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G. ANDREW ADAMEK
CHAD E. ADAMS
DANIEL J. AUERBACH
KIMBERLY A. BEATTY
TROY L. BENTSON
SARA S. BERG
LEO BERRY
CARLO CANTY
MARK D. ETCHART
OLIVER H. GOE
ERICA R. GRINDE
J. DANIEL HOVEN
STANLEY T. KALECZYC
BROOKE C. KUHL

BROWNING KALECZYC BERRY & HOVEN P.C.
ATTORNEYS AT LAW
Bozeman • Great Falls • Helena • Missoula

801 W. MAIN, SUITE 2A
BOZEMAN, MT 59715-3336
PHONE (406) 585-0888
www.bkbh.com

CATHY LAUGHNER
CATHYL@BKBH.COM

CATHERINE A. LAUGHNER
JESSIE L. LUTHER
CHRISTY SURR MCCANN
JOANNE MCCORMACK
DAVID M. MCLEAN
ERIC D. MILLS
KYLE W. NELSON
MARK R. TAYLOR
EVAN THOMPSON
W. JOHN TIETZ
STEVEN T. WADE
LEO S. WARD
MORGAN WEBER
RYAN C. WILLMORE
R. STEPHEN BROWNING : RETIRED

By E-Mail

April 16, 2012

Rebecca Thomas
Remedial Project Manager, Mail Code 8EPR-SR
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop
Denver, CO 80202
Thomas.Rebecca@epamail.epa.gov

RE: Response of BNSF to February 2, 2012 General & Special Notice Letter Conceming the Libby Asbestos Site Operable Unit 6 in Libby, Montana

Dear Ms. Thomas:

On behalf of BNSF Railway Company (BNSF), thank you for the opportunity to submit a good faith offer for Operable Unit 6 by today, and for meeting with us April 5, 2012. BNSF looks forward to working with you to complete the Remedial Investigation/Focused Feasibility Study (RI/FFS).

GOOD FAITH OFFER FOR THE RI/FFS

The seven elements required by EPA's February 2, 2012 letter would be met by:

1. Willingness to conduct the RI/FFS.

BNSF agrees to conduct the work in revised Appendix A (April 13, 2012) and complete the tasks on the revised attached Schedule (April 16, 2012). Subject to EPA's review and approval, these tasks, in addition to the work previously conducted and submitted to EPA are necessary for the RI/FFS.

2. Paragraph-by-paragraph response to EPA's Statement of Work and draft Settlement Agreement and Order.

At the April 5, 2012 meeting it was thought that this requirement would be fulfilled by attaching a work plan to the Settlement Agreement. A revised proposed Settlement Agreement and Order is submitted with this response. We have suggested language that might meet the needs of both parties, but we welcome and are open to further discussion.

3. A detailed description of the work plan identifying how BNSF plans to proceed.

A proposed schedule and deadlines that BNSF believes is manageable is included in this response and a work plan would be attached to the Settlement Agreement. As noted on the Schedule (April 16, 2012), several tasks are complete.

4. Demonstration of BNSF's technical capability to carry out the RI/FFS.

Dave Smith of BNSF is the Project Manager and Scott Carney of Kennedy Jenks and Laura Trozzolo of AECOM will work with BNSF on the RI/FFS. Curriculum vitae of the consultants will be supplied consistent with the requirements of the Settlement Agreement or at EPA's request.

5. A demonstration of BNSF's capability to finance the RI/FFS.

BNSF has the resources to finance the RI/FFS. Upon request, BNSF can provide financial documents to EPA.

6. A statement that BNSF is willing to reimburse EPA for costs incurred in overseeing BNSF's conduct of the RI/FS.

If a Settlement Agreement is reached, BNSF would be willing to reimburse reasonable oversight costs of EPA.

7. The name, address, and phone number of the party who will represent BNSF in negotiations.

Dava Kaitala, Esq., BNSF Railway Co., 2500 Lou Menk, AOB 3, Ft. Worth, TX 76131. (817) 352-2377.

Dave Smith, BNSF Railway Co., 825 Great Northern Blvd, Helena, MT 59601. (406) 443-6820.

Catherine A. Laughner, Esq. Browning, Kaleczyc, Berry & Hoven, P.C., 801 W. Main St. Suite 2A, Bozeman, MT 59715. (406) 585-0888.

ADDITIONAL WORK TO BE CONDUCTED – TREE BARK ANALYSIS WITHIN OU6

During the April 5, 2012 meeting, EPA discussed the possibility of BNSF sampling tree bark to identify the nature and extent of asbestos fibers lodged in the bark due to airborne transport. As EPA's toxicologist (David Berry) mentioned, evidence shows that airborne asbestos fibers in the Libby valley can travel up to eight (8) miles before lodging into tree bark. The exposure concern from asbestos fibers lodged in tree bark would arise during tree cutting activities, which could result in the airborne release of the lodged fibers. As discussed during the April 5th meeting, tree cutting activities within the OU6 boundary are prohibited on the right-of-way and BNSF could place a voluntary Institutional Control (IC) prohibiting tree harvesting, thereby eliminating this exposure pathway from the OU6 human health risk evaluation.
As discussed above, tree bark data are not used in the OU6 human health risk evaluation; however, BNSF will agree to sample a limited dataset of tree bark within the OU6 boundary for nature and extent purposes only. The logistics related to the tree bark Sampling and Analysis Plan (SAP) will be presented to EPA in a separate document.

We look forward to working with you and completing this work. Please do not hesitate to contact Dave Smith, Dava Kaitala, or me for further discussion. Thank you.

Sincerely,

C A Laughner

Catherine A. Laughner

Enclosures

cc w/enc: Lorraine Ross, Esq.
Legal Enforcement Program, 8ENF-L
US EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Ross.Lorraine@epamail.epa.gov

April 16, 2012 DRAFT

This draft document is offered for settlement purposes only and does not constitute an Agency decision. This draft has not been approved by EPA management. The table of contents. paragraph and section numbers and cross-references will be corrected at the conclusion of negotiations.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF: The BNSF Railway Company, Libby Asbestos Site Libby, Montana The BNSF Railway Company, Respondent	Administrative SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY -OU6 U.S. EPA Region 8 CERCLA Docket No._____ Proceeding Under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability. Act, as amended, 42 U.S.C. §§ 9604,9607 and 9622.

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ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY
OPERABLE UNIT 6

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement and Order") is entered into voluntarily by the United 'States Environmental Protection Agency ("EPA") and the Burlington Northem and Santa Fe Railway Company ("BNSF"), ("Respondent"). The Settlement Agreement and Order concerns the preparation and performance of a remedial investigation and focused feasibility study ("RI/FFS") for Operable Unit #6 ("OU6"), which covers asbestos contamination on and from the rail line between Libby and Troy at the Libby Asbestos Site, located generally in Libby, Montana ("Site") and payment of Future Response Costs incurred by EPA in connection with the RI/FFS.

2. This Settlement Agreement and Order is issued under the authority vested in the President of the United States by Secfions 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 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. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority has been further redelegated to the Director of the Superfund Remedial Response Program and the Supervisors in the Legal Enforcement Program and the Technical Enforcement Program.

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 Department of the Interior, the Department of Agriculture and the State of Montana during January 2012, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal and/or State tmsteeship.

4. EPA and Respondent recognize that this Settlement Agreement and Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settiement Agreement and Order do not constitute an admission of any liability or waive the common carrier defense at 42 U.S.C. 9607(b)(3). Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement and Order, the validity of the findings of fact, conclusions of law and determinations in Sections V and VI of this Settlement Agreement and Order. Respondent agrees to comply with and be bound by the terms of this Settiement Agreement and Order and further agrees that it will not contest the basis or validity of this Settiement Agreement and Order or its terms unless Respondent asserts the common carrier defense.

II. PARTIES BOUND

5. This Settlement Agreement and Order applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of

Respondent including, but not limited to, any transfer of assets or real property shall not alter Respondent's responsibilities under this Settiement Agreement and Order.

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and Order and comply with this Settlement Agreement and Order. Respondent shall be responsible for any noncompliance with this Settlement Agreement and Order.

7. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to execute and legally bind Respondent to this Settlement Agreement and Order.

III. STATEMENT OF PURPOSE

8. In entering into this Settlement Agreement and Order, the objectives of EPA and Respondent are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from OU6, by conducting a Remedial Investigation as more specifically set forth in the ~~Statement of Work (SOW)~~ reanalysis plan attached as Appendix A to this Settlement Agreement and Order; (b) to identify and evaluate remedial alternatives to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting a Feasibility Study as more specifically set forth ~~in the SOW~~ in Appendix A to this Settlement Agreement and Order; and (c) to recover response and oversight costs incurred by EPA with respect to this Settlement Agreement and Order

9. The Work conducted under this Settlement Agreement and Order is subject to approval by EPA and shall provide all appropriate and necessary information to assess Site conditions and evaluate altematives 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"). Respondent shall conduct all Work under this Settiement Agreement and Order in compliance with CERCLA, the NCP, and all applicable EPA guidance, policies, and procedures.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement and Order that are defined in CERCLA or in regulations promulgated under CERCLA shall havethe meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement and Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Day" shall mean a calendar day. In computing any period of time under this

Settlement Agreement and Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall mn until the close of business of the next working day.

c. "Effective Date" shall mean the effective date of this Settlement Agreement and Order as provided in Section XXIX.

d. "EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instmmentalities.

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

f "'Engineering Controls" shall mean constmcted containment barriers or systems that control one or more of the following: downward migration, infiltration or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

g. "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 pursuant to this Settlement Agreement and Order, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement and Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs; the costs incurred pursuant to Paragraph 53 (costs and attomeys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 39 (emergency response) and Paragraph 82; (Work takeover). Future Response Costs shall also include Agency for Toxic Substances and Disease Registry ("A TSDR") costs regarding the Site.

h. "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.

i. "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 accmes. The rate of interest is subject to change on October 1 of each year.

j . "Libby Asbestos Site Sitewide 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).

k. "MDEQ" shall mean the Montana Department of Environmental Quality and

any successor departments or agencies of the State.

l. "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.

m. "Operable Unit 6 or OU6" shall mean all amphibole asbestos contamination on and from rail lines, any property owned or leased by BNSF, BNSF rights-of-way and other properties associated with rail transport within the Site, including, but not limited to: the Troy bunker, the Amtrak station, rail lines, sidings, spurs and yards.

n. "Paragraph" shall mean a portion of this Settlement Agreement and Order identified by an Arabic numeral or an upper or lower case letter.

o. "Parties" shall mean EPA and Respondent.

p. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.*

q. "Respondent" shall mean The Burlington Northem and Santa Fe Railway Company.

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

s. "Settlement Agreement and Order" shall mean this 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 and Order upon approval by EPA. In the event of conflict between this Settlement Agreement and Order and any appendix or other incorporated documents, this Settlement Agreement and Order shall control.

t. "Site" shall mean the Libby Asbestos Superfund Site, located in and near Lincoln County, Montana

u. "State" shall mean the State of Montana.

v. "Statement of Work" or "SOW" shall mean the Statement of Work for development of a RI/FFS for OU6, as set forth in Appendix A to this Settlement Agreement and Order. The Statement of Work Appendix A is incorporated into this Settlement Agreement and Order and is an enforceable part of this Settlement Agreement and Order as are any modifications made thereto in accordance with this Settlement Agreement and Order.

w. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section

101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under Montana State Law.

x. "Work" shall mean all activities Respondent is required to perfom under this Settlement Agreement and Order, except those required by Section XIV (Retention of Records).

V. FINDINGS OF FACT

EPA has determined that:

11. The Site is located in Libby, Montana and encompasses areas contaminated with amphibole asbestos, including Libby, Troy and other nearby areas on which the asbestos has come to be located.

12. Vermiculite mining at Zonolite Mountain (the "Mine") was commenced by the Universal Zonolite Company in the 1920s. In 1963, W.R. Grace purchased Zonolite Mountain and continued operations until 1990. The processed ore was tmcked down Rainy Creek Road to the screening plant, which separated the milled ore into various sizes. Subsequently, the screened ore was moved by conveyor across the Kootenai River to a loading facility owned and operated by W.R. Grace, where it was loaded by W.R. Grace employees into rail cars which ultimately traveled on Respondent's rail line. The vermiculite concentrate was shipped by rail for processing in either Lincoln County or across the country to other destinations.

13. Respondent's rail line runs, in part, between Troy and Libby. It is believed that spillage and dispersion may have occurred along the rail line, rights of way, and other properties associated with rail transport in the area thus causing vermiculite concentrate and/or processed material to be deposited on and adjacent to these areas. It is these areas within the Site that comprise OU6.

14. EPA has performed extensive analyses of both the amphibole asbestos content and friability of such asbestos in vermiculite. It has also reviewed similar data collected by W.R. Grace. The data reveal that vermiculite from the Zonolite Mine in Libby contains amphibole asbestos and that when that vermiculite is disturbed; it releases significantly high levels of amphibole asbestos fibers into the environment.

15. The vermiculite spillage along Respondent's right-of-way is uncontrolled. Once disturbed, the vermiculite spillage exposes receptors to high levels of amphibole asbestos fibers.

16. The amphibole asbestos found at the Site is of respirable size and is known to induce lung cancer, mesothelioma and other Asbestos Related Disease (ARD) upon inhalation.

17. The Site was listed on the National Priorities List ("NPL") pursuant to CERCLA Section 105, 42 U.S.C. § 9605, on October 24, 2002. See 67 Fed. Reg. 65315 (Oct. 24,2002).

18. Respondent is the Owner and operator of property in OU6 at the Site and holds a

right-of-way along its rail line. During the operation of such rail line, vermiculite containing amphibole asbestos was released to the environment through spillage from the rail cars. With the exception of spillage in the rail yard, the spillage has been left exposed to the environment and to disturbance by human activity.

19. EPA and W.R. Grace have been involved in several response actions at the Site. Respondent has performed a removal action at the rail yard pursuant to an administrative order on consent (CERCLA 08-2003-0004). The remainder of OU6 has not yet been addressed.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

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

20. The Libby Asbestos Site, including OU6, is a "facility" as defined in Section 101(9) Of CERCLA. 42 U.S.C. § 9601(9).

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

22. The conditions described in 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).

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

24. Respondent is a responsible party under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622, as Respondent is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), although Respondent may have a common carrier defense under Section 107 of CERCLA, 42 U.S.C. § 9607(b)(3).

25. The actions required by this Settlement Agreement and Order 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).

26. EPA has determined that Respondent is qualified to conduct the RI/FFS 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 Respondent complies with the terms of this Settlement Agreement and Order.

VII. SETTLEMENT AGREEMENT AND ORDER

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

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

28. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement and Order shall be under the direction and supervision of qualified personnel. Within 30 days of the Effective Date of this Settlement Agreement and Order, and before the Work outlined below begins, Respondent 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, Respondent 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 Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Settlement Agreement and Order is contingent on Respondent's demonstration to EPA's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Settlement Agreement and Order. If EPA disapproves in writing of any person's technical qualifications, Respondent 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 Order and to conduct a complete RI/FFS, and to seek reimbursement for costs and penalties from Respondent. During the course of the RI/FFS, Respondent 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.

29. Within 15 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and Order 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 OU6 of the 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, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 5 days following EPA's disapproval. Respondent shall have the right to

change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA 3 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 Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement and Order shall constitute receipt by Respondent.

30. EPA has designated Rebecca Thomas of the Superfund Remedial Branch, Region 8 as its Remedial Project Manager ("RPM"). EPA will notify Respondent of a change of its designated RPM. Except as otherwise provided in this Settlement Agreement and Order, Respondent shall direct all submissions required by this Settlement Agreement and Order to the RPM at 1595 Wynkoop Street, Denver, CO, 80202. Submissions may also be provided electronically, where mutually agreed to by the Parties, at thomas.rebecca@epa.gov.

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

32. EPA shall arrange tor a qualified person to assist in its oversight and review of the conduct of the RI/FFS, 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 tne RI/FFS Work Plan.

IX. WORK TO BE PERFORMED

33. Respondent shall conduct the RI/FFS in accordance with the provisions of this Settlement Agreement and Order, the SOW, Appendix A, CERCLA, the NCP and EPA guidance, including,
but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01, October 1988 or subsequently issued guidance), "Guidance tor Data Useability in Risk Assessment" (OSWER Directive #9285.7-05. October 1990 or subsequently issued guidance), and guidance referenced Therein, and guidances referenced in the SOW, Appendix A as may be amended or modified by EPA. The Remedial Investigation ("RI") shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the enviroronment and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Focused Feasibility Study ("FFS") shall determine and evaluate (based on treatability testing, where appropriate) altematives for remedial action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The altematives evaluated must include, but shall not be limited to, the range of altematives described in the NCP, and shall include remedial actions that utilize permanent solutions and altemative treatment technologies or resource

recovery technologies to the maximum extent practicable. In evaluating the altematives, Respondent shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e). Upon request by EPA, Respondent shall submit in electronic form all portions of any plan, report, or other deliverable Respondent is required to submit pursuant to provisions of this Settlement Agreement and Order.

a. Scoping. EPA will determine the Site-specific objectives of the RI/FFS and devise a general management approach for the Site, as stated in the attached ~~SOW~~ Appendix A. Respondent shall conduct the remainder of scoping activities as described in the attached ~~SOW~~- Appendix A and referenced guidances. At the conclusion of the project planning phase, Respondent shall provide EPA with the following plans, reports and other deliverables:

(1) RI/FFS Work Plan. Within 30 days after the Effective Date of this Settlement Agreement and Order, Respondent shall submit to EPA a complete RI/FFS Work Plan. Upon its approval by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions), the RI/FFS Work Plan shall be incorporated into and become enforceable under this Settlement Agreement and Order.

(2) Sampling and Analysis Plan. Within 45 days after the Effective Date, Respondent shall submit a Sampling and Analysis Plan (SAP) to EPA for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions). The SAP will include a description of the goals, a list of key persomel and responsibilities, Data Quality Objectives (DQOs), a Field Sampling Plan (FSP), a data management plan, a schedule and will be accompanied by a Quality Assurance Project Plan (QAPP). The FSP will describe the sampling program including the rationale, number, type, and location of samples; the sample collection, handling and custody procedures; the required field documentation and the required analytical methods. The QAPP will describe the measures necessary to generate data of sufficient quality to achieve the DQOs. The QAPP will contain details of any special training requirements and certifications, quality control requirements for field activities and analytical processes, and data validation requirements. EPA has developed a site-wide QAPP for the Libby Asbestos project as the minimum standard of performance. If BNSF chooses to prepare an OU6-specific QAPP, it must be consistent with the site-wide QAPP. Upon its approval by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions), the SAP shall be incorporated into and become enforceable under this Settlement Agreement and Order.

(3) Site Health and Safety Plan. At least 30 days prior to the start of any field work, Respondent shall submit for EPA review and comment a Site Health and Safety Plan that ensures the protection of on-site workers and the public during performance of on-site Work under this Settlement Agreement and Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992 or subsequently issued guidance). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning.

Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the RI/FFS.

b. Community Involvement Plan. EPA will prepare a community involvement plan, in accordance with EPA guidance and the NCP. As requested by EPA, Respondent shall provide information supporting EPA's community involvement plan and shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

c. Site Characterization. Following EPA approval or modification of the RI/FFS Work Plan and Sampling and Analysis Plan, Respondent shall implement the provisions of these plans to characterize the Site. Respondent shall complete Site characterization and submit all plans, reports and other deliverables in accordance with the schedules and deadlines established in this Settlement Agreement and Order, the SOW Appendix A, and/or the EPA-approved RI/FFS Work Plan and Sampling and Analysis Plan.

d. Baseline Human Health Risk Assessment and Ecological Risk Assessment. Respondent may perform the Baseline Human Health Risk Assessment and Ecological Risk Assessment ("Risk Assessments") in accordance with the SOW Appendix A, RI/FFS Work Plan, and
applicable EPA guidance, including but not limited to: "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part A)," (RAGS, EPA-540-1-89-002, OSWER Directive 9285.7-01A, December 1989); "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)," (RAGS, EPA 540-R-97-033, OSWER Directive 9285.7-01D, January 1998); "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments" (ERAGS, EPA-540-R-97-006, OSWER Directive 9285.7-25, June 1997) or subsequently issued guidance. If Respondent chooses not to perform the risk assessments, EPA will perform them.

e. Draft Remedial Investigation Report. Within 60 days after EPA approves or provides the Risk Assessments, Respondent shall submit to EPA for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions), a Draft Remedial Investigation Report consistent with the SOW Appendix A, RI/FFS Work Plan, and Sampling and Analysis Plan. The Draft RI Report shall also contain the Risk Assessments.

f. Development and Screening of Alternatives. Respondent shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the SOW and RI/FFS Work Plan. In accordance with the schedules or deadlines established in this Settlement Agreement and Order, the SOW, and/or the EPA-approved RI/FFS Work Plan, Respondent shall provide EPA with the following deliverables for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions):

(1) Memorandum on Remedial Action Objectives. The Memorandum on Remedial Action Objectives shall include remedial action objectives for Engineering Controls as

well as for Institutional Controls.

(2) Memorandum on Development and Screening of Alternatives. The Memorandum shall summarize the development and screening of remedial alternatives.

g. Detailed Analysis of Alternatives. Respondent shall conduct a detailed analysis of remedial alternatives, as described in the SOW and RI/FFS Work Plan. In accordance with the deadlines or schedules established in this Settlement Agreement and Order, the SOW and/or the EPA-approved RI/FFS Work Plan Respondent shall provide EPA with the following deliverables and presentation for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions):

(1) Report On Comparative Analysis and Presentation to EPA. Within 60 days after EPA's approval of Screening Alternatives, Respondent will submit a report on comparative analysis to EPA. Within 60 days after submitting the report on comparative analysis, Respondent will present to EPA a summary of the findings of the remedial investigation and remedial action objectives, and present the results of the nine criteria evaluation and comparative analysis, as described in the SOW.

(2) Alternatives Analysis for Institutional Controls and Screening, Respondent shall submit a memorandum on the Institutional Controls identified in the Memorandum on Development and Screening of Alternatives as potential remedial actions. The Alternatives Analysis for Institutional Controls and Screening shall (i) state the objectives (i,e., what will be accomplished) for the Institutional Controls; (ii) determine the specific types of Institutional Controls that can be used to meet the remedial action objectives; (iii) investigate when the Institutional Controls need to be implemented and/or secured and how long they must be in place; (iv) research, discuss, and document any agreement with the proper entities (e.g., state, local government entities, local landowners, conservation organizations, Respondent) on exactly who will be responsible for securing, maintaining and enforcing the Institutional Controls. The Alternatives Analysis tor Institutional Controls and Screening shall also evaluate the Institutional Controls identified in the Memorandum on Development and Screening of Alternatives against the nine evaluation criteria outlined in the NCP (40 C.F.R. § 300.430(e)(9)(iii)) for CERCLA cleanups, including but not limited to costs to implement, monitor and/or enforce the Institutional Controls. The Alternatives Analysis for Institutional Controls and Screening shall be submitted as an appendix to the Draft Focused Feasibility Study Report.

(3) Draft Focused Feasibility Study Report. Within 60 days after the presentation to EPA described in Paragraph 33.g(l), Respondent shall submit to EPA a Draft Focused Feasibility Study Report which reflects the findings in the Risk Assessments. Respondent shall refer to Table 6-5 of the RI/FS Guidance for report content and format. The draft report as amended, and the administrative record, shall provide the basis for the proposed plan under CERCLA Sections 113(k) and 117(a) by EPA, and shall document the development and analysis of remedial alternatives.

34. Upon receipt of the draft FFS report, EPA will evaluate, as necessary, the estimates

of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed and will evaluate the durability, reliability, and effectiveness of any proposed Institutional Controls.

35. Modification of the RI/FFS Work Plan.

a. If at any time during the RI/FFS process, Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the need for additional data to the RPM within 3 days after identification. EPA in its discretion will determine whether the additional data will be collected by Respondent and whether it will be incorporated into plans, reports and other deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the RPM 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 RI/FFS Work Plan, EPA shall modify or amend the RI/FFS Work Plan in writing accordingly. Respondent shall perform the RI/FFS Work Plan as modified or amended.

c. EPA may determine that in addition to tasks defined in the initially approved RI/FFS Work Plan, other additional Work may be necessary to accomplish the objectives of the RI/FFS. Respondent agrees to perform these response actions in addition to those required by the initially approved RI/FFS Work Plan as long as the additional tasks do not exceed X amount and the tasks are on BNSF property [this is an open issue; specific wording to be worked out so that everything is not opened up through a future work clause], including any approved modifications, if EPA determines that such actions are necessary for a complete RI/FFS.

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

e. Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FFS Work Plan or written RI/FFS Work Plan supplement. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondent, 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 OU6 of the Site.

36. Off-Site Shipment of Waste Material. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to EPA's RPM. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such

shipments will not exceed 10 cubic yards.

a. Respondent shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state -will be determined by Respondent following the award of the contract for the remedial investigation and feasibility study. Respondent shall provide the information required by Paragraph 36.a and 36.c as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

c. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3),42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

37. Meetings. Respondent shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FFS. In addition to discussion of the technical aspects of the RI/FFS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

38. Progress Reports. In addition to the plans, reports, and other deliverables set forth in this Settlement Agreement and Order, Respondent shall provide to EPA monthly progress reports by the 5th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (a) describe the actions which have been taken to comply with this Settlement Agreement and Order during that month, (b) include all results of sampling and tests and all other data received by Respondent, (c) describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FFS 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.

39. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during performance of the Work that causes or threatens a release of Waste Material from OU6 at the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement and

Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the RPM and the Environmental Response Specialist (ERS) in Libby (406-291-5335) of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent 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 OU 6 of the Site, Respondent shall immediately notify the RPM and the ERS. Respondent 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 APROVAL OF PLANS AND OTHER SUBMISSIONS

40. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement and Order, in a notice to Respondent 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 Respondent modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 10 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.

41. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 40.a, .b, .c or .e, Respondent 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, Respondent 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 40.c and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties).

42. Resubmission.

a. Upon receipt of a notice of disapproval, Respondent shall, within 10 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 10-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 43 and 44, respectively.

b. Notwithstanding the receipt of a notice of disapproval. Respondent 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 Respondent of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. Respondent 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: RI/FFS Work Plan and Sampling and Analysis Plan, Health and Safety Plan, Draft Remedial Investigation Report and Draft Feasibility Study Report. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondent 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 and Order.

d. For all remaining deliverables not listed above in Paragraph 42.c., Respondent shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanentiy, on any task, activity or deliverable at any point during the RI/FFS.

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

44. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately unless Respondent invokes 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 accme for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

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

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

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

XL QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

48. Quality Assurance. Respondent shall assure that Work performed, samples taken and analyses conducted conform to the requirements of Appendix A~~the SOW~~, the QAPP and guidance identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures. Respondent 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.

49. Sampling.

a. All results of sampling, tests, modeling or other data (including raw data) generated by Respondent, or on Respondent's behalf: during the period that this Settlement Agreement and Order is effective, shall be submitted to EPA in the next monthly progress report as described in Paragraph 38. EPA will make available to Respondent validated data generated by EPA unless it is exempt tram disclosure by any federal or state law or regulation.

b. Respondent shall verbally notify EPA and MDEQ at least 5 days prior to conducting significant field events as described in ~~the SOW~~Appendix A, RI/FFS Work Plan or Sampling and
Analysis Plan. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondent shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) or MDEQ of any samples collected in implementing this Settiement Agreement and Order. All split samples of Respondent shall be analyzed by the methods identified in the QAPP.

50. Access to Information.

a. Respondent shall provide to EPA and MDEQ, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settiement Agreement and Order, 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. Respondent shall also make available to EPA and MDEQ. for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts conceming the performance of the Work.

b. Respondent may assert business confidentiality' claims covering part or all of the documents or information submitted to EPA and MDEQ under this Settlement Agreement and Order 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). Documents or information 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 documents or information when it is submitted to EPA and MDEQ, or if EPA has notified Respondent that the documents or information 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 documents or information without further notice to Respondent. Respondent shall segregate and clearly identify all documents or information submitted under this Settlement Agreement and Order for which Respondent asserts business confidentiality claims.

c. Respondent may assert that certain documents, records and other information are privileged under the attomey-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, they shall provide EPA and MDEQ with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record. or information; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the document, record, or information; and (vi) the privilege asserted by Respondent. However, no documents, reports, or other information created or generated pursuant to the requirements of this Settlement Agreement and Order 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 documents or information evidencing conditions at or around the Site.

51. In entering into this Settlement Agreement and Order, Respondent waives any objections to any data gathered, generated, or evaluated by EPA, MDEQ or Respondent 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 and Order or any EPA-approved RI/FFS Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the RI/FFS, Respondent 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

52. If OU6, or any other property where access is needed to implement this Settlement

Agreement and Order, is owned or controlled by Respondent, Respondent shall commencing on the Effective Date, provide EPA and MDEQ, and their representatives, including contractors, who follow FRA regulations and BNSF policy with access at all reasonable times to OU6 of the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement and Order.

53. Where any action under this Settlement Agreement and Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 30 days after the Effective Date, or as otherwise specified in writing by the RPM. Respondent 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. Respondent shall describe in writing their efforts to obtain access. If Respondent cannot obtain access agreements, EPA may either (a) obtain access tor Respondent or assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement and Order, using such means as EPA deems appropriate; (b) perform those tasks or activities with EPA contractors; or (c) terminate the Settlement Agreement and Order. Respondent 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 and Order, Respondent 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. Respondent shall integrate the results of any such tasks or activities undertaken by EPA into its plans, reports and other deliverables.

54. Notwithstanding any provision of this Settlement Agreement and Order, EPA and MDEQ retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. COMPLIANCE WITH OTHER LAWS

55. Respondent shall comply with all applicable state and federal laws and regulations when performing the RI/FFS. 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, Respondent 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 and Order is not. and shall not be constmed to be, a permit issued pursuant to any federal or state statute or regulation.

XIV. RETENTION OF RECORDS

56. During the pendency of this Settlement Agreement and Order and for a minimum of 10 years after commencement of constmction of any remedial action, Respondent shall preserve and retain all non-identical copies of documents, records, and other information (including

documents, records, or other information 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 constmction of any remedial action, Respondent shall also instruct their contractors and agents to preserve all documents, records, and other information of whatever kind, nature or description relating to performance of the Work.

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

58. 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, documents or other information (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 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. § 6927.

XV. DISPUTE RESOLUTION

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

60. If Respondent objects to any EPA action taken pursuant to this Settiement Agreement and Order, including billings for Future Response Costs, it shall notify EPA in writing of their objection(s) within 7 days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 14 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing.

61. 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 and Order. If the Parties are unable to reach an agreement within the Negotiation Period, the Director of the Superfund Remedial Response Program will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement and Order. Respondent's obligations under this Settlement Agreement and Order 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, Respondent 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 Respondent agrees with the decision.

XVI. STIPULATED PENALTIES

62. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 63 and 64 for failure to comply with any of the requirements of this Settlement Agreement and Order specified below unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the Work under this Settlement Agreement and Order or any activities contemplated under any RI/FFS Work Plan or other plan approved under this Settlement Agreement and Order identified below, in accordance with all applicable requirements of law, this Settlement Agreement and Order, Appendix A~~the SOW~~, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and Order and within the specified time schedules established by and approved under this Settlement Agreement and Order.

63. Stipulated Penalty Amounts – Work (Including Payments).

The following stipulated penalties shall accme per day for any noncompliance with this Settlement Agreement and Order, ~~the SOW~~ Appendix A or failure to pay costs:

Penalty Per Violation Per Day	Period of Noncompliance
$ 5,000	1st tirough 14th day
$ 10,000	i 5th through 30th day
$ 32,500	31st day and beyond

64. Stipulated Penalty Amounts - Reports.

The following stipulated penalties shall accme per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraph 38:

Penalty Per Violation Per Day	Period of Noncompliance
$ 500	1st through 14th day

$ 1,000	i5th through 30th day
$ 5,000	31st day and beyond

65. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 82 (Work Takeover), Respondent shall be liable for a stipulated penalty in the aruount of $100,000.

66. 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 Respondent of any deficiency; and (b) with respect to a decision by the EPA ruanagement official designated in Paragraph 61 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 and Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement and Order.

67. Following EPA's determination that Respondent has tailed to comply with a requirement of this Settlement Agreement and Order, EPA may give Respondent written notification of the same and describe the noncompliance. EPA may send Respondent a written deruand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

68. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes 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
S\VIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire ruessage should read "D 68010727 Environruental Protection Agency"

and shall reference stipulated penalties, Site/Spill ID Number 08-BC(OU6), 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 76.b below.

69. The payruent of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement and Order.

70. Penalties shall continue to accrue as provided in Paragraph 66 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.

71. If Respondent tails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 68.

72. Nothing in this Settlement Agreement and Order 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 Respondent's violation of this Settlement Agreement and Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1), 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(1) 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 and Order, except in the case of willful violation of this Settlement Agreeruent and Order 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 81. 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 and Order.

XVII. FORCE MAJEURE

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

74. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement and Order, whether or not caused by a *force majeure* event. Respondent shall notify EPA orally within 24 hours of when Respondent first knew that the event might cause a delay. Within 3 days thereafter, Respondent 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; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, 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 Respondent 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 .

75. 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 and Order 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 Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent 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

76. Payment of Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a Regionally prepared cost summary (currentiy known as a SCOPRIOS Summary) which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 78 of this Settlement Agreement and Order. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT below and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name (Libby Asbestos), EPA Region 8 and Site/Spill ID Number 08-BC(OU6), and the EPA docket number tor this action. Respondent shall make such payments by wire transfer to the Federal Reserve Bank in New York City with the following information:

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"

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street NW
Washington, DC 20074
Contact = Jesse White 301-887-6548
Transaction Code 22 - checking
ABA = 051036706
Environmental Protection Agency
Account 310006
CTX Format

b. At the tirue of payment, Respondent shall send notice that payment has been made to:

Dana Sherrer
U.S. EPA
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Attention: FINANCE
MS: NWD
E-ruail (to both): sherrer.dana@epa.gov and AcctsReceivable.CINWD@epa.gov

and

Cost Recovery Program Manager, ENF-RC
Superfund Enforcement Program
U.S. EPA, Region 8
1595 Wynkoop
Denver. CO 80202-1129

c. The total amount to be paid by Respondent pursuant to Paragraph 76 shall be deposited in the Libby Asbestos Site Sitewide Special Account within the EPA Hazardous Substance Superfund 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.

77. If Respondent does not pay Future Response Costs within 30 days after Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance of Future Response Costs. 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 Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI. Respondent shall make all payments required by this Paragraph in the manner described in Paragraph 76.

78. Respondent may contest payment of any Future Response Costs billed under Paragraph 76 if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes 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 RPM. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30 day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 76. Simultaneously, Respondent shall establish, in a duly chartered bank or tmst 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. Respondent shall send to the RPM 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, Respondent 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, Respondent shall pay the sums due (with accmed interest) to EPA in the manner described in Paragraph 76. If Respondent prevails conceming any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accmed interest) for which it did not prevail to EPA in the manner described in Paragraph 76. Respondent 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 Respondent's obligation to reimburse EPA for its Future Response Costs.

XIX. COVENANT NOT TO SUE BY EPA

79. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settiement Agreement and Order, and except as otherwise specifically provided in this Settlement Agreement and Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and I 07(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Futture Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement and Order, including, but not limited to, payment of Future Response Costs pursuant to Paragraph 76 (Payment of Future Response Costs). This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

80. Except as specifically provided in this Settiement Agreement and Order, nothing in this Settlement Agreement and Order 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 and Order shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement and Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

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

a. liability for failure by Respondent to meet a requirement of this Settlement Agreement and Order;

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 damages for injury to, destmction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

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

g. 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 and Order.

82. Work Takeover. In the event EPA determines that Respondent has 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. Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover often 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 Respondent shall pay pursuant to Section XVIII (Payment of Response Costs). Notwithstanding any other provision of

this Settlement Agreement and Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

83. Respondent covenants 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 and Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfimd 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 Future Response Costs have or will be incurred, including any claim under the United States Constitution, the Montana Constittution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim pursuant to Sections 107 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 tiie Work or payment of Future Response Costs.

84. Except as expressly provided in Paragraph 86 (Claims Against De Micromis Parties), 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 81.a (liability for failure to meet a requirement of the Settiement Agreement and Order) or 81.d (criminal liability), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

85. 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).

86. Claims Against De Micromis Parties. Respondent agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) or 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site Was less than 110 gallons of liquid materials or 200 pounds of solid materials.

87. The waiver in Paragraph shall not apply with respect to any defense. claim, or cause

of action that a Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA. 42 U.S.C.§§ 9604(e) Or 9622(e). or Section 3007 of RCRA or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site

XXII. OTHER CLAIMS

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

89. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement and Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settiement Agreement and Order, tor 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.

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

XXIII. EFFECT OF SETTLEMENT/CONTRIBUTION

91. Except as provided in Paragraph 86 (Claims Against De Micromis Parties), nothing in this Settlement Agreement shall be constmed to create any rights in, or grant any cause of action to, any person not a Party to this Settiement Agreement. Except as provided in Paragraph 86 (Claims Against De Micromis Parties), 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 Settiement 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).

92. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f){2) and 9622(h)(4), and that Respondent 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, 42 USC. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work and Future Response Costs.

93. 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. 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, Respondent shall notif~~y~~ 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.

94. 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, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata,* collateral estoppel, issue preclusion, claimsplitting, 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.

95. Effective upon signature of this Settlement Agreement by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from 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 mnning of any statute of limitations potentially applicable to any action brought by the United States related to the "'matters addressed" as defined in Paragraph 92 and that, in any action brought by the United States related to the "matters addressed," 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 Respondent 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~~

~~96. Respondent 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 Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement and Order. In addition, Respondent agrees 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 Respondent, its 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 and Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement and Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.~~

~~97. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.~~

98. Respondent waives 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 Respondent and any person for performance of Work on or relating to the Site. In addition, Respondent 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 Respondent and any person for performance of Work on or relating to the Site.

XXV. INSURANCE

99. At least 5 days prior to commencing any on-site Work under this Settlement Agreement and Order, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement and Order, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit, naming the EPA as an additional insured. Alternatively, BNSF shall provide documentation of self-insurance. Within the same period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent 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 and Order, Respondent shall satisfy, or shall ensure that its 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 Respondent in furtherance of this Settlement Agreement and Order. If Respondent demonstrates 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 Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

100. Within 30 days after the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of $1 ~~3~~-million in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

a. a surety bond or corporate guarantee 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 tmst fund administered by a tmstee acceptable in all respects to EPA; or

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.

101. Any and all financial assurance instmments 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, Respondent 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 100, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 30 days after such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settiement Agreement and Order.

102. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 100 of this Section, Respondent 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. Respondent 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, Respondent may seek dispute resolution pursuant to Section **XV** (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

103. Respondent 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, Respondent may change the form of the financial assurance only in accordance with the written

decision resolving the dispute.

XXVII. INTEGRATION/APPENDICES

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

"Appendix A" is the ~~SOW~~ reanalysis plan memorandum.

"Appendix **B**" is the map of OU6 of the Site

XXVIII. ADMINISTRATIVE RECORD

105. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondent shall submit to EPA documents developed during the course of the RI/FFS upon which selection of the response action may be based. Upon request of EPA, Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Upon request of EPA, Respondent shall additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondent and state, local, or other federal authorities concerning selection of the response action. At EPA's discretion, Respondent shall establish a community information repository at or near the Site, to house one copy of the administrative record.

XXIX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

106. This Settlement Agreement and Order shall be effective when the Settlement Agreement and Order is signed by EPA.

107. This Settlement Agreement and Order may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. EPA RPMs do not have the authority to sign amendments to the Settlement Agreement and Order.

108. No informal advice, guidance, suggestion, or comment by the EPA RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement and Order, or to comply with all requirements of this Settlement Agreement and Order, unless it is formally modified.

XXX. NOTICE OF COMPLETION OF WORK

109. When EPA determines that all Work has been fully performed in accordance with this Settlement Agreement and Order, with the exception of any continuing obligations required by this Settlement Agreement and Order, including but not limited to payment of Future Response Costs and record retention, EPA will provide "written notice to Respondent. If EPA determines that any such Work has not been completed in accordance \vith this Settlement Agreement and Order, EPA will notify Respondent. provide a list of the deficiencies, and require that Respondent modify the RI/FFS Work Plan if appropriate in order to correct such deficiencies, in accordance vvi.th Paragraph 35 (Modification of the RI Work Plan). Failure by Respondent to implement the approved modified RI/FFS Work Plan shall be a violation of this Settlement Agreement and Order.

Agreed this ____ day of April, 2012.

For Respondent BNSF Railway Company

By: _____

Title: _____

It is so ORDERED AND AGREED this ____ day of April, 2012.

BY: _____ DATE: _____
Bill Murray, Director
Superfund Remedial Program, EPR

BY: _____ DATE: _____
Kelcey Land, Director
Technical Enforcement Program, ECEJ

BY: _____ DATE: _____
Lorraine Ross, Actlng Supervisory Attomey
Legal Enforcement Program, ECEJ
Region 8

9. Schedule of Deliverables

SOW REFERENCE	DOCUMENT OR ACTIVITY	DELIVERY DATE
Section 3.1	Provide Existing Information	Complete (July 11, 2011) [1]
Section 3.2	Sampling & Analysis Plan	Complete (October, 2008, [2] September, 2008)[3]
Section 3.2	RI/FFS Work Plan	To be determined
Section 4	Community relations support	As requested by EPA
Section 5.1	Health and Safety Plan for SAP implementation	Complete. (Sept. 9, 2008) [4]
Section 5.1	Written description of data security system	30 days prior to start of field work
Section 5.2	Sampling Summary Report	Complete. (July 13, 2011)[1]
Section 5.3	Draft RI Report including human health and ecological risk assessments	~~60~~ 120 days after EPA provides or approves the risk assessments
Section 5.3	Final RI Report	~~45~~ 90 days after receiving EPA and State comments on draft RI Report
Section 5.6	Remedial Action Objectives Memorandum	~~30~~ 60 days after approval of final RI report
Section 6.5	Draft Development and Screening of Alternatives Technical Memorandum	~~60~~ 120 days after receiving EPA final remedial action objectives from EPA
Section 6.5	Final Development and Screening of Alternatives Technical Memorandum	~~45~~ 90days after receiving EPA and State comments on draft Technical Memorandum
Section 7.0	Comparative Analysis of Alternatives Report	~~60~~ 120 days after receiving EPA approval on the alternatives screening memorandum
Section 7.0	Comparative Analysis for Institutional Controls Memorandum	~~60~~ 120 days after receiving EPA approval on the alternative screening memorandum
Section 8	Draft FFS Report including the alternatives analysis for institutional controls as an appendix	~~60~~ 120 days after EPA approval of final Development and Screening of Alternatives Technical Memorandum
Section 8	Final FFS Report	~~30~~ 60 days after receiving EPA and State comments on draft FS report.

[1] – Date for letter of transmittal that accompanied the reports.
[2] – Cover date of Worker Receptor SAP
[3] – Cover date of Public Receptor SAP
[4] – Cover date for Health and Safety Plan - not submitted to USEPA

13 April 2012

Memorandum

To: Dave Smith

From: Heather Brunelle, Scott Carney, Laura Trozzolo (AECOM)

Subject: Statistical Evaluation for Sample Size Determination
K/J 1249206*00

BACKGROUND

The 2008 activity-based sampling (ABS) dataset consists of air samples collected from seven separate locations along the BNSF Railway Company (BNSF) Right of Way (ROW), which occurred on September 17-19 and September 22-25, 2008. A total of 14 pedestrian samples were collected on the ROW, which consisted of two pedestrian samples per location. All pedestrian samples were below detection limits, with a sensitivity range of 0.000766 to 0.00237 per cubic centimeters (cc). At each sampling location, one on-looker sample was also collected, yielding a total of seven (7) on-looker samples with a sensitivity range of 0.00967 to 0.00125 per cc. All on-looker samples were below detection limits. Likewise, between two and five stationary samples were collected per location, resulting in a total of 23 stationary samples. All stationary samples were below detection limits, with a sensitivity range of 0.000397 to 0.0024 per cc.

Finally, a total of 14 ABS samples were collected from BNSF workers conducting track maintenance on the ROW. Two worker samples were collected each day and correspond to the seven separate locations along the ROW. Of the 14 worker samples, four samples (BA-0001, BA-0002, BA-00037, BA-00038) were indirectly propped prior to analysis. All worker samples were below detection limits, with a sensitivity range of 0.00224 to 0.00769 per cc.

SAMPLE SELECTION METHOD

A statistical evaluation was completed to determine the required number of samples for the reanalysis of asbestos samples to achieve adequate sensitivity in the reporting limits. The data quality objective (DQO) for required sensitivity was recently revised to 0.00022 per cc, approximately an order of magnitude lower than that required for the 2008 data analysis of 0.0024 per cc. The 2008 data set included 54 samples representing four groups (Workers, Public Stationary, Public Trespassers, Public Pedestrians) (see attachment for Table 1). This sample population does not include four (4) worker samples that were indirectly prepared.

The EPA software ProUCL Version 4.1.00[1] was used to evaluate the 2008 data set. ProUCL output files are provided with the attachment. For the 2008 data set the results were all non-detect. The sensitivity values achieved for the 2008 data set ranged from 0.000397 to 0.0024 per cc with a mean and standard deviation of 0.0016±0.00078. A goodness of fit test of the

[1] United States Environmental Protection Agency (USEPA). 2011. ProUCL Version 4.1.00 Technical Guide (Draft). EPA 600-R-07/041. May 2010.

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sensitivity values indicated a nonparametric distribution (see attachment). The Wilcoxon Signed Rank Test (a nonparametric test) was used to conduct hypothesis testing of whether the sensitivity limit values were significantly greater (at a 95 percent confidence level) than a value of 0.00022 per cc. The results of the Wilcoxon Signed Rank Test indicate that the sensitivity values achieved in 2008 data set are significantly greater than a value of 0.00022 per cc (see attachment).

The samples were then randomly selected, at a rate of one replication for every four samples, to replace the achieved sensitivity value in 2008 with the sensitivity limit of 0.00022 per cc (see attachment Table 1). For the revised data set including replaced values, the Wilcoxon Signed Rank Test (at a 95 percent confidence level) indicated that the 2008 sensitivity values were not significantly greater than 0.00022 per cc. These results suggest that re-analyzing 14 of the 54 samples with an achieved sensitivity limit of 0.00022 per cc will result in a data set for which the central tendency value for sensitivity limits is not significantly greater than the required sensitivity limit of 0.00022 per cc. The re-analyzed samples would be distributed as follows (see attachment Table 1):

- Worker – 3 samples
- Pedestrian – 3 samples
- Onlooker – 3 samples
- Stationary – 5 samples

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Table 1: ProUCL Input Data

IndexID	SampleType	Sensitivity	Sensitivity_Replaced
BA-00003	Pedestrian	0.000814	0.00022
BA-00004	Pedestrian	0.000766	0.000766
BA-00005	On-Looker	0.000993	0.000993
BA-00006	Stationary	0.0024	0.0024
BA-00007	Stationary	0.0024	0.00022
BA-00008	Stationary	0.00202	0.00202
BA-00009	Stationary	0.00205	0.00205
BA-00013	Pedestrian	0.000777	0.000777
BA-00014	Pedestrian	0.000806	0.00022
BA-00015	On-Looker	0.000987	0.000987
BA-00016	Stationary	0.00221	0.00221
BA-00017	Stationary	0.00221	0.00221
BA-00018	Stationary	0.00233	0.00022
BA-00019	Stationary	0.00235	0.00235
BA-00023	Pedestrian	0.000791	0.000791
BA-00024	Pedestrian	0.000797	0.000797
BA-00025	On-Looker	0.000967	0.00022
BA-00026	Stationary	0.00216	0.00216
BA-00028	Stationary	0.00215	0.00215
BA-00031	On-Looker	0.000975	0.000975
BA-00032	Pedestrian	0.000974	0.00022
BA-00033	Pedestrian	0.00115	0.00115
BA-00034	Stationary	0.00215	0.00215
BA-00035	Stationary	0.00215	0.00215
BA-00039	On-Looker	0.00098	0.00022
BA-00040	Pedestrian	0.00237	0.00237
BA-00041	Pedestrian	0.00229	0.00229
BA-00044	Stationary	0.000397	0.000397
BA-00045	Stationary	0.000397	0.00022
BA-00049	On-Looker	0.000997	0.000997
BA-00050	Pedestrian	0.0023	0.0023
BA-00051	Pedestrian	0.0022	0.0022
BA-00052	Stationary	0.000467	0.00022
BA-00053	Stationary	0.000469	0.000469
BA-00054	Stationary	0.000465	0.000465
BA-00055	Stationary	0.000465	0.000465
BA-00060	On-Looker	0.00125	0.00022
BA-00061	Pedestrian	0.00235	0.00235
BA-00062	Pedestrian	0.00234	0.00234
BA-00064	Stationary [1]	0.000649	0.000649
BA-00065	Stationary	0.000645	0.00022
BA-00066	Stationary	0.000649	0.000649
BA-00067	Stationary	0.000645	0.000645
BA-00068	Stationary 2	0.000645	0.000645

BA-00011	Worker	0.00233	0.00022
BA-00012	Worker	0.00239	0.00239
BA-00021	Worker	0.00231	0.00231
BA-00022	Worker	0.00224	0.00224
BA-00029	Worker	0.00235	0.00022
BA-00030	Worker	0.00235	0.00235
BA-00047	Worker	0.00233	0.00233
BA-00048	Worker	0.00231	0.00231
BA-00058	Worker	0.00232	0.00022
BA-00059	Worker	0.00236	0.00236

Notes:

0.00022 = Indicates value replaced with required sensitivity limit of 0.00022.

BA-00001, BA-00002, BA-00037 and BA-00038 were not included since they were indirectly prepared

	A	B	C	D	E	F	G	H	I	J	K	L
1				Goodness-of-Fit Test Statistics for Full Data Sets without Non-Detects								
2			User Selected Options									
3			From File	U:\Heather_Brunelle\Libby.wst								
4			Full Precision	OFF								
5			Confidence Coefficient	0.95								
6												
7												
8	Sensitivity											
9												
10			Raw Statistics									
11			Number of Valid Observations			54						
12			Number of Distinct Observations			39						
13			Minimum			0.000397						
14			Maximum			0.0024						
15			Mean of Raw Data			0.00155						
16			Standard Deviation of Raw Data			0.0007823						
17			Kstar			3.034						
18			Mean of Log Transformed Data			-6.635						
19			Standard Deviation of Log Transformed Data			0.619						
20												
21			Normal Distribution Test Results									
22												
23			Correlation Coefficient R			0.899						
24			Approximate Shapiro Wilk Test Statistic			0.778						
25			Approximate Shapiro Wilk P Value			1.847E-10						
26			Lilliefors Test Statistic			0.26						
27			Lilliefors Critical (0.95) Value			0.121						
28	Data not Normal at (0.05) Significance Level											
29												
30			Gamma Distribution Test Results									
31												
32			Correlation Coefficient R			0.839						
33			A-D Test Statistic			4.295						
34			A-D Critical (0.95) Value			0.757						
35			K-S Test Statistic			0.27						
36			K-S Critical(0.95) Value			0.122						
37	Data not Gamma Distributed at (0.05) Significance Level											
38												
39			Lognormal Distribution Test Results									
40												
41			Correlation Coefficient R			0.912						
42			Approximate Shapiro Wilk Test Statistic			0.806						
43			Approximate Shapiro Wilk P Value			3.188E-09						
44			Lilliefors Test Statistic			0.275						
45			Lilliefors Critical (0.95) Value			0.121						
46	Data not Lognormal at (0.05) Significance Level											

	A	B	C	D	E	F	G	H	I	J	K	L
1				Single Sample Wilcoxon Signed Rank Test for Full Data Sets without NDs								
2			User Selected Options									
3			From File	U:\Heather_Brunelle\Libby.wst								
4			Full Precision	OFF								
5			Confidence Coefficient	95%								
6			Substantial Difference	0								
7			Action Level	0								
8			Selected Null Hypothesis	Mean/Median Less Than or Equal to Action Level (Form 1)								
9			Alternative Hypothesis	Mean/Median Greater Than the Action Level								
10												
11	Sensitivity											
12												
13			Single Sample Wilcoxon Signed Rank Test									
14												
15			Raw Statistics									
16			Number of Valid Observations	54								
17			Number of Distinct Observations	39								
18			Minimum	0.000397								
19			Maximum	0.0024								
20			Mean	0.00155								
21			Median	0.00204								
22			SD	0.0007823								
23			SE of Mean	0.0001065								
24			Number Above Limit	54								
25			Number Equal Limit	0								
26			Number Below Limit	0								
27			T-plus	1485								
28			T-minus	0								
29												
30	H0: Site Median <= 2.2000E-4 (Form 1)											
31												
32			Large Sample z-Test Value	6.39								
33			Critical Value (0.05)	1.645								
34			P-Value	8.315E-11								
35												
36	Conclusion with Alpha = 0.05											
37	Reject H0, Conclude Mean/Median > 2.2000E-4											
38	P-Value < Alpha (0.05)											

	A	B	C	D	E	F	G	H	I	J	K	L
1				Single Sample Wilcoxon Signed Rank Test for Full Data Sets without NDs								
2			User Selected Options									
3			From File	U:\Heather_Brunelle\Libby.wst								
4			Full Precision	OFF								
5			Confidence Coefficient	95%								
6			Substantial Difference	0								
7			Action Level	0								
8			Selected Null Hypothesis	Mean/Median Less Than or Equal to Action Level (Form 1)								
9			Alternative Hypothesis	Mean/Median Greater Than the Action Level								
10												
11	Sensitivity Replaced											
12												
13			Single Sample Wilcoxon Signed Rank Test									
14												
15			Raw Statistics									
16			Number of Valid Observations	54								
17			Number of Distinct Observations	32								
18			Minimum	0.00022								
19			Maximum	0.0024								
20			Mean	0.00125								
21			Median	0.000981								
22			SD	0.0009088								
23			SE of Mean	0.0001237								
24			Number Above Limit	40								
25			Number Equal Limit	14								
26			Number Below Limit	0								
27			T-plus	820								
28			T-minus	0								
29												
30	H0: Site Median <= 2.2000E-4 (Form 1)											
31												
32			Large Sample z-Test Value	1.035								
33			Critical Value (0.05)	1.645								
34			P-Value	0.15								
35												
36	Conclusion with Alpha = 0.05											
37	Do Not Reject H0, Conclude Mean/Median <= 2.2000E-4											
38	P-Value > Alpha (0.05)											