UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ENVIRONMENTAL
CLEANUP

GENERAL NOTICE LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

October 7, 2015

Puget Sound Energy
c/o Harry Edward Grant
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154

Re: General Notice Letter and Invitation to Negotiate Pre-Remedial Design ASAOC for the Quendall Terminals Superfund Site in Renton, WA

Dear Mr. Grant:

This letter provides notice of the U.S. Environmental Protection Agency's determination that the Puget Sound Energy, ("PSE") has potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, "CERCLA" or "Superfund"), 42 U.S.C. § 9607(a), for the cleanup of the Quendall Terminals Superfund Site, including all costs incurred by the EPA in responding to releases at the Site. By this letter, the EPA is also providing the PSE an opportunity to perform pre-Remedial Design at the Site pursuant to the enclosed administrative settlement agreement and order on consent, "ASAOC."

Background

Based on a review of records related to the release and/or disposal of hazardous substances at the Site, as well as the responses to the CERCLA information requests which the EPA received, the EPA has identified the PSE as one of approximately six potentially responsible parties, "PRPs," that contributed hazardous substances to the Site. Under the federal Superfund law, the PSE and the other PRPs at the Site are responsible for the costs of cleaning up the Site.

Under CERCLA, specifically Sections 106(a) and 107(a), the PRPs may be required to perform cleanup actions to protect the public health, welfare, or the environment. The PRPs may also be responsible for costs incurred by the EPA in cleaning up the Site, unless the PRP can demonstrate divisibility or assert one of the statutory defenses. The PRPs include current and former owners and operators of a Site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the site, and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered.

Status of Site Cleanup

The EPA listed the Quendall Terminals Superfund Site on the National Priorities List on April, 19, 2006. The EPA and the current owners of the Site, Altino Properties and J.H. Baxter, entered into an ASAOC for the performance of a Remedial Investigation and Feasibility Study for the Site on September 8, 2006. These parties have nearly completed the RI/FS. After the RI/FS is completed, the EPA will identify a preferred remedial approach for the Site in a proposed plan and provide the public with an opportunity to comment on its preferred remedial approach. After the public comment period has closed, the EPA will select remedial actions for the Site in a Record of Decision. The EPA believes that the information that has been developed during the RI/FS provides it with the basis to select a remedy for the Site and anticipates that it will select a remedy in the near future and in parallel to the performance of the requested pre-Remedial Design studies.

Offer to Negotiate

As noted above, the EPA is inviting the PSE and the other PRPs to negotiate an ASAOC for pre-Remedial Design studies at the Site. The pre-Remedial Designs studies will supplement the information developed during the RI/FS and provide the EPA and the PRPs with more information regarding the scope of the contamination subject to cleanup and areas of the Site which may be available for reuse after cleanup. The EPA believes these studies will facilitate a more timely and efficient cleanup of the Site. A draft ASAOC and statement of work for the pre-Remedial Design studies is enclosed with this letter. Consistent with the special notice procedures of Section 122(e) of CERCLA, the EPA requests that you provide it with a written response with its offer to negotiate within forty-five days of the date this letter is received. The EPA will evaluate the written responses it has received to determine whether it has receive a good faith offer to perform the requested pre-Remedial Design studies. The EPA requests that the PRPs work together to develop a single good faith offer.

To assist the PSE and the other PRPs in developing a response, the EPA requests that you attend a meeting at the Region 10 office in Seattle at 10 a.m. on Wednesday, November 4, 2015. During this meeting you will have an opportunity to discuss the scope of the pre-Remedial Design Study, the ASAOC, and the remedy selection process for the Site with the EPA staff.

Good Faith Offer

As noted above, a proposed ASAOC and Statement of Work are enclosed to assist you in developing a "good faith offer." A "good faith offer" to conduct or finance the pre-Remedial Design studies is a written proposal that demonstrates the qualifications and willingness of the PRPs to conduct or finance the pre-Remedial Design studies, and includes the following elements:

- A statement of willingness by the PRPs to conduct or finance pre-Remedial Design studies that is consistent with the EPA's Statement of Work and draft Administrative Order and provides a sufficient basis for further negotiations;

- A paragraph-by-paragraph response to the EPA's Statement of Work and draft ASAOC;
- A detailed description of the work plan identifying how the PRPs plan to proceed with the work;
- A demonstration of the PRPs' technical capability to carry out the pre-Remedial Design studies, including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s); and
- The name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

To assist the PRPs in negotiating with the EPA concerning this matter, the EPA is attaching to this letter a list of the names and addresses of other PRPs to whom it is sending this Notice. The EPA encourages you to contact Lynn Manolopoulos, counsel for Altino, Inc., before the November 10th meeting in Seattle.

Administrative Record Site File

In accordance with Section 113 of CERCLA, 42 U.S.C. § 9613, the EPA has established an Administrative Record Site file containing the documents that may serve as the basis for the EPA's selection of the appropriate response action for the Site. This Administrative Record Site file is available for inspection at the EPA Region 10 Superfund Records Center. You may wish to review the Administrative Record Site file to assist you in responding to this letter, but your review should not delay a timely response to this letter.

PRP Response and EPA Contact Person

You are encouraged to contact the EPA within forty-five days of the date this letter is received to indicate your willingness to participate in future negotiations concerning this Site. You may respond individually or through a steering committee if such a committee has been formed. If the EPA does not receive a timely response, the EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the Site, and that you have declined any involvement in performing the response activities.

Your response to this letter, including written proposals to perform the pre-Remedial Design studies for the Site, should be sent to:

Claire Hong
United States Environmental Protection Agency, Region 10
1200 Sixth Avenue
ECL-122
Seattle, WA 98101

(206) 553-1813
hong.claire@epa.gov

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, the EPA urges that you give immediate attention and prompt response to this letter.

Resources and Information for Small Businesses

As you may be aware, on January 11, 2002, President Bush signed into law the "Small Business Liability Relief and Brownfields Revitalization Act" (SBLRBRA). This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may download a copy of the law at http://www.gpo.gov/fdsys/pkg/PLAW-107publ118/pdf/PLAW-107publ118.pdf and review EPA guidances regarding these exemptions at http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/.

The EPA has created a number of helpful resources for small businesses. The EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at http://www2.epa.gov/compliance/compliance-assistance-centers. In addition, information on contacting the EPA's Small Business Ombudsman is available at http://www.epa.gov/sbo. Finally, the EPA has developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act (SBREFA) and information on resources for small businesses, which is enclosed with this letter and available on the Agency's website at http://www2.epa.gov/compliance/small-business-resources-information-sheet.

If you have any questions regarding the technical aspects of this letter, please contact Claire Hong, Remedial Project Manager, at (206) 553-1813 or hong.claire@epa.gov. If you have an attorney handling your legal matters, please direct his or her questions to Ted Yackulic, Assistant Regional Counsel, at (206) 553-1218 or yackulic.ted@epa.gov.

My staff and I look forward to working with you during the coming months.

Sincerely,

Shawn Blocker, Unit Manager
Site Cleanup Unit 3

Attachments

List of Recipients, October 7, 2015 Letter

Potentially Responsible Parties

Altino Properties, Inc
c/o Robert Cugini
4101 Lake Washington Blvd.
PO Box 359
Renton, WA 98057

J. H. Baxter & Co.
c/o Georgia Baxter Krause, President
1700 S. El Camino Real
San Mateo, California 94402

BNSF Railway
Registered Agent: CT Corporation System
1801 West Bay Drive NW Suite 206
Olympia, WA 98502

Mark Nielsen
General Counsel, Secretary
Frontier Communications Corporation
401 Merritt 7
Norwalk, CT 06851

Puget Sound Energy
c/o Harry Edward Grant
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154

Thomas E. Mesevage
Corporate Environmental Counsel
Vertellus Specialties, Inc.
900 Lanidex Plaza, Suite 250
Parsippany, NJ 07054-2739

Ms. Kristin Swenddal
Division Manager
Aquatic Resources Division
Washington State Department of Natural Resources
1111 Washington Street, SE
P.O. Box 47027
Olympia, Washington 98504-7027

Privileged and Confidential
Draft 10-7-2015

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF: Quendall Terminals Superfund Site Altino Properties, Inc., J.H. Baxter & Co., Puget Sound Energy, BNSF Railway, Vertellus Specialties, Inc., WA State Department of Natural Resources Respondents Proceeding Under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607 and 9622.	U.S. EPA Docket No. 10 CERCLA Docket No. ____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR Pre-REMEDIAL STUDY**

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ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR PRE-REMEDIAL STUDY

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Altino Properties, Inc., J.H. Baxter & Co., Puget Sound Energy, Inc., BNSF Railway, Vertellus Specialties, Inc., and the WA State Department of Natural Resources (collectively "Respondents"). This Settlement Agreement provides that Respondents shall pre-Remedial Design ("pre-RD") studies for the Quendall Terminals Superfund Site ("Site"). The Site is located generally at 4503 Lake Washington Boulevard North along the shore and including a portion of Lake Washington in Renton, WA. In addition, Respondents shall pay the United States for certain response costs that it incurs, as provided in this Settlement Agreement.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607, and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). These authorities were further re-delegated to the Unit Managers in the Office of Environmental Cleanup or equivalent by R10 14-14-A(1), R10 14-14-C(1), and R10 14-14-D(1) on May 3, 2012.

3. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), EPA notified the [**insert the relevant Federal and/or State natural resource trustee(s)**] on _____, 20__, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal [**insert if applicable:** and/or State] trusteeship.

4. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact in Section V and the conclusions of law and determinations in Section VI. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondents and their heirs, successors, and assigns. Any change in ownership or corporate

status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

7. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement.

8. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Respondents to this Settlement Agreement.

III. STATEMENT OF PURPOSE

9. In entering into this Settlement Agreement, the objectives of EPA and Respondents are: (a) to perform a pre-remedial design as more specifically set forth in the Statement of Work ("SOW") attached as Appendix A to this Settlement Agreement; and (c) to recover response and oversight costs incurred by EPA with respect to this Settlement Agreement.

10. The Work conducted under this Settlement Agreement is subject to approval by EPA and shall provide all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). Respondents shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidances, policies, and procedures.

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:

"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 in Section XXVIII.

"EPA" shall mean the United States 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.

"Ecology" shall mean the Washington State Department of Ecology and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other deliverables submitted pursuant to this Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XII (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access, including, but not limited to, the amount of just compensation), Paragraph 48 (emergency response), community involvement (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), and the costs incurred by the United States in enforcing the terms of this Settlement Agreement, including all costs incurred in connection with Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry ("ATSDR") costs regarding the Site.

"Institutional controls" shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

"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.[1]

"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.

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[1] The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

"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 Respondents.

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

"Respondents" shall mean Altino Properties, Inc., J.H. Baxter & Co., Puget Sound Energy, Inc., BNSF Railway, Vertellus Specialties, Inc., and the WA State Department of Natural Resources.

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

"Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, the SOW, all appendices attached hereto (listed in Section XXVII) and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by EPA. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

"Site" shall mean the Quendall Terminals Superfund Site, encompassing approximately 51 acres, located at 4503 Lake Washington Boulevard in Renton, WA. The approximately 51 acre site includes approximately 29 acre portion of Lake Washington immediately west of the Quendall Terminals property as well as the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for the implementation of the response action, and depicted generally on the map attached as Appendix B.

"Quendall Terminals 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).

"State" shall mean the State of Washington.

"Statement of Work" or "SOW" shall mean the Statement of Work for development of a pre-remedial study, as set forth in Appendix A to this Settlement Agreement. The Statement of Work is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Settlement Agreement.

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

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of

CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any "hazardous substance" under the Washington State Model Toxics Control Act, Washington RCW 70.105D .

"Work" shall mean all activities Respondents are required to perform under this Settlement Agreement, except those required by Section XIV (Retention of Records).

V. FINDINGS OF FACT

12. The Quendall Terminals Superfund Site covers approximately 51 acres and is located at 4503 Lake Washington Boulevard in Renton, WA. Approximately 22 acres of the Site are located on uplands adjacent to Lake Washington and approximately 29 acres are located within Lake Washington immediately west of the Quendall Terminals property.

13. The Site was formerly used as a creosote manufacturing facility. With exception of an office building near the Site's eastern border, the creosote facility has been demolished, and the Site has, effectively, become one of the few undeveloped areas along the Lake Washington shore line.

14. The area surrounding the Site is zoned for mixed uses and is dominated by residential and commercial uses. The Site borders a residential development to the south, a private professional football training facility to the north, a railway right of way to the east, and a water body, Lake Washington, to the west. The Site is located near a popular bike trail and public waterfront park. Lake Washington supports a number of recreational uses including swimming, fishing, and boating. The portion of Lake Washington within and adjacent to the Site provides potential prime habitat for endangered juvenile salmonid stocks.

15. Reilly Tar & Chemical Company, a predecessor-in-interest of Vertellus Specialties, Inc., began creosote operations at the Site in 1916. The operations included: a T-Dock that protrudes into Lake Washington, and was located approximately 1200 feet offshore, that was used to load and unload materials, including coal tar, that were delivered to or from the operations; a still house where coal tar was distilled, and creosote and light distillates were transferred from to surrounding tanks via piping; a railroad tank car loading area, which was owned by BNSF Railway during the relevant period of operations, that was used to deliver materials to or from the operations; sumps which contained cooling coal tars and creosote; and the a pond which received overflow wastes from one of the sumps and tank bottoms from storage tanks. Spill of materials are associated with each of these areas. Waste materials were also used to provide fill at the Site. [Reilly Tar & Chemical conducted operations at the Site until 1971.

16. Reilly Tar & Chemical Company sold the Site property (upland portion and a portion of the Lake Washington area to Altino Properties, Inc., and Puget Timber Company in 1971. Altino Properties, Inc. is a wholly owned subsidiary of Barbee Mill Co., Inc., which is a wholly owned subsidiary of Barbee Forest Products, Inc. Puget Timber Company is a wholly owned subsidiary of J.H. Baxter & Co. Altino Properties, Inc. and Puget Timber Company are the current owners of the Site property.

17. The Washington State Department of Natural Resources owns a portion of the waterfront area of the Site including the period during which the operations were occurring and

when Reilly Tar & Chemical Company leased portions of the State property for the purpose of constructing and operating the T-dock.

18. BNSF operated a spur line referenced in Paragraph 15 above from approximately 1918 until 1975 and thus including most of the period during which creosote manufacturing operations were conducted at the Site.

19. Puget Sound Energy, Inc. sold tar and other wastes it generated to the Reilly Tar & Chemical Company. The tar and other by wastes were wastes generated at gas plants operated by predecessors-in-interest of Puget Sound Energy, Inc. which were difficult to re-use or dispose of at the gas plants facilities where the tar and other wastes were generated.

20. Creosote manufacturing operations at the Site resulted in releases of several hazardous substances at the Site. The constituents of dense non-aqueous liquid phase, "DNAPL," contamination is widespread and found in several locations – soil, sediment, and groundwater -- at the Site contain typical characteristics of coal tar and creosote. For example, samples of DNAPL contained high concentrations of polynuclear aromatic hydrocarbons (PAHs), including naphthalene in ranges of 5.2 to 18 percent of the sample; carbazole, a heterocyclic compound, at ranges between .11 to .36 percent; and total benzene, ethylbenzene, toluene, and xylene at concentrations ranging from .15 to 6.7%. In addition, sampling revealed plumes of benzene and naphthalene plumes that extend beyond the area where DNAPL contamination is present. The distribution of sediment contamination are highest in the nearshore groundwater discharge area and the T-Dock area. EPA estimates that there are approximately 445,000 gallons of DNAPL present in 9.7 acres of soil and sediment at the Site.

21. DNAPL Contamination is transported in at least two ways at the Site. First, DNAPL moves from soil to groundwater where it volatizes and is releases into the air. Second, DNAPL in soil goes to groundwater and then to sediment where it is released into surface water. Human and ecological receptors are exposed to the hazardous substances through dermal contact, ingestion, and inhalation. Contamination present at the Site poses unacceptable risks to humans as well as terrestrial and aquatic wildlife.

22. The Quendall Terminals Superfund Site was listed on the National Priorities List ("NPL") pursuant to CERCLA Section 105, 42 U.S.C. § 9605, on April 19, 2006.

23. Each of the Respondents is responsible for performing or paying for the response actions to be implemented by this Settlement Agreement pursuant to CERCLA Section 107(a) the Site.

24. Identification of prior response and enforcement actions, including investigations and assessments, if any, taken at the Site, by EPA or the State.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth in Section V, EPA has determined that:

25. The Quendall Terminals Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

27. The conditions described in Paragraphs 15, 20 and 21 the Findings of Fact in Section V above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

28. Each Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

29. Respondents are responsible parties under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622.

30. The actions required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

31. EPA has determined that Respondents are qualified to conduct the pre-RD within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement Agreement.

VII. SETTLEMENT AGREEMENT AND ORDER

32. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

33. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within 30 days after the Effective Date, and before the Work outlined below begins, Respondents shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995, or most recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001; Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review, for verification that such persons meet minimum technical background and

experience requirements. This Settlement Agreement is contingent on Respondents' demonstration to EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Settlement Agreement. If EPA disapproves in writing of any person's technical qualifications, Respondents shall notify EPA of the identity and qualifications of the replacements within 30 days after the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct a complete pre-RD, and to seek reimbursement for costs and penalties from Respondents. During the course of the pre-RD, Respondents shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

34. Within 7 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 7 days following EPA's disapproval. Respondents shall have the right to change their Project Coordinator, subject to EPA's right to disapprove. Respondents shall notify EPA 14 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondents. [**NOTE: If Respondents' Project Coordinator has been selected prior to signature of the Settlement Agreement, replace the first sentence with the following and delete the third sentence:** Respondents have designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement: [**insert name, address, phone number and email address**].]

35. EPA has designated Claire Hong of the Office of Environmental Cleanup, Region 10 as its Project Coordinator. EPA will notify Respondents of a change of its designated Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the Project Coordinator at Claire Hong, US EPA Region 10, 1200 Sixth Avenue, ECL-122, Seattle, WA, 98101; (206) 553-1813; hong.claire@epa.gov.

36. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

37. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the pre-RD as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the pre-RD Work Plan.

IX. WORK TO BE PERFORMED

38. Respondents shall conduct activities and submit plans, reports, or other deliverables as provided by the attached SOW, which is incorporated into and enforceable under this Settlement Agreement, for the development of the pre-RD. Respondents shall conduct the pre-RD in accordance with the provisions of this Settlement Agreement, the SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-09A, April 1992 or subsequently issued guidance), and guidance referenced therein, and guidances referenced in the SOW, as may be amended or modified by EPA. The pre-RD shall consist of collecting data to further characterize and refine site conditions, and determining the nature and extent of the contamination at or from the Site, and conducting treatability testing/pilot studies as identified in the SOW.

39. Respondents shall submit all deliverables to EPA in electronic form with at least three paper copies. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondents shall also provide EPA with 2 additional paper copies of such exhibits.

40. Technical Specifications for Deliverables. Sampling and monitoring data should be submitted in compliance with EPA, Region 10 Data Deliverable Guidance. The Respondents shall submit data directly in electronic format for records as well as upload directly to WQX. Data derived during field sampling or other collection events shall be shared in real time through a file transfer protocol or other real time transfer mechanism.

41. Spatial data, including spatially-referenced data and geospatial data, should be submitted in compliance with USEPA R10 GIS Deliverable Guidance which may be found at USEPA_R10_GIS_DeliverableGuidance2013-SubmissionofGISDataFromExternalEntities.pdf

42. Each file must include an attribute name for each site unit or sub-unit submitted. Consult http://www.epa.gov/geospatial/policies.html for any further available guidance on attribute identification and naming.

43. Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

44. Modification of the pre-RD Work Plan.

a. If at any time during the pre-RD process, Respondents identify a need for additional data, Respondents shall submit a memorandum documenting the need for additional data to the EPA Project Coordinator within 30 days after identification. EPA in its discretion

will determine whether the additional data will be collected by Respondents and whether it will be incorporated into plans, reports, and other deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the pre-RD Work Plan, EPA shall modify or amend the pre-RD Work Plan in writing accordingly. Respondents shall perform the RI/FS Work Plan as modified or amended.

c. EPA may determine that in addition to tasks defined in the initially approved the pre-RD Work Plan, other additional Work may be necessary to accomplish the objectives of the pre-RD Work Plan. Respondents agree to perform these response actions in addition to those required by the initially approved pre-RD Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a complete pre-RD.

d. Respondents shall confirm their willingness to perform the additional Work in writing to EPA within 7 days after receipt of the EPA request. If Respondents object to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondents may seek dispute resolution pursuant to Section XV (Dispute Resolution). The SOW and/or pre-RD Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Respondents shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the pre-RD Work Plan or written RI/FS Work Plan supplement. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

45. Off-Site Shipment.

a. Respondents may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b). Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if Respondents comply with EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992).

b. Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must

include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for remedial investigation and feasibility study and before the Waste Material is shipped.

46. Meetings. Respondents shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the pre-RD. In addition to discussion of the technical aspects of the pre-RD, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

47. Progress Reports. In addition to the plans, reports, and other deliverables set forth in this Settlement Agreement, Respondents shall provide to EPA monthly progress reports by the 30th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (a) describe the actions that have been taken to comply with this Settlement Agreement during that month, (b) include all results of sampling and tests and all other data received by Respondents, (c) describe Work planned for the next two months with schedules relating such Work to the overall project schedule for pre-RD completion, and (d) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

48. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during arising from or relating to performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the EPA Project Coordinator or, in the event of his/her unavailability, the OSC or the Regional Duty Officer Emergency Program Management Branch, US Region 10, (206) 553-1264, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs).

b. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the EPA Project Coordinator, the OSC, or Regional Duty Officer at (206) 553-1264 and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section

103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

49. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement, in a notice to Respondents EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondents at least one notice of deficiency and an opportunity to cure within 21 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

50. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 49.a, 49.b, 49.c, or 49.e, Respondents shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submission or portion thereof, Respondents shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 49.c and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties).

51. Resubmission.

a. Upon receipt of a notice of disapproval, Respondents shall, within 21 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI, shall accrue during the 21-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 52 and 53, respectively.

b. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. Respondents shall not proceed with any activities or tasks dependent on the following deliverables until receiving EPA approval, approval on condition, or modification of such deliverables: pre-RD Work Plan and Sampling and Analysis Plan, Health and Safety Plan, any other plan required by the pre-RD Work Plan or this Settlement Agreement. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities that may be conducted

independently of these deliverables, in accordance with the schedule set forth under this Settlement Agreement.

d. For all remaining deliverables not listed above in Paragraph 51.c, Respondents shall proceed will all subsequent tasks, activities, and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the pre-RD.

52. If EPA disapproves a resubmitted plan, report, or other deliverable, or portion thereof, EPA may again direct Respondents to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report, or other deliverable. Respondents shall implement any such plan, report, or deliverable as corrected, modified, or developed by EPA, subject only to Respondents' right to invoke the procedures set forth in Section XV (Dispute Resolution).

53. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Respondents shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately unless Respondents invoke the dispute resolution procedures in accordance with Section XV (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified, or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XV, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

54. In the event that EPA takes over some of the tasks, but not the preparation of the RI Report or the FS Report, Respondents shall incorporate and integrate information supplied by EPA into the final reports.

55. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

56. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables acceptable to EPA.

XI. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

57. Quality Assurance. Respondents shall assure that Work performed, samples taken, and analyses conducted conform to the requirements of the SOW, the QAPP, and

guidances identified therein. Respondents will assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures. Respondents shall only use laboratories that have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001; Reissued May 2006) or equivalent documentation as determined by EPA.

58. Sampling.

a. All results of sampling, tests, modeling, or other data (including raw data) generated by Respondents, or on Respondents' behalf, during the period that this Settlement Agreement is effective, shall be submitted to EPA in the next monthly progress report as described in Paragraph 47. EPA will make available to Respondents validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondents shall orally notify EPA at least 21 days prior to conducting significant field events as described in the SOW, pre-RD Work Plan, or Sampling and Analysis Plan, or any other plan approved by EPA. At EPA's oral or written request, or the request of EPA's oversight assistant, Respondents shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected in implementing this Settlement Agreement. All split samples of Respondents shall be analyzed by the methods identified in the QAPP or otherwise identified by EPA.

59. Access to Information.

a. Respondents shall provide to EPA, 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 their possession or control or that of their 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 related to the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

b. Respondents may assert business confidentiality claims covering part or all of the Records submitted to EPA under this Settlement Agreement 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). Records determined to be confidential by EPA will be afforded 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 Respondents 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 Respondents. Respondents shall segregate and clearly identify all Records submitted under this Settlement Agreement for which Respondents assert business confidentiality claims.

c. Respondents may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents

assert such a privilege in lieu of providing Records, they shall provide EPA with the following: (i) the title of the Record; (ii) the date of the Record; (iii) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the Record; and (vi) the privilege asserted by Respondents. However, no Records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

d. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other Records evidencing conditions at or around the Site.

60. In entering into this Settlement Agreement, Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the Work that has been verified according to the quality assurance/quality control ("QA/QC") procedures required by the Settlement Agreement or any EPA-approved pre-RD Work Plans or Sampling and Analysis Plans. If Respondents object to any other data relating to the pre-RD, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

XII. SITE ACCESS AND INSTITUTIONAL CONTROLS

61. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of Respondents, such Respondents shall, commencing on the Effective Date, provide EPA, and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

62. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 30 days after the Effective Date, or as otherwise specified in writing by the EPA Project Coordinator. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. If Respondents cannot obtain access agreements, EPA may either (a) obtain access for Respondents or assist Respondents in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate; (b) perform those tasks or activities with EPA contractors; or (c) terminate the Settlement Agreement. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs). If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondents shall perform all other tasks or activities not requiring access to that property, and shall reimburse EPA for all costs incurred in

performing such tasks or activities. Respondents shall integrate the results of any such tasks or activities undertaken by EPA into its plans, reports, and other deliverables.

63. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. COMPLIANCE WITH OTHER LAWS

64. Respondents shall comply with all applicable state and federal laws and regulations when performing the pre-RD. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-Site and requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIV. RETENTION OF RECORDS

65. During the pendency of this Settlement Agreement and for a minimum of 10 years after commencement of construction of any remedial action, each Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after commencement of construction of any remedial action, Respondents shall also instruct their contractors and agents to preserve all Records of whatever kind, nature, or description relating to performance of the Work.

66. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, Respondents shall deliver any such Records to EPA. Respondents may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: (a) the title of the Record; (b) the date of the Record; (c) the name and title of the author of the Record; (d) the name and title of each addressee and recipient; (d) a description of the subject of the Record; and (f) the privilege asserted by Respondents. However, no Records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

67. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information

regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 692.

XV. DISPUTE RESOLUTION

68. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

69. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within 10 days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 21 days from EPA's receipt of Respondents' written objection(s) to resolve the dispute (the "Negotiation Period"). EPA may respond to the Respondents written objections at its discretion. The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted orally but must be confirmed in writing.

70. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Director of the Office of Environmental Cleanup or designee will issue a written decision based upon the administrative record generated during the dispute. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs, and regardless of whether Respondents agree with the decision.

XVI. STIPULATED PENALTIES

71. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 72 and 73 for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XVII (Force Majeure). "Compliance" by Respondents shall include completion of the Work under this Settlement Agreement or any activities contemplated under any pre-RD Work Plan or other plan approved under this Settlement Agreement identified below, in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

72. Stipulated Penalty Amounts - Work (Including Payments).

a. The following stipulated penalties shall accrue per day for any noncompliance identified in Paragraph 72.b:

Penalty Per Violation Per Day	Period of Noncompliance

$ 2,000	1st through 14th day
$ 5,000	15th through 30th day
$ 10,000	31st day and beyond

b. Compliance Milestones.

Initiate field work on the date approved by EPA; complete field work on the date approved by EPA, submit a final RD Workplan on the date approved by EPA; pay Future Response Costs on the date required by this Settlement Agreement; establish financial controls when and as required by this Settlement Agreement; establishing escrow accounts to hold disputed Future Response Costs when and as required by this Settlement Agreement; and timely obtaining access.

73. Stipulated Penalty Amounts – Reports and other violations.

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other plans or deliverables or otherwise violate this Settlement Agreement:

b.

Penalty Per Violation Per Day	Period of Noncompliance
$ 1,000	1st through 14th day
$ 2,500	15th through 30th day
$ 5,000	31st day and beyond

74. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 91 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of 1.5 times the cost of EPA's performance of the taken over Work.

75. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA management official designated in Paragraph 70 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

76. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, EPA may give Respondents written notification of

the same and describe the noncompliance. EPA may send Respondents a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

77. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XV (Dispute Resolution). Respondents shall make all payments required by this Paragraph to EPA by Fedwire Electronic Funds Transfer 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"

and shall reference stipulated penalties, Site/Spill ID Number 10PF, and the EPA docket number for this action. At the time of payment, Respondents shall send notice that payment has been made as provided in Paragraph 85.b below.

78. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

79. Penalties shall continue to accrue as provided in Paragraph 75 during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

80. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 77.

81. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement Agreement, except in the case of willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 91. Notwithstanding any other provision of this

Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVII. FORCE MAJEURE

82. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, *force majeure* is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

83. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within 48 hours of when Respondents first knew that the event might cause a delay. Within 5 days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

84. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. PAYMENT OF RESPONSE COSTS

85. Payments of Future Response Costs.

a. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a Superfund Cost Recovery Package Imaging and On-Line System (SCORPIOS) report, which includes direct and indirect costs incurred by EPA, its contractors, and DOJ. Respondents

shall make all payments within 30 days after receipt of each bill requiring payment, except as otherwise provided in Paragraph 87 of this Settlement Agreement. Payments shall be made to EPA by Fedwire Electronic Funds Transfer ("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"

and shall reference Site/Spill ID Number 10PF and the EPA docket number for this action.

b. At the time of payment, Respondents shall send notice that payment has been made to Claire Hong USEPA Region 10, 1200 Sixth Avenue, ECL-122, Seattle WA, 98101, (206) 553-1813, hong.claire@epa.gov; and to the EPA Cincinnati Finance Center by email at cinwd_acctsreceivable@epa.gov, or by mail to

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number 10PF and the EPA docket number for this action.

c. The total amount to be paid by Respondents pursuant to Paragraph 85.a shall be deposited by EPA in the Quendall Terminals 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, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Quendall Terminals Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.

86. Interest. If Respondents do not pay Future Response Costs within 30 days after Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to,

payments of stipulated penalties pursuant to Section XVI. Respondents shall make all payments required by this Paragraph in the manner described in Paragraph 85.

87. Respondents may contest payment of any Future Response Costs billed under Paragraph 85 if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30 days after receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall within the 30 day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 85. Simultaneously, Respondents shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation, and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 85. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 85. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XIX. COVENANT NOT TO SUE BY EPA

88. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Paragraph 85 (Payment of Future Response Costs). This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

89. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

90. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. liability for failure by Respondents to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definition of Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement Agreement.

91. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by EPA in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay

pursuant to Section XVIII (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

92. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, 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 the Work or arising out of the response actions for which the [Past Response Costs or] Future Response Costs have or will be incurred, including any claim under the United States Constitution, the Washington State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Work or payment of [Past Response Costs or] Future Response Costs.

93. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XX (Reservations of Rights by EPA), other than in Paragraph 90.a (liability for failure to meet a requirement of the Settlement Agreement) or 90.d (criminal liability), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

94. Respondents reserve, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' plans, reports, other deliverables, or activities.

95. Nothing in this 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).

XXII. OTHER CLAIMS

96. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents.

97. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

98. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. EFFECT OF SETTLEMENT/CONTRIBUTION

99. 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 XXI (Covenant Not to Sue by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party 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 Section 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).

100. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Respondent 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 the Work, and Future Response Costs.

101. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Respondent 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).

102. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent 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 it. In addition, each Respondent 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.

103. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents 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 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 covenant by EPA set forth in Section XIX.

104. Effective upon signature of this Settlement Agreement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Respondent the payment(s) required by Section XVIII (Payment of Response Costs) and, if any, Section XVI (Stipulated Penalties) 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 100 and that, in any action brought by the United States related to the "matters addressed," such Respondent 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 Respondents that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

XXIV. INDEMNIFICATION

105. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and representatives in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

106. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

107. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site.

XXV. INSURANCE

108. At least 30 days prior to commencing any on-Site Work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, commercial general liability insurance with limits of 5 million dollars, for any one occurrence, and automobile insurance with limits of 2 million dollars, combined single limit, naming the EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement Agreement. Within the same period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

109. Within 30 days after the Effective Date, Respondents shall establish and maintain financial security for the benefit of EPA in the amount of $1,000,000 in one or more of the following forms, in order to secure the full and final completion of Work by Respondents:

a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;

b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;

c. a trust fund administered by a trustee acceptable in all respects to EPA;

d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Respondents, or by one or more unrelated companies that have a substantial business relationship with at least one of Respondents, including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. a demonstration of sufficient financial resources to pay for the Work made by one or more of Respondents, which shall consist of a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

110. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within 30 days after receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 109, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within 30 days after such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

111. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Paragraph 109.e or 109.f, Respondents shall (a) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (b) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date, or such other date as agreed by EPA, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of $1,000,000 for the Work at the Site plus any other RCRA, CERCLA or other federal environmental obligations financially assured by the relevant Respondent or guarantor to EPA by means of passing a financial test.

112. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 109 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondents may seek dispute resolution pursuant to Section XV (Dispute Resolution). Respondents may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

113. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. INTEGRATION/APPENDICES

114. This Settlement Agreement and its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete, and exclusive agreement and understanding among 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 the SOW.

"Appendix B is the map of the Site

XXVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

115. This Settlement Agreement shall be effective the day after the Settlement Agreement is signed by the Regional Cleanup Program Manager or his/her designee.

116. The EPA Project Coordinator may modify any plan or schedule or Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the EPA Project Coordinator's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties. If Respondents seek permission to deviate from any approved work plan or schedule or Statement of Work, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the EPA Project Coordinator pursuant to this Paragraph.

117. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXIX. NOTICE OF COMPLETION OF WORK

118. When EPA determines that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to payment of Future Response Costs, payment

of stipulated penalties, and record retention, EPA will provide written notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the pre-RD Work Plan if appropriate in order to correct such deficiencies, in accordance with Paragraph 44 (Modification of the pre-RD Work Plan). Failure by Respondents to implement the approved modified pre-RD Work Plan shall be a violation of this Settlement Agreement.

Agreed this ___ day of _____, 2_____.

For Respondent _____

By:_____

Title: _____

[**NOTE: Use a separate page for the following signature.**]

It is so ORDERED AND AGREED this _____ day of _____, 2_____.

BY:_____ DATE:_____

Shawn Blocker

Unit Manager, Site Cleanup Unit 3

Region 10

U.S. Environmental Protection Agency

EFFECTIVE DATE: _____

Instructions Regarding Automated Features

FEATURE	INSTRUCTIONS
Inserting text copied from a different document	Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. **Therefore, ALWAYS use the "Paste Special" function to insert text copied from another document**. Press Ctrl-Alt-V; in the pop-up menu, click "Unformatted Text" and OK. (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.)
Inserting a new paragraph	Click at the end of the ¶ immediately preceding the place where you wish to add the new **paragraph**, and press Enter. To change the new ¶'s outline level use (under the Home tab) the styles menu. For example, to change ¶12.b into ¶12.a(1), click in that ¶ and then (using the Home tab) click the "LVL 3" style. To change ¶13.a into ¶14, click in that ¶ and then (using the Home tab) click the "LVL 1" Style. Note that in consent decree models, the letters denoting each background paragraph must be manually updated.
Adding an updateable section or paragraph cross-reference	(a) Click where you wish to insert a cross-reference; (b) Click the "References" tab, and, in the "Captions" box, click "Cross-reference;" (c) In the pop-up menu that appears, make sure the "Reference type" field contains "Numbered item" and the "Insert reference to" field contains "Paragraph Number (full context); (d) In the "For which numbered item" field" select the numbered item (section, paragraph. or subparagraph) you wish to cross-reference, and click Insert.
Updating the cross-references	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click "Update Field;" click OK. Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: "Error! Reference source not found."
Updating the table of contents	Right-click in the TOC, and in the pop-up menu, left-click "Update Field." Or click in the TOC, press F9, click Update Entire Table and OK. If you have just added a new section heading, click Update entire table before pressing Enter.
Inserting a new section heading	Click in the text of the new heading and assign the "SECTION" paragraph style to the text by clicking the "Home" tab, and in Styles box, clicking the "SECTION" style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents.
Changing the font	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click "Font;" in the "font" field, select a new font; click OK.

APPENDIX A

STATEMENT OF WORK FOR THE QUENDALL TERMINALS REMEDY DEFINITION STUDY

Renton, WA

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1.0 INTRODUCTION

1.1 General

This Statement of Work (SOW) describes the work to be conducted by Potentially Responsible Parties (PRPs) to collect data to refine the conceptual site model (CSM) to support optimization and definition of remedial treatment compartments at the Quendall Terminals Site (Site). This work will be performed pursuant to an Administrative Settlement Agreement and Order on Consent (AOC) with the U.S. Environmental Protection Agency (EPA).

For the purposes of the Feasibility Study (FS), EPA identified all soil and sediments containing dense non-aqueous phase liquid (DNAPL); including oil-wetted and oil-coated materials as Principal Threat Waste (PTW). The FS identified the following Source Control (SC) Remedial Action Objectives (RAOs) for Site PTWs:

- **SC1: PTW.** Treat or remove DNAPL in subsurface soils and groundwater to prevent contamination of groundwater above constituents of concern (COC) maximum contaminant levels (MCLs) to the extent practicable.
- **SC2: PTW.** Contain DNAPL in subsurface soils and groundwater where treatment or removal is not practicable.

It is anticipated that the preferred remedy will provide for *in situ* solidification (ISS) of certain upland soils and dredging of certain sediments to achieve these objectives. For the purpose of comparing and evaluating remedial alternatives, the FS presented approximate areas, based on existing data, over which of these remedial alternatives could be implemented. Determining the actual extent of treatment and dredging will be optimized through additional delineation of DNAPL occurrences. Specific criteria for defining boundaries for treatment compartments will be developed with EPA as data is collected and the CSM is updated.

Additional information regarding the specific extent of treatment and removal will assist in further defining the scope of the preferred remedy, facilitate preparation of the Proposed Plan and allow estimated remedial costs to be refined. This SOW identifies the work required to address these data needs.

The FS will be finalized in 2016. This SOW will be conducted in parallel with finalizing the FS, and will be used to support development of the Proposed Plan.

1.2 Oversight

All work products submitted to EPA are subject to EPA approval. The PRPs shall ensure that all plans, reports, and records are comprehensive, accurate, and consistent in content and format with the National Contingency Plan (NCP) and relevant EPA guidance unless otherwise specified by EPA.

The PRPs shall prepare and submit Quarterly Progress Reports to EPA to aid in project planning. These reports will document the status of all work products under development pursuant to this SOW. These reports shall describe the actions taken, problems encountered during the previous quarter, and activities scheduled during the upcoming reporting period. These reports shall also summarize the extent to which the procedures and dates set forth in the AOC, this SOW, and any work plans are being met. These reports shall be submitted according to the schedule in Table 1.

2.0 Remedy Definition Study

2.1 General

The PRPs shall conduct a Remedy Definition Study (RDS) to optimize the boundaries for remedial compartments under EPA's preferred remedy. This information will be used to develop a more accurate estimate of remedial costs and describe the preferred remedy in the Proposed Plan.

2.2 Remedy Definition Study

The primary objectives of the RDS are to refine the boundaries for upland soil treatment and the extent of sediment dredging. The RDS will achieve these objectives through a data collection and analysis program as follows:

- Determine the lateral and vertical extent and thickness of DNAPL in soil and sediment using TarGOST and/or completion of soil borings with soil sampling and visual observations.
- Collect samples of DNAPL-impacted soil and sediment for laboratory analysis, to confirm field observations of DNAPL and determine DNAPL chemical characteristics in different locations.
- Collect groundwater samples in and downgradient of DNAPL areas, to evaluate the impact to groundwater in each area.
- Use a collaborative approach between EPA and the PRP team members to conduct real-time review and analysis of DNAPL observations, correlate areas of DNAPL occurrences and identify potential criteria for treatment/removal, and refine the sampling scope as needed to address areas of uncertainty.
- Update the groundwater model to reflect current plume conditions based on the collected data.

The RDS shall include four tasks: a work plan, field investigation, groundwater modeling, and reporting. These tasks are described below.

Task 1—Work Plan

This task will involve preparation of an RDS Work Plan (Work Plan) which identifies the objectives of the potential preferred remedy, the data needed to define the scope of the potential preferred remedy, data quality objectives for the work, the work to be performed, and the methods to be used to document the work.

The Work Plan will include a schedule for conducting the work, a project management plan that identifies team-member roles and responsibilities, a description of the systematic planning process, including Data Quality Objectives (DQOs) to conduct the work, a Sampling and Quality Assurance Project Plan (SQAPP) that will identify sampling, analysis, and quality assurance procedures to be conducted, and a health and safety plan (HASP) that will be prepared in compliance with Occupational Safety and Health Administration (OSHA) regulations and protocols.

The Work Plan will include the following data collection elements:

- A Site-specific bench study (bench study) to evaluate the effectiveness of the TarGOST technology to delineate DNAPL in soil and sediments. The objectives of the bench study will be to evaluate if DNAPL materials can be adequately distinguished from non-DNAPL organic materials (peat, wood debris) present at the Site.
- A plan for delineating the lateral and vertical extent and thickness of DNAPL throughout areas of DNAPL occurrences. To provide sufficient precision, upland DNAPL areas will be delineated on a minimum 50-foot by 50-foot grid and sediment DNAPL areas will be delineated on a minimum 50-foot by 50-foot grid. Greater density may be warranted in certain areas, such as near edges of DNAPL occurrences. Methodology will depend on the results of the bench study, as follows:
    - If the results of the bench study are favorable, DNAPL delineation will be conducted primarily using TarGOST technology. The investigation work would include collocated continuous soil cores collected at a subset of locations using conventional drilling technologies to visually identify DNAPL.
    - If the results of the bench study are not favorable, DNAPL delineation will be conducted using visual observation and field testing of continuous soil cores collected with conventional drilling technologies.
- A coordination plan that describes how data will be communicated and evaluated, how the CSM will be updated, and how the scope of work may be adapted as data is collected. Field data will be shared as it is generated, and visualization tools will be used to represent DNAPL occurrences and aid decision making. The coordination plan will identify the process for modifying the proposed scope if appropriate.
- A sampling and analysis plan for collecting and submitting for laboratory analysis representative samples of DNAPL-containing soil and sediment, and of groundwater from locations downgradient of DNAPL occurrences, using direct-push drilling. Soil, sediment and groundwater samples will be analyzed for volatile organic compounds (VOCs) and polycyclic aromatic hydrocarbons (PAHs). These data will be used to confirm DNAPL presence, evaluate DNAPL chemical composition in different areas, and assess the impact to groundwater in each area.
- A plan for installing and sampling additional groundwater monitoring wells in the Deeper Aquifer. The purpose of these wells is to better delineate VOCs (including benzene), PAHs, and arsenic occurrences in the Deeper Aquifer. This information will be used to help determine the contribution of different DNAPL areas to groundwater contamination and to calibrate the groundwater model. The number and location of wells will be determined after the DNAPL delineation and sampling is completed.

Task 2—Field Investigation

The field investigation will involve conducting sampling and analysis according to the Work Plan and SQAPP. PRPs will initiate field support activities following approval of the Work Plan. Field support activities include scheduling, procuring equipment, laboratory services, and/or contractors. PRPs will notify EPA at least two weeks in advance of the field work regarding the planned dates for field activities. Information gathered during Site characterization shall be documented and adequately recorded by PRPs in well-maintained field logs and laboratory reports. The method(s) of documentation will be specified in the Work Plan. Field logs must be utilized to document observations, measurements, and significant events that have occurred during field activities. Laboratory reports must document: sample custody; analytical

responsibility; analytical results; adherence to prescribed protocols, nonconformity events and corrections thereof; and/or data deficiencies. PRPs shall maintain field reports, sample shipment records, analytical results, and quality assurance/quality control (QA/QC) reports.

- It is anticipated that field activities will be conducted in close coordination with EPA for the purposes of evaluating data as it is collected and optimizing the investigation as it proceeds. Coordination and decision-making protocols will be described in the Work Plan. The EPA will consider input from all parties involved in this field work, however, the EPA will maintain ultimate decision making authority regarding changes to the sampling design based on field conditions and findings.

Task 3—Modeling

Data collected during the field investigation will be used to update the groundwater fate-and-transport model developed in the FS. The purpose of the revised model will be to more accurately represent current groundwater conditions. The model is not anticipated to be used to predict remedy performance for the purposes of selecting a remedy; however, it is expected that the model will be updated during remedial design and implementation to assist in performance evaluations. Additionally, as recommended by the Remedy Review Board, the model will evaluate groundwater flow and determine the potential for ponding, redirection and flooding due to in-situ solidification.

Task 4—Reporting

A Remedy Definition Report (RDR) will be prepared after the field investigation and updated groundwater modeling is completed. The RDR will include the following:

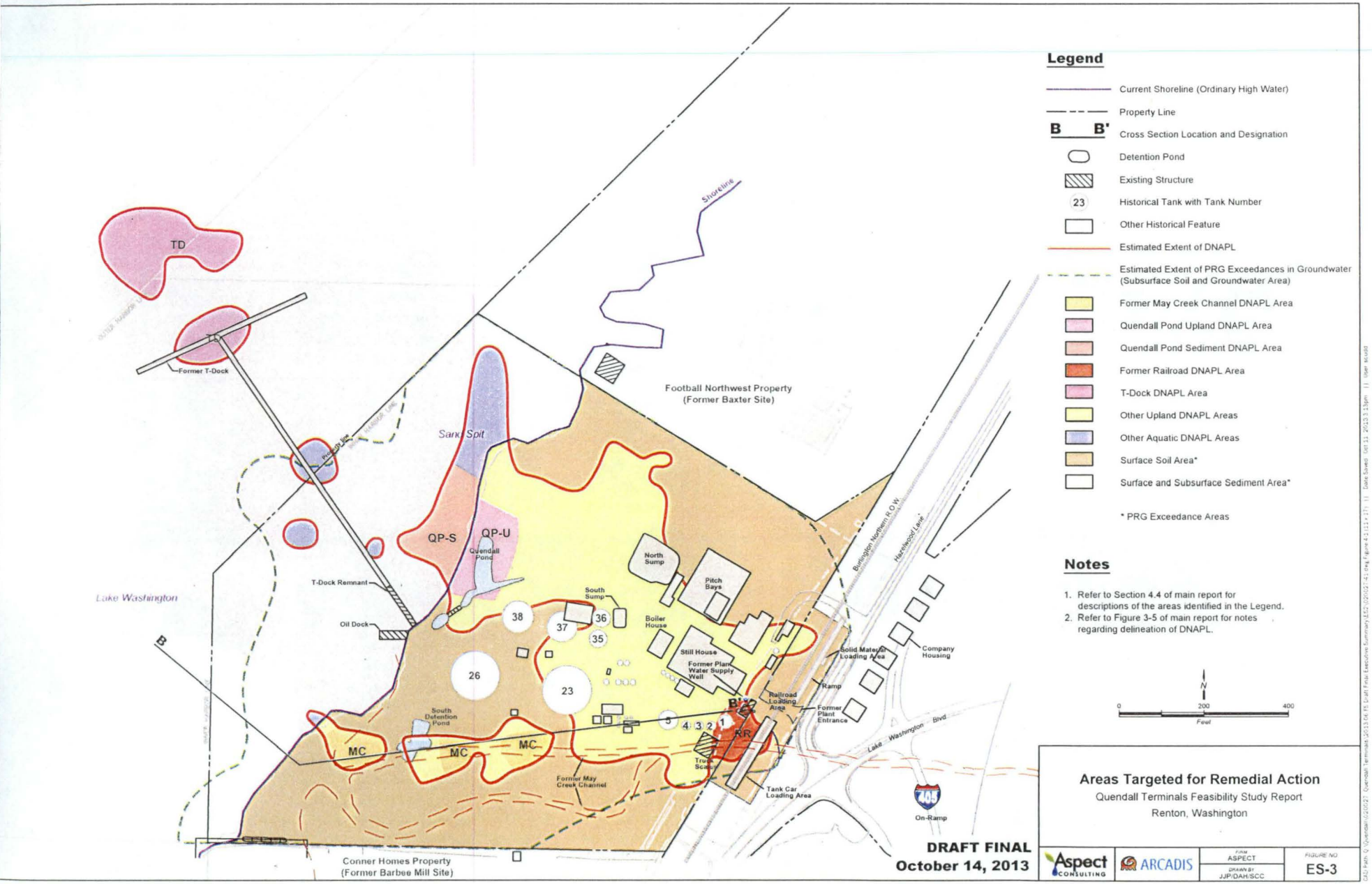
- Documentation of field activities;
- Summary of collected data;
- Updated site CSM;
- Summary of criteria and analyses used to determine areas of treatment or removal;
- Identification of specific areas to be potentially treated or removed;
- An assessment of other data that may be needed to refine treatment areas as part of design, if identified; and
- An updated cost estimate for the preferred remedy.

3.0 SCHEDULE

Refer to Table 1 for a summary of the deliverables required by this SOW and the associated schedule for submission of those deliverables.

TABLE 1—Schedule of Project Deliverables[1]		
TASK	**DELIVERABLE**	**DUE DATE**
Remedy Definition Study Work Plan	Draft Remedy Definition Study Work Plan	Within 60 days after the effective date of the AOC.
	Final Remedy Definition Study Work Plan	Within 30 days of PRPs' receipt of EPA's comments.
Remedy Definition Report	Draft Remedy Definition Report	Within 60 days of PRPs' receipt of validated data from samples collected during Remedy Definition Study.
	Final Remedy Definition Report	Within 30 days of PRPs' receipt of EPA's comments.

[1] All deadlines in this Table are subject to extension as set forth in the Settlement Agreement, including without limitation, for *Force Majeure* events.


Legend
Current Shoreline (Ordinary High Water)
Property Line
B B'
Cross Section Location and Designation
Detention Pond
Existing Structure
23
Historical Tank with Tank Number
Other Historical Feature
Estimated Extent of DNAPL
Estimated Extent of PRG Exceedances in Groundwater (Subsurface Soil and Groundwater Area)
Former May Creek Channel DNAPL Area
Quendall Pond Upland DNAPL Area
Quendall Pond Sediment DNAPL Area
Former Railroad DNAPL Area
T-Dock DNAPL Area
Other Upland DNAPL Areas
Other Aquatic DNAPL Areas
Surface Soil Area*
Surface and Subsurface Sediment Area*
* PRG Exceedance Areas
Notes
1. Refer to Section 4.4 of main report for descriptions of the areas identified in the Legend.
2. Refer to Figure 3-5 of main report for notes regarding delineation of DNAPL.
N
0
200
400
Feet
TD
Former T-Dock
Shoreline
Sand Spit
Football Northwest Property
(Former Baxter Site)
QP-S
QP-U
Quendall Pond
T-Dock Remnant
Oil Dock
Lake Washington
B
North Sump
Pitch Bays
South Sump
Boiler House
Still House
Former Plant Water Supply Well
38
37
36
35
26
23
5
4
3
2
1
B'
RR
MC
South Detention Pond
Former May Creek Channel
Truck Scale
Railroad Loading Area
Former Plant Entrance
Ramp
Solid Material Loading Area
Company Housing
Tank Car Loading Area
Burlington Northern R.O.W.
Harlewood Lane
Lake Washington Blvd
405
On-Ramp
Conner Homes Property
(Former Barbee Mill Site)
DRAFT FINAL
October 14, 2013
Areas Targeted for Remedial Action
Quendall Terminals Feasibility Study Report
Renton, Washington
Aspect CONSULTING
ARCADIS
FIRM ASPECT
DRAWN BY JJP/DAH/SCC
FIGURE NO. ES-3

Appendix B