

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	CERCLA SECTION 122(h)(1)
)	SETTLEMENT
Welch Group Environmental Palmetto Site)	AGREEMENT FOR RECOVERY OF
Belton, Anderson County, South)	PAST RESPONSE COSTS
Carolina)	
)	
)	EPA Docket No. CERCLA-04-2020-
)	2502
Gary Warehouse Services, LLC,)	
SETTLING PARTY)	Proceeding under Section 122(h)(1) of
)	CERCLA, 42 U.S.C. § 9622(h)(1)

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I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and redelegated to the Chief of the Enforcement Branch in the Superfund and Emergency Management Division.

2. This Settlement Agreement is made and entered into by EPA and Gary Warehouse Services, LLC (Settling Party). Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Welch Group Environmental Palmetto Site (Site) located at 110 Palmetto Parkway, Belton, Anderson County, South Carolina 29627. The Site is comprised of a one-story, multi-use warehouse building. The Site is owned by Settling Party and was leased to Welch Group Environmental, LLC (WGE) until December 2, 2010, at which time the South Carolina Department of Health and Environmental Control (SCDHEC) ordered WGE to cease its operations. WGE used the Site to store recovered lead slugs and shell casings from gun and rifle ranges in the operation of its munitions recovery business. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

a. On February 4, 2011, SCDHEC notified EPA's On-Scene Coordinator (OSC) that operations had occurred at the Site. EPA conducted an inspection of the Site on February 7, 2011, and conducted x-ray fluorescence (XRF) screening. The readings for metal concentrations on the floor and wall where most Site operations took place found that a release of lead existed at high concentrations at or near the surface. EPA's OSC determined that actual or threatened releases of hazardous substances from the Site, if not addressed by implementing the response action, may have presented an imminent and substantial endangerment to public health, welfare or the environment.

b. EPA, WGE, and Settling Party entered into an Administrative Settlement Agreement and Order on Consent for Removal Action (AOC), Docket No. CERCLA-04-2011-3763, that became effective on May 12, 2011, which provides that WGE and Settling Party are jointly and severally liable for carrying out all activities required by the AOC, including implementation of EPA's Action Memorandum with oversight from EPA, pursuant to Section VIII (Work to be Performed) of the May 12, 2011 AOC, and payment of EPA's past and future response costs, pursuant to Section XV (Payment of Response Costs) of the May 12, 2011 AOC.

c. WGE conducted removal work at the Site which was overseen by EPA pursuant to the terms of the May 12, 2011 AOC. EPA's Superfund Technical Assessment and Response Team (START) conducted daily visual inspections of the paper/plastic floor covering; reconnaissance of the decontamination process; and, confirmation screening of WGE's contractor data for designated areas at the Site.

5. In performing response actions at the Site, EPA has incurred approximately \$89,788.34 as of December 9, 2019 in past and future response costs as defined in Section III (Definitions) of the May 12, 2011 AOC. Neither WGE nor Settling Party have paid any portion of EPA's past and future response costs, which they agreed to pay, pursuant to Section XV (Payment of Response Costs) of the May 12, 2011 AOC.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred at the Site.

7. EPA has reviewed the Financial Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred by EPA at the Site. Based upon this Financial Information, EPA has determined that Settling Party has limited financial ability to pay for response costs incurred by EPA at the Site. Accordingly, this Settlement Agreement supersedes the payment terms set forth in Section XV (Payment of Response Costs) of the May 12, 2011 AOC with respect to the Settling Party.

8. EPA has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.

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

III. PARTIES BOUND

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

IV. DEFINITIONS

11. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement 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 Settlement Agreement or its appendices, the following definitions shall apply:

“Affected Property” shall mean all real property at the Site and any other real property, owned or controlled by Settling Party, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, 110 Palmetto Parkway, Belton, Anderson County, South Carolina, comprising approximately .77 acres, generally designated as Tax Parcel 2260401001, depicted in Appendix A (Site Diagram).

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

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

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVI.

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

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

“Financial Information” shall mean those financial documents identified in Appendix B.

“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 Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA and Settling Party.

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice (DOJ) on behalf of EPA has incurred at or in connection with the Site through December 9, 2019, plus accrued Interest on all such costs through such date.

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

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“Settling Party” shall mean Gary Warehouse Services, LLC.

“Site” shall mean the Welch Group Environmental Palmetto Superfund Site located at 110 Palmetto Parkway, Belton, Anderson County, South Carolina, 29627, encompassing approximately .77 acres, generally designated as Tax Parcel 2260401001, and depicted in Appendix A.

“State” shall mean the State of South Carolina.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. PAYMENT OF PAST RESPONSE COSTS

12. **Payment by Settling Party for Past Response Costs.** Settling Party shall pay to EPA the principal amount of \$27,000.00. Payment of the principal amount shall be made in three (3) installments. The first installment payment of \$9,000.00 is due within 30 days after the Effective Date and, if timely paid, shall include no Interest. The second installment payment of \$9,000.00 is due within six (6) months after the Effective Date and the third installment payment of \$9,000.00 is due within twelve (12) months after the Effective Date. Each installment payment shall also include an additional sum for Interest accrued on the unpaid portion of the principal amount calculated from the date of the prior payment until the date of payment. EPA shall send a calculation of the Interest due for each payment to Settling Party after the Effective Date. Settling Party may pay any installment payment prior to the due date, but must contact: Paula Painter, Program Analyst, by phone at 404-562-8875, by electronic mail at painter.paula@epa.gov, or by mail at U.S. EPA Region 4, 61 Forsyth Street S.W., Atlanta, Georgia, in advance for a determination regarding the amount of Interest to be included with the payment. In the event any installment payment includes an overpayment, the amount of the overpayment shall be applied to the remaining principal.

13. Settling Party’s payments shall be made to EPA by one of the following methods:

For Fedwire Electronic Funds Transfer (EFT):

If by Fedwire Electronic Funds Transfer, Settling Party shall make payments to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

The payment shall reference Site/Spill ID Number B4F6 and the EPA Docket No. CERCLA-04-2020-2502 for this action.

For ACH payment:

If by Automated Clearinghouse payment, Settling Party shall make payments to EPA by Automated Clearinghouse (ACH) to:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

The payment shall reference Site/Spill ID Number B4F6 and the EPA Docket No. CERCLA-04-2020-2502 for this action.

For online payment:

If by online payment, Settling Party shall make payments at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to Settling Party by EPA.

For check payment:

Settling Party shall make payments by official bank checks made payable to "EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, Site/Spill ID Number B4F6, and the EPA Docket No. CERCLA-04-2020-2502 for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments – Region 4
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

14. **Deposit of Payment.** The total amount of each payment to be paid pursuant to Paragraph 12 (Payment by Settling Party for Past Response Costs) shall be deposited by EPA in the EPA Hazardous Substance Superfund.

15. **Notice of Payment.** At the time of each payment, Settling Party shall send notice that such payment has been made: (a) to EPA in accordance with Section XIII (Notices and Submissions); and (b) to the EPA Cincinnati Finance Center (CFC) by email to acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, OH 45268

With a copy to:

Paula Painter
Program Analyst
U.S. EPA, Region 4
61 Forsyth Street S.W.
Atlanta, GA 30303

Such notice shall reference Site/Spill ID Number B4F6 and the EPA Docket No. CERCLA-04-2020-2502 for this action.

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

16. **Interest on Payments.** If Settling Party fails to make any payment required by Paragraph 12 (Payment by Settling Party for Past Response Costs) by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure, and if the first payment is not timely made, Interest shall accrue from the Effective Date. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

17. Stipulated Penalty

a. If any amounts due to EPA under Paragraph 12 (Payment by Settling Party for Past Response Costs) are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 16 (Interest on Payments), \$500.00 per day that such payment is late.

b. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Settling Party's receipt from EPA of a demand for payment of the penalties. Settling Party shall identify all payments to EPA under this Paragraph as "stipulated penalties," shall reference Site/Spill ID Number B4F6 and the EPA Docket No. CERCLA-04-2020-2502 for this action. Settling Party shall make all payments required by this Section to EPA by Fedwire EFT to:

Federal Reserve Bank of New York

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

c. At the time of each payment, Settling Party shall send notice that payment has been made as provided in Paragraph 15 (Notice of Payment).

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

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

19. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V (Payment of Past Response Costs) or from performance of any other requirements of this Settlement Agreement.

VII. COVENANTS BY EPA

20. **Covenants by EPA.** Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs as defined in this Settlement Agreement. These covenants shall take effect upon the Effective Date and are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement including, but not limited to, payment of all amounts due under Section V (Payment of Past Response Costs) and any Interest or stipulated penalties due thereon under Section VI (Failure to Comply with Settlement Agreement). These covenants are also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Party and the financial and indemnity certification made by Settling Party in Paragraph 39. These covenants extend only to Settling Party and do not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

21. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within Paragraph 20 (Covenants by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs as defined in this Settlement Agreement;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and,
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

22. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the Financial Information provided by Settling Party, or the financial or indemnity certification made by Settling Party in Paragraph 39, is false or, in any material respect, inaccurate.

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

IX. COVENANTS BY SETTLING PARTY

24. **Covenants by Settling Party.** Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs and this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA 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 claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of South Carolina, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and,
- c. any claim pursuant to Section 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 for Past Response Costs.

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

26. **Waiver of Claims by Settling Party.** Settling Party 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) or 113 of CERCLA) that it may have relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Party.

X. EFFECT OF SETTLEMENT/CONTRIBUTION

27. Except as provided in Paragraph 26 (Waiver of Claims by Settling Party), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section IX (Covenants by Settling Party), each of the Parties 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 Settlement Agreement diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(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).

28. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are Past Response Costs.

29. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party 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).

30. Settling Party shall, with respect to any suit or claim brought by it for matters related to Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon Settling Party. In addition, Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

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

32. Effective upon signature of this Settlement Agreement by Settling Party, Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Settling Party the payment(s) required by Section V (Payment of Response Costs) and, if any, Section VI (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 28, and that, in any action brought by the United States related to the "matters addressed," Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XI. ACCESS TO INFORMATION

33. Settling Party shall provide to EPA, 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") within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, 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.

34. Privileged and Protected Claims

a. Settling Party may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 34.b, and except as provided in Paragraph 34.c.

b. If Settling Party asserts a claim of privilege or protection, it shall provide EPA 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 Party shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Settling Party shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Party's favor.

- c. Settling Party 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 Party is required to create or generate pursuant to this Settlement Agreement.

35. **Business Confidentiality Claims.** Settling Party may assert that all or part of a Record submitted to EPA under this Section or Section XII (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 Party shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Settling Party asserts a business confidentiality claim. Records that Settling Party claims 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, or if EPA has notified Settling Party 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 Party.

36. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XII. RETENTION OF RECORDS

37. Until 10 years after the Effective Date, Settling Party 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 Settling Party is potentially liable as an owner or operator of the Site, Settling Party must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of these requirements shall apply regardless of any corporate retention policy to the contrary.

38. At the conclusion of the document retention period, Settling Party shall notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA, and except as provided in Paragraph 34 (Privileged and Protected Claims), Settling Party shall deliver any such Records to EPA.

39. Settling Party certifies that, to the best of its knowledge and belief, after thorough inquiry, 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 Settling Party'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;

b. submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Party executes this Settlement Agreement; and

c. 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.

XIII. NOTICES AND SUBMISSIONS

40. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. 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 this Settlement Agreement regarding such Party.

As to EPA: Paula Painter
Program Analyst
U.S. EPA, Region 4
61 Forsyth Street S.W.
Atlanta, GA 30303

As to Settling Party: Coleman Cummings Gary
Gary Warehouse Services, LLC
P.O. Box 476
Belton, SC 29627

XIV. INTEGRATION/APPENDICES

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

“Appendix A” is a diagram of the Site.

“Appendix B” is a list of the financial documents submitted to EPA by Settling Party.

XV. PUBLIC COMMENT

42. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section

122(i)(3) of CERCLA, the United States may withhold its consent or seek to modify this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVI. EFFECTIVE DATE

43. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 42 has closed and the United States has determined not to withhold its consent or seek to modify this Settlement Agreement based on the comments received, if any.

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated

Maurice L. Horsey, IV | Chief
Enforcement Branch
Superfund & Emergency Management Division
U.S. EPA Region 4

Signature Page for Settlement Agreement Regarding Welch Group Environmental Palmetto
Superfund Site

FOR GARY WAREHOUSE SERVICES, LLC:

Dated

Coleman Cummings Gary on behalf of Gary Warehouse
Services, LLC as Owner/President
10600 Belton Honea Path Highway
Belton, South Carolina 29627

APPENDIX A



APPENDIX B

BASIS OF INABILITY-TO-PAY DETERMINATION

Site Name and Location:

Welch Group Environmental Palmetto Site
110 Palmetto Parkway
Belton, South Carolina 29627

Name of the Party Subject to the Ability-to-Pay (ATP) Analysis:

Gary Warehouse Services, LLC

Documents Submitted by the Settling Party that Formed the Basis of the ATP Determination:

- A. Financial Statement of Corporate Debtor;
- B. Individual Federal Income Tax Returns for the tax years 2014, 2015, and 2016;
- C. Gary Warehouse Services, LLC's Form Schedule C for tax years 2014, 2015, and 2016; and,
- D. Business Financial Statements from January 2014, through December 2017, and January 2019, through October 2019.