

**NORTH CAROLINA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES
DIVISION OF WASTE MANAGEMENT
SUPERFUND SECTION**

**IN RE: The Site known to the Department
as CTS of Asheville
NCD003149556
SKYLAND, NORTH CAROLINA
BUNCOMBE COUNTY**

**ADMINISTRATIVE AGREEMENT
FOR STATE-DIRECTED ASSESSMENT
AND REMEDIAL ACTION
PURSUANT TO N.C.G.S. 130A- 310.9**

DOCKET NUMBER __ - SF- __

The following constitutes the agreement of the parties hereto.

I. JURISDICTION

This Agreement is entered into under authority vested in the Secretary of the North Carolina Department of Environment and Natural Resources (Department) by North Carolina's Inactive Hazardous Sites Response Act of 1987 (the Act), which constitutes Part 3, Article 9 of Chapter 130A of the North Carolina General Statutes (N.C.G.S.). N.C.G.S. 130A-310 *et seq.* This authority has been delegated to the Chief of the Superfund Section of the North Carolina Division of Waste Management (Chief).

II. STATEMENT OF PURPOSE

A. This Agreement is entered into for the purpose of addressing the hazardous substance or waste disposal site (the Site) defined in Section III. A. of this Agreement. In entering into this Agreement, the objective of the Division of Waste Management (Division) and CTS Corporation (CTS) is for CTS to implement a voluntary remedial action program approved by the Division involving: (1) preparation of a Remedial Action Plan to evaluate alternatives for meeting remediation goals; and (2) implementation of the approved Remedial

Action Plan. Preparation and implementation of the remedial investigation plan(s) have been and are ongoing separately from this Agreement. This Agreement covers the preparation and implementation of the Remedial Action Plan and is to be implemented within ninety (90) days of receipt of notice from the Department that the remedial investigation is complete or substantially complete.

- B. The Division and CTS recognize that although this Agreement has been negotiated in good faith, the actions undertaken by CTS in accordance with this Agreement do not constitute an admission by CTS of any factual conditions related to, or liability for, the Site (as hereinafter defined). CTS does not admit, and retains the right to controvert in any subsequent proceedings, the validity of the Division's Findings of Fact, Conclusions of Law and any other determination contained within this Agreement.

III. THE DIVISION'S FINDINGS OF FACT

- A. "The Site" is all the property formerly owned by CTS and/or its predecessor(s) in interest on Mills Gap Road in Skyland, North Carolina, and any additional area which has become contaminated as a result of hazardous substances or waste disposed at that property.
- B. CTS of Asheville and CTS conducted operations including metal electroplating at the Site from 1959 through 1984.
- C. Soil sampling at the Site has revealed the presence of hazardous substances, including but not limited to, trichloroethylene, 1,1,1-trichloroethane, xylenes, and 2-methylnaphthalene. This is not a comprehensive list of contaminants present at the Site and the remedial investigation and remedial action are not limited to this list of compounds.
- D. Groundwater sampling at the Site has revealed the presence of hazardous substances, including but not limited to, trichloroethylene and 1,1,1-trichloroethane. This is not a comprehensive list of contaminants present at the Site and the remedial investigation and remedial action are not limited to this list of compounds.

IV. THE DIVISION'S CONCLUSIONS OF LAW

- A. The substances identified in Sections III.C. and D. above include hazardous substances as defined in the Comprehensive

Environmental Response, Compensation and Liability Act/Superfund Amendments and Reauthorization Act, 42 U.S.C. Section 9601 *et seq.*, and are thus such substances for purposes of the Act pursuant to N.C.G.S. 130A-310(2).

- B. The Site is an inactive hazardous substance or waste disposal site for purposes of the Act pursuant to N.C.G.S. 130A-310(3).
- C. CTS is an owner, operator, or other responsible party in relation to the Site within the meaning of N.C.G.S. 130A-310.9, pursuant to N.C.G.S. 130A-310(4), -310(5), -310(9), and -310.7.
- D. Under N.C.G.S. 130A-310.9(b), the Secretary, and by delegation, the Chief, is authorized to enter into agreements with owners, operators, or other responsible parties for implementation of voluntary remedial action programs as to inactive hazardous substance or waste disposal sites in accordance with remedial action plans approved by the Department.

V. WORK TO BE PERFORMED

All work performed pursuant to plans approved under this Agreement shall comply with the current Inactive Hazardous Sites Program Guidelines for Assessment and Cleanup.

- A. If the Division determines that hazardous substances or waste disposed at the Site have contaminated any potable water wells, CTS shall, by a deadline established by the Division, provide an alternate drinking water source for users of those wells. Provided, however, that: 1) CTS reserves the right to object to providing an alternate drinking water source in circumstances where there is reasonable evidence that none of the contamination was caused by hazardous substances or waste disposed at the Site and; 2) this Section (Section V. A.) shall not apply to situations where CTS is already required to, and has met the requirement to provide, alternate water to affected well users under its January 22, 2004 Administrative Order of Consent with the United States Environmental Protection Agency, so long as CTS continues to meet that requirement.
- B. Within ninety (90) days of receiving written notice from the Division that the Remedial Investigation is complete, CTS shall submit to the Division two (2) copies of its proposed Remedial Action Plan for cleanup of all contaminated media at the Site, organized in sections corresponding to the following items and including at least:

1. A statement of objectives for the Remedial Action.
2. A listing of potentially applicable technologies.
3. An evaluation of remedial alternatives using the following feasibility study criteria:
 - a. Protection of human health and the environment, including attainment of remediation goals.
 - b. Compliance with applicable federal, State and local regulations.
 - c. Long-term effectiveness and permanence.
 - d. Reduction of toxicity, mobility and volume.
 - e. Short-term effectiveness: effectiveness at minimizing the impact of the site remediation on the environment and the local community.
 - f. Implementability: technical and logistical feasibility, including an estimate of time required for completion.
 - g. Cost.
 - h. Community acceptance.
4. A detailed description of CTS's preferred remedial alternative for each contaminated medium, from among the alternatives evaluated, including an evaluation of potential impact to any sensitive environments identified on or near the Site and construction designs and specifications (any proposed treatment technology may require on-site testing or bench-scale testing of site waste to verify its effectiveness).
5. A description of all activities that are necessary to ensure that the proposed method(s) of remedial action is (are) implemented in compliance with applicable laws and regulations, that remediation goals established by the Division are met and that the health and safety of nearby residential and business communities will not be adversely affected by activities related to the remedial action. These activities include, but are not limited to, well installation and abandonment, sampling, run-on/run-off control, dust suppression and discharge of treated waste streams.
6. The results of any treatability studies or site characterization work conducted in support of the proposed Remedial Action Plan.

7. A description of any proposed treatability studies or additional site characterization work needed to support the remedial design.
 8. A description of methods of post-remedial and confirmatory sampling, and any necessary maintenance.
 9. Equipment and personnel decontamination procedures.
 10. A proposed schedule for completion of remedial design and for Remedial Action construction, implementation and periodic sampling and reporting.
 11. A signed and notarized certification by a corporate official of CTS in charge of a principal business function stating: "I certify that, to the best of my knowledge, after thorough investigation, the information contained in or accompanying this certification is true, accurate, and complete."
 12. A signed and notarized certification by the consultant responsible for the day to day remedial activities stating: "I certify that, to the best of my knowledge, after thorough investigation, the information contained in or accompanying this certification is true, accurate, and complete."
 13. If this document includes any work that would constitute the "practice of engineering" as defined by N.C.G.S. 89C, the signature and seal of a professional engineer must be included. If this document includes any work that would constitute the "public practice of geology" as defined by N.C.G.S. 89E, the signature and seal of a licensed geologist is required.
- C. CTS shall provide to the Division the number of additional copies of the proposed Remedial Action Plan determined by the Division to be required for distribution to the local health director, register of deeds, and each public library in the county where the Site is located, if requested by the Division. The Division shall also mail notice of the Remedial Action Plan to those who have requested notice that such plans have been developed, as provided in N.C.G.S. 130A- 310.4(c)(2). The Division will not approve the Remedial Action Plan until at least thirty (30) days after public notice was provided.
- D. Within thirty (30) days of receiving notice from the Division of any deficiency in the Remedial Action Plan, CTS shall submit to the

Division information or material sufficient to correct such deficiency.

- E. CTS shall begin implementation of the Remedial Action Plan no sooner than receiving written approval from the Division nor later than sixty (60) days thereafter.
- F. Any requests for modifications of the approved Remedial Action Plan must be submitted in writing to the Division, and may not be incorporated or implemented unless and until approved in writing by the Division.
- G. CTS shall provide to the Division:
 - 1. Weekly written or telephone progress reports each Monday during the soil and waste remedial action if less than one (1) month in duration;
 - 2. Quarterly reports during: (a) groundwater remedial action, (b) any soil and waste remedial action greater than one (1) month in duration, and (c) any necessary post-remedial maintenance;
 - 3. A final report with confirmatory sample data documenting complete implementation of the approved Remedial Action Plan.

Note 1: The quarterly reports and final report should include, without limitation, complete "as-built" drawings and specifications of all remedial action systems; tabulated laboratory data; the location and depth of samples collected; a description of all field and laboratory quality control/quality assurance procedures; and legible and complete copies of all records of periodic system inspections, laboratory reports, waste manifests and chain of custody documentation generated during the reporting period. Quarterly reports shall be provided by the tenth day after each quarter concludes, with the first quarter commencing on the date of written approval of the Remedial Action Plan by the Division. The final report shall be provided within one (1) month following complete implementation of the approved Remedial Action Plan.

Note 2: Each progress report and the final report shall contain the certifications specified in Sections V.B.11, V.B.12, and V.B.13 of this Agreement.

- H. Within thirty (30) days of receiving notice from the Division of any

deficiency in the reports required by paragraph V.G. or in the implementation of the plans required by this Agreement, CTS shall submit to the Division information or material sufficient to demonstrate correction of such deficiencies.

VI. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

- A. The Division or its representatives may take split or duplicate samples of any samples collected by CTS pursuant to this Agreement. CTS shall notify the Division not less than ten (10) days in advance of any field activity. This notification may be given verbally in the field by CTS to the Division.
- B. The Division or its representatives may conduct any field activity it deems appropriate in relation to the Site. CTS may take split or duplicate samples of any samples collected by the Division during such field activity.
- C. While this Agreement is in effect, Division personnel and their representatives may, in addition to exercising any related legal rights, enter the Site without notice at all times and, while present: review the progress of activities required by this Agreement; conduct such tests as the Division deems necessary; verify the data submitted to the Division by CTS; inspect and copy any and all records, files, photographs, operating logs, contracts, sampling and monitoring data, and other documents relating in any way to this Agreement; and otherwise assess CTS's compliance with this Agreement. All parties with access to the Site pursuant to this paragraph shall comply with all approved health and safety plans.
- D. Unless a confidentiality claim covering information provided under this Agreement is made pursuant to law and adequately substantiated when the information is submitted, such information may be made available to the public by the Division without further notice to CTS. CTS agrees that under no circumstances shall analytical data generated pursuant to this Agreement be considered confidential.
- E. In any litigation between CTS and the Division, CTS waives any objections to the admissibility into evidence (but not objections as to the weight) of the results of any analyses of sampling conducted by or for CTS at the Site or of other data gathered pursuant to this Agreement.
- F. If CTS is unable by reasonable efforts to gain access to other

property as necessary pursuant to this Agreement, the Division shall assist CTS in obtaining access.

VII. DELAY IN PERFORMANCE

As soon as CTS is aware of the potential for delay, it shall submit to the Division written documentation of the reasons for the delay and the efforts made by CTS to avoid the delay, as well as a time by which such work can be completed. The Division shall review the documentation and shall promptly approve the new schedule if good cause is shown. Good cause may include, but is not limited to, extraordinary weather, natural disasters and national emergencies. At a minimum, good cause does not include normal inclement weather, increases in the cost of work to be performed under this Agreement, financial difficulty for CTS in performing such work, failure by CTS to satisfy its obligations under this Agreement (whether evidenced by a notice of deficiency or not), acts or omissions of CTS's contractors or representatives not otherwise constituting good cause, and failure by CTS or its contractors or representatives to make complete and timely application for any required approval or permit. The burden of demonstrating good cause for delay, and that the delay proposed is warranted, is CTS's.

VIII. ADDITIONAL PROVISIONS

A. All documents submitted to the Division shall be delivered to:

Bonnie S. Ware
Hydrogeologist
North Carolina Superfund Section
585 Waughtown Street
Winston- Salem, NC 27605- 1350

The Division will direct all correspondence related to this Agreement to:

Marvin Gobles
Manager, Environmental Services
CTS Corporation
905 West Blvd. North
Elkhart, IN 46514- 1899

B. This Agreement shall be binding upon, and inure to the benefit of, CTS, its agents, successors and assigns. The signatory for CTS to this Agreement certifies that he/she is authorized to execute and legally bind CTS as to this Agreement.

- C. CTS shall provide a copy of this Agreement to each contractor or other person or entity retained to perform any work under this Agreement within seven (7) days after the effective date of this Agreement or the date of retaining their services, whichever is later. CTS shall condition any such contracts upon satisfactory compliance with this Agreement. Notwithstanding the terms of any contract, CTS is responsible for compliance with this Agreement and for ensuring that such contractors or other persons or entities comply with this Agreement.
- D. This Agreement notwithstanding, the Division retains all its authority regarding inactive hazardous substance or waste disposal sites in relation to the Site.
- E. All actions required pursuant to this Agreement shall be in accordance with applicable local, state and federal laws and regulations, unless an exemption regarding particular state or local laws or regulations is specifically provided in this Agreement now or later.
- F. CTS agrees to indemnify and save and hold harmless the State of North Carolina, and its agencies, departments, officials, agents, employees, contractors and representatives, from any and all claims or causes of action arising from or on account of acts or omissions of CTS or its officers, employees, receivers, trustees, agents, or assigns in carrying out actions required pursuant to this Agreement. Neither the State of North Carolina nor any agency or representative thereof shall be held to be a party to any contract involving CTS relating to the Site excluding, however, this Agreement.
- G. CTS shall preserve, for at least six (6) years after termination of this Agreement, all records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors or attorneys which relate in any way to this Agreement. After this six (6)-year period, CTS shall notify the Division at least thirty (30) days prior to the destruction of any such records and documents. CTS shall comply with any written request by the Division, prior to the day set for destruction, to continue to preserve such records and documents or to provide them to the Division. CTS may assert any available right, defense or privilege available to it to keep particular records and documents, other than analytical data, confidential.

- H. This Agreement may not be modified without the written consent of the parties.
- I. Except for rights and obligations under Sections II B. and VIII. F. and G. above, this Agreement shall terminate when CTS receives written notice from the Division that all activities required pursuant to this Agreement have been completed to the Division's satisfaction.
- J. This is a voluntary agreement. If CTS elects to discontinue implementation of work under this Agreement, CTS shall notify the Division in writing of such intent, and, except for rights and obligations under Sections II. B. and VIII. F. and G. above, this Agreement shall be dissolved upon the Division's receipt of such written notice. If the Division determines that CTS is not complying with the terms of this Agreement in a timely manner, the Division may notify CTS in writing of such determination, and the Agreement, except for rights and obligations under Sections II. B. and VIII. F. and G. above, shall be dissolved upon CTS's receipt of such written notice. In either of these events, neither party may seek judicial review of the dissolution of this Agreement or, except for rights and obligations under Sections II. B. and VIII. F. and G. above, has any right, claim or action for breach of this Agreement. In either of these events, the Division shall retain all its applicable enforcement rights against CTS, and CTS shall retain all applicable rights, defenses and privileges.

The effective date of this Agreement shall be the date on which it is executed by the Secretary or his Authorized Agent.

Date Executed: _____

By: _____
Jack Butler, PE
Superfund Section Chief
Division of Waste Management
North Carolina Department of Environment
and Natural Resources

By: _____
Richard G. Cutter

Vice President, Secretary and General Counsel
CTS Corporation