection Agency  
11201 Renner Boulevard  
Lenexa, Kansas 66219

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Katherine E. Gulley  
Attorney-Adviser, Region 7  
U.S. Environmental Protection Agency  
11201 Renner Boulevard  
Lenexa, Kansas 66219

Signature Page for Consent Decree Regarding Missouri Electric Works Superfund Site

**FOR THE STATE OF MISSOURI:**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Eric Schmitt  
Attorney General

Timothy Duggan, Assistant Attorney General

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Kyra Moore, Director  
Division of Environmental Quality  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102

Signature Page for Consent Decree Regarding Missouri Electric Works Superfund Site

CITY OF JACKSON, MISSOURI

(SEAL)

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

ATTEST:

\_\_\_\_\_  
City Clerk

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Liza Walker  
Title: City Clerk  
Company: City of Jackson, MO  
Address: 101 Court St.  
Jackson, MO 63755  
Phone: 573-243-3568 x2020  
Email: [lwalker@jacksonmo.org](mailto:lwalker@jacksonmo.org)