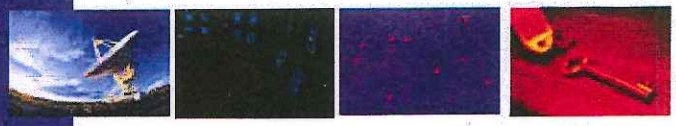
Welcome to the Report Time & Attendance in PeoplePlus Course!

Click on the ***Course Navigation*** menu button on the left side of the screen to learn how to navigate through the course,

or

click on the ***Next*** button on the left hand side of the screen to proceed to the next page.

Attachment A
Declaration of
Richard Gray

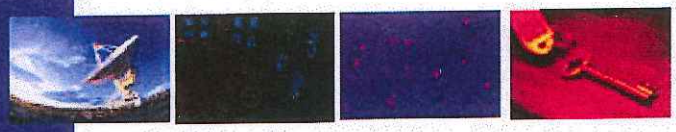


Welcome & Course Overview

Welcome to the Report Time and Attendance in PeoplePlus Course. This course is designed to prepare EPA employees to begin using PeoplePlus to report their time and attendance (T&A) and labor distribution information, electronically. The course will explain and demonstrate the new electronic time reporting process, as well as allow you to practice using the new PeoplePlus system.

Upon completion of this course you should be able to:

- Describe the goals and objectives of the PeoplePlus project
- Define the new PeoplePlus time and attendance reporting process
- Log on and navigate within the PeoplePlus system



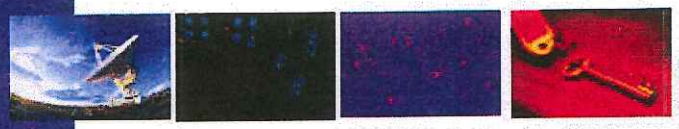
Welcome & Course Overview

Upon completion of this course you should be able to (cont.):

- Enter your time and attendance information for a current, prior or future pay period
- Establish new account information in PeoplePlus if you are an expanded time reporter (Superfund, Oil spills, IT, etc)

At the end of each section, you will have an opportunity to complete several exercises. These exercises are used to reinforce important concepts and allow you to experience completing different tasks in PeoplePlus.

Note: These exercises are based on simulations of the PeoplePlus application only and are designed to demonstrate the specific tasks you will complete in the system. Therefore several functions, such as the TAB and Enter keys are not available in the demonstration, but are available in the live PeoplePlus application.



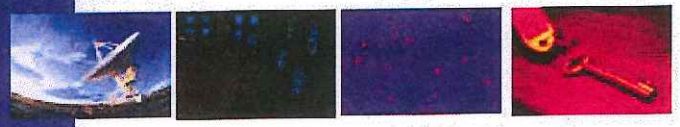
Welcome & Course Overview

Each exercise can be completed in two different modes. The first mode follows a step by step simulation of the procedure. The second method allows you to practice the same procedure but with less guidance and instruction. You should complete the simulation to learn the procedure before attempting to complete the practice exercise.

Hint These exercises are best viewed and completed when you maximize the screen they appear in after they are launched.

The course does not include all the different T&A reporting examples that may occur. Instead the course focuses on more generic examples to demonstrate the process for recording T&A and labor distribution information. Prior to go-live a detailed user guide will be made available to all PeoplePlus users.

It should take approximately 1 hour for you to complete the course. You can take this course as many times as you would like. You should review each topic in the order it is presented as each topic will build upon information presented in earlier topics.



Main Menu

This is the table of contents for the Report Time and Attendance in PeoplePlus course. To begin, please click the "NEXT" button on the left or click on the name of the section where you wish to go.

Welcome & Course Overview

PeoplePlus System Overview

PeoplePlus Time and Attendance Process Overview

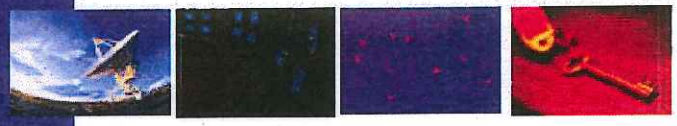
Accessing and Logging onto PeoplePlus

Entering Time and Attendance Data in PeoplePlus

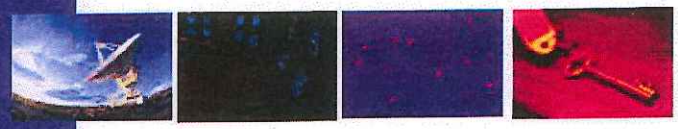
Correcting Time and Attendance Data In PeoplePlus

Process for Reporting Against Superfund Sites, Oil Spills & IT Project Codes

Key Points Overview



PeoplePlus System Overview

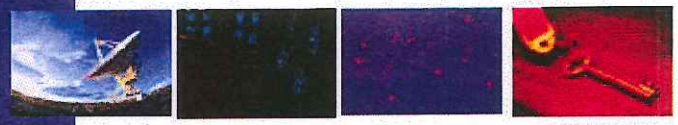


PeoplePlus System Overview

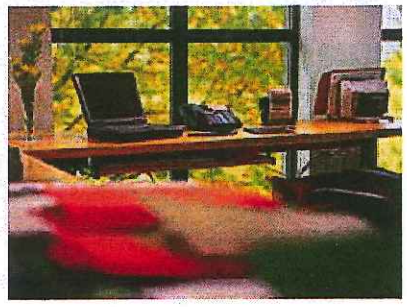
The PeoplePlus project is the EPA's initiative to implement a modern, automated and integrated Human Resources, Benefits, Payroll, Time and Labor System. Undertaken jointly by OARM and OCFO, PeoplePlus will be implemented in October 2003 and will replace a number of existing administrative systems.

The PeoplePlus initiative will deliver significant benefits to the Agency including:

- Ability to record, review and approve time and attendance information online through an integrated web based application.
- Standardized and easier access to accurate human resources and payroll information to better support analysis, reporting, and decision-making processes.



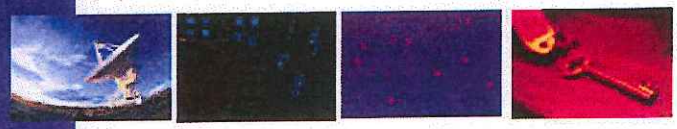
PeoplePlus System Overview



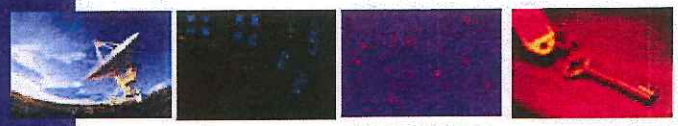
The PeoplePlus initiative will deliver significant benefits to the Agency including (cont.):

- Reduced operating costs.
- Increased system flexibility to more easily adapt to changing needs and requirements from both within and outside the Agency.
- Improved systems security and data integrity.
- Reduced administrative burden for staff involved in time and labor, human resources, and payroll operations.

Hint Procedures for accessing PeoplePlus and information regarding the required PeoplePlus User ID and Password will be distributed in an all employee memo prior to go-live



PeoplePlus
Time & Attendance
Process Overview

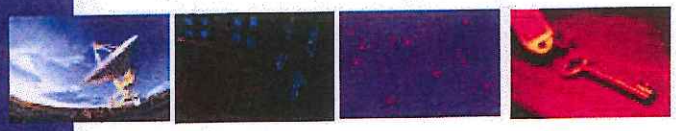


PeoplePlus Time and Attendance Process Overview

The new PeoplePlus system will allow EPA employees to report their time and attendance (T&A) and labor distribution information electronically, thereby eliminating the need for manual processes and hard copy timesheets/cards.

Both timekeepers and supervisors will be able to complete their review and approval of T&A information online. PeoplePlus will also allow you to enter your T&A information up until the close of the pay period, thereby reducing the need for you or your timekeeper to prepare and for payroll to process hard copy correction cards.

PeoplePlus is also designed for use by those employees who need to report their time to specific superfund sites or Oil spills, IT project codes.



PeoplePlus Time and Attendance Process Overview

Those employees who are required to allocate some or all of their time and attendance information to a particular superfund site or project code will have the ability in PeoplePlus to create and use specific account codes. These will be in addition to their FAN, or task profile. You will learn how to do this later in the course in the section titled "Process for Expanded Time Reporters".

Now that you have a general overview of the new PeoplePlus T&A and labor distribution process, you will learn how to log onto PeoplePlus and begin using it to record your T&A information.

Accessing and Logging onto PeoplePlus

Accessing and Logging onto PeoplePlus

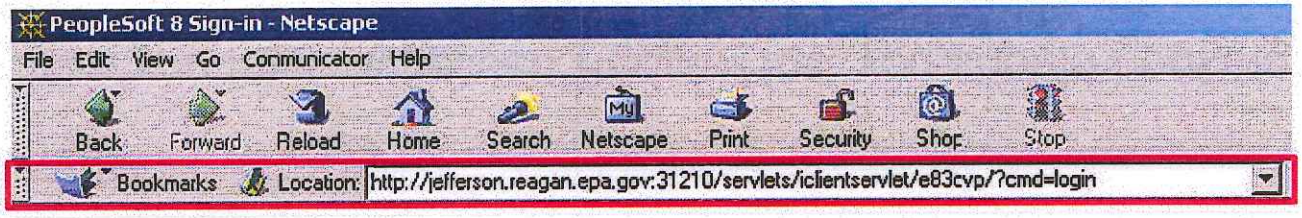
This section will teach you how access, log onto the PeoplePlus system and navigate to the page you will use to record your T&A information.

The next two pages will describe accessing PeoplePlus through either Netscape Navigator or Internet Explorer. You should access PeoplePlus through whichever program you are most comfortable using.

Once you have accessed PeoplePlus, you should bookmark it, or add it to your favourites, so that it is easily accessible.

Accessing and Logging onto PeoplePlus

To access PeoplePlus, open Netscape Navigator, enter the URL that is provided to you at the time of go-live, and hit the enter key on your keyboard.

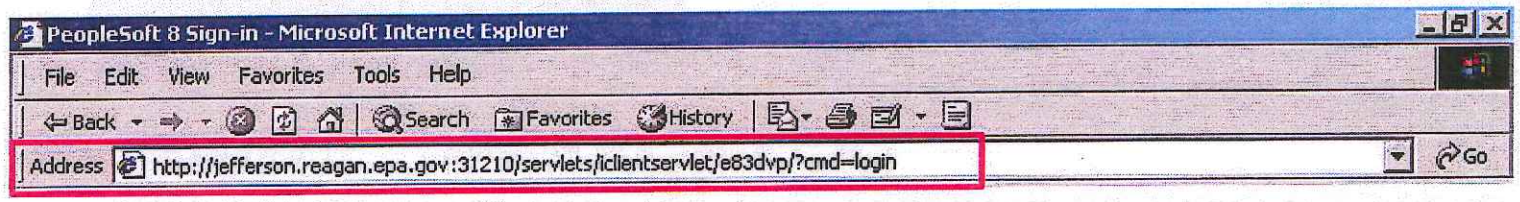


After you have accessed the logon screen, save this address in your Bookmarks by clicking on Bookmarks and then highlighting Add Bookmark.

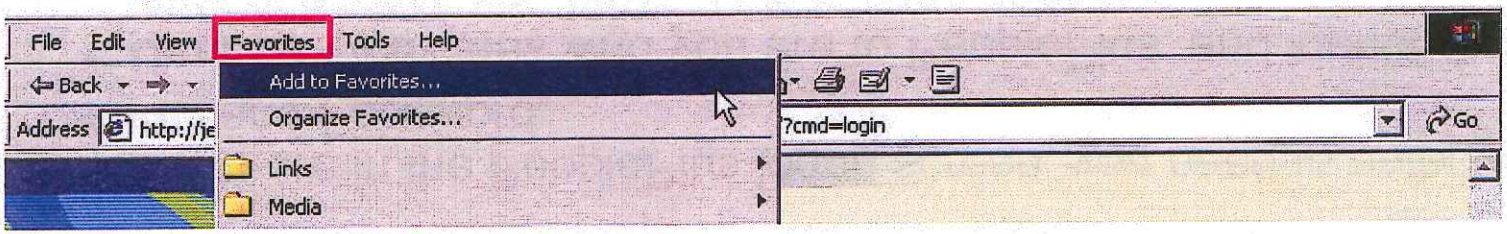
The next time you want to access PeoplePlus, just click Bookmarks, and highlight PeoplePlus.

Accessing and Logging onto PeoplePlus

To access PeoplePlus, open Internet Explorer, enter the URL that is provided to you at the time of go-live, and hit the enter key on your keyboard.



After you have accessed the logon screen, save this address in your Favorites, by clicking on favorites and highlighting Add to Favorites.

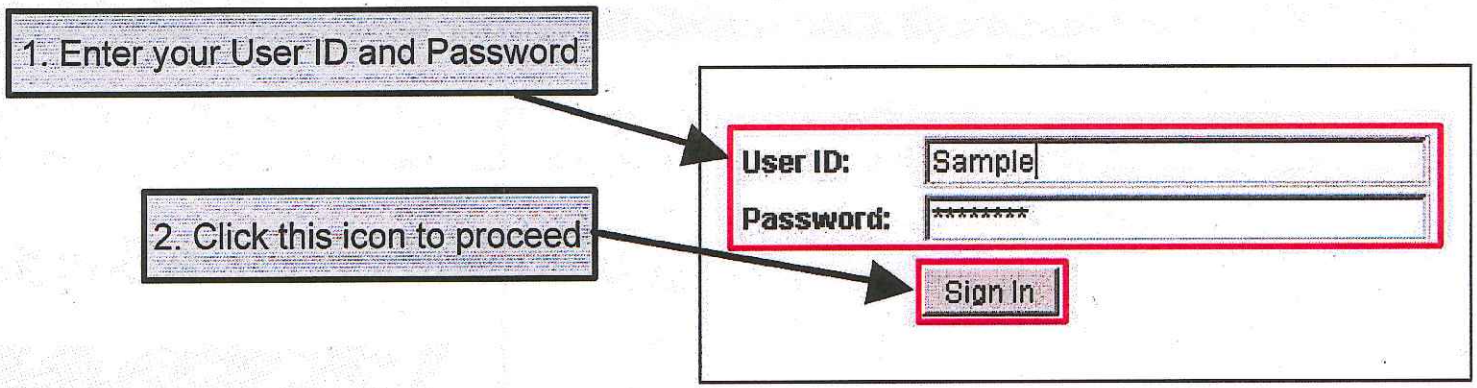


The next time you want to access PeoplePlus, just click your Favorites, and highlight PeoplePlus.

Accessing and Logging onto PeoplePlus

Once you are in the PeoplePlus logon screen, you need to enter your User ID and Password.

- **User ID** - Indicates who you are to PeoplePlus, and identifies the level of access you have. This is case sensitive.
- **Password** - A security feature identifying the user. Please keep your password private to avoid unauthorized log ons. This is case sensitive. As you type your password asterisks will appear in the field.

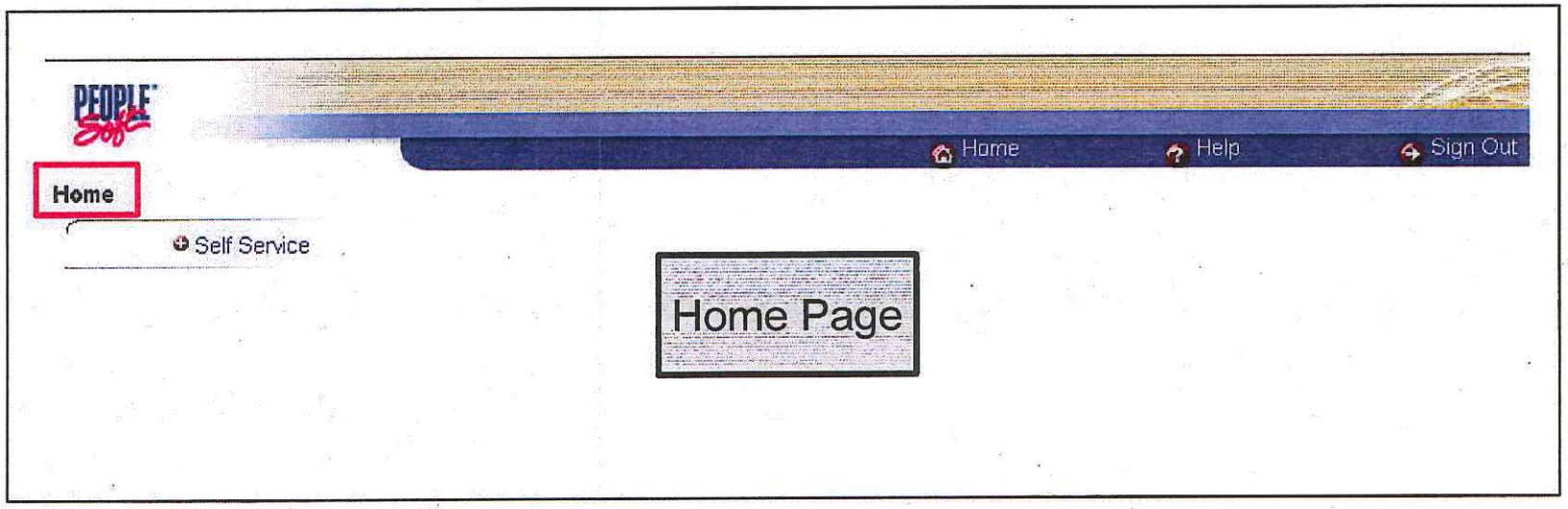


Accessing and Logging onto PeoplePlus

If either the user ID or password is invalid, the system will display an error message below the Sign In button. You will have to reenter the correct User ID and Password or contact your security administrator for assistance.

Accessing and Logging onto PeoplePlus

If your log on information is valid, the system will display the **Home Page**. Please note, that the screen below is applied only for the time reporters. Depends on your role and position in EPA (ex. time keeper, supervisor) you can have more navigational options on the left side of the screen.

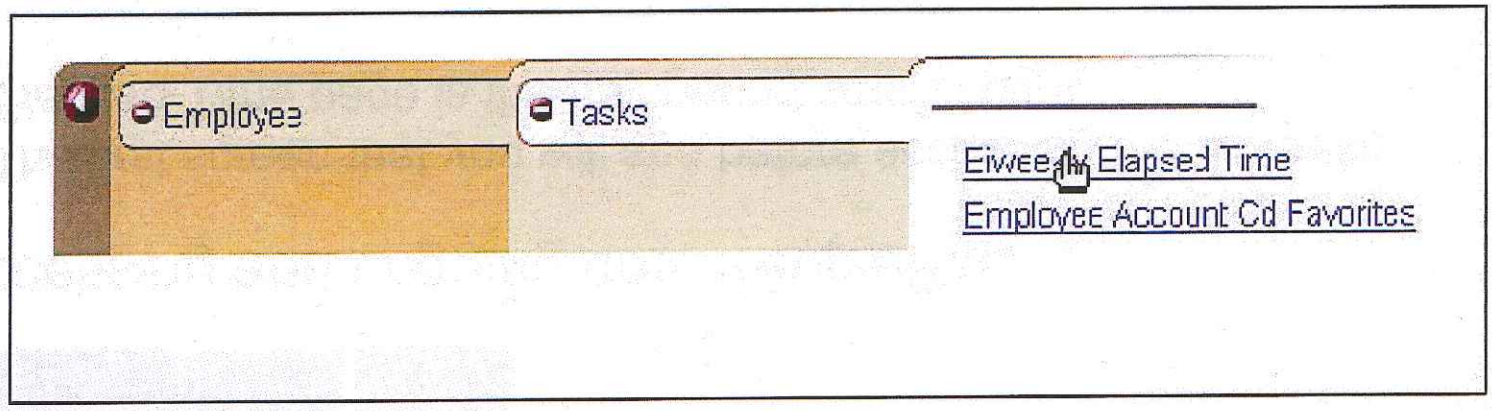


Accessing and Logging onto PeoplePlus

Now that you know how to access and log onto PeoplePlus, we will walk through how to navigate to the *Biweekly Elapsed Time* page. This is the page that you will use each day to enter your T&A and labor distribution information.

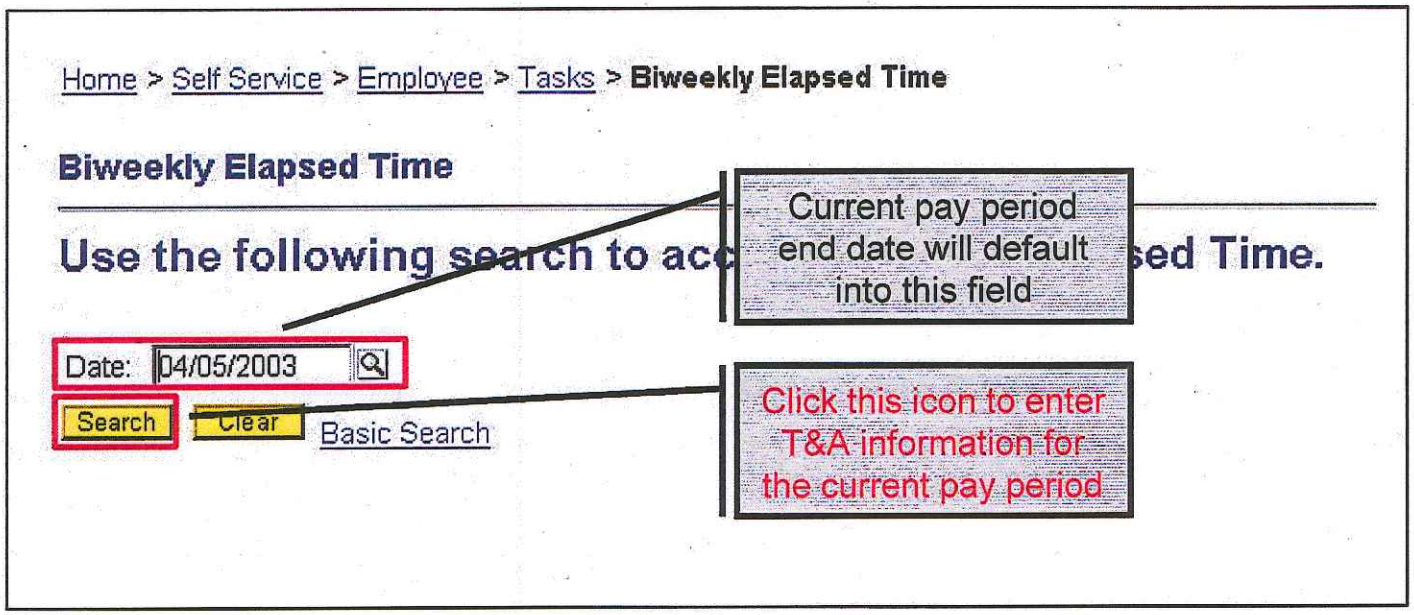
The following menu path will take you to the *Biweekly Elapsed Time* page in PeoplePlus.

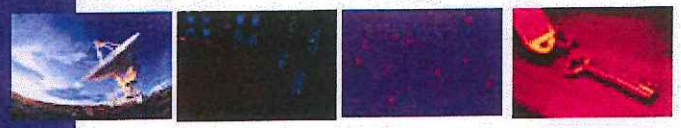
Self Service ➡ Employee ➡ Tasks ➡ Biweekly Elapsed Time



Accessing and Logging onto PeoplePlus

The first screen that you will see before accessing the *Biweekly Elapsed Time* page is the pay period search page.





Accessing and Logging onto PeoplePlus

After selecting the required pay period, the system will display the *Biweekly Elapsed Time* Page.

Biweekly Elapsed Time

Thomas K. Mcneil

Job Title: Junior Speech Writer

Enter or change time reporting data in the table below. Time may also be entered by pressing the "Apply Schedule" pushbutton.
The pushbutton will populate data in the table with time reporting data from the employee's scheduled time definition.
If additional lines for time entry are needed, press the "Add a New Line" pushbutton.

From Sunday 06/15/2003 to Saturday 06/28/2003

Sun 6/15	Mon 6/16	Tue 6/17	Wed 6/18	Thu 6/19	Fri 6/20	Sat 6/21	Sun 6/22	Mon 6/23	Tue 6/24	Wed 6/25	Thu 6/26	Fri 6/27
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Total Hours

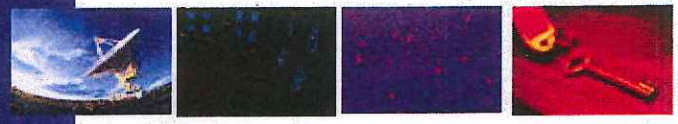
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Period Total
0.00

☐ **Attest and Submit?** ☐ Verify and Submit?

Add a New Line | Apply Schedule | Previous Week | Next Week

Save



Exercise

Lets now complete an exercise that will allow you to access the PeoplePlus home page, log on to the system and navigate to the *Biweekly Elapsed Time* page.

Scenario: It is the end of the day and you need to log onto PeoplePlus in preparation for entering your time and attendance information as part of your daily routine.

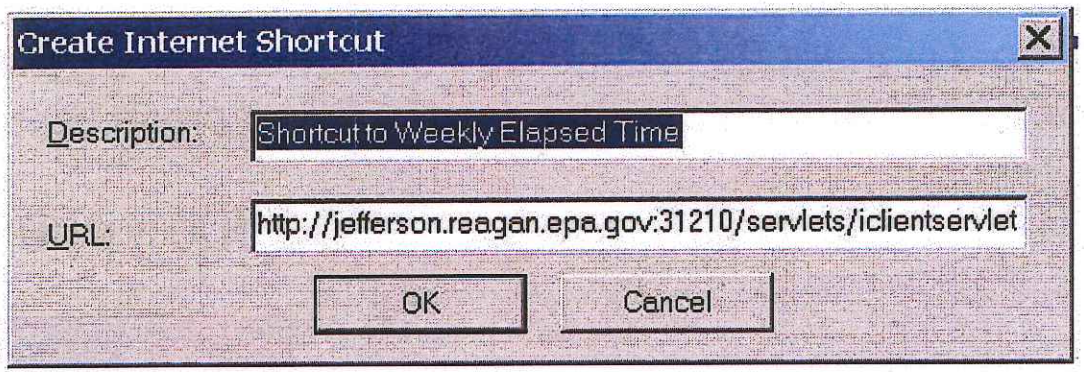
Accessing and Logging onto PeoplePlus

Hint - You can avoid using the full menu path every time you want to record your T&A information by creating a shortcut. To do this, first use the menu path to navigate to the *Biweekly Elapsed Time* page. Once you get there, put your mouse anywhere on the screen and click the right mouse button.

Accessing and Logging onto PeoplePlus

Hint - From the pop up window select **Create Shortcut**. A new screen *Create Internet Shortcut* will appear. In this screen type in the name for your shortcut in the **Description** field and click OK. This will save the shortcut to your desktop.

When you next need to enter your time in the PeoplePlus system, all you have to do is double click on this icon on your desktop, enter your PeoplePlus logon information and the system will take you directly to the time reporting page.



Entering Time & Attendance Data in PeoplePlus

Entering Time and Attendance Data In PeoplePlus

Now that you know how to log on and navigate to the *Biweekly Elapsed Time* page, you will learn how use it to input and complete your T&A and labor distribution information.

Entering Time and Attendance Data In PeoplePlus

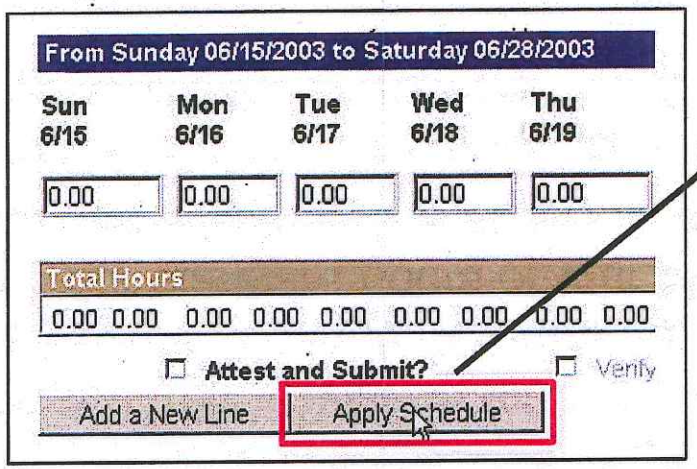
Before we do this, it is necessary for you to understand some of buttons and features on the *Biweekly Elapsed Time* page.

The first of these is the use of the "**Apply Schedule**" button. This button allows you to automatically populate the page with the regular hours you were scheduled to work for each day of the pay period. This saves you from having to manually enter your hours for each day. While you can change this information, if you worked something other than your standard hours or tour of duty, only your Manager or timekeeper can assign a new schedule in PeoplePlus

In many cases, clicking the Apply Schedule button, will be the first step you complete after accessing the *Biweekly Elapsed Time* page.

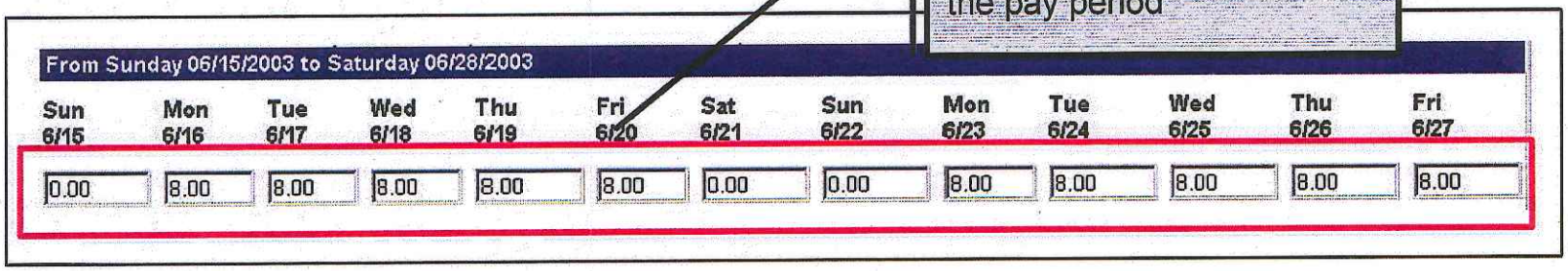
Hint - If the first time you enter your time card, and decide to manually enter and save your hours in any time field, then you can no longer use the "**Apply Schedule**" button for that particular pay period.

Entering Time and Attendance Data In PeoplePlus

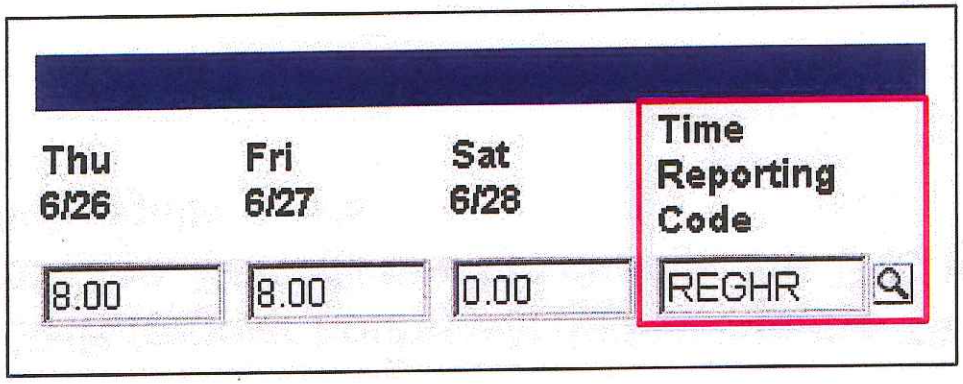


Clicking on this button will apply your default schedule

Your work schedule hours will appear for each day of the pay period



Entering Time and Attendance Data In PeoplePlus



As shown above, there is a separate input field for each day of the pay period on the *Biweekly Elapsed Time* page. You are required to manually input (or through the use of the Apply Schedule button) the number of hours worked for each day. Each row used to record your hours also requires a separate **Time Reporting Code** (TRC).

Entering Time and Attendance Data In PeoplePlus

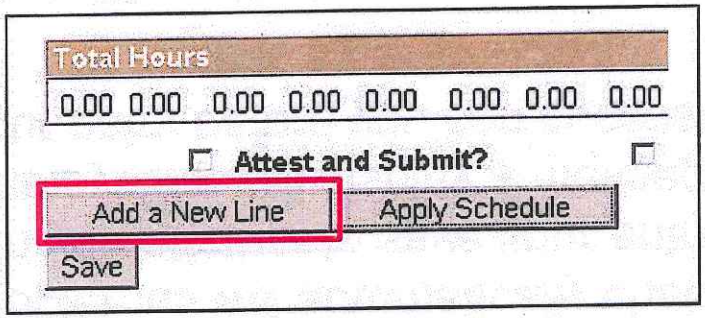
TRC's define the type or category of time your are recording for each day of the pay period. Examples of TRC's include:

- Regular (REGHR)
- Overtime (OVT)
- Annual Leave (ANNL)

Hint - REGHR (regular hours) will default into the **TRC** field in each new inserted line. You will need to change the TRC type to what you need if it not regular hours.

Entering Time and Attendance Data In PeoplePlus

You can insert an additional line in the *Biweekly Elapsed Time* page by clicking the **"Add a New Line"** icon.



You can split time between different TRC types as needed. For example, if you worked 8 hours regular time and 2 hours overtime on Monday , you would have two separate rows with separate TRCs for each.

- 8 hours – REGHR
- 2 Hours – OVT When you save your time, total hours are calculated by the system automatically and appear on the bottom of the time card..

Entering Time and Attendance Data In PeoplePlus

As you complete your time and attendance input for each day, it is important to remember to save your entries. Failure to do so will mean your input is lost when you exist the system.

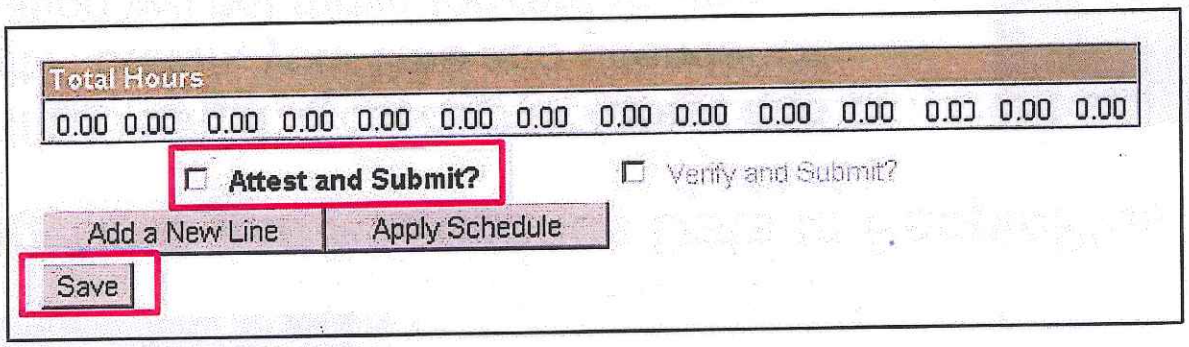
Hint – PeoplePlus will automatically check and validate your T&A input when you attempt to save your entries. Depending on the type of error, the system will display a message that requires you to correct your entry before you can successfully save your T&A input.

Hint - PeoplePlus will also sequence the rows on the *Biweekly Elapsed Time* page alphabetically, based on the TRC, when you first save your input.

Entering Time and Attendance Data In PeoplePlus

The final step, once you have completed inputting your T&A information for each day of the pay period, is to check the "**Attest and Submit?**" button.

Once you click this button, the system will edit your input for the entire pay period and indicate any errors or anomalies in your T&A information. As with any errors that occur in your daily input, the system will require you to correct your T&A information before you can successfully save your input for the pay period.



Entering Time and Attendance Data In PeoplePlus

Hint - If you forget to check the "**Attest and Submit?**" button, your time and attendance information will not move forward to your supervisor for approval nor will it be included in the payroll process.

Entering Time and Attendance Data In PeoplePlus

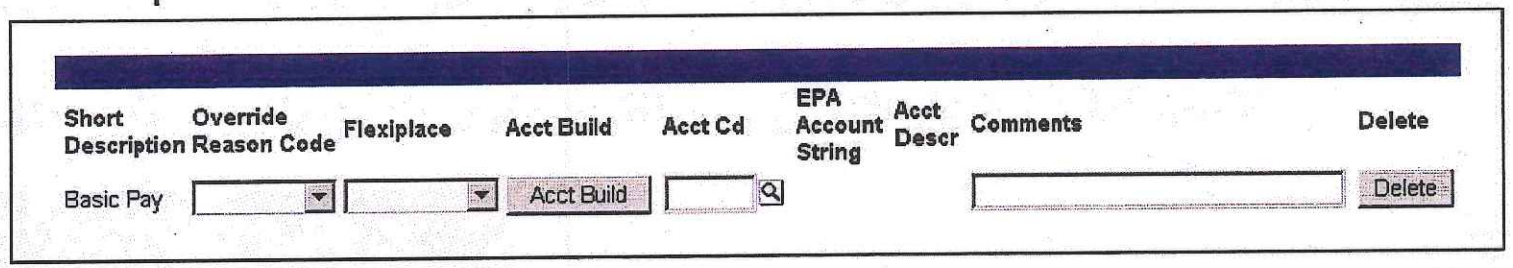
After you complete the "**Attest and Submit?**" checkbox and save your entries, PeoplePlus will not allow you to make any further changes to your T&A information.

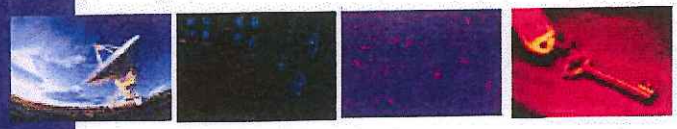
If you have to make a change before the close of the pay period, after you have attested and saved your entries for the current pay period, then PeoplePlus simply requires you to remove the "**Attest and Submit?**" checkmark. Once this is removed you can make the necessary changes, re-attest and save your input.

Entering Time and Attendance Data In PeoplePlus

There are several additional fields you will see on the *Biweekly Elapsed Time* page and can use as necessary:

- **Override Reason Code** – This is used in the case where you have to report the Family Medical Leave Act (FMLA) or Administrative Leave.
- **Flexi Place** – The intent of this field is to allow you to capture the location where your work was performed. This field is optional.
- **Comments** – This is a 254 character free-form optional text field. The intent of this field is to allow you to capture more detailed information if necessary: This field can include the work start and stop time for those who are on the Maxiflex schedule type.





Exercise

Let's now complete an exercise that will allow you to practice using the *Biweekly Elapsed Time* page to enter your T&A data against several different TRC's, attest, save and submit your input.

Scenario: You have worked 8 regular hours according to your schedule and 2 hours of approved overtime and need to enter this data into the time reporting page.

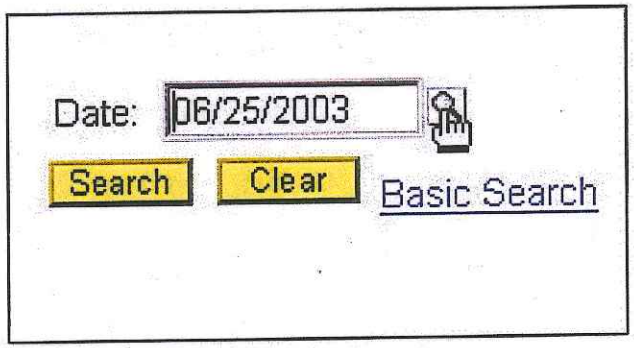
Correcting Time & Labor Data In PeoplePlus

Correcting Time and Attendance Data In PeoplePlus

PeoplePlus also allows you to make changes to a prior pay period, electronically. This is a simple process and is also completed through the *Biweekly Elapsed Time* page.

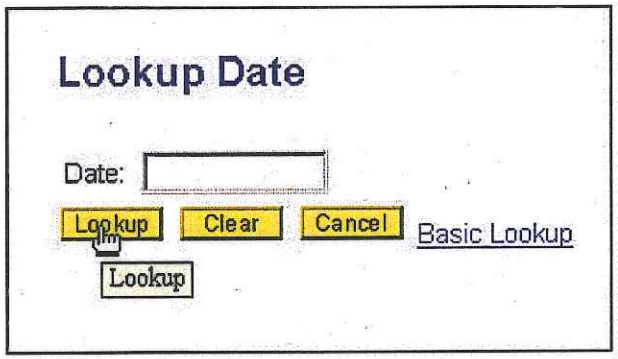
The first step requires you to navigate to the *Biweekly Elapsed Time* page and enter the pay period end date for which you want to make a change.

To find the date you need, you would click on the next to the **Date** field.



Correcting Time and Attendance Data In PeoplePlus

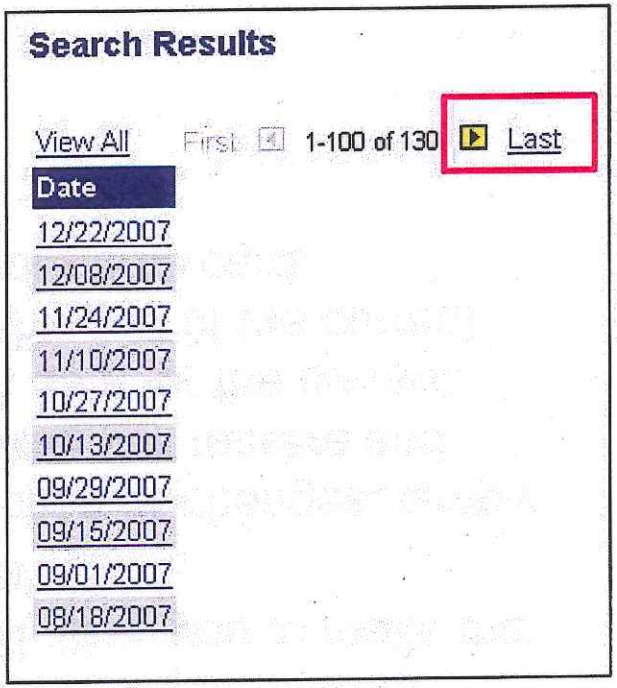
In the new *Look UP* page you would click on the **Lookup** button to search for your date.



Correcting Time and Attendance Data In PeoplePlus

In the next step, you would scroll down and click on the hyperlink for the required pay period.

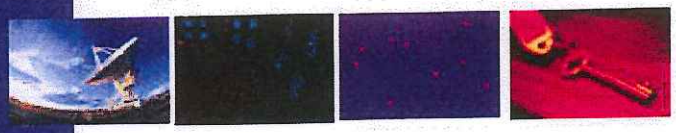
Hint - Since the PeoplePlus page can represent only 100 search results on one screen, to see others click on ▶ to go to the next page until you find the date you require.



Correcting Time and Attendance Data In PeoplePlus

Once you have accessed the correct pay period, you need to remove the attestation checkmark. This will allow you to make the necessary changes to your T&A information.

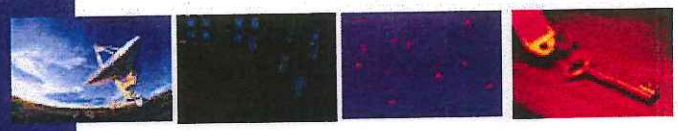
Once you have made the necessary correction or changes, simply re-attest and save your input. Your Supervisor will receive and review these changes along with your T&A data for the current pay period. All changes will take effect by the end of the current pay period in which you are resubmitting your time card.



Exercise

Let's now complete an exercise that will allow you to practice accessing and correcting time and attendance data for a prior pay period in PeoplePlus.

Scenario: You have been informed by your manager, that after reviewing your time card for a prior pay period, you need to change hours allocation in your time card for a certain date.



Process for Expanded Time Reporters

Process for Expanded Time Reporters

This section is intended for those agency employees who are required to report all or part of their T&A information to specific Superfund sites, Oil Spills and/or IT project codes.

Currently, the majority of these employees use the EPA Electronic Time Sheet system (ETS) to report their T&A information. If you are one of these employee, then you will also begin using PeoplePlus to record your T&A and labor distribution information.

Process for Expanded Time Reporters

PeoplePlus has been designed to support the reporting needs of expanded time reporters. This allows all agency employees to use the same system to report and manage their T&A information and accounting distribution requirements.

The specific functionality developed to support the needs of expanded time reporters includes the Account Build button on the *Biweekly Elapsed Time* Page and the Employee Account Code (Cd) Favorites function.

Lets begin by describing each of these Account Build options. The Account Build button on the *Biweekly Elapsed Time* Page is intended for use when you want to create and allocate time to an account(s) for the current pay period only. Creating an account code through this method will not save and store the account code for use in future pay periods.

Process for Expanded Time Reporters

If you intend to re-use a particular account code in future pay periods, then it is recommended that you build and store it through the Account Code Favorites option.

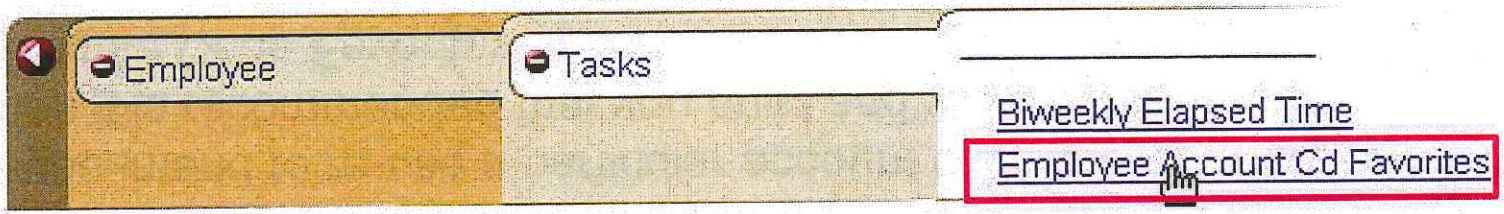
Lets now walk through the procedure and practice using each of these options to build and use different account codes as part of the overall time and labor reporting process. We will begin with the process for building an account code through the Employee Account Code (cd) favorites function.

Process for Expanded Time Reporters

Unlike the Account Build feature on the *Biweekly Elapsed Time* page, this feature allows you to build, store and re-use your account codes for each pay period.

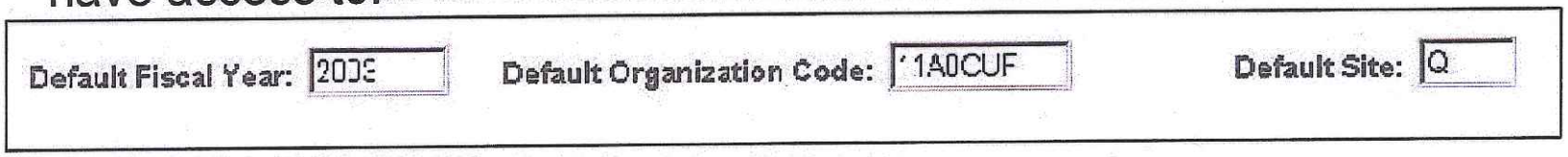
The following menu path will take you to the *Employee Account Cd Favorites* page in PeoplePlus.

Self Service → Employee → Tasks → Employee Account Cd Favorites

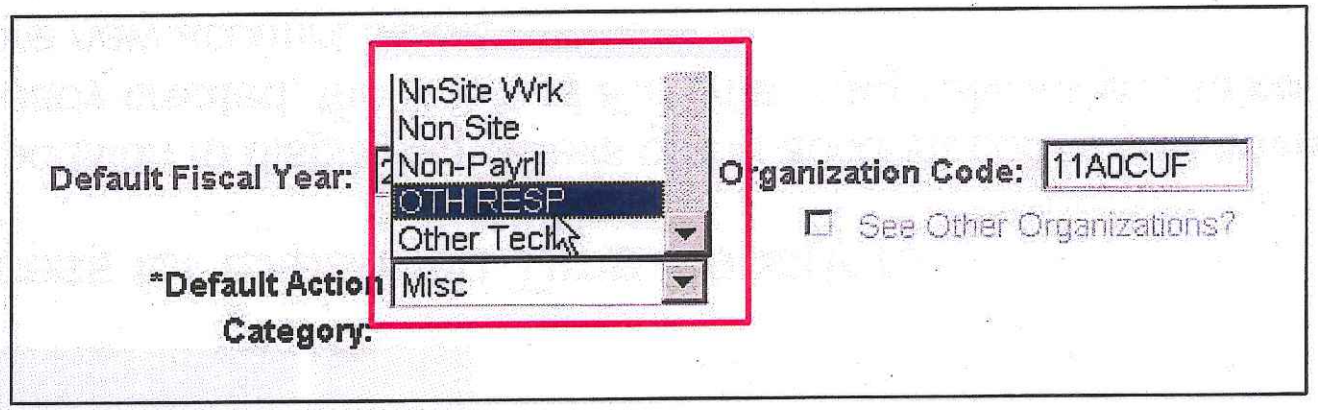


Process for Expanded Time Reporters

The Fiscal Yr, Organizational Code, and Region values are display only and are used to determine the account code information you have access to.



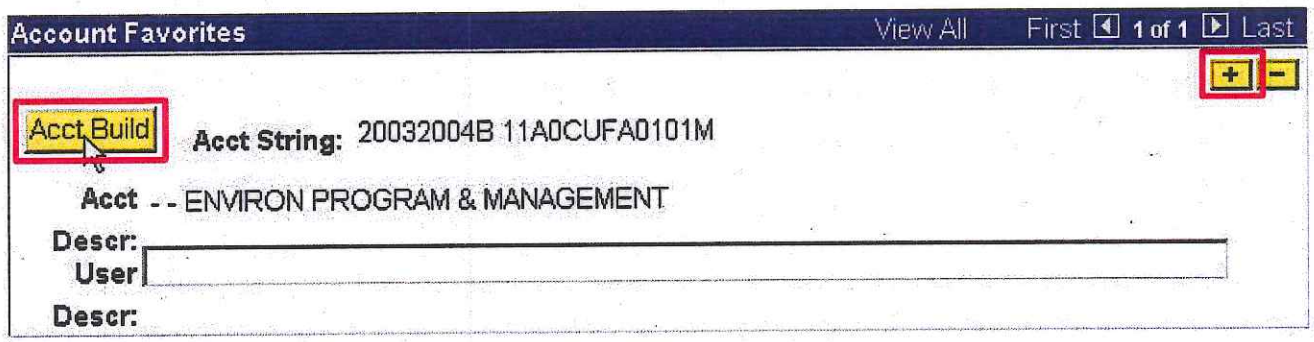
You can use the Default Action Category feature to further define and narrow down the values displayed to you in the different lookup features.



Process for Expanded Time Reporters

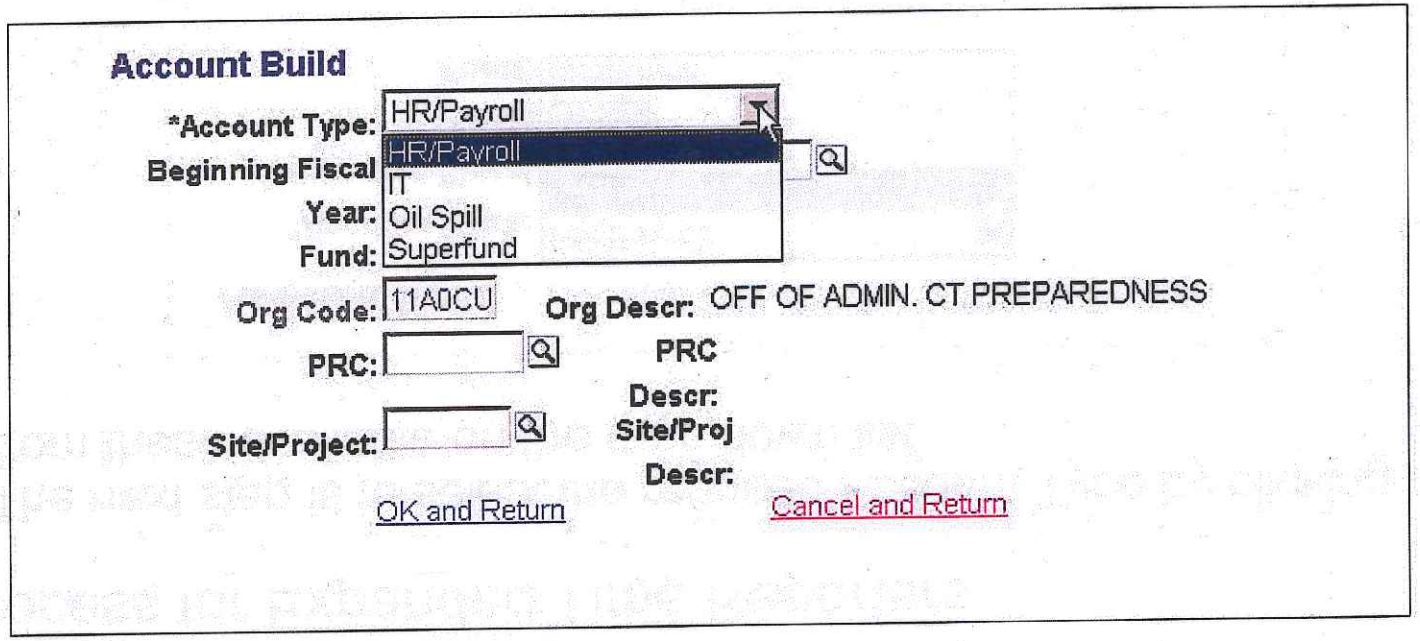
In addition to displaying details of the account codes you have already created, the *Account Favorites* page allows you to build and store new account codes.

The first step in adding a new account code to your favorites list, is to click on the + icon to add a new row. The next step requires you to click the **Acct Build** icon in the new row.



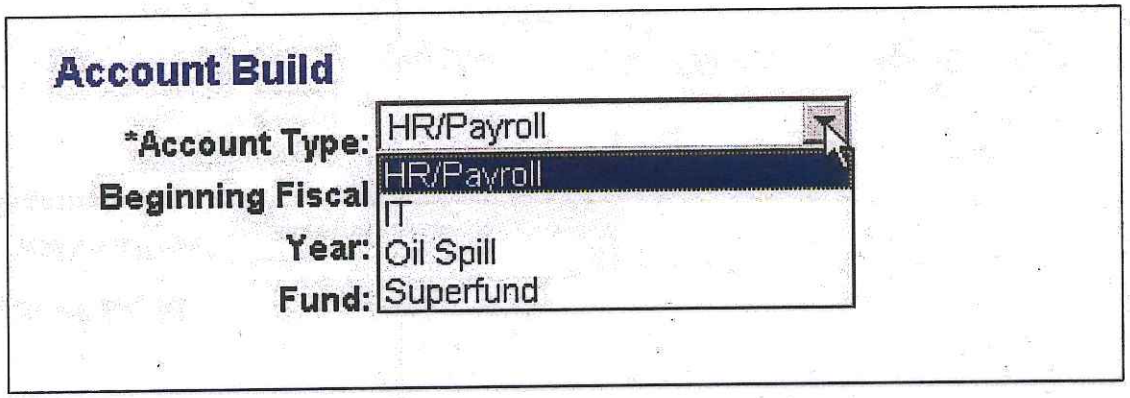
Process for Expanded Time Reporters

After clicking the Account Build button, the system will display the Account Build sub page, as shown below.



Process for Expanded Time Reporters

The next step is to select the required Account Type by clicking on it from those available on the drop down list.



Lets now walk through the procedure and situation for using each of these different Account Types.

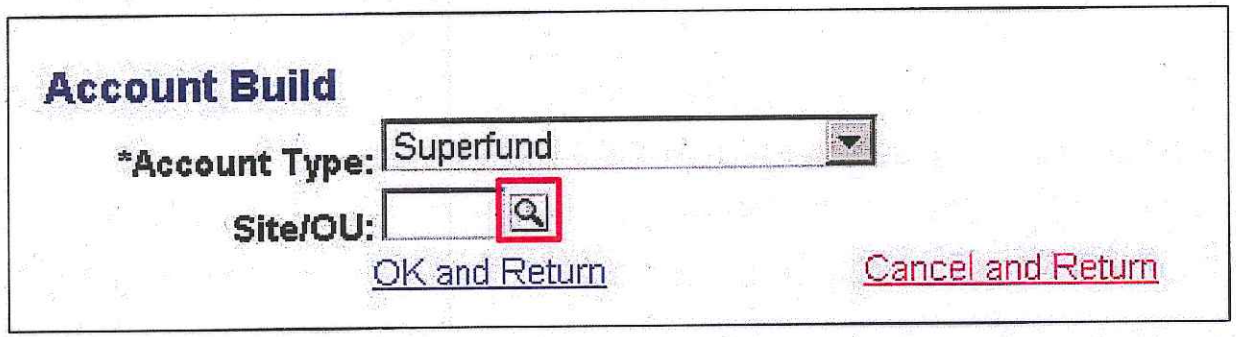
Process for Expanded Time Reporters

The IT, Superfund and Oil Spill account types are designed for use when not all the code values that comprise the account string are known. The pages associated with these account types include expanded lookup and field validation processes that facilitate construction of the required account string.

Let's begin by looking at the process for building a Superfund Account Code through the Account Favorites function and using it as part of the *Biweekly Elapsed Time* page.

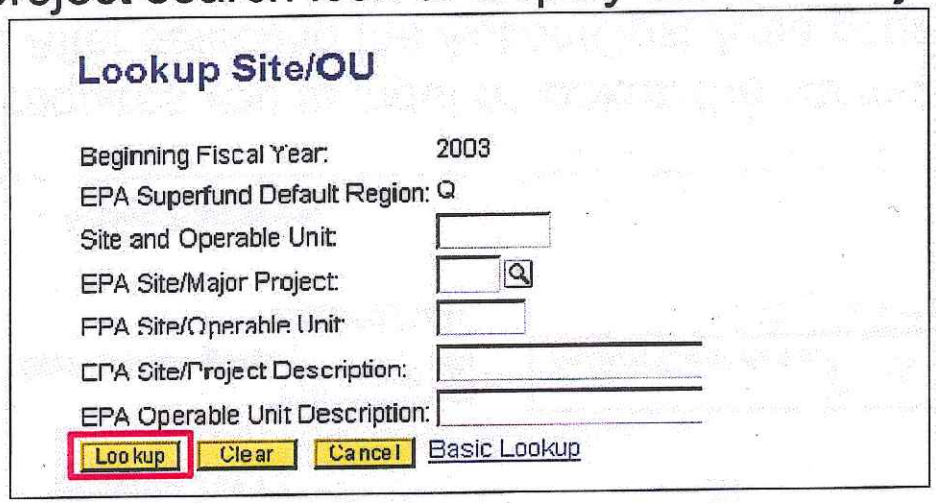
Process for Expanded Time Reporters

The first step, after you have accessed and selected the Superfund Account Type option, is to input or lookup the Site/OU code value. If you don't know the Site/OU value, then click on the magnifying glass to access the *Site/OU Lookup* page.



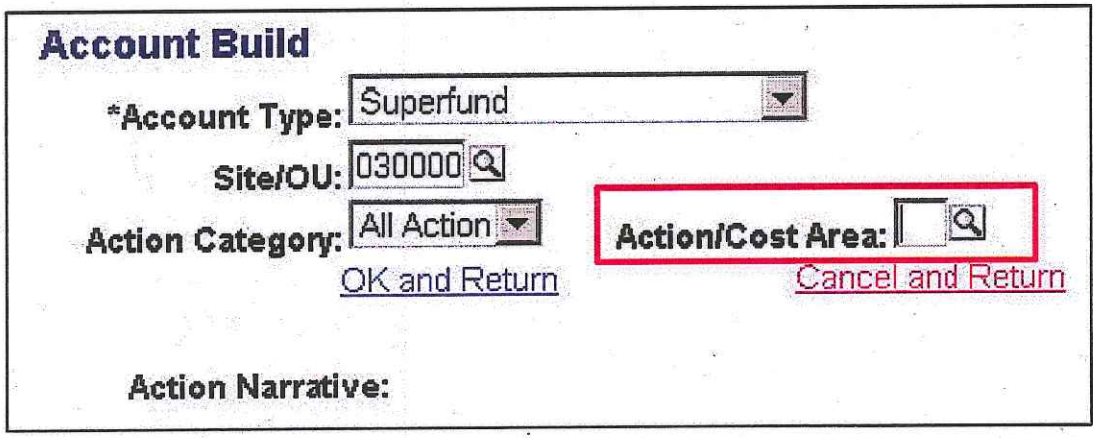
Process for Expanded Time Reporters

If the site/OU code is unknown then you would click on the Site/Major project search icon to display the Site/Major project look up screen.



Clicking on the **Lookup** button will display a list of valid Site/Major project values. **Hint** - This search can be narrowed by entering part of or all the EPA/Site Project Description.Clicking on the required value will return you to the *Account Build* page and populate the Site/OU value.

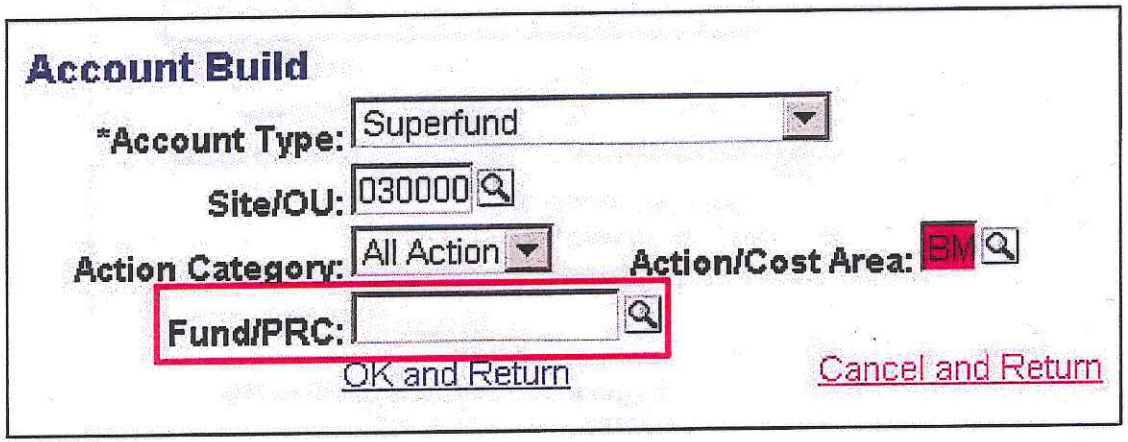
Process for Expanded Time Reporters



Step three requires you to input or lookup the correct **Action/Cost Area** code. After selecting the Action/Cost Area code, the system will display the Action/Cost area Lookup sub page. Clicking on the required Cost Area code will return you to the *Account Build* page.

Hint – The system may display a message that there are multiple Program Results Codes (PRC) for the selected action. You would click **OK** to proceed.

Process for Expanded Time Reporters



The next step requires you to input or select the appropriate Fund/PRC code.

After selecting the Fund/PRC code, the system will populate the FUND, Org Code, PRC, Site Project, Site/Major Proj. values. The full account string will be displayed at the bottom of the page.

Process for Expanded Time Reporters

Account Build

*Account Type: Superfund
Beginning Fiscal Year: 2003
Fund: T Fund Desc: HAZARDOUS SUBSTANCE SUPERFUND
Org Code: 03J Org Descr: POLICY & MGMNT
PRC: 50102D PRC Descr: RSPD TO SF HAZ WSTE STES;OSWER
Site/Project: 0300BM0 Site/Proj Descr:
Site/OU: 030000
Site/Major Project: 0300 Site/Proj Descr:
OU: 00 OU Descr: GENERAL
Action Category: All Action Action/Cost Area: BM
Fund/PRC: T 50102D
Org/PRC:
Account String: 2003 T 03J 50102D 0300BM00

OK and Return Cancel and Return

The next step is to click OK and Return. to return to the *Account Favorites* page and view the new account code entry.

Process for Expanded Time Reporters

EPA Acct Favorites

Account Favorites

First00004390 Last00004390

Empl Rcd#: 0

Default Fiscal Year: 2003 **Default Organization Code:** 11A0CU= **Default Site:** Q

☐ See Other Organizations?

***Default Action Category:** All Action

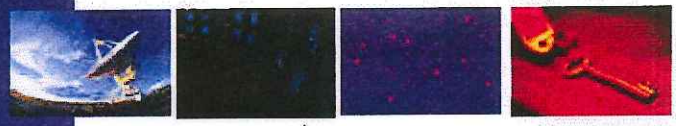
Account Favorites View All First 1 of 1 Last

Acct Build **Acct String:** 20J32004B 1 ´A0CUFA0101M

Acct Descr: -- ENVIRON PROGRAM & MANAGEMENT

User Descr:

Save Return to Search Refresh



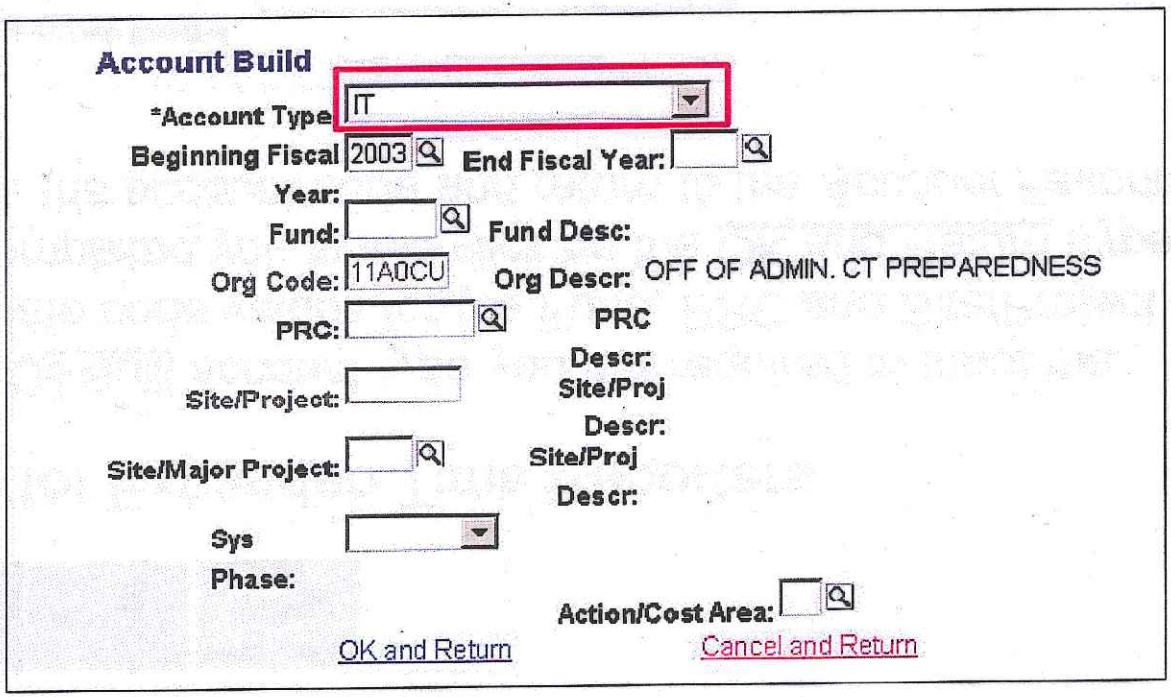
Process for Expanded Time Reporters

The final step, one you have completed all tasks on the favorites page is to click on the **Save** button

To delete an account code from the favorites list, you would click on the icon. To view a full listing of your account favorites, you would click on the View All hyperlink on the top of the **Account Favorites** panel.

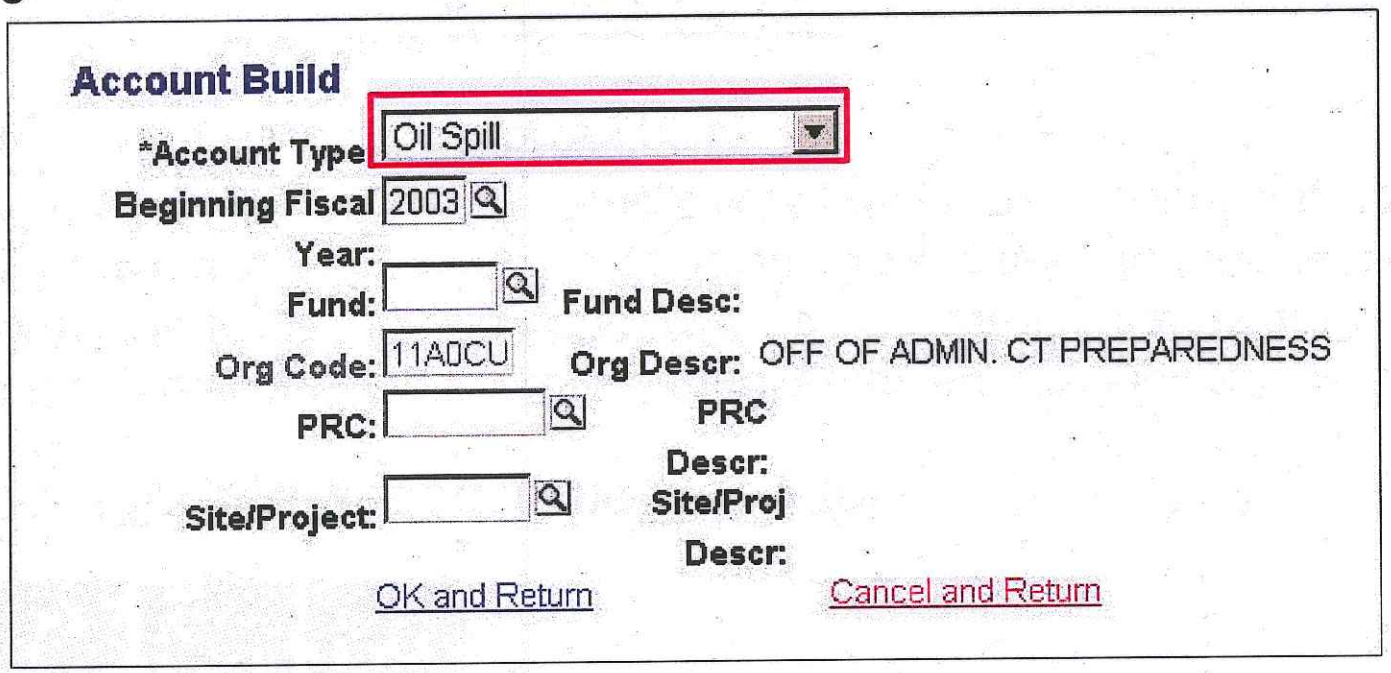
Process for Expanded Time Reporters

For the IT Account type, you are required to input or look up the appropriate values for the Fund, PRC, Site/Project, Site/Major Project, Sys Phase and Action/Cost Area fields. Once completed you would click on the OK and Return hyperlink to create the account code and return to the *Account Favorites* page.



Process for Expanded Time Reporters

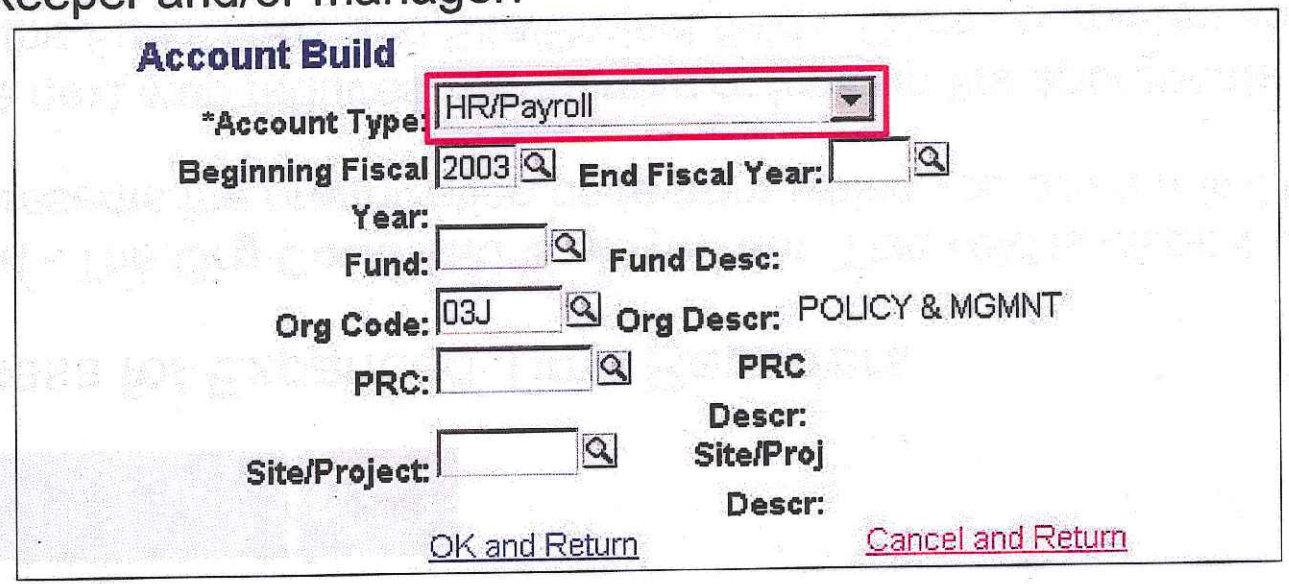
For the Oil Spill account type you are required to input the appropriate code values for the Fund, PRC and Site/Project fields. Once completed you would click on the OK and Return hyperlink to create the account code and return to the *Account Favorites* page.



Process for Expanded Time Reporters

The HR/Payroll account type appears first in the list and also is the default account type when the *Account Build* page is first accessed. The HR/Payroll account type has been designed as a generic account build option. It allows all account types to be created and is intended to be used by program/budget office staff.

Hint The HR/Payroll option is also the only one that will be available when an account code is being created on behalf of an employee by a timekeeper and/or manager.



Process for Expanded Time Reporters

Hint - The **Org Code** field is grayed out. This field is display only and represents the organization code from which you are funded from.

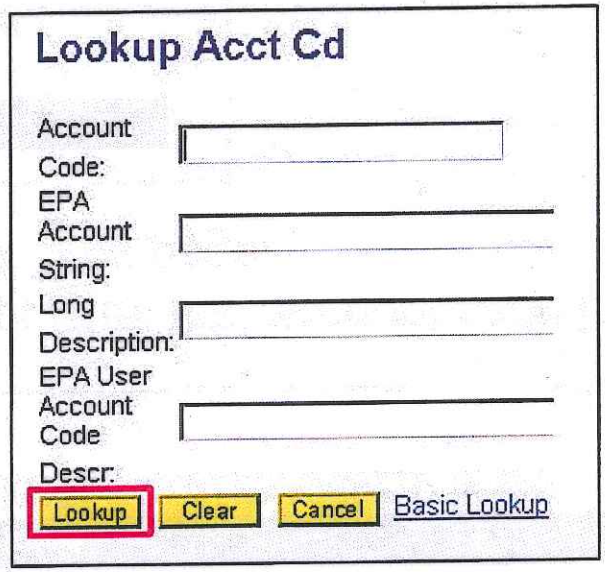
The next step requires you to input or look up the appropriate values for the Fund, PRC and Site/Project fields. Once completed you would click on the OK and Return hyperlink to create the account code and return to the *Account Favorites* page.

Process for Expanded Time Reporters

Let's now review the procedure for using the account code from the favorites page as part of reporting your T&A information on the *Biweekly Elapsed Time* page.

Clicking on the icon next to the **Acct cd** field on the *Biweekly Elapsed Time* page will display the *Lookup Accd Cd* search page.

Clicking on the **Lookup** button on this search page will display a list of all account codes that are stored in your Favorites.



Process for Expanded Time Reporters

Search Results

View All

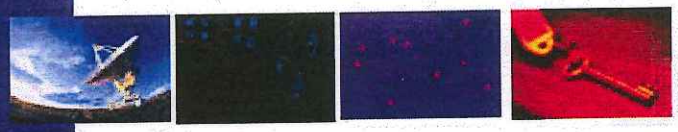
Account Code	EPA Account String	Long Description	EPA User
6434	20032004B 11A0CUFA0101M	- - ENVIRON PROGRAM & MANAGEMENT	(blank)

Clicking on the required account code populates that account code in the selected row on the *Biweekly Elapsed Time* page.

Acct Build	Acct Cd	EPA Account String
Acct Buil	643	20032004B 11A0CUFA0101M

Process for Expanded Time Reporters

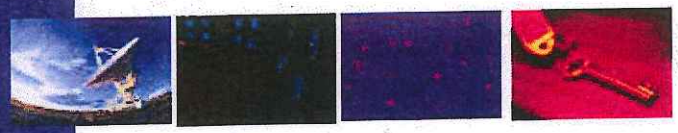
Hint - The procedure for building a new account code through the Account Build function on the *Biweekly Elapsed Time* page, is identical to that used through the Account Favorites function. The Account Build button on the *Biweekly Elapsed Time* Page is intended for use when you want to create and allocate time to an account(s) for the current pay period only. Creating an account through this method will not save and store the account for use in future pay periods



Exercise

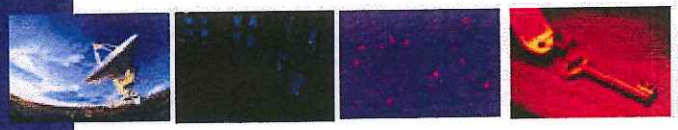
Let's now complete an exercise that will allow you to practice using the account build and favorites features in PeoplePlus.

Scenario: For the current pay period you are required to report five days of regular work hours, one day of annual leave and four days to a new Superfund site. You have not allocated time to this Superfund account code previously, so therefore you are required to create it in your Favorites page and use it as part of your Biweekly Elapsed Time page for the current pay period.



Key Points Overview

- The new PeoplePlus system will allow you to report your T&A and labor distribution information electronically, thereby eliminating the need for manual processes and hard copy timesheets/cards
- PeoplePlus will also allow you to report your T&A information up until the close of the pay period
- PeoplePlus will automatically check and validate your T&A input when you attempt to save your entries
- You must check the "Attest & Submit" box after you have entered all your T&A information for the pay period. The failure to do so will mean your T&A information is not available for approval or inclusion in the PeoplePlus payroll process



Key Points Overview

- PeoplePlus is also designed for use by those employees who need to report their time to specific superfund sites or Oil spills, IT project codes
- The specific functionality developed to support the needs of expanded time reporters includes the Account Build button on the *Biweekly Elapsed Time* Page and the Employee Account Code (Cd) Favorites function

DOCUMENTATION CODES FOR COSTS EXCLUDED FROM THE OVERSIGHT BILL

Case Attorneys, RPMs and OSCs, please use this form when reviewing and commenting on costs in the draft oversight bill. SFD personnel should sign below and return the hardcopy with the bill to Denise Ratliff, the Oversight Bill Coordinator. Attorneys should sign and return the hardcopy and bill to PAAS via interoffice mail or fax. **(Copy, Sign & Return)**
Ck code that fit, Thank you

Site Name United Scrap Lead **SSID** 05H5
Please check the appropriate box and provide details when needed.

A. _____ I agree with the costs listed and have made no changes to the bill

B. X I disagree with some of the costs listed for the following reasons:

Reason Codes:
- 01 _____ Insufficient financial documentation from the Region
- 02 _____ Insufficient financial documentation from HQs
- 03 _____ Insufficient financial documentation from RTP
- 04 _____ Insufficient financial documentation from CFC
- 05 _____ Insufficient financial documentation from LVFC
- 06 _____ ORC/DOJ determination
- 07 X Costs not within the definition of the enforcement instrument
- 08 _____ Costs to be pursued in other enforcement actions
- 09 _____ Accounting error - adjustment in the accounting system
- 10 _____ DOJ costs (IAG costs for specified IAGs).
- 11 _____ Insufficient work performed documentation
- 12 _____ Other

See reverse side for explanation of codes. Please use the appropriate reason code (such as 01, 02, etc.) on the draft bill next to each cost item that needs to be disallowed.

Please note: R5 takes an aggressive approach and generally will supplement missing or incomplete documentation with either testimony or other supporting documentation. Because a given cost may meet one of the given definitions does not necessarily mean it has to be removed from a bill. This is a decision for the case management team as part of the normal oversight review process.

Reviewed by Sherry L. Estes **Date** 9/12/11

(please continue on another sheet if more space is required)

Attachment A

Documentation Codes	Explanation
01	**Absence of or insufficient financial documentation from the Region** Code 01 is used when financial documents from the region are missing and can not be located after following search procedures. Missing documents may include either paper and/or a SCORPIOS Generated Report (SGR). Code 01 may be used if documentation is incomplete or insufficient. (e.g., payroll and travel documents)
02	**Absence of or insufficient financial documentation from Headquarters (HQs)** Code 02 is used when financial documents from HQs are missing and can not be located after Following search procedures. Missing documents may include either paper and/or a SCORPIOS Generated Report (SGR). Code 02 may be used if documentation is incomplete or insufficient. (e.g. payroll and travel documents)
03	**Absence of or insufficient financial documentation from Research Triangle Park (RTP)** Code 03 is used when financial documents from RTP are missing and can not be located after following search procedures. Missing documents may include either paper and/or a SCORPIOS Generated Report (SGR). Code 03 may be used if documentation is incomplete or insufficient. (e.g., contract and vendor payments)
04	**Absence of or insufficient financial documentation from Cincinnati Finance Center (CFC)** Code 04 is used when financial documents from CFC are missing and can not be located after following search procedures. Missing documents may include either paper and/or a SCORPIOS Generated Report (SGR). Code 04 may be used if documentation is incomplete or insufficient. (e.g., IAG, and travel documents)
05	**Absence of or insufficient financial documentation from Las Vegas Finance Center (LVFC)** Code 05 is used when financial documents from LVFC are missing and can not be located after following search procedures. Missing documents may include either paper and/or a SCORPIOS Generated Report (SGR). Code 05 may be used if documentation is incomplete or insufficient. (e.g., Superfund Cooperative Agreements)
06	**ORC/DOJ Determination** Code 06 is used when costs are not pursued due to a legal reason as determined by ORC and/or DOJ, after consultation with the site team. Legal reasons may include SOL, CERCLA § 107 liability, insufficient evidence for prima facie case, costs for work efforts inconsistent with NCP. (R5 ORC should seek a DOJ cost summary so that DOJ determines what costs are recoverable under which cases and/or oversight bills)
07	**Costs not within the definition of the Enforcement Instrument** Code 07 is used when the costs are not billable under the language of the enforcement billing Instrument (e.g., AOC, Consent Decree) as determined by ORC and/or DOJ, after consultation with the site team. Enforcement instrument language to be considered are definitions for Site, ROD, Past Response Costs, Reservations and Covenants-not-to-sue. Code 07 is used only when the future billing of these costs is not planned.
08	**Costs to be pursed in other enforcement actions** Code 08 is used when the costs are not billable under the language of the enforcement billing Instrument (e.g., AOC, Consent Decree) as determined by ORC and/or DOJ, after consultation with the site team. Enforcement instrument language to be considered are definitions for Site, ROD, Past Response Costs, Interim Response Costs, Future Response Costs, Reservations and Covenants-not-to-sue. Code 08 is used when the costs not billed will be considered for billing or will be sought in another planned enforcement action.
09	**Accounting Error—adjustment in the accounting system** Code 09 is used for costs requiring adjustment in the accounting system in accordance with financial policies and procedures. (Generally this will be either wrong amounts recorded or wrong SSIDs used)
10	**DOJ Costs** Code 10 is used for DOJ costs that are removed from a Cost Report Package (CRP). The EPA Policy states that DOJ costs noted in the system as drawdown payments pursuant to the EPA/DOJ IA shall be removed. At such time as a DOJ Letter Report is received, DOJ costs will be included in an updated package for the cost recovery purposes.
11	**Absence of or insufficient work performed documentation** Code 11 is used when costs are removed because the work performed documents (e.g., Progress Reports, TDDs, IAs, Contracts) are missing, incomplete or insufficient.
12	**Other** Code 12 is a catch-all documentation category. The system will require that a reason statement be entered. (R5 must consult with HQ prior to using this code as we should be using the other 10 codes where they best fit).

Itemized Cost Summary Verification

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

REGIONAL PAYROLL COSTS	$28,267.36
REGIONAL TRAVEL COSTS	$1,654.08
SUPERFUND COOPERATIVE AGREEMENT (SCA)	
OHIO EPA (V98568704)	$526.85
TECHNICAL SERVICE AND SUPPORT	
ASRC MANAGEMENT SERVICES, INC. (EPW05052)	$1,384.68
MISCELLANEOUS COSTS (MIS)	$49.10
EPA INDIRECT COSTS	$20,009.20
Total Site Costs:	$51,891.27

Regional Payroll Costs Verification

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

Employee Name	Fiscal Year	Pay Period	Office Code	Payroll Hours	Payroll Costs	Site Project	CRP Number
BARNES, SHEILA	2010	12	05M	1.00	47.87	05H5PC00	130663
FINANCIAL SPECIALIST		13	05M	1.00	47.87	05H5PC00	130663
		26	05M	8.00	382.93	05H5PC00	130663
		27	05M	1.50	72.19	05H5PC00	130663
	2011	01	05M	1.00	47.67	05H5PC00	130663
		02	05M	1.50	71.81	05H5PC00	130663
		04	05M	8.00	382.93	05H5PC00	130663
				22.00	$1,053.27		
BOENZI, FRANK A.	2011	04	05F	8.00	502.10	05H5LT00	130663
CIVIL INVESTIGATOR		05	05F	44.00	2,761.54	05H5LT00	130663
				52.00	$3,263.64		
CO, GRACE	2011	04	05F	1.00	51.12	05H5LT00	130663
ENFORCEMENT SPECIALIST							
				1.00	$51.12		
ESTES, SHERRY L.	2010	11	05D	5.25	430.53	05H5LT00	130663
GENERAL ATTORNEY		12	05D	1.50	123.01	05H5LT00	130663
		13	05D	3.25	266.51	05H5LT00	130663
		14	05D	7.50	630.82	05H5LT00	130663
		15	05D	3.50	294.40	05H5LT00	130663
		16	05D	8.75	735.98	05H5LT00	130663
		17	05D	27.00	2,271.01	05H5LT00	130663

OK

Take out all "LT" codes
Leave in all "PS" codes

Regional Payroll Costs Verification

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

Employee Name	Fiscal Year	Pay Period	Office Code	Payroll Hours	Payroll Costs	Site Project	CRP Number
ESTES, SHERRY L.	2010	18	05D	0.25	21.03	05H5PS00	130663
		18	05D	5.00	420.56	05H5LT00	130663
		19	05D	1.00	84.10	05H5LT00	130663
		20	05D	2.50	210.28	05H5LT00	130663
		21	05D	0.50	42.06	05H5LT00	130663
		22	05D	4.75	406.78	05H5LT00	130663
		23	05D	1.00	84.12	05H5LT00	130663
		24	05D	0.25	21.03	05H5LT00	130663
		26	05D	0.75	63.08	05H5LT00	130663
	2011	01	05D	0.75	61.95	05H5LT00	130663
		02	05D	0.75	63.34	05H5PS00	130663
		02	05D	3.25	274.42	05H5LT00	130663
		03	05D	11.00	900.64	05H5LT00	130663
		04	05D	12.00	968.91	05H5LT00	130663
		04	05D	0.50	40.37	05H5PS00	130663
		05	05D	2.00	161.49	05H5LT00	130663
		06	05D	0.75	60.57	05H5LT00	130663
		08	05D	2.50	217.09	05H5LT00	130663
		09	05D	1.00	84.78	05H5PS00	130663
		09	05D	3.25	275.57	05H5LT00	130663
		10	05D	4.75	402.74	05H5LT00	130663
				115.25	$9,617.17		
GARBER, DEBORAH	2011	02	05D	1.00	81.61	05H5NG00	130663

Regional Payroll Costs Verification

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

Employee Name	Fiscal Year	Pay Period	Office Code	Payroll Hours	Payroll Costs	Site Project	CRP Number
SUPV GENERAL ATTORNEY	2011	03	05D	1.50	122.42	05H5NG00	130663
		04	05D	1.75	142.81	05H5NG00	130663
				4.25	$346.84		
HACKLEY, RICHARD D.	2011	04	05M	2.25	159.75	05H5PC00	130663
ACCOUNTANT							
				2.25	$159.75		
HERRING, MARGARET E.	2010	11	05F	3.25	198.90	05H5LT00	130663
INVESTIGATOR		14	05F	2.00	122.40	05H5LT00	130663
		15	05F	2.00	122.40	05H5LT00	130663
		17	05F	6.00	367.20	05H5LT00	130663
		18	05F	20.00	1,224.01	05H5LT00	130663
		19	05F	4.50	275.40	05H5LT00	130663
		20	05F	8.00	489.61	05H5LT00	130663
	2011	04	05F	2.00	122.41	05H5LT00	130663
		05	05F	48.00	2,937.63	05H5LT00	130663
		06	05F	17.00	1,040.41	05H5LT00	130663
		08	05F	1.00	61.35	05H5LT00	130663
		09	05F	20.00	1,227.22	05H5LT00	130663
				133.75	$8,188.94		
HILL, LOLITA A.	2011	03	05F	4.00	270.30	05H5BF00	130663

Regional Payroll Costs Verification

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

Employee Name	Fiscal Year	Pay Period	Office Code	Payroll Hours	Payroll Costs	Site Project	CRP Number
ENVIRONMENTAL ENGINEER							
				4.00	$270.30		
JOHNSON, DELORIS	2010	19	05D	1.00	56.10	05H5BB00	130663
PARALEGAL SPECIALIST	2011	09	05D	2.00	114.92	05H5BB00	130663
		10	05D	2.00	114.17	05H5BB00	130663
				5.00	$285.19		
JONES, TERESA	2010	18	05F	0.25	15.30	05H5IJ00	130663
ENV.PROTECTION SPECIALIST	2011	04	05F	0.25	15.36	05H5IJ00	130663
				0.50	$30.66		
KYTE, LAWRENCE W.	2010	15	05D	0.50	42.78	05H5LT00	130663
SUPERVISORY GENERAL ATTORNEY							
				0.50	$42.78		
MARKS, THOMAS C.	2010	11	05F	0.25	18.64	05H5PC00	130663
SUPV ENVIRONMENTAL PROTECTION SPEC							
				0.25	$18.64		
PODOWSKI, ANDREW A.	2010	26	05F	1.00	73.69	05H5RD01	130663
TOXICOLOGIST							
				1.00	$73.69		

Regional Payroll Costs Verification

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

Employee Name	Fiscal Year	Pay Period	Office Code	Payroll Hours	Payroll Costs	Site Project	CRP Number
SIDLO, JULIE A.	2010	17	05M	1.25	78.02	05H5PC00	130663
THURBER, JULIE A.		18	05M	19.50	1,217.14	05H5PC00	130663
OPERATING ACCOUNTANT		19	05M	4.50	288.87	05H5PC00	130663
	2011	03	05M	20.50	1,323.00	05H5PC00	130663
		04	05M	1.00	64.44	05H5PC00	130663
		06	05M	4.75	306.10	05H5PC00	130663
		07	05M	6.00	386.65	05H5PC00	130663
		08	05M	12.00	775.21	05H5PC00	130663
		09	05M	4.00	258.40	05H5PC00	130663
				73.50	$4,697.83		
VLCEK, LANCE L.	2010	20	05F	2.00	134.37	05H5BZ00	130663
INVESTIGATOR							
				2.00	$134.37		
WILLIS, DOROTHY L	2010	13	05D	1.00	33.17	05H5LT00	130663
SUGGS-WILLIS,							
SECRETARY (TYPING)							
				1.00	$33.17		
Total Regional Payroll Costs				418.25	$28,267.36		

Report Date: 08/04/2011
Report Time: 05:48 PM

Headquarters Payroll Costs Verification

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

Employee Name	Fiscal Year	Pay Period	Office Code	Payroll Hours	Payroll Costs	Site Project	CRP Number

Report Date: 08/04/2011
Report Time: 05:48 PM

Regional Travel Costs Verification

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

Traveler/Vendor Name	Travel Number	Fund Code	Treasury Schedule Date	Travel Costs	Site Project	CRP Number
BOENZI, FRANK A.	0R63N2	T	12/15/2010	1,654.08	05H5LT00	130663
CIVIL INVESTIGATOR						
				$1,654.08		
Total Regional Travel Costs				$1,654.08		

Headquarters Travel Costs Verification

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

Traveler/Vendor Name	Travel Number	Fund Code	Treasury Schedule Date	Travel Costs	Site Project	CRP Number

Contract Costs Verification

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

SUPERFUND COOPERATIVE AGREEMENT (SCA)

State Agency: OHIO EPA

SCA Number: V98568704

Project Officer(s): Glynis Landers

Dates of Service: From: 04/01/2009 To: 03/31/2011

Summary of Service:

Total Costs: $526.85

Drawdown Number	Drawdown Date	Drawdown Amount	Fund Code	Schedule Date	Site Amount	Site Project	CRP Number
311334820CV	08/04/2010	14,507.07	TCD	08/04/2010	204.71	05H5MA00	130663
311334820CV	09/01/2010	143.72	TCD	09/01/2010	47.56	05H5MA00	130663
311334820CV	10/07/2010	37,422.80	T	10/07/2010	274.58	05H5MA00	130663
				Total:	$526.85		

DOCUMENTATION CODES FOR COSTS EXCLUDED FROM THE OVERSIGHT BILL

Case Attorneys, RPMs and OSCs, please use this form when reviewing and commenting on costs in the draft oversight bill. SFD personnel should sign below and return the hardcopy with the bill to Denise Ratliff, the Oversight Bill Coordinator. Attorneys should sign and return the hardcopy and bill to PAAS via interoffice mail or fax. **(Copy, Sign & Return)**

Ck code that fit, Thank you

Site Name United Scrap Lead **SSID** 05H5

Please check the appropriate box and provide details when needed.

A. X I agree with the costs listed and have made no changes to the bill

B. _____ I disagree with some of the costs listed for the following reasons:

Reason Codes:

01 _____ Insufficient financial documentation from the Region

02 _____ Insufficient financial documentation from HQs

03 _____ Insufficient financial documentation from RTP

04 _____ Insufficient financial documentation from CFC

05 _____ Insufficient financial documentation from LVFC

06 _____ ORC/DOJ determination

07 _____ Costs not within the definition of the enforcement instrument

08 _____ Costs to be pursued in other enforcement actions

09 _____ Accounting error - adjustment in the accounting system

10 _____ DOJ costs (IAG costs for specified IAGs).

11 _____ Insufficient work performed documentation

12 _____ Other

See reverse side for explanation of codes. Please use the appropriate reason code (such as 01, 02, etc.) on the draft bill next to each cost item that needs to be disallowed.

Please note: R5 takes an aggressive approach and generally will supplement missing or incomplete documentation with either testimony or other supporting documentation. Because a given cost may meet one of the given definitions does not necessarily mean it has to be removed from a bill. This is a decision for the case management team as part of the normal oversight review process.

Reviewed by Sherry L. Estes **Date** 9/22/2011

(please continue on another sheet if more space is required)

ISSUED TO:

Booz Allen Hamilton Inc
8283 Greensboro Drive
McLean, VA 22102-3838

ISSUED BY:
The Federal Systems Integration and Management Center (FEDSIM)
Metro Park
6354 Walker Lane
Alexandria, VA 22310

March 7, 2006

TASK ORDER NUMBER: GST0006AJA028
GSA Contract Number:GS09K99BHD0002

Database Management/Program Support

IN SUPPORT OF:

Environmental Protection Agency
Superfund Division – Region 5

FEDSIM Project Number 25333EPM-0001

Attachment B

SECTION B – SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 GENERAL DESCRIPTION

The Contractor shall perform the effort required by this Task Order on a Time and Materials (T&M) basis. The Time consists of labor hours needed to perform tasks while the Materials consist of ODC's for conference calls and Travel for required conferences. Travel shall be conducted in accordance with the Federal Travel Regulations. The ceiling price for Materials shall include any fixed Indirect Handling Rate, if applicable. The work shall be performed in accordance with all sections of this Task Order and the Contractor's ANSWER contract, under which the resulting Task Order will be placed.

B.2 SERVICES AND PRICES/COSTS

The following abbreviations are used in this price schedule:

(NTE) Not To Exceed
(CLIN) Contract Line Item Number
(ODC) Other Direct Cost

The following CLINS are associated with this task order:

- *Technical Labor* – CLINs 0001, 1001, 2001, 3001, 4001
- *Travel* – CLINS 0002, 1002, 2002, 3002, 4002
- *ODCs* - CLINs 0003, 1003, 2003, 3003, 4003

For labor, the pricing schedules in Section B shall reflect fully burdened rates that the Offeror is proposing under the Task Order, as bound by the maximum rates per the ANSWER Contract. The fully burdened labor rates shall be inclusive of profit, fringe benefits, salary and indirect rates.

Travel and ODC costs incurred may be burdened with the Contractor's indirect handling rate as entered in the schedule (contractor to enter amount, but not to exceed the ceiling rate of the basic contract). **If no rate is specified in the schedule, no indirect rates shall be applied to or reimbursed on such costs. If no rate is specified in the contract, none shall be applied.**

For all CLINs, the NTE ceiling amount represents the Government's liability. The Contractor exceeds the ceiling at its own risk.

B.2.1 BASE PERIOD

LABOR CLIN

CLIN	Labor Category/ Description	Labor Hours		Labor Rate		NTE Ceiling
0001	Technical Labor			$		$725,906.65

TRAVEL CLIN

CLIN	Description		Total Ceiling Price
0002	Travel	NTE	$4,020.10
	includes Indirect Handling Rate 8.7%		

ODC CLINs

CLIN	Description		Total Ceiling Price
0003	ODCs	NTE	$939.74
	includes Indirect Handling Rate 8.7%		

B.2.2 FIRST OPTION PERIOD

LABOR CLIN

CLIN	Labor Category/ Description	Labor Hours		Labor Rate		NTE Ceiling
1001	Technical Labor			$		$874,207.84

TRAVEL CLIN

CLIN	Description		Total Ceiling Price
1002	Travel	NTE	$2,716.83
	includes Indirect Handling Rate 8.7%		

ODC CLINs

CLIN	Description		Total Ceiling Price
1003	ODCs	NTE	$2,161.99
	includes Indirect Handling Rate 8.7%		

B.2.3 SECOND OPTION PERIOD

LABOR CLIN

CLIN	Labor Category/ Description	Labor Hours		Labor Rate		NTE Ceiling
2001	Technical Labor			$		$1,129,501.99

TRAVEL CLIN

CLIN	Description		Total Ceiling Price
2002	Travel	NTE	$12,965.51
	includes Indirect Handling Rate 8.7%		

ODC CLINs

CLIN	Description		Total Ceiling Price
2003	ODCs	NTE	$2,595.34
	includes Indirect Handling Rate 8.7%		

B.2.4 THIRD OPTION PERIOD

LABOR CLIN

CLIN	Labor Category/ Description	Labor Hours		Labor Rate		NTE Ceiling
3001	Technical Labor			$		$1,179,849.25

TRAVEL CLIN

CLIN	Description		Total Ceiling Price
3002	Travel	NTE	$13,436.43
	includes Indirect Handling Rate 8.7%		

ODC CLINs

CLIN	Description		otal Ceiling Price
3003	ODCs	NTE	$2,595.34

	includes Indirect Handling Rate 8.7%		

B.2.5 FOURTH OPTION PERIOD

LABOR CLIN

CLIN	Labor Category/ Description	Labor Hours		Labor Rate		NTE Ceiling
4001	Technical Labor	12,675		$_____		$1,197,783.05

TRAVEL CLIN

CLIN	Description		Total Ceiling Price
4002	Travel	NTE	$13,963.19
	includes Indirect Handling Rate 8.7%		

ODC CLINs

CLIN	Description		Total Ceiling Price
4003	ODCs	NTE	$2,595.34
	includes Indirect Handling Rate 8.7%		

B.2.6 CUMULATIVE CLIN TABLE

CLINS		Total Price	
0001, 1001, 2001, 3001, 4001 – Technical Labor	NTE	$5,107,248.78	
0002, 1002, 2002, 3002, 4002 – Travel	NTE	$ 47,102.06	
0003, 1003, 2003, 3003, 4003 – ODCs	NTE	$ 10,887.75	
Total Task Order NTE		$5,165,238.59	

B.3 INCREMENTAL FUNDING

B.3.1 INCREMENTAL FUNDING LIMITATION OF GOVERNMENT'S OBLIGATION

(a) Incremental funding for CLINS 0001, 0002, 0003, 1001, 1002, 1003. 2001, 2002 2003, 3001,3002, and 3003 is currently allotted and available for payment by the Government. For these item(s), the sum of **$3,942,460.23** of the total cost/price is presently available for payment and allotted to this task order. The estimated period of performance covered by the allotments is from date of award through **April 30, 2010**. The Task Order will be modified to add funds incrementally up to the maximum of **$5,165,238.59** over the performance period of

this TO. These allotments constitute the estimated cost for the purposes of FAR Clause 52.232-22, Limitation of Funds, which applies to this Task Order on a CLIN-by-CLIN basis.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor will not be obligated to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the task order for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (i) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (i) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (i) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of task order performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the task order will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this task order and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once

the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this task order pursuant to the clause of the underlying contract entitled "Termination for Convenience of the Government."

(i) The parties contemplate that the Government will allot funds to this task order in accordance with the following schedule:

CLIN	ESTIMATED NTE AMOUNT	FUNDED NTE AMOUNT	REMAINING BALANCE
0001 Technical Labor	$ 725,906.65	$ 725,906.65	$ -
0002 Travel	$ 4,020.10	$ 4,020.10	$ -
0003 ODCs	$ 939.74	$ 939.73	$ 0.01
1001 Technical Labor	$ 874,207.84	$ 874,207.84	$ -
1002 Travel	$ 2,716.83	$ 2,716.83	$ -
1003 ODCs	$ 2,161.99	$ 2,161.99	$ -
2001 Technical Labor	$ 1,129,501.99	$ 1,129,501.99	$ -
2002 Travel	$ 12,965.51	$ 12,965.51	$ -
2003 ODCs	$ 2,595.34	$ 2,595.34	$ -
3001 Technical Labor	$ 1,179,849.25	$ 1,179,849.25	$ -
3002 Travel	$ 13,436.43	$ 5,000.00	$ 8,436.43
3003 ODCs	$ 2,595.34	$ 2,595.00	$ 0.34
4001 Technical Labor	$ 1,197,783.05	$ -	$ 1,197,783.05
4002 Travel	$ 13,963.19	$ -	$ 13,963.19
4003 ODCs	$ 2,595.34	$ -	$ 2,595.34
TOTAL	$ 5,165,238.59	$ 3,942,460.23	$ 1,222,778.36

C.1 PURPOSE

The purpose of this Task Order is to provide Contractor services in support of Information Technology (IT) requirements within the EPA's Superfund Division (SFD), Region 5.

C.2 BACKGROUND

C.2.1 AGENCY MISSION/OVERVIEW

The mission of the EPA is to protect human health and preserve natural resources; prevent and abate pollution to improve the environment; serve the public with environmental education, innovation, action and results. One of the ways to facilitate a healthier environment is through the remediation and/or removal of hazardous waste material, which is currently under the purview of the EPA's SFD.

The EPA established its SFD in 1980. The SFD was initiated in response to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). CERCLA created a tax on the chemical and petroleum industries and provided broad federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. Over the first six years (1980-1985) of CERCLA implementation, the Government established standard guidelines for enforcing waste liability and remediation, but more work was needed. Hence, the Superfund Amendments and Reauthorization Act (SARA) of 1986 amended CERCLA; this amendment provided revisions to CERCLA, including: a focus on more effective, permanent hazardous waste remediation solutions; a larger budget for SFD programs. The result of CERCLA/SARA has been a growing national cleanup effort, with FY 2005 obligations of $524 million dedicated to cleaning up hazardous waste sites.

To effectively enforce hazardous waste regulations, the EPA operates the SFD regionally. There are 10 Superfund regions in total; each region is responsible for monitoring its own hazardous waste program. This requirement is confined to Region 5 (headquartered in Chicago, Illinois), which manages the six Great Lake states – Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin. In addition to the basic EPA mission, the SFD Region 5 strives to restore and protect the Great Lakes and all Midwestern ecosystems.

The SFD at Region 5 operates under dynamic conditions. Specifically, priorities often change as certain waste monitoring projects become more critical than others. As a result, the support team (including the Contractor) is often tasked with activities which are in response to a new, immediate concern, as opposed to routine activities. For example, the program often has to respond swiftly to Congressional inquiries about a new, potentially dangerous waste area. Also, there are requests for information which originate from EPA staff as well as via the Freedom of Information Act (FOIA) for ad-hoc reports that can contain any number of different statistics about the SFD and its projects. In essence, the program must direct its attention to the tasks which are most critical at any given time.

The information management requirements of the SFD are extensive in scope/detail and continue to rise. Most of the requirements come from the nature of the program itself. Superfund is a costly regulatory program that implements risk-based decisions with advanced technology, high local impact, significant public involvement and widespread potential liability. Up-to-date information is needed on plans and accomplishments in order to: make strategic decisions; evaluate and report progress; take any corrective actions needed; to plan the financial requirements on a site-specific basis for the current year and the next two out-years.

Geographic data is now being routine collected, analyzed and displayed in maps to support site-specific and program-wide decisions. Data in geographic format with accurate hazardous waste site locations, demographic considerations (such as populations and socioeconomic factors), land use and habitat data are now required. In addition, the Groundwater Evaluation and Optimization System (GEOS) helps handle thousands of geophysical parameters, sample analysis records for soil, water/air contaminants and ties the data to a location at the hazardous waste site.

Superfund faces an increasing public demand for data. In addition to the traditional reports on site activities, managers are being asked to relate site details in narrative format, e.g., "Success Stories," for members of the public and legislative officials.

Information security is paramount. While most Superfund records are open to public review, certain enforcement records shall remain confidential until action is taken. Similarly, documents that support agency decisions before they have been finalized are traditionally exempt from disclosure. A small amount of Superfund data is protected by the Privacy Act or as proprietary (i.e., confidential business information). Nevertheless, all data shall remain intact, uncorrupted and free from unauthorized disclosure.

Given the level of demand, data quality shall be superior in every respect. Data shall be accurate, timely and readily accessible to the people who need it (within and outside EPA). The data shall be meaningful to the user and arrive in a common sense format that is sufficiently documented. Superfund data has many uses, including to: create legislation or assign individual liability; ease the minds of homeowners; preserve the health of whole communities; determine the appropriate cleanup technology; and cause real estate transactions to fail. These are just some of the decisions that are made everyday with Superfund information.

C.2.2 SUPERFUND CLEANUP PROCESS

The Superfund cleanup process begins with site discovery or notification to EPA of possible releases of hazardous substances. Sites are discovered by various parties, including citizens, State agencies and EPA Regional offices. Once discovered, sites are entered into the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS), which is the EPA's national database instance containing all potential hazardous substance release sites. EPA then evaluates the potential for a release of hazardous substances from the site through these steps in the Superfund cleanup process:

1) Preliminary Assessment / Site Inspection – investigation of site conditions

2) Hazard Ranking System (HRS) Scoring – this is a screening mechanism used to place sites on the National Priorities List (NPL)
3) NPL Site Listing – listing of the most serious sites identified for possible long-term cleanup.
4) Remedial Investigation / Feasibility Study (RI/FS) – determines the nature and extent of the contamination
5) Records of Decision (ROD) – explains which cleanup alternatives will be used at the NPL sites
6) Remedial Design / Remedial Action (RD/RA) – preparation and implementation of plans and specifications for applying site remedies
7) Construction Completion – identifies completion of cleanup activities
8) Post Construction Completion – ensures the Superfund response actions provide for the long-term protection of human health and the environment

C.2.3 TECHNICAL ENVIRONMENT

C.2.3.1 Users

All users within the SFD Region 5 environment have an IBM-compatible desktop computer; most have an Intel Pentium 4 processor with at least 512 megabytes of RAM and at least one fixed disc drive with a minimum 10 gigabytes of storage space. All desktop computers are wired to a 100 megabit/second Ethernet, Local Area Network (LAN), through a clustered-server environment with an attached Storage Area Network (SAN). Additional file severs which contain special applications are accessible through a fiber optic facility backbone.

There are one or two Macintosh computers and one or two Sun microcomputers in the division for specialized graphic and geographic applications, respectively. In addition, there are several notebook computers available for field staff and supervisors; some On-scene coordinators (OSCs) use a notebook with a port replicator and a separate monitor at the desktop. All workstations run Microsoft Windows XP. The network operating system is primarily Novell Netware 6x; some servers, however, use Microsoft Windows 2000 or Microsoft Windows 2003.

C.2.3.2 CERCLIS/WasteLAN Database

Each region in the SFD has a database application entitled WasteLAN (the Contractor shall be responsible for SFD Region 5's WasteLAN application) which serves as the data repository for SFD programs/projects within its purview. In addition to analyzing/monitoring cleanup efforts, the database provides for: alternative analysis of hazardous waste remedies; documentation of waste removal site characteristics; project management; and program management. Each night, the regional database instances are replicated into the national headquarters instance of the database - entitled CERCLIS (mentioned above in the Superfund Cleanup Process) – so that national reports contain accurate, updated information.

Note: Due to the replication process, the regional instance of the database shall conform to the structure/schema of the national database instance. Any schema additions/changes to the database shall require EPA Headquarters approval.

The first generation (CERCLIS 1) of the application was purely a mainframe application, accessed through terminals and PC's with terminal emulation. The second generation (CERCLIS 2) was a hybrid of mainframe/desktop with Foxbase/FoxPro used on the front-end (as a user interface) to manage the data locally, with a corresponding upload of data to the mainframe at regular intervals. Currently CERCLIS 3, the application is a client/server Oracle9i database with a PowerBuilder user interface. The user interface is spread across three Citrix servers located in Research Triangle Park (RTP), N.C. RTP also houses 11 database servers – one for the CERCLIS Headquarters Production Instance of the database and 10 more for each regional WasteLAN Production Instance of the database. CERCLIS 4 (yet to be released) will be entirely web-based. The next version of CERCLIS will be renamed the Superfund Enterprise Management System (SEMS). Headquarters is currently in the planning phase of developing a new system (prototype) that consolidates CERCLIS, Superfund Document Management System (SDMS), and the Institutional Controls Tracking System (ICTS) providing a common platform for the Superfund data/document contained within the major systems and enabling common business processes and workflows. In the future all CERCLIS functionality and data will be contained within SEMS. EPA Headquarters is planning for the requirements gathering and development of SEMS over the next several years

The WasteLAN application consists of nine modules, all of which the Contractor shall be responsible for maintaining: Site Information, Site Assessment, Federal Facilities, Enforcement, Removal, Community Involvement, Remedy Selection, Project Management and Program Management. Project Management and Program Management are currently the two modules in heavy use at Region 5. All modules are described in more detail under C.5.2 WasteLAN Module Support.

C.2.3.3 Application Software

In addition to CERCLIS/WasteLAN, the Contractor shall interact with and/or provide support for the following applications throughout the life of the Task Order:

Regional Applications:

- *Enforcement Action Response System (EARS)* – This is a regional application that tracks Potentially Responsible Party (PRP) data and provides capability to print enforcement letters to the PRPs.
- *FOIALog* – This is a Region 5 application that tracks Freedom of Information Act (FOIA) requests..
- *Bill Tracking System (BTS)* – This is a Region 5 application that tracks oversight bills.
- *Facility Compliance Tracking System (FCTS)* – This is a regional application that manages Spill Prevention Control and Counter (SPCC) measures and Facility Response Plans (FRP) data.

- *Groundwater Evaluation and Optimization System (GEOS)* – This is a Region 5 application that allows an interface to various statistical tools.
- *Pipeline Budget Information Tracking System (PBITS)* – This is a Region 5 application that helps the SFD budget its Pipeline funds.

Headquarters Applications

- *Integrated Compliance Information System (ICIS)* – This is a Headquarters application that tracks compliance data.
- *Institutional Control Tracking System (ICTS)* – This is a Headquarters application that tracks institutional controls data.
- *ReportLink* – This is a Headquarters application that runs and shares regionally developed reports.
- *Superfund Document Management System (SDMS)* – This is a Headquarters application that serves as a repository for all relevant documents concerning the SFD.

C.3 SCOPE

The scope of this Task Order is: 1) task order management, 2) WasteLAN module support, 3) data entry, 4) reporting, 5) system prototyping/development, 6) program analysis and 7) documentation.

As part of the performance of the above tasks, the Contractor (one person, no more than three times per year) shall travel to EPA's Superfund conferences (in U.S., locations TBD) to discuss the program. Also, the Contractor shall participate in conference calls with other Superfund regions and their support teams to discuss WasteLAN data issues.

C.4 OBJECTIVE

The objective of this Task Order is to provide the EPA SFD Region 5 with Contractor services in support of its IT requirements. Specifically, the Contractor shall:

- Develop and maintain application software/reports, as needed.
- Provide assistance and support for current and future application software through data entry, data analysis, document creation, training and data conversion.
- Provide assistance and support for application software integration efforts, as needed.
- Provide assistance through program/budget analysis for SFD Region 5.

C.5 TASKS

The Contractor shall perform the following activities during the Task Order:

- C.5.1 Task 1: Task Order Management
- C.5.2 Task 2: WasteLAN Module Support
- C.5.3 Task 3: Data Entry/ Data Quality Control
- C.5.4 Task 4: Reporting
- C.5.5 Task 5: System Prototyping/Development

- C.5.6 Task 6: Program/Systems Analysis
- C.5.7 Task 7: Documentation

All tasks are rolled up into the Technical Labor CLIN, with the exception of Conference calls and travel for national conferences (under Task Order Management), which are ODC's and travel, respectively.

C.5.1 TASK 1: TASK ORDER MANAGEMENT

C.5.1.1 Meetings

C.5.1.1.1 Kickoff Meeting

The Contractor shall prepare (i.e. create slides/discussion materials, schedule a time) and participate in a kickoff meeting with EPA and GSA FEDSIM at EPA SFD Region 5 (77 West Jackson Boulevard, Chicago IL 60604). The meeting shall occur within 5 days from Performance Start Date (specified in Section F.2)

C.5.1.1.2 Conference Calls

The Contractor shall participate in Conference calls with support teams from all regions/Headquarters to discuss WasteLAN data issues. It is estimated that there will be two (2) calls per month.

C.5.1.1.3 Conference Attendance

In support of SFD Region 5, the Contractor may be required to attend the following conferences:

- System Administrator's (SA) conference for Annual Training
- Information Management Coordinators/Budget Coordinators Conference to discuss WasteLAN data requirements, system problems and report issues
- ReportLink Conference to discuss user comments, suggestions and ease of use
- Special Account National Meetings to discuss issues around Special Accounts

The Government currently expects only one Contractor employee to attend, if needed. The Contractor is expected to attend no more than three conferences per year. Currently, the exact locations of the Conferences are unknown.

C.5.1.1.4 Project Status Meetings

The contractor shall provide project updates in a location that is mutually accessible by the EPA PM and the contractor. Every other month, or as requested by the EPA PM, the contractor shall initiate and lead a meeting with the EPA PM to discuss, the progress, including recent accomplishments, next steps, and timeframes for each active project. Specifically, those projects that were shifted from the base year to subsequent option years will be addressed.

C.5.1.2 Project Plans

The Contractor shall develop a Generic Work Plan which establishes a mechanism for adequately addressing the Region's need for effective programmatic and fiscal control. The Project Plan shall be flexible and simple enough to adapt to the program's requirements. Specifically, the plan shall: contain a high-level overview of tasks and level of effort associated; be flexible enough to incorporate additional project activities as the need arises. The Contractor shall provide the initial version of the Generic Work Plan (via soft-copy) to the FEDSIM COR and the EPA PM no later than 15 days from Performance Start Date. The Contractor shall update the Generic Work Plan as needed.

In addition to the Generic Work Plan, the Contractor shall develop Project Plans for specific application development/prototyping efforts, which may arise throughout the Task Order. The application development Project Plans, when requested, shall be coordinated with and approved by the EPA PM/FEDSIM COR before work is initiated. The Project Plan shall contain, at a minimum, the following elements:

- Project Description Summary Project Tasks
- Project Deliverables (if applicable)
- Project Schedule (including deliverables as critical milestones), from planning through implementation
- Task-associated Work Breakdown Structure (WBS), identifying labor categories, estimated hours and cost
- Cost Plan, updated monthly, providing the following information:
    - Budgeted Cost
    - Actual Cost
    - Deviation
    - Cumulative Cost
    - Expected Cost at Completion

The Contractor shall submit the final version of the specific Project Plan upon initiation of the effort and subsequently update the plan as needed.

The Contractor shall provide all Project Plans (both Generic Work Plan as well as individual project efforts) as attachments to the Monthly Status Report (see C.5.1.2). There shall be no deviation from any Project Plan unless agreed to by the Government (EPA PM/FEDSIM COR). In the event that deviations are necessary, the Contractor shall provide the Government with a written justification of the deviation.

C.5.1.3 Transition Plan

The Contractor shall develop a Transition Plan which describes how the Contractor will provide a seamless (i.e., business as usual) transition from the previous Contractor (incumbent) that does not impact EPA SFD Region 5 operations. The scheduled transition-in period is one month (30 days). In addition, the Transition Plan shall describe the Contractor's methods for transition-out

at the end of the Task Order. The transition-out plan is due 90 days before the end of the Task Order. For both transition-in and transition-out, the plan shall address, at a minimum, the following areas for the Task Order:

- Personnel transition
- Methods for transferal of system knowledge
- Methods for transferal of system documentation

C.5.1.4 Monthly Status Report / Financial Status Report

The Contractor shall provide a Monthly Status Report to the FEDSIM COR/EPA PM which summarizes the activities accomplished as well as the financial status for the current reporting period. The report shall contain, at a minimum, the following elements:

- Contract Number
- Task Order Number
- FEDSIM Project Number
- Date of the Report
- Period of Performance for the report
- Generic Work Plan (as attachment)
- Specific Project Plans (as attachment, if applicable)
- Deviations from Reported Schedules
- Summary of Activities Completed
- Summary of Issues

The Contractor shall submit a Monthly Financial Status Report (either separately or as part of the Monthly Status Report). The information reported on this page shall include, at a minimum:

- Period of performance for the year in question
- Reporting period
- Total funded budget
- Amount expended in this period
- Cumulative amount expended
- Amount remaining
- Percent of budget expended

In addition to the above financial data, for site-specific charging, the Contractor shall include the following information in the Monthly Financial Status Report:

- Site Name
- Site-Specific Cost
- EPA ID Number
- Site Spill Identification (SSID) number, if applicable

The Contractor shall deliver the Monthly Status Report and Monthly Financial Status Report (via soft-copy) no later than ten (10) business days following the end of each month. The Reports shall serve as supporting documentation for the monthly invoice.

C.5.2 TASK 2: WASTELAN MODULE SUPPORT

C.5.2.1 General Support

The Contractor shall maintain the EPA SFD Region 5 WasteLAN Database. This application stores data concerning SFD Region 5 cleanup efforts. As stated previously, the WasteLAN database consists of nine modules – Site Information, Site Assessment, Federal Facilities, Enforcement, Removal, Community Involvement, Remedy Selection, Project Management and Program Management – all of which the Contractor shall be responsible for. Below is a short description of each module (Project and Program Management are the modules currently in most routine use).

- *Site Information* – Stores and updates data concerning waste removal site characteristics.
- *Site Assessment* – Provides for the creation and storage of analytical data for any site that poses an environmental threat
- *Federal Facilities* – Tracks relationships between federal facilities, federal facility sites and parcels, as well as information on Interagency Agreements to remediate hazardous waste.
- *Enforcement* – Collects data about Potentially Responsible Parties (PRPs) for hazardous waste and helps decide whether or not to take legal action.
- *Removal* – Tracks the actual project execution of waste removal within the region.
- *Community Involvement* – Contains information on various meetings and outreach programs which facilitate hazardous waste cleanups.
- *Remedy Selection* – In support of the remedy selection process, this module provides for risk analysis, cost/benefit analysis of remediation alternatives.
- *Project Management* – Maintains the schedule for projects and helps measure each project's financial status. This module contains schedules for the Community Involvement, Enforcement, Remedial, Removal and Site Assessment modules.
- *Program Management* – This module helps perform site planning, to include cross-regional budget analysis. In addition to budget analysis, this module provides for accomplishment tracking as well as listings of environmental indicators.

C.5.2.2 WasteLAN Fixes

The Contractor shall use the WasteLAN User Request System (WURS), a Lotus Notes application to enter and track all deficiencies in WasteLAN that originate in Region 5, whether "bugs" or needed changes. The Contractor shall: categorize deficiencies by impact on the program; report on them periodically; and notify Superfund staff when deficiencies have been corrected, deferred or resolved. Additional user support activities shall include: answering user questions by phone, e-mail or face-to-face; recommending certain user strategies on ease of use; and referring to user documentation in all formats. The Contractor shall direct all questions it is unable to answer to EPA staff or other Superfund contractors, as appropriate.

User support activities shall take place on an ongoing basis.

C.5.3 TASK 3: DATA ENTRY/ DATA QUALITY CONTROL

The Contractor shall add, modify and delete records for SFD Region 5 systems, based on specific source documents (e.g. coding sheets, annotated reports). For updates to CERCLIS/WasteLAN, the *CERCLIS/WasteLAN Data Entry Control Plan* requires that all data entry transactions have source documents, with signatures or initials of data owner, as well as the initials of the data entry operator. Data entry shall include one or more quality control procedures, such as transaction reports or screen prints that demonstrate the accuracy of the transaction.

The Contractor shall develop specialized forms for data entry and quality control. Upon completion of data entry and quality control procedures, these forms shall be collected, filed in a readily retrievable manner, and kept on EPA premises for no less than one year after completion. From time to time, the Contractor shall retrieve data entry records in order to verify quality of transactions.

The Contractor shall ensure and enhance the accuracy, timeliness, and utility of data in SFD Region 5 systems. Methods for ensuring data quality may include, but not be limited to:

- Assessing the accuracy of data converted into SFD Region 5 systems from various other legacy systems.
- Reconciling data between SFD Region 5 systems and other EPA systems, such as DOCKET.
- Identifying and correcting specific data gaps or inconsistencies within SFD Region 5 systems.
- Auditing periodically a specific sample of transactions under the CERCLIS/WasteLAN Data Entry Control Plan to determine accuracy of entries and existence of sufficient source documents.
- Developing specific audit reports.
- Performing test retrievals and queries.
- Reviewing report select logic.
- Establishing coding guidance and data definitions.
- Developing corrective database revisions or data conversions

The Contractor shall also work "upstream" to ensure data quality by training users and preventing data quality problems. This shall involve: documenting processes that generate data; examining data ownership and system access issues; and investigating potential system-generated data problems (*e.g.*, default values, lockouts, or reference table errors). In most data quality exercises, the Contractor shall: confirm or investigate the scope of an identified data problem; research its cause; recommend corrective action (if possible); and with EPA approval, implement the needed correction.

C.5.3.1 Document Identification (Doc ID) Tracking Data Entry/Data Quality Support

The contractor shall provide ongoing support for the Region 5 Doc ID Tracking process relating to data entry and data quality of CERCLIS data. This support shall include data entry of Doc ID data into CERCLIS for designated program areas. The contractor shall also provide data quality for those designated program areas where data entry is conducted as well as any additional program areas requested.

C.5.3.2 Special Account Data Entry/Data Quality Support

The contractor shall provide ongoing support for Special Account Management relating to data entry and data quality of CERCLIS data. This support shall include entry of designated Special Account planning data into CERCLIS at the direction of Superfund Division staff and data quality of data entered into CERCLIS by both the contractor and Superfund Division program staff.

C.5.4 TASK 4: REPORTING

The Contractor shall develop reports of many kinds from data in SFD Region 5 systems. Reports shall range from relatively simple queries to elaborate retrievals from multiple tables in spreadsheet or graphic format. In most cases, retrievals and reports shall be programmed in PowerBuilder or InfoMaker; some may be programmed in another commercial report product or with some other SQL or ODBC-compliant software.

All reports shall be fully documented in ReportLink with copies of user specifications, source code (both electronic and on hard copy), and sample output.

The Contractor shall provide a draft version of reports, and discuss any revisions or corrections necessary with the requestor. After revisions, the Contractor shall generate a final report for the requestor and/or place the report into production (*i.e.*, via ReportLink, or a separate executable program, if necessary).

The Contractor shall develop reports on an ongoing basis, per user request. The Contractor shall use report requests to create work packages, and use the corresponding report development procedure as a work breakdown structure. The Contractor shall maintain a log or a file of all report requests received and completed.

C.5.4.1 CERCLIS/WasteLAN Reports

The Contractor shall receive and respond to a wide range of report requests from WasteLAN, including those prepared in response to Freedom of Information Act (FOIA) requests. The Contractor shall maintain a log or file of all report requests received and completed. Report requests will include those generated for one-time, *ad hoc* use or for periodic/standard use. The Contractor shall:

- Consult with the user to determine the purpose of the report and to fully specify the features required.
- Determine the software and hardware environment most suitable for the report based on the user's requirement.
- Document the report specifications in writing, including (but not limited to) the database files opened, the records desired, and the fields to be displayed or used, the format and sort order of the report output, and any special calculations or operations needed.
- Review the specifications with the user and the EPA PM if needed to accurately develop the first version of the report.
- Design, code and test the report using recent versions of one or more of the following software products: Oracle, PowerBuilder, InfoMaker, Access, MySQL, dBASE Plus,Visual dBase, Crystal Reports, or any other databases capable of using Structured Query Language (SQL), Lotus 1-2-3, Excel, or other spreadsheet software, PowerPoint or other graphics/presentation software, WordPerfect, Word or other word processing software, Lotus Notes, and Microsoft Windows, DOS, Linux or other system-wide languages.
- Submit a prototype of the report for user review and comment.

The Contractor shall use an abbreviated version of this process to modify or create variations of existing reports. To the extent possible, report retrieval code shall be modular and/or reusable so that multiple reports with some variation can be readily developed later. The Contractor shall be expected to follow all applicable portions of the CERCLIS Reports Development Guidelines and Procedures issued by EPA HQ.

C.5.4.1.1 Doc ID Tracking Quality Assurance/Quality Control Reports

The contractor shall provide support for the Region 5 Doc ID Tracking process. This support shall include developing and updating quality assurance/quality control reports in CERCLIS and SDMS to support this process.

C.5.4.1.2 Special Accounts Management Reports

The contractor shall provide support for the Region 5 Special Accounts Management process. This support shall include developing and updating reports in CERCLIS and ORBIT to support managers and staff in this process.

C.5.4.2 Shared Regional Reports

In support of CERCLIS, the Contractor shall implement and maintain a process for shared Regional reports (for use in all ten regions). The process shall enable national (HQ) CERCLIS

users to submit CERCLIS reports, queries, reusable code, formats, and other information for the benefit of regional CERCLIS users.

The Contractor shall:

- establish user access and security procedures
- index and/or catalog user submissions
- track ownership of submissions
- maintain some degree of version control
- test user submissions for computer viruses and "bugs"
- remove user submissions that are defective, too old (e.g., unused in 12 months since submission), or no longer applicable

The typical hardware and software environment for this task consists of Windows XP, a standard SFD PC, Internet Explorer version 6, ReportLink, WasteLAN and SDMS. The EPA PM will further define this task at a later date.

C.5.4.3 ReportLink

The Contractor shall maintain the current reports library in ReportLink for all CERCLIS reports originating in SFD Region 5. The Contractor shall make modifications to ReportLink as directed by the EPA PM. For reports developed by the Contractor, SFD Region 5 EPA Staff and other parties, the library shall contain:

- a ReportLink entry containing the textual description of the report
- name of requester
- date of request
- name of report developer
- CERCLIS program area
- SQL statements which generate the report
- summary outline of the procedures used to generate it in CERCLIS
- 1-3 pages of sample output

This information may be published for the entire CERCLIS user community, as determined by the EPA PM.

For all reports in production or in periodic use at SFD Region 5 (i.e., excluding those reports for one-time, *ad hoc* use), this information shall be published at least once a year for the CERCLIS user community, at a time determined by the EPA PM.

The Contractor shall maintain copies of the final user specifications, the uncompiled report code (both hard copy and removable media), and the compiled report placed into production (on removable media only). These items will not be published, but copies will be maintained at both EPA in Chicago and at the Contractor's site. The Contractor shall also maintain a change log for each report, which documents all permanent modifications made to reports in production. The

contractor shall follow this documentation process, to the extent possible, for reports developed by other parties, but modified by the Contractor.

C.5.5 TASK 5: SYSTEM PROTOTYPING/DEVELOPMENT

C.5.5.1 WasteLAN Module Creation / Module Updates

The Contractor shall create new and/or implement updated WasteLAN modules as the program changes or the need arises. If the need arises for a new/updated module, the Contractor shall coordinate the effort with EPA headquarters; this is necessary due to the requirement of the regional instances of the database conforming to the structure of the national instance of the database. As stated earlier, the regional database instances (WasteLAN) serve as data sources for the national database instance (CERCLIS). Hence, as new modules are created, the Contractor shall assess the need for implementation in CERCLIS as well as implementation at SFD Region 5 (or others as appropriate). The Contractor shall negotiate timeframes for completion of new / updated modules with Headquarters prior to initiation of the effort. For each effort, the Contractor shall complete the following activities (if applicable):

- Rollout "marketing" to target users, including: email and/or printed notices; distribution of quick reference guides; and user contact.
- Informal training sessions (with 1-2 users at the desktop) on module features and benefits.
- Formal training sessions (often in cooperation with Headquarters staff or Contractors) with several users in a meeting room or a computer training room.
- Analysis and documentation of minimum data elements required by the sponsoring offices.
- Data entry, maintenance and retrieval (this will likely involve some facilitation and consensus-building techniques).
- Completion of module test plans from Headquarters, modifications for regional needs; tracking test results and identified problems.

The Contractor shall use "operational prototyping" as the default approach for design and coding of WasteLAN enhancements and prototypes. All prototypes and enhancements shall be fully tested and found operational in the SFD Region 5 environment, before release to users. All system prototypes and enhancements shall be fully documented (both in writing and in non-compiled, non-encrypted system code) within 10 business days after they have been placed in production.

C.5.5.2 Prototyping

The Contractor shall design, develop, test and implement one or more prototypes for SFD Region 5 systems, in order to support Superfund business processes.

For all prototypes, the contractor shall follow the EPA Systems Life Cycle Planning process, as appropriate, and all other applicable EPA data policies and standards. To the extent possible, the Contractor shall follow all SFD Region 5 system coding standards and database definitions so

that: data elements can be shared; and their "look and feel" can be maintained between applications.

When the need for a prototype arises, the Contractor shall:

- assess the user's requirements
- provide user training
- evaluate the current features in the affected system that address (or fail to address) the user's needs
- describe the needed enhancements in a preliminary design document

The Contractor shall await approval from the EPA PM before proceeding.

C.5.5.3 FOIALog Development

The Contractor shall develop and maintain enhancements to the FOIALog application. The EPA will supply source code as needed for existing systems maintenance and analysis. The current version of the FOIALog application uses a PowerBuilder front-end and an Oracle back-end. To the extent possible, all system enhancements and maintenance shall be consistent with the CERCLIS/WasteLAN or Superfund Document Management System (SDMS) data definitions; this allows the sharing of data with interfacing systems.

The Contractor shall fully test and document (both in writing and in non-compiled, non-encrypted system code) all system enhancements before release to the users of interest. The Contractor shall follow routine configuration management procedures, ensuring that all versions of software in development, testing, and production are accounted for.

C.5.5.4 Software Migration

The Contractor shall lead or assist in the migration of applications, as needed, within both the regions and EPA Headquarters. Prior to migration, the Contractor shall fully test and document (both in writing and in non-compiled, non-encrypted software code) all software development enhancements in the Superfund environment. The Contractor shall follow routine configuration management procedures, ensuring that all versions of the software in development, testing, and production are accounted for.

Systems maintenance and enhancements shall occur, to some extent, concurrently with systems development at the national level during the course of this Task Order. The Contractor shall coordinate efforts with Headquarters staff or vendors on maintenance and enhancements of mutual interest. The Contractor may be called upon to supply its analysis, design, and/or code to the national effort. All coordination efforts shall be authorized by the EPA PM prior to initiation. The Contractor shall inform the EPA PM of all coordination requests that originate outside of SFD Region 5.

C.5.6 TASK 6: PROGRAM/SYSTEMS ANALYSIS

The Contractor shall provide program and systems analysis in three broad areas: business process analysis, policy impact analysis, and internal control analysis.

The Contractor shall, in coordination with the EPA PM and FEDSIM COR, assist in the development and maintenance of a Strategic Plan for the Region 5 SFD that encompasses business process analysis, policy impact analysis and internal control analysis. The Plan will establish goals and strategies for obtaining those goals throughout the task order Period of Performance.

The Contractor shall implement business process analysis in support of systems development projects, both planned and underway, in the SFD. The Contractor shall use one or more structured methodologies, such as IDEF0 and IDEF1x, to define models for Superfund business processes and data relationships. These methodologies may be closely linked to one or more computer-assisted software engineering (CASE) tools (often proprietary), such as Oracle Designer 2000 or PowerSoft S Modeler.

The Contractor shall evaluate changes in SFD policy and the associated effects on the productivity of the program, especially as related to information management.

The Contractor shall provide support for internal controls. This shall involve review of all cyclic processes, especially as related to information management. Internal controls are needed for areas of potential vulnerability, including: information integrity, data quality, access control, and appropriate disclosure.

Program and systems analysis tasks shall be done on a project-by-project basis.

C.5.6.1 CERCLIS Administration Manual

The contractor shall provide support for the Region 5 CERCLIS Administration Manual. This support shall include: 1) reviewing existing documentation; 2) interviewing CERCLIS stakeholders to determine current processes, needs, and process gaps; 3) developing new process mapping documents, data entry guides, quality assurance/quality control procedures, and guides to interpret reporting requirements; 4) compiling existing and new data management documents into a usable manual; and 5) establishing a plan for maintaining the manual.

C.5.6.2 Doc ID Tracking Support

The contractor shall provide support for Region 5 Doc ID Tracking in CERCLIS. This support shall include: 1) reviewing existing processes for ensuring documents are scanned into SDMS; 2) interviewing CERCLIS stakeholders to determine current processes, needs, and process gaps; 3) developing new process mapping documents, data entry guides, and quality assurance/quality control procedures; 4) compiling existing and new data management documents into a usable manual; 5) developing a consensus with stakeholders and staff involved; and 6) creating and facilitating an implementation plan.

C.5.6.3 Special Accounts Management Support

The contractor shall provide support for the Region 5 Special Accounts Management process. This support shall include: 1) developing and documenting processes and procedures for the following phases of the Regional Special Account Management: training, planning, utilization, reclassification, closing a Special Account, and general Special Account analysis; 2) providing training and ongoing support to the Superfund Division program staff for using, planning, and managing the Special Account funds; 3) monitoring and scheduling the Regional reclassification process; 4) researching and preparing details/reports as well as supporting the process for the reclassification of funds to the Region; and 5) providing support to close a Special Account.

C.5.7 TASK 7: SYSTEMS DOCUMENTATION

The Contractor shall provide documents as required by the Interim Agency System Life Cycle Management Policy, as described in the Interim Agency System Life Cycle Management Procedures, and as determined by the System (Application) Sponsor, Owner(s), and Manager(s).

SECTION D – PACKAGING AND MARKING

NOTE: Sections D.1 and D.2 of the Contractor's ANSWER contract are applicable to this Task Order and are hereby incorporated by reference. In addition, the following applies.

The Contractor shall provide all project deliverables to the FEDSIM COR and EPA PM via e-mail.

SECTION E - INSPECTION AND ACCEPTANCE

NOTE: Sections E.1 through E.4 of the Contractor's ANSWER contract are applicable to this Task Order and are hereby incorporated by reference. In addition, the following applies:

E.1 PLACE OF INSPECTION AND ACCEPTANCE

For all CLINs, initial inspection and acceptance of work performance, reports and other deliverables under this Task Order shall be performed by the EPA PM at 77 West Jackson Boulevard, Chicago IL 60604. FEDSIM shall perform final acceptance at 6354 Walker Lane, Alexandria VA 22310.

E.2 SCOPE OF INSPECTION

E.2.1 For all CLINs, deliverables will be inspected for content, completeness, accuracy and conformance to Task Order requirements by the EPA PM / FEDSIM COR. Inspection may include validation of information or software through the use of automated tools and/or testing of the deliverables, as specified in the Task Order. The scope and nature of testing will be specified by the Government upon Task Order award and will be sufficiently comprehensive to ensure the completeness, quality and adequacy of all deliverables.

E.2.2 The Government requires a period not to exceed fifteen (15) work days after receipt of final deliverable items for inspection and acceptance or rejection.

E.3 BASIS OF ACCEPTANCE

For all CLINs, the basis for acceptance shall be compliance with the requirements set forth in the Task Order, the Contractor's proposal and other terms and conditions of the contract. Deliverable items rejected shall be corrected in accordance with the applicable clauses.

E.3.1 Cost reimbursable items such as travel and ODCs will be accepted upon receipt of proper documentation as specified in this Task Order under section G.1.2-3.

E.3.2 For software development, the final acceptance of the software program will occur when all discrepancies, errors or other deficiencies identified in writing by the Government have been resolved, either through documentation updates, program correction or other mutually agreeable methods. (Software development only)

E.3.3 Reports, documents and narrative type deliverables will be accepted when all discrepancies, errors or other deficiencies identified in writing by the Government have been corrected.

E.3.3.1 If the draft deliverable is adequate, the Government may accept the draft and provide comments for incorporation into the final version.

E.3.3.2 All of the Government's comments to deliverables must either be incorporated in the succeeding version of the deliverable or the Contractor must demonstrate to the Government's satisfaction why such comments should not be incorporated.

E.3.3.3 If the Government finds that a draft or final deliverable contains spelling errors, grammatical errors, improper format, or otherwise does not conform to the requirements stated within this Task Order, the document may be immediately rejected without further review and returned to the Contractor for correction and resubmission. Upon rejection of a deliverable, the Contractor shall have ten (10) business days to resubmit the deliverable. If the Contractor requires additional Government guidance to produce an acceptable draft, the Contractor shall arrange a meeting with the FEDSIM COR.

E.4 INITIAL DELIVERABLES

E.4.1 For all CLINs, the Government will provide written acceptance, comments and/or change requests, if any, within fifteen (15) business days from receipt of the initial deliverable by the Government.

E.4.2 Upon receipt of the Government comments, the Contractor shall have ten (10) business days to incorporate the Government's comments and/or change requests and to resubmit the deliverable in its final form.

E.5 WRITTEN ACCEPTANCE/REJECTION BY THE GOVERNMENT

The Government shall provide written notification of acceptance or rejection of all final deliverables within fifteen (15) business days. All notifications of rejection will be accompanied with an explanation of the specific deficiencies causing the rejection.

E.6 NON-CONFORMING PRODUCTS OR SERVICES

Non-conforming products or services will be rejected. Deficiencies shall be corrected, by the Contractor, within ten (10) business days of the rejection notice. If the deficiencies cannot be corrected within ten (10) business days, the Contractor will immediately notify the FEDSIM COR / EPA PM of the reason for the delay and provide a proposed corrective action plan within ten (10) business days.

SECTION F - DELIVERIES OR PERFORMANCE

NOTE: Paragraphs F.1 and F.2 of the Contractor's ANSWER contract are applicable to this Task Order and are hereby incorporated by reference. In addition, the following applies:

F.1 PLACE OF PERFORMANCE

Place of Performance shall be off-site at the Contractor's place of business, with the exception of any services requiring Contractor's attendance at EPA SFD Region 5 (77 West Jackson Boulevard, Chicago IL 60604).

F.2 PERIOD OF PERFORMANCE

The period of performance for this Task Order is five (5) years, consisting of one base year and four (4) one-year option periods. The Period of Performance for CLINs 0001, 0002 and 0003 shall be from the Performance Start Date (established at award) through 12 months. The Period of Performance for all optional CLINs (1001, 1002, 1003, 2001, 2002, 2003, 3001, 3002, 3003, 4001, 4002 and 4003) is 12 months.

F.3 TASK ORDER SCHEDULE AND MILESTONE DATES

The following schedule of milestones will be used by the FEDSIM COR to monitor timely progress under this Task Order.

MILESTONE/DELIVERABLE	CLIN Number	SOW Reference	DUE DATE
Project Start		F.2	Performance Start Date (PSD)
Kickoff Meeting	0001, 1001, 2001, 3001, 4001	C.5.1.1.1	5 business days from PSD
Project Status Meeting	2001 3001 4001	C.5.1.1.4	Every other month, or as needed
Generic Work Plan	0001, 1001, 2001, 3001, 4001	C.5.1.2	15 days from PSD; provided as attachment to Monthly Status Report, updated as needed
Individual Project Plans	0001, 1001, 2001, 3001, 4001	C.5.1.2	Prior to initiation of the specified Project
Transition-in Plan	0001, 1001,	C.5.1.3	Performance Start Date, updated as needed

MILESTONE/DELIVERABLE	CLIN Number	SOW Reference	DUE DATE
	2001, 3001, 4001		
Transition-out Plan	0001, 1001, 2001, 3001, 4001	C.5.1.3	90 business days before end of Task Order
Monthly Status Report	0001, 1001, 2001, 3001, 4001	C.5.1.4	10 business days following end of each month
Monthly Financial Status Report	0001, 1001, 2001, 3001, 4001	C.5.1.4	10 business days following end of each month
Reports Creation/Publishing	0001, 1001, 2001, 3001, 4001	C.5.4	As needed
ICIS Report	2001, 3001, 4001	C.5.4	Quarterly updates or as needed
ICIS Report Updates	2001, 3001, 4001	C.5.4	Annual updates or as needed
Response Chart Updates	2001, 3001, 4001	C.5.4	Quarterly updates or as needed
System Development	0001, 1001, 2001, 3001, 4001	C.5.5	As needed
EARS Data Transfer	2001	C.5.5	July 31, 2008
EARS System Enhancements	2001, 3001, 4001	C.5.5.2	As needed
Strategic Plan	0001,	C.5.6	Coordinated with EPA PM, after receipt

MILESTONE/DELIVERABLE	CLIN Number	SOW Reference	DUE DATE
	1001, 2001, 3001, 4001		of government information/direction.
Special Account Management Process & Procedures	1001, 2001, 3001, 4001	C.5.3, C.5.4, C.5.5	June 30, 2009 – annual updates or as needed
Special Accounts Training & Ongoing Support	2001, 3001, 4001	C.5.3, C.5.4, C.5.5	Ongoing Support
Special Accounts – Develop & Update Reports in CERCLIS & ORBIT	2001, 3001, 4001	C.5.3, C.5.4, C.5.5	June 30, 2009 – annual updates or as needed
Support Special Account Closeouts Special Accounts – Develop & Update Reports in CERCLIS & ORBIT	2001, 3001, 4001	C.5.3, C.5.4, C.5.5	Ongoing Support
Archiving Process Document Support Special Account Closeouts	1001, 2001, 3001, 4001	C.5.3, C.5.4, C.5.5	December 31, 2009 – annual updates or as needed
Removal Data Processes & Procedures Document Archiving Process Document	1001, 2001, 3001, 4001	C.5.6	December 31, 2009 – annual updates or as needed
Budget Coordinator Desk Reference Updates Removal Data Processes & Procedures Document	1001, 2001, 3001, 4001	C.5.6	Annually or as needed
CERCLIS Administration Manual Budget Coordinator Desk Reference Updates	1001, 2001, 3001, 4001	C.5.6	December 31, 2009; annual updates or as needed
CERCLIS Administration Manual	2001, 3001, 4001	C.5.6	December 31, 2009; updates annually
BTS Enhancements	2001, 3001, 4001	C.5.2, C.5.5	Coordinated with EPA PM after receipt of government information/direction
Doc ID Document Identification Tracking (Doc ID) Entry into	2001, 3001,	C.5.3	Ongoing

MILESTONE/DELIVERABLE	CLIN Number	SOW Reference	DUE DATE
CERCLIS	4001		
Doc ID – CERCLIS Stakeholders Analysis	2001, 3001, 4001	C.5.6	October 30, 2009 – annual updates or as needed
Doc ID – Process Mapping Document(s)	2001, 3001, 4001	C.5.6	October 30, 2009 – annual updates or as needed
Doc ID – Data Entry Guides	2001, 3001, 4001	C.5.3, C.5.6	October 30, 2009 – annual updates or as needed
Doc ID – Quality Assurance/Quality Control Procedures	2001, 3001, 4001	C.5.3, C.5.6	October 30, 2009 – annual updates or as needed
Doc ID – Quality Assurance/Quality Control Reports	2001, 3001, 4001	C.5.3, C.5.4	October 30, 2009 – annual updates or as needed
Doc ID – Data Management Manual	2001, 3001, 4001	C.5.3, C.5.6	October 30, 2009 – annual updates or as needed
Doc ID – Implementation Plan	2001, 3001, 4001	C.5.3, C.5.6	October 30, 2009 – annual updates or as needed
SEMS Requirement Analysis	2001, 3001, 4001	C.5.2, C.5.5	Coordinated with EPA PM after receipt of government information/direction
SEMS Screen Design & Report Formats	2001, 3001, 4001	C.5.2, C.5.5	Coordinated with EPA PM after receipt of government information/direction
SEMS Planning Document	2001, 3001, 4001	C.5.2, C.5.5	Coordinated with EPA PM after receipt of government information/direction
SEMS Implementation Plan	2001, 3001, 4001	C.5.2, C.5.5	Coordinated with EPA PM after receipt of government information/direction
System Documentation	0001, 1001, 2001, 3001, 4001	C.5.7	10 business days after new system / system enhancement is placed into production
Conference Calls	0001, 0003, 1001,	C.5.1.1.2	As

MILESTONE/DELIVERABLE	CLIN Number	SOW Reference	DUE DATE
	1003, 2001, 2003, 3001, 3003, 4001, 4003		needed
Conferences	0001, 0002, 1001, 1002, 2001, 2002, 3001, 3002, 4001, 4002	C.5.1.1.3	As needed
Problem Notification Report	0001, 1001, 2001, 3001, 4001	G.3	Within 24 hours from problem identification

F.4 PLACE(S) OF DELIVERY

The Contractor shall deliver all documentation requiring Government approval to the FEDSIM COR and EPA PM via e-mail:

GSA FEDSIM
Sandy Greenwell, COR
Office: 703-605-3608
Cell: 703-589-2564
sandy.greenwell@gsa.gov

EPA – Region 5, Superfund Division
Earlene Rhodes, PM
Office: 312-353-1247
Rhodes.earlene@epa.gov

F.5 NOTICE REGARDING LATE DELIVERY

The Contractor shall notify the FEDSIM COR / EPA PM as soon as it becomes apparent to the Contractor that a scheduled delivery will be late. The Contractor shall include in the notification

the rationale for late delivery, the expected date for the delivery and the project impact of the late delivery. The FEDSIM COR / EPA PM will review the new schedule and provide guidance to the Contractor. Such notification in no way limits the Government's right to any and all remedies up to and including termination.

SECTION G – CONTRACT ADMINISTRATION DATA

NOTE: Paragraphs G.1 through G.4 of the Contractor's ANSWER contract awarded are applicable to this Task Order and are hereby incorporated by reference. In addition, the following applies:

G.1 INVOICE SUBMISSION

The Contractor shall submit Requests for Payments in accordance with the format contained in GSAM 552.232-70, INVOICE REQUIREMENTS (SEPT 1999), to be considered proper for payment. In addition, the data elements indicated below shall be included on each invoice.

Task Order number: *(from GSA Form 300, Block 2)*
Paying Number: *(ACT/DAC NO.) (From GSA Form 300, Block 4)*
FEDSIM Project No.: 25333EPM-0001
Project Title: Superfund Information Management Support

The Contractor shall provide invoice backup data, including labor categories, rates and quantities of labor hours.

The Contractor shall utilize FEDSIM's electronic Tracking and Ordering System (TOS) to submit invoices. The Contractor shall submit invoices by logging onto http://enable.its.gsa.gov. Select "Vendor Support"; log onto TOS using your assigned I.D. and password, then click on "Create Invoice". The TOS Help Desk should be contacted for support at (703) 306-7759. By utilizing this method, no paper copy of the invoice shall be submitted to GSA FEDSIM or the GSA Finance Center in Ft. Worth.

G.1.1 TECHNICAL LABOR CLINs

The Contractor may invoice monthly on the basis of cost incurred for Technical Labor CLINs 0001, 1001, 2001, 3001 and 4001. The invoice shall include the period of performance covered by the invoice and the CLIN number and name. All hours and costs shall be reported by CLIN element (as shown in Section B) and Contractor employee, and shall be provided for the current billing month and in total for project to date. The Contractor shall provide the invoice in spreadsheet form with the following detailed information. The listing shall include separate columns and totals for the current invoice period and the project to date.

- Employee name (current and past employees)
- Employee company labor category
- Employee ANSWER labor category
- Monthly and total hours worked
- Billing rate (as proposed in the cost proposal)
- Corresponding ANSWER ceiling rate

G.1.2 TRAVEL CLINs

The Contractor may invoice monthly on the basis of cost incurred for Travel CLINs 0002, 1002, 2002, 3002 and 4002. The invoice shall include the period of performance covered by the invoice, the CLIN number and name. In addition, the Contractor shall provide the following detailed information for each invoice submitted, as applicable. Separate worksheets, in MS Excel format, shall be submitted for travel with separate columns for the following:

a. Project Total Travel: This will identify all current and past travel on the project and their total Project costs billed. The listing shall include separate columns and totals for the following information concerning the current invoice period and the project to date:

- Current invoice period
- Names of persons traveling
- Number of travel days
- Dates of travel
- Number of days per diem charged
- Per diem rate used
- Total per diem charged
- Transportation costs
- Other charges
- Total charges

b. CLIN/Task Total Travel: This will identify all current and past travel on the project and their total CLIN/Task costs billed. The listing shall include separate columns and totals for the current invoice period and the project to date:

- Current invoice period
- Names of persons traveling
- Number of travel days
- Dates of travel
- Number of days per diem charged
- Per diem rate used
- Total per diem charged
- Transportation costs
- Total charges

G.1.3 ODCs

The Contractor may invoice monthly on the basis of cost incurred for ODC CLINs 0003, 1003 2003, 3003 and 4003. The invoice shall include the period of performance covered by the invoice and the CLIN number and name. In addition, the Contractor shall provide the following detailed information for each invoice submitted, as applicable. Spreadsheet submissions are preferred.

- ODCs purchased
- Date accepted by the Government
- Associated CLIN
- Project to date totals by CLIN

G.2 LIMITATION OF COSTS

FAR Clause 52.232-20 applies to this Task Order on a Contract Line Item Number (CLIN) basis and on a total contract basis. The notification required by the subject clause on the part of the Contractor shall be made in writing to the Contracting Officer. In the event the Task Order is not funded beyond the estimated cost set forth in the schedule, the Contractor shall deliver to the Contracting Officer all data collected and material produced, in process or acquired, in connection with the performance of the Task Order together with a summary report, in three (3) copies, of its progress and accomplishments to date.

G.3 PROBLEM NOTIFICATION REPORT

The Contractor shall provide a Problem Notification Report (PNR) for any problem which may place in jeopardy either the technical performance, costs, or schedule of the project. A sample PNR is provided at Attachment D in Section J.

SECTION H – SPECIAL CONTRACT REQUIREMENTS

NOTE: Paragraphs H.1 through H.24 of the Contractor's ANSWER contract are applicable to this Task Order and are hereby incorporated by reference. In addition, the following applies:

H.1 GOVERNMENT FURNISHED PROPERTY (GFP)

The Government shall provide work spaces to Contractor personnel for any assignments requiring completion at EPA SFD Region 5's location.

The Government shall supply badges for Contractor personnel upon the start of the Task Order.

H.1.1 GOVERNMENT FURNISHED INFORMATION (GFI)

The Government will supply the Contractor with secure remote access information needed for authorization into the EPA SFD Region 5's Superfund network. In addition, the Government will provide the location of all notable regulations/policies the Contractor shall adhere to throughout the Task Order.

H.2 TRAVEL

H.2.1 TRAVEL REGULATIONS

The Contractor shall adhere to the following travel regulations (see FAR 31.205-46):

(1) Federal Travel Regulations (FTR) - prescribed by the General Services Administration, for travel in the contiguous United States.

H.2.1.1 All requests for Travel must be approved by the FEDSIM COR prior to incurring cost. Prior to any long distance travel, the Contractor shall prepare a Travel Authorization Request for Government review and approval. Long distance travel will be reimbursed in accordance with the Federal Travel Regulations (FTR).

H.2.1.2 Requests for travel approval shall:

- Be prepared in a legible manner
- Include a description of the travel proposed including a statement as to purpose
- Be summarized by traveler
- Identify the task order number
- Identify the CLIN associated with the travel
- Be submitted in advance of the travel with sufficient time to permit review and approval

The Contractor shall use only the minimum number of travelers and rental cars needed to accomplish the task(s). Travel shall be scheduled during normal duty hours whenever possible. Airfare will be reimbursed for actual common carrier fares which are obtained by the most reasonable and economical means.

H.2.1.3 The Government will identify the need for a Trip Report (if required) when the request for travel is submitted. The Contractor shall keep a summary of all long-distance travel, to include, at a minimum, the name of the employee, location of travel, duration of trip, and POC at travel location.

H.3 ODCs

All requests for ODCs must be approved by the FEDSIM COR prior to incurring cost.

H.4 APPLICABLE LAWS/REGULATIONS/POLICIES

The Contractor shall adhere to the following laws/regulations/policies during completion of the Task Order:

- EPA System Design and Development Guidance
- Interim Agency System Life Cycle Management Policy/Procedures
- CERCLIS/WasteLAN Data Entry Control Plan
- CERCLIS Reports Development Guidelines and Procedures
- Chapter 8 of the EPA Directive 2100 – Information Resources Management Policy Manual
- EPA Information Resources Management (IRM) Policy Manual
- The National Technology Services Division (NTSD) LAN Operating Procedures Manual
- EPA LAN Operating Procedures Manual
- EPA Directive 2195A1
- National Institute of Standards and Technology (NIST) Special Publication 800-18 Guide for Developing Security Plans for Information Technology Systems

H.5 SECURITY REQUIREMENTS

CERCLIS contains enforcement sensitive data, which shall not be released to the public or used for other projects without the authorization of the EPA PM. During completion of the Task Order, the Contractor shall adhere to the following federal and EPA security policies:

- Privacy Act
- The Computer Security Act of 1987
- OMB Circular A-130, Management of Federal Information Resources, Standard of Behavior for the Security of Information Resources
- Federal Information Security Management Act 2002 (FISMA)
- EPA Information Security Manual (ISM (Directive 2195A1)
- EPA Information Security (InfoSec) Program Plan
- EPA Information Security Awareness Training Addendum
- EPA Information Security Planning Guidance
- EPA Standards of Behavior for the Security of Information Resources
- EPA Network Security Policy (Directive 2195.1 A4)
- EPA User Guide for developing and evaluating security plans for unclassified Federal Automated Information Systems Version #5
- EPA Information Security Planning Guidance

- National Institute of Standards and Technology (NIST) Special Publications 800-18 Guide for Developing Security Plans for Information Technology Systems
- Region 5's Security Plan for Computer Applications
- Homeland Security Presidential Directive-12 (HSPD-12)**

In addition, the following rules for EPA site access apply:

- Upon Task Order award or modification, the EPA will require all Contractor and subcontractor employees needing access to an EPA controlled facility to obtain an EPA-Personnel Access and Security (EPASS) badge.

- The Contractor shall agree on behalf of all its employees, and employees of all subcontractors to abide by the EPA's security regulations. The Contractor shall notify all contractor and subcontractor personnel of the security requirements in place at the EPA site.

- Badges provided by the EPA are the property of the government. The badge shall be worn at all times while on-site, on the outer layer of clothing, above the waist, with the picture and name visible. If requested by building security guards or security staff, the badge shall be relinquished and the employee shall immediately leave the site. Upon completion of the task order, the Contractor shall return each badge to the EPA.

- The EPA reserves the right to close down the job site and order contractor personnel off the site in the event of an emergency, government shutdown, times of elevated security risk, or any other reason deemed necessary by EPA management or security staff. If so instructed by EPA management or security staff, the contractor personnel shall immediately leave the site and not return until authorized by the EPA.

- Only business directly related to this Task Order shall be conducted at EPA. All other business shall be conducted off of government property.

- No person issued a badge shall allow another person to use his/her badge.

- Any person deemed by FEDSIM or the EPA security officer to have intentionally disregarded EPA security requirements shall have his badge confiscated and shall immediately leave the site. Future access shall be at the discretion of the FEDSIM Project Manager and the EPA security officer.

EPA reserves the right to exclude or remove from the site any employee of the contractor or subcontractor whom the EPA security officer deems incompetent, careless, insubordinate, unsafe, or otherwise objectionable. Anyone with a concern regarding these characteristics of a Contractor employee may contact the EPA security officer for consultation. The FEDSIM Project Manager shall be notified of any contractor or subcontractor personnel removed from the site.

**FAR 52.204.9 Personal Identity Verification of Contractor Personnel (Sept 2007)

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.
(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. (See Section J.1 List of Attachments)

H.6 KEY PERSONNEL

Section C.7 of the Contractor's ANSWER contract contains the contract labor category descriptions. The contract labor category descriptions provide the minimum qualifications for the selected labor categories listed in Section B.

For this Task Order, the Government designates the following persons to be Key Personnel:

- Operations Systems Manager
- Systems Management Technologist

Operations Systems Manager
Operations Systems Manager shall possess:

- Considerable experience in managing information technology projects, specifically database support projects
- Substantial knowledge of systems development
- The ability to effectively manage project resources (e.g. personnel, funding)
- Experience managing customer relationships and effective problem resolution skills

In addition, familiarity with the EPA environment is desired.

Systems Management Technologist
Systems Management Technologist shall possess:

- Considerable experience functioning as a task lead
- Substantial knowledge of systems development
- Considerable background in the implementation of relational database technology using Oracle
- Substantial knowledge in reports development utilization various applications (e.g. Oracle, PowerBuilder, InfoMaker, Access, MySQL, dBASE Plus,Visual dBase, Crystal Reports)

In addition, familiarity with the EPA environment is desired.

Key personnel must be assigned for the duration of the Task Order and may be replaced or removed subject to Section H.4 – *Restricted Activities and Standards of Conduct,* H.8 – *Key*

Personnel and Personnel Substitutions, and H.10 – *Personnel Conduct* of the basic ANSWER contract.

H.7 ORGANIZATIONAL CONFLICT OF INTEREST AND NON-DISCLOSURE REQUIREMENTS

H.7.1 ORGANIZATIONAL CONFLICT OF INTEREST

If the Contractor is currently providing support or anticipates providing support to EPA SFD Region 5 that creates or represents an actual or potential organizational conflict of interest (OCI), the Contractor shall immediately disclose this actual or potential OCI in accordance with FAR Part 9.5. The contractor is also required to complete and sign an Organizational Conflict of Interest Statement in which the Contractor (and any Subcontractors, consultants or teaming partners) agree to disclose information concerning the actual or potential conflict with any proposal for any solicitation relating to any work in the TO. All actual or potential OCI situations shall be handled in accordance with FAR Subpart 9.5.

H.7.2 NON-DISCLOSURE REQUIREMENTS

All Contractor personnel (to include Subcontractors, teaming partners, and consultants) who will be personally and substantially involved in the performance of the TO issued which requires the Contractor to act on behalf of, or provide advice with respect to any phase of an agency procurement, as defined in FAR 3.104-4, shall execute and submit an "Employee/Contractor Non-Disclosure Agreement" Form (See Section J, Attachment A). This is required prior to the commencement of any work on such TO and whenever replacement personnel are proposed under an ongoing TO. Any information obtained or provided in the performance of this TO is only to be used in the performance of the TO.

H.8 TRANSFER OF HARDWARE/SOFTWARE MAINTENANCE AGREEMENTS TO FOLLOW-ON CONTRACTORS

The Contractor shall ensure that any hardware/software agreements entered into under this task order are transferable to the Government and/or to other Contractors at the discretion of the Government.

SECTION I– CONTRACT CLAUSES

NOTE: Paragraphs I.1 through I.27 of the Contractor's ANSWER contract are applicable to this Task Order and are hereby incorporated by reference. In addition, the following applies:

I.1 FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) SOLICITATION CLAUSES (http://www.arnet.gov/far/)

CLAUSE NO	CLAUSE TITLE	DATE
52.215-21	REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA – MODIFICATIONS	(OCT 1997)
52.217-9	OPTION TO EXTEND THE TERMS OF THE CONTRACT	(MAR 2000)
52.232-20	LIMITATION OF COSTS	(APR 1984)
52.232-22	LIMITATION OF FUNDS	(APR 1984)
52.251-1	AUTHORIZATION TO USE GOVERNMENT SUPPLY SOURCES	(APR1984)

SECTION J– LIST OF ATTACHMENTS

NOTE: SECTION J of the Contractor's ANSWER contract is applicable to this Task Order and is hereby incorporated by reference. In addition the following applies:

J.1 LIST OF ATTACHMENTS

Attachment A	-	Nondisclosure Agreement (Removed at award)
Attachment B	-	Key Personnel Qualification Matrix Template (Removed at award)
Attachment C	-	Project Staffing Plan Template, Non-Key Personnel Qualifications Table (Removed at award)
Attachment D	-	Problem Notification Report (PNR)
Attachment E	-	Agency Personal Verification Procedures for Contractor Personnel

ATTACHMENT A
NONDISCLOSURE AGREEMENT FORMAT (Removed at award)

ATTACHMENT B
KEY PERSONNEL QUALIFICATIONS MATRIX TEMPLATE
(Removed at award)

ATTACHMENT C (Removed at award)

ATTACHMENT D – PROBLEM NOTIFICATION REPORT

TASK ORDER NUMBER: _____ DATE: _____

1. Nature and sources of problem:

2. COR was verbally notified on: (date) _____

3. Is action required by the Government? Yes_____ No_____

4. If YES, describe Government action required and date required:

5. Will problem impact delivery schedule? Yes_____ No_____

6. If YES, identify what deliverables will be affected and extent of delay:

7. Can required delivery be brought back on schedule? Yes_____ No_____

8. Describe corrective action needed to resolve problems:

9. When will corrective action be completed?

10. Are increased costs anticipated? Yes_____ No_____

11. Identify amount of increased costs anticipated, their nature, and define Government responsibility for problems and costs:

Client		**Period**
Environmental Protection Agency		July 1, 2010 – June 30, 2011
Prepared by	**Date**	**W/P Reference**
Amber Eckenrod	March 17, 2011	PMOS.19.A

Business Process: Payroll Processing

Process Owners:

- Shelia Bullock, Office of Financial Services (OFS), Immediate Office (IO), Payroll Management and Outreach Staff (PMOS), Director, Accountability and Control Staff (ACS), 202-564-5202
- Renee Brooks, OFS, IO, PMOS, Chief, Accounting and Reporting Section (ARS), 202-564-4838
- Shelandra Burton, OFS, IO, PMOS, Chief, Payroll Support Section, 202-564-4853
- Angela Taylor-Hairston, OFS, IO, PMOS, Accountant, Financial Services Section, ARS, 202-464-4991
- Michelle Hawkins, OFS, IO, PMOS, Accountant, ARS, 202-564-5201
- Lynwood Leach, OFS, IO, PMOS, Accountant, ARS, 202-564-1071
- Freny Katki, OFS, PMOS, PeopleSoft Plus (PPL) Security Administrator, 202-564-4981

Overview

The Defense Finance and Accounting Service (DFAS) processes all payroll information for the United States (U.S.) Environmental Protection Agency (EPA). DFAS is one of the four governmental entities selected by the Office of Personnel Management (OPM) to provide payroll services for the U.S. Government. The EPA Office of Financial Services (OFS) Immediate Office (IO) Payroll Outreach and Management Staff (PMOS) provides payroll support services for DFAS and EPA employees. Bi-weekly payroll cycles begin on Sunday and end on the second Saturday of the two week pay period. Payroll processing begins on the Monday (Approval Monday) after the pay period ends.

OFS IO PMOS uses the PeopleSoft Plus (PPL) system for all payroll transactions. Employees are responsible for recording their daily time and attendance (T&A) information in PPL each pay period and for making corrections to time previously entered and approved. If employees are unable to record their time, due to unforeseen circumstances (i.e. absent, traveling, etc.), an assigned timekeeper reports time in PPL on the employee's behalf.

Timekeepers are responsible for a "dynamic group", which consists of 20 to 120 employees. Dynamic groups are established by the Office of Human Resources (OHR) based on employees' Request for Personnel Action (SF-52). Within a dynamic group, a profile is established in PPL for each employee including an identification (ID) number, work schedule, program office, timekeeper and supervisor. The timekeeper is given PPL group access to their dynamic group and has authorization, along with managers, to review or modify employee timesheets. PPL Access Coordinators have the authority to authorize PPL access and OHR has the ability to add or delete individuals from dynamic groups.

OFS Timecard Process

The payroll process begins with employees logging into PPL, Self-Service, through the OFS homepage and reporting their time on or before 11:59 pm on the second Saturday of each pay cycle. PPL automatically submits T&A after 8:00 pm on the Monday following the pay period (Approval Day) if it has not already been submitted. Employees, who are unable to enter their time, must notify their supervisor, and their respective timekeeper enters the time on their behalf. **Timekeepers cannot approve time in PPL, but can review, modify, or generate missing T&A reports (Key Control #1).** *This key control will not be tested in FY 2011.* **When corrections are made to an employee's timesheet, the PPL system overwrites the original timesheet with the corrected version to prevent duplicate payments (Key Control #2).** For example, if an employee forgot to include one hour of leave on their original timesheet, the employee logs in to PPL to revise their original timesheet. The original timesheet is automatically stored in PPL in the system history under the employees' record leaving an audit trail.

PPL System Access

New employees are granted PPL system access for timekeeping purposes once OHR has processed the Notification of Personnel Action (SF-50). The PPL system authenticates both the employee's (user) ID and password. The employee's password is the same as their Local Area Network (LAN) ID (i.e. user ID). Employees are responsible for safeguarding their LAN ID and password, reporting security violations to managers, PPL Security Administrators, the Office of the Chief Financial Officer (OCFO)/OHR and Research Triangle Park Finance Center (RTPFC), and informing the OCFO and OHR management of weaknesses identified in the PPL security process.

Functional user access levels (i.e. timekeepers, supervisors, etc.) are added by the PMOS, PPL Security Administrator. **When an employee needs functional user access to PPL in accordance with their job function, a PPL System Access Request Form is completed and signed by the employee, their supervisor, and the PPL Access Coordinator for that dynamic group, and is sent via fax or e-mail to the PPL Security Administrator (Key Control #3).** *This key control will not be tested in FY 2011.* Once access has been granted, the PPL Security Administrator sends a confirmation e-mail to the PPL Access Coordinator indicating the employee has been granted access.

If employees with PPL functional access leave EPA, their PPL Access Coordinator completes, signs and faxes a PPL System Access Request Form to the PPL System Administrator indicating the appropriate level of authorization for PPL functional access removal. The former employee's PPL account is locked when OHR processes the SF-52 for employee separation (see Key Control #7).

PPL System Access Review

The PPL Security Administrator performs a quarterly review of all PPL access roles (Key Control #4). Each quarter the Security Administrator runs queries in PPL and creates a spreadsheet of all employees and their current PPL functional access roles. The Security Administrator e-mails the spreadsheet to all Program and Regional Offices where the respective offices' PPL Access Coordinator reviews the spreadsheet for accuracy and submits a certification email to the Security Administrator indicating review of the documentation. Any separated employees who continue to have PPL access are identified during this review and once identified the PPL Access Coordinator notifies the PPL Security Administrator. The PPL Security Administrator removes PPL functional user access.

Time Administration

Time Administration is an automated editing process that gathers all employees' reported time and converts it to payable time. PPL compares the reported time and applies the applicable rules to the timesheet (i.e. compensatory time, leave time, etc.) to determine if sufficient compensation or leave balance is available.

The time administration process begins on the first Friday of the pay period and runs every day up to the next pay period, Sunday at 10:00 pm, with the exception of the first Monday (Approval Day), Tuesday, Wednesday, and Thursday of the pay period. In addition, the time administration process is run on the second day of the new pay period, Monday from 1:00 pm to 1:30 pm to allow employees to account for time worked on Saturday to ensure proper payment is received during the pay period in which the hours were actually worked, which, helps reduce timecard corrections. From 1:30 pm to 8:00 pm managers approve remaining unapproved timesheets. Managers can make changes to employee T&A reports on Approval Monday morning before the 1:00 pm processing. At 1:00 pm all morning corrections are processed. Once completed, managers can only approve employee T&A reports prior to 8:00 pm.

Beginning mid-week of the 2nd week of the pay cycle, timekeepers generate a Missing T&A Report in PPL. The report lists employees whose time had not been reported, attested, or verified by the timekeeper (i.e. when the timekeeper recorded an employee's time or employees who do not have payable time). Payable time is time which has been entered and submitted by the employee's office and processed by the PPL system. The total payable time must equal the employee's standard and scheduled hours. Non-payable time is time which has been saved, but not submitted by the employee's office nor processed by the PPL system. Timekeepers and managers contact employees on the Missing T&A Report to ensure time has been entered and attested or verified and submitted.

Managers review the T&A of employees in their internal group organization to confirm that employee leave slips and labor distribution information agree to the T&A reports prior to their approval and transmission in PPL. Managers use e-Signature in PPL, which authenticates the signature of the user, to approve employee time. T&A not timely certified by management appears on the Mass Approval Report. While it is not mandatory, managers can utilize a Manager Approval Report as a tool to confirm timely approval of T&A as based on their office standards. For example, some offices require managers to approve T&A by the last Thursday of the pay period. Also available to managers are new reports, EPA Audit Summary Page and EPA Schedule Change Audit, which can be used to review approvals and changes by employee name, ID and time stamp made to T&A or employee schedules.

Mass Approval

After 8:00 pm on Approval Monday after the time administration is complete, a mass approval process is run in PPL to check payable time for all employees. If payable time is not present for an active employees, the system defaults to the employee's standard hours, which would also be on the Default Pay Report. The mass approval process then checks for approved time for all employees. Any timesheet not approved by 8:00 pm on Approval Monday is mass approved in the PPL System. The mass approval process generates a Portable Document Format (PDF) Default Pay Report and 23 PDF Mass Approval Certification Reports (one for each EPA organization).

Bi-weekly, the Mass Approval Certification Reports are distributed by e-mail via an automated process through the PPL to the appropriate Program Office Manager to sign, date, file and return by a determined date. The reports are also distributed to the Implementation Support Team (IST), the Lead PPL Access Coordinators, the Deputy Regional Administrators (DRA), and the Program Management Offices to be reviewed, verified, and approved by the Manager or Supervisor.

The Manager or Supervisor signs the Mass Approval Report and forwards a copy to their Comptroller or Program Management Office who then forwards a copy to the OFS IO PMOS ACS by the date designated in the e-mail. **The ACS Accountant confirms the Mass Approval Report was approved by the Managers and that all required corrections were made. A Mass Approval Summary Report documents this review (Key Control #5).** *This key control will not be tested in FY 2011.* If a report has not been received, the ACS Accountant sends an e-mail to the responsible manager requesting report submission.

Default Pay Reports

PPL checks payable time for all employees and if payable time is not present the system defaults to the employee's standard hours and is reported on a Default Pay Report for each of the 23 EPA organizations. Bi-weekly, the Default Pay Certification Reports are distributed by e-mail via an automated process through the PPL to the appropriate Program Office Manager to sign, date, file and return by a determined date. The reports are forwarded to the IST, the Lead PPL Access Coordinators, the DRAs, and the Program Management Office to be reviewed, verified, and approved by the manager or supervisor.

Bi-weekly, the Program Management Office annotates employees on the Default Pay Report that have separated from the Agency and then forwards a signed copy of the report to ACS certifying that employees corrected their timesheets to reflect the actual time worked. ACS tracks the Certifications on the Default Pay Summary Report and files the certifications in the Default Pay Reports binder (Key Control #6). *This key control will not be tested in FY 2011.* If a report has not been received, the ACS Accountant sends an e-mail to the responsible manager requesting report submission.

The ACS receives the Default Pay Report and reviews it for separated employees as identified by the Program Management Office. They confirm the separation by reviewing DFAS for a processed SF-50 Notification of Personnel Action. HR is informed of the separated employees so that the individuals will be removed from the payroll system (Key Control #7). *This key control will not be tested in FY 2011.*

The OFS IO PMOS ARS receives the Default Pay Report from the ACS Accountant with potential separated employees annotated. The ARS reviews the report and researches separated employees with possible overpayments in the OHR menu within PPL before determining if an accounts receivable (AR) should be established. ARS gathers background information, and calculates the amount owed to the Agency. For employees no longer with the Agency, the ARS Accountant initiates an AR for paychecks paid in error, assigns the debt an AR number and establishes the receivable. (*See the OFS IO PMO AR Payroll Narrative at workpaper **PMO.20.A.** for more information*). If the employee is still employed with the Agency, an ACS Accountant e-mails the Property Management Office and the PPL Access Coordinator to inform them the employee has not input and attested their time in PPL.

Source Data Automation (SDA)

On the Tuesday following Approval Monday, the SDA process takes all T&A information and forwards it to the DFAS for processing. Prior to the SDA process, the Payroll Support Staff (PSS) reviews sixteen queries in PPL to determine if adjustments need to be made to the data. The PSS annotates on the query printouts the adjustments that are made and maintains evidence of their review and timely corrective action. Once the queries are complete, an e-mail is sent to the system staff confirming completion. The system staff runs the time administration process to incorporate the PSS adjustments and then sends an e-mail to PSS to approve the changes. Finally, the system staff runs the 'Net Zeros' (re-distribution) process to clear transactions that are not relevant to an employee's T&A. The 'Net Zeros' process identifies all changes made (i.e. hours and cost, awards) since the last payroll run. For example, an employee retires or employment is terminated, his lump sum leave amounts are calculated and paid out by the payroll system, and the system defaults to the employee's normal payroll fixed account number; however, the Program Office may want the lump sum amount to be charged to a different account number. During the 'Net Zeros' process, these manual changes are captured in PPL.

OFS IO PMOS creates the SDA file and sends it to DFAS via Direct Connect, which uploads and processes the SDA file. During this process, the PSS enters the DFAS Defense Civilian Payment System (DCPS) and runs an Invalid Transaction Report on the Wednesday and Thursday following Approval Monday. **The PSS analyzes the DFAS DCPS Invalid Transaction Report to determine if action is needed and then makes corrections in DCPS as necessary to clear system rejections (Key Control #8).** The PSS

annotates the report and follows up on all needed corrections to confirm resolution. Once DFAS completes the payroll processing, the System Staff receives the Gross Payroll file from DFAS and loads the file into PPL.

Reconciliation of DFAS Gross Payroll File

Each pay period the ARS reconciles the PPL Labor Distribution Results Report (EPALAB02) to the DFAS Payroll Certification and Summary (592) and the Gross Pay Report (Key Control #9). The PPL Labor Distribution Results Report compares Gross Pay payroll summary data to employee detail accounting distribution data. For any discrepancies found, corrections are made in the Gross Pay Adjustments section of PPL. An example of a discrepancy would be the transposition of a new employee's social security number. Depending on the error type, corrections are made either by the ARS or Bart &Associates, a consultant company that maintains accounting distribution for OFS. Discrepancies are typically resolved within one working day and the EPALAB02 is rerun until the reports reconcile.

After corrections have been made, the EPALAB03 program is run. This program copies all payroll data from the PPL work area to the production on-line file within the PPL Labor Distribution Module Paymerge/CPARS. After the pay merge update is complete, the Websphere Business Interchange (WBI) Server re-formats certain data fields, such as the accounting string and object class code, into the Integrated Financial Management System (IFMS) format for upload and creates a publish date for the data. The publish date is the date of reconciliation between the DFAS Gross Pay file and the PPL Labor Distribution Report, which must be within the month that the paychecks are paid. Once the publish date is established, the data is uploaded into IFMS by the IO System Staff. **Bi-weekly, a system generated e-mail from the WBI, which reflects PPL data information, is reconciled by ARS to the EPA Employee Hours/Pay (HR/PY) Summary, which reflects IFMS data information (Key Control #10).** The latter report, whose totals agree to the EPALABO3, is produced by the Consultants to Government and Industry (CGI), who maintain IFMS for the Office of Financial Management.

Bi-weekly, the ARS identifies payroll rejections on the IFMS Reject Report and corrects the errors found (Key Control #11). The ARS Accountant updates an Excel spreadsheet which lists all of the payroll rejections. The total rejected amount on this spreadsheet must agree with the total from the WBI reconciliation email and the IFMS Reject Report. Based on the error message received, the ARS Accountant requests the information needed to correct the rejection(s), via e-mail, from the Program Office or Budget Division. An example of an error would be an incorrect organization code. Once the correct information is received, the ARS Accountant reprocesses the transaction to update IFMS.

Monthly Payroll Reconciliation (224 Process)

Monthly, the ARS Payroll Accountant (PA) performs the 224 process, which reconciles the IFMS payroll transactions to the Government-Wide Accounting (GWA) Report, Treasury's list of disbursements. The PA obtains the 'A Report', which is generated from IFMS, downloaded by CGI and put out on the ARS shared drive, listing all monthly IFMS transactions. The PA enters Treasury's Government On-Line Accounting Link System (GOALS) through the GWA website and prints the Treasury payment schedules and Intra-Governmental Payment and Collections (IPAC) payments. A spreadsheet is maintained by the PA for reconciliation purposes listing all IPAC data sent from payroll to another Agency Location Code (ALC) and sent to payroll from another ALC. The spreadsheet is used to reconcile the 'A Report' to Treasury disbursements. At the end of each pay cycle the PA receives an e-mail from the ARS listing the payroll totals for the period, which are added to the spreadsheet and reconciled to the 'A Report'. The PA also maintains a second spreadsheet called the Statement of Differences (SOD), which lists the monthly disbursement totals per the 'A Report' and is reconciled to the Treasury's SOD on Treasury's GOALS website.

Once the PA has completed the 224 reconciliation process, the final 224 Report is printed from IFMS where all reports are stored. The final 224 Report lists all data per the 'A Report' by appropriation. The PA enters data from the final 224 Report onto the EPA's 224 submission website located on the EPA Intranet. Once submitted, the 224 data is printed and initialed by the PA, and reviewed and signed by the ARS Supervisor. Hard copies of the reconciliation documentation and the signed 224 report are maintained in a monthly 224 file located in the ARS department.

Please see the SF-224 testing documentation at workpaper ***PMO.26.E*** *for additional information.*

Exhibit G

Sums That EPA Will Remove From The Disputed Oversight Bills

FY 2009—Direct Charges of EPA Employees

Employee	Pay Period	Payroll hrs.	Direct Charge
Garber, Deborah Supv. Gen. Attorney	15	1.00	79.89
Podowski, Andrew A. Toxicologist	12	1.00	70.34

FY 2010—Direct Charges of EPA Employees

Employee	Pay Period	Payroll hrs.	Direct Charge
Haile, Linda Maria Accountant	05	0.50	30.73
Nelson, Thomas Leverett Supv. Gen. Attorney	10	0.25	14.59
Podowski, Andrew A. Toxicologist	26	1.00	73.69

FY 2011—Direct Charges of EPA Employees

Employee	Pay Period	Payroll hrs.	Direct Charge
Garber, Deborah Supv. Gen. Attorney	03 04	1.50 1.75	122.42 142.81
Nelson, Thomas Leverett Supv. Gen. Attorney	16	0.25	23.68

FY 2011—Direct Charges of EPA Employees

Employee	Pay Period	Payroll hrs.	Direct Charge
Nelson, Thomas Leverett	01	0.25	22..36
Supv. Gen. Attorney	03	0.25	22..59
	06	0.25	22..59
	07	0.50	47.42
	08	0.50	47.49
	09	0.25	23.77
	10	0.75	71.25
		3.00	$281.75

ENFORCEMENT SUPPORT SERVICES (ESS) CONTRACT;

Toeroek Associates, Inc.; Total Costs = $1218.33

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VEDDER PRICE P.C.
222 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
312-609-7500
FAX: 312-609-5005

CHICAGO • NEW YORK CITY • WASHINGTON, DC

PETER J. KELLY
312-609-7875
pkelly@vedderprice.com

June 2, 2010

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-153A

Sheri Bianchin
EPA Project Coordinator
U.S. Environmental Protection Agency
Region 5
Mail Station SR-6J
77 W. Jackson Boulevard
Chicago, IL 60604

Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Regional Financial Manager
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Mark Koller
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
Mail Station C-14J
77 W. Jackson Boulevard
Chicago, IL 60604

Eric Runkel
State Project Coordinator
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Re: U.S. v. BFI, et al.
No. 07 C 4499
Notice of Dispute

Ladies & Gentlemen:

Certain Settling Defendants to the Consent Decree in the referenced civil matter hereby notify EPA and DOJ of a dispute over some of the costs included in the September 3, 2009 oversight cost invoice. This Notice issues pursuant to Paragraphs 54 and 64 of the Decree. The time to initiate a Notice of Dispute was extended to and through June 3, 2010, by agreement of the Parties. This letter is written on behalf of certain Settling Defendants consisting of BFI Waste Systems of North America, Inc., Borden Chemical, Inc., successor to IB Distributors, Inc., Exxon Mobil Corporation, Giddings & Lewis Machine Tools, as successor to Basic Electronics

Mfg. Corp., H.B. Fuller Company, Honeywell, Inc., Mail-Well Envelope Co., Morton International, Inc., Waste Management of Illinois, Inc. and Weber Foreign Manufacturing, Inc., f/k/a Ink Specialties Company, Inc.

Specifically, Settling Defendants dispute $163,531.43 of EPA's indirect costs. EPA's adding its own indirect costs on top of the Department of Justice indirect costs is overreaching. It is also contrary to EPA policy. We assume EPA calculated oversight costs using the "methodology" which was Attachment 1 to Joseph Dillon's May 26, 2000, memorandum to EPA Senior Resource Officials. In its second paragraph Attachment 1 declares that "direct costs include those that are directly incurred by the United States for site-specific activities...." It would seem obvious that DOJ costs directed to Wauconda site specific activities are direct costs incurred by the United States. Based on the April 10, 2009, DOJ Cost Summary, it seems clear that DOJ adds its own indirect costs to its direct costs in its charges. We assume DOJ's methodology approximates EPA's own. The crux of our challenge is that the United States in the form of EPA is calculating its oversight costs by multiplying its indirect costs on United States' indirect costs from DOJ. The policy allows EPA to multiply its indirect cost rate on direct costs incurred by the United States for site specific activities. (See above). There is no provision for adding indirect costs onto indirect costs. As noted, the amount in question is $163,531.43. I have attached another copy of the calculation of those costs .

We are depositing that amount in an interest bearing account and will provide the documentation required by Paragraph 54 of the Consent Decree shortly. Please let us know your availability for informal negotiations.

Very truly yours,

Peter J. Kelly

PJK/jab
cc: WTG II

Calculation of Disputed Costs

DOJ Indirect Costs*	EPA Indirect Rate	EPA Indirect Costs on DOJ Indirect
FY05 - $13,179.35	61.71%	$8,132.98
FY06 - $55,634.00	56.23%	$31,283.00
FY07 - $13,584.48	62.91%	$8,546.00
FY08 - $119,814.00	62.91%	$75,374.99
FY09 - $93,892.00	62.91%	$40,194.46
		$163,531.43

*From April 10, 2009 DOJ Cost Summary.

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VEDDER PRICE P.C.
222 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
312-609-7500
FAX: 312-609-5005

CHICAGO • NEW YORK CITY • WASHINGTON, DC

PETER J. KELLY
312-609-7875
pkelly@vedderprice.com

June 2, 2010

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-153A

Sheri Bianchin
EPA Project Coordinator
U.S. Environmental Protection Agency
Region 5
Mail Station SR-6J
77 W. Jackson Boulevard
Chicago, IL 60604

Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Regional Financial Manager
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Mark Koller
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
Mail Station C-14J
77 W. Jackson Boulevard
Chicago, IL 60604

Eric Runkel
State Project Coordinator
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Re: U.S. v. BFI, et al.
No. 07 C 4499

Ladies & Gentlemen:

In accordance with Paragraph 53.b of the Consent Decree in the referenced matter, on June 2, 2010, Settling Defendants wire transferred $1,837,028.82 in payment of the undisputed portion of the September 3, 2009, oversight cost invoice. The amount will arrive in two wire transfers of $200,607.76 and $1,636,421.06. In total the amount includes interest on $1,972,788.85 at 2.15% from October 5, 2009 until June 3, 2010. Interest was $116.20 per day.

Separately, the Settling Defendants are depositing $163,531.43 into an interest bearing account pursuant to the dispute resolution provision of the Decree. A Notice of Dispute for this portion of the oversight cost bill is included herewith.

Very truly yours,

Peter J. Kelly

PJK/jab
cc: S. Ellis
WTG II

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 21 2010

Via Electronic Mail
Via First Class Mail

REPLY TO THE ATTENTION OF:

Peter Kelly, Esq.
Vedder Price P.C.
222 North LaSalle Street
Chicago, Illinois 60601

Re: *United States v. BFI, et al.*, Case No. 07-CV-4499, Response to Notice of Dispute

Dear Mr. Kelly:

I write in response to your notice of dispute dated June 2, 2010, written on behalf of certain Settling Defendants (the "Settling Defendants") to the Consent Decree in the civil action referenced above, disputing a portion of the September 3, 2009 bill for Future Response Costs sent by the United States Environmental Protection Agency ("U.S. EPA"). As I understand it, the Settling Defendants dispute the portion of the bill relating to indirect costs calculated by U.S. EPA. Specifically, the Settling Defendants have disputed certain U.S. EPA indirect costs that they allege are applied to the Department of Justice's ("DOJ") line item on the U.S. EPA bill. The Settling Defendants allege that U.S. EPA improperly charged its own indirect costs upon a portion of DOJ's charges to U.S. EPA attributed as DOJ's indirect costs, which the Settling Defendants have calculated as $163,531.43. You have characterized that portion of the charges as "overreaching" and as contrary to language in the "Background" section of Appendix 1 to a memorandum, dated May 26, 2000, by U.S. EPA's Acting Comptroller.

As I understand your letter, the Settling Defendants do not dispute any other amounts in the September 3, 2009 billing, other than the $163,531.43 in U.S. EPA indirect costs calculated upon the DOJ line item.

After closely reviewing the notice of dispute, and having listened to the Settling Defendants' positions on previous conference calls, the U.S. EPA Wauconda team concludes that the amount billed to the Settling Defendants is correct and has been calculated in accordance with U.S. EPA's procedures and applicable law as described in more detail below.

According to Paragraph 53 of the Consent Decree, the Settling Defendants have agreed to reimburse the United States for all Future Response Costs (including Interim Response Costs) not inconsistent with the National Contingency Plan. The Consent Decree defines Future Response Costs in pertinent part as

> all costs ... including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports or other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to

Sections VII, IX, (including, but not limited to, the cost of attorney time...), XV, and Paragraph 85 of Section XXI."

The dispute centers on the nature of U.S. EPA's indirect costs and how these costs are calculated. EPA's indirect cost methodology, like the indirect cost methodology of any organization, is the manner the organization uses to identify and distribute its indirect costs to the goods and services the organization produces. These goods and services are referred to as "products" or "outputs." When determining the costs of their products, organizations include the direct cost of producing that product and the indirect cost of producing that product. Examples of U.S. EPA's direct costs include the salary of U.S. EPA personnel for time spent directing cleanup activities at a site, the cost of travel to the site, and the cost of contractors performing work at the site. Indirect costs include those costs incurred by an organization that support a product or service, but which cannot be specifically identified with that product or service, such as administration and management costs of the organization. U.S. EPA accounts for the cost of its Superfund activities through both direct and indirect costs. Contracts, interagency agreements, and state cooperative agreements are part of U.S. EPA's activities within the Superfund program.

In developing its indirect cost methodology, U.S. EPA follows the Statement of Federal Financial Accounting Standards No. 4 ("Standard No. 4"), issued by the Office of Management and Budget on July 31, 1995. The Federal Financial Management Improvement Act of 1996 requires the federal government to comply with published Federal Accounting Standards in its activities. Standard No. 4 does not require that U.S. EPA use any particular methodology to calculate its indirect costs, nor does it tell U.S. EPA how it must develop its methodology for calculating the indirect rate. Rather, the language of Standard No. 4 is intentionally broad to allow maximum flexibility for federal agencies in developing costing methodologies that best suit their agencies. The requirements of Standard No. 4 are: (1) cost accounting (meaning accumulate and report the costs of activities on a regular basis); (2) Responsibility Segments (meaning define and establish responsibility segments to match costs with outputs); (3) Full Costs (meaning report the full costs of government goods and services); (4) Inter-entity Costs (meaning incorporate the full cost of goods and services provided among federal entities); and (5) Costing methodology (meaning use appropriate costing methodologies to accumulate and assign costs to outputs).

In 2000, U.S. EPA revised its indirect cost methodology to employ a "full cost" methodology for indirect costs, based on the guidance provided by Standard No. 4. U.S. EPA's prior indirect cost methodology, which was based upon U.S. EPA labor hours charged to a Superfund site for determining its indirect costs, was criticized for failing to take into account the full cost of Superfund site cleanups because it did not take into account the complexity and magnitude of all of the activities that take place at a Superfund site, as labor hours are only a small component of site-specific costs. The revised methodology allocates indirect costs to sites based on the total costs of cleaning up Superfund sites. To compute its indirect cost rate, U.S. EPA identifies its total direct Superfund site expenditures by region (the allocation base) and allocates indirect costs over that amount to produce a percentage. The allocation is the means to reflect the relationship of indirect costs to direct expenditures for the Superfund program. To determine indirect costs attributable to an individual Superfund site, that percentage is then multiplied by total direct costs for the individual site.

The indirect cost pool for the Superfund program includes indirect costs such as rent, electricity, training, management and supervision of employees, and the management and implementation of the Superfund program as a whole. There is a different indirect cost pool for each region within U.S. EPA. The allocation base is the mechanism used to distribute, or allocate, the direct costs associated with the Superfund program to the program's product (or output) – in this case, Superfund activity. Under U.S. EPA's revised methodology, the allocation base is total site-specific expenditures (*i.e.*, total direct costs). Total site-specific costs is a reasonable basis for allocating direct costs because it reflects the magnitude and complexity of all of the Superfund program's activities at contaminated sites. To compute the indirect rate, U.S. EPA takes the indirect cost pool and divides it by the allocation base to produce a percentage. A separate rate for each fiscal year is generated for each regional office within EPA, such as Region 5, and that rate applies to all sites in that region. Finally, to determine the amount of indirect costs charged to a particular Superfund site, U.S. EPA multiplies the indirect rate percentage (obtained by dividing the pool by the allocation base) by the total direct costs for that site.

From an accounting perspective, it is appropriate for U.S. EPA to include indirect costs of those who have performed services for the U.S. EPA, such as its contractors (TetraTech, etc.) and other federal government agencies (such as Department of the Interior and DOJ) into the Superfund program's allocation base under U.S. EPA's indirect cost methodology. This is because all of the Superfund program's costs, including the indirect costs of those who have performed services for the Superfund program, are necessary to produce the Superfund program's product – the cleanup of contaminated sites and recovery of costs for the cleanup. As a result, these costs are appropriately included as part of the total (direct) cost of activity at the site. U.S. EPA's contractors are paid by U.S. EPA pursuant to contract. The contract price billed to U.S. EPA includes the contractors' direct and indirect costs, plus the contractors' profit in accordance with its contract with U.S. EPA. Similarly, DOJ is paid by U.S. EPA for its work pursuant to an interagency agreement. U.S. EPA's payment to DOJ reflects DOJ's direct and indirect costs. The total cost incurred by U.S. EPA for DOJ's services is part of the total direct costs attributed to the Wauconda Site, and thus becomes part of the direct cost base upon which U.S. EPA calculates its indirect costs. From a cost accounting viewpoint, the indirect portion of total DOJ costs U.S. EPA incurs pursuant to an interagency agreement is conceptually and practically indistinguishable from the indirect portion of a contractor's total costs billed to U.S. EPA pursuant to contract. In both cases, this is not double billing; rather, this is U.S. EPA's standard procedure for applying indirect costs upon ***total*** U.S. EPA site costs.

Similarly, the Settling Defendants' claim that U.S. EPA did not follow its own instruction for calculating indirect costs for a site, based on Attachment 1 to the May 26, 2000 memorandum written by U.S. EPA's Acting Comptroller, is incorrect. The memo's Attachment 1 instructs U.S. EPA to follow the very procedure for assessing indirect costs on total DOJ costs outlined in this letter. The Attachment provides, at page 9: "To apply these [indirect] rates to an individual site, identify the total direct site-specific costs of that site (including any DOJ costs but excluding ATSDR costs) and multiply that total by the appropriate region's indirect cost rate." In the present case, U.S. EPA identified the total DOJ costs (direct and indirect), included the total DOJ costs as part of U.S. EPA's direct site-specific costs of the Wauconda Site, and applied Region 5's indirect cost rate to the total DOJ costs just as it did with all other direct Site-specific costs.

Accordingly, U.S. EPA's billing, including applying U.S. EPA's indirect cost rate to total DOJ's costs, is appropriate, and accords with U.S. EPA's standard practices. You have asked us for dates to hold informal negotiations, and we are generally available on June 22, June 23 (before 3 PM), and June 24 (before 3 PM). In order to provide time for negotiations, we are willing to extend the period for informal dispute resolution ten days, up to and including July 2, 2010. Please contact us with your availability. Also, if you have further questions or would like to discuss this matter further, please do not hesitate to contact me at (312) 353-2591 or Steven Ellis at DOJ at (202) 514-3163.

Sincerely,

Mark J. Koller

Mark J. Koller
Associate Regional Counsel

cc: Steven Ellis, U.S. DOJ (via Email)

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(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 9607(a) of this title and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

(D) A petitioner who is liable for response costs under section 9607(a) of this title may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with subsections (a) and (d) of section 2412 of title 28.

(c) Guidelines for using imminent hazard, enforcement, and emergency response authorities; promulgation by Administrator of EPA, scope, etc.

Within one hundred and eighty days after December 11, 1980, the Administrator of the Environmental Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this chapter. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforcement of standards and permits, the gathering of information, and other imminent hazard and emergency powers authorized by (1) sections 1321(c)(2),[1] 1318, 1319, and 1364(a) of title 33, (2) sections 6927, 6928, 6934, and 6973 of this title, (3) sections 300j–4 and 300i of this title, (4) sections 7413, 7414, and 7603 of this title, and (5) section 2606 of title 15.

(Pub. L. 96–510, title I, § 106, Dec. 11, 1980, 94 Stat. 2780; Pub. L. 99–499, title I, §§ 106, 109(b), Oct. 17, 1986, 100 Stat. 1628, 1633; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Section 1321(c)(2) of title 33, referred to in subsec. (c), was amended generally by Pub. L. 101–380, title IV, § 4201(a), Aug. 18, 1990, 104 Stat. 523. Prior to general amendment, subsec. (c)(2) related to preparation of a National Contingency Plan. Provisions relating to a National Contingency Plan are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–499 designated existing provisions as par. (1), substituted "who, without sufficient cause, willfully" for "who willfully" and "$25,000" for "$5,000", and added par. (2).

Subsec. (b)(2)(A). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

[1] See References in Text note below.

§ 9607. Liability

(a) Covered persons; scope; recoverable costs and damages; interest rate; "comparable maturity" date

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

(D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26. For purposes of applying such amendments to interest under this subsection, the term "comparable maturity" shall be determined with reference to the date on which interest accruing under this subsection commences.

(b) Defenses

There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c) Determination of amounts

(1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed—

(A) for any vessel, other than an incineration vessel, which carries any hazardous substance as cargo or residue, $300 per gross ton, or $5,000,000, whichever is greater;

(B) for any other vessel, other than an incineration vessel, $300 per gross ton, or $500,000, whichever is greater;

(C) for any motor vehicle, aircraft, hazardous liquid pipeline facility (as defined in section 60101(a) of title 49), or rolling stock, $50,000,000 or such lesser amount as the President shall establish by regulation, but in no event less than $5,000,000 (or, for releases of hazardous substances as defined in section 9601(14)(A) of this title into the navigable waters, $8,000,000). Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or

(D) for any incineration vessel or any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus $50,000,000 for any damages under this subchapter.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A)(i) the release or threat of release of a hazardous substance was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 or vessels subject to the provisions of title 33 or 46, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 9604 or 9606 of this title, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 9612(c) of this title. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(d) Rendering care or advice

(1) In general

Except as provided in paragraph (2), no person shall be liable under this subchapter for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan ("NCP") or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(2) State and local governments

No State or local government shall be liable under this subchapter for costs or damages as a result of actions taken in response to an emergency created by the release or threat-

ened release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(3) Savings provision

This subsection shall not alter the liability of any person covered by the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section with respect to the release or threatened release concerned.

(e) Indemnification, hold harmless, etc., agreements or conveyances; subrogation rights

(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this subchapter, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f) Natural resources liability; designation of public trustees of natural resources

(1) Natural resources liability

In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) of this section liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation: *Provided, however*, That no liability to the United States or State or Indian tribe shall be imposed under subparagraph (C) of subsection (a) of this section, where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) of this section shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource. There shall be no recovery under the authority of subparagraph (C) of subsection (a) of this section where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

(2) Designation of Federal and State officials

(A) Federal

The President shall designate in the National Contingency Plan published under section 9605 of this title the Federal officials who shall act on behalf of the public as trustees for natural resources under this chapter and section 1321 of title 33. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this chapter and such section 1321 of title 33 for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship.

(B) State

The Governor of each State shall designate State officials who may act on behalf of the public as trustees for natural resources under this chapter and section 1321 of title 33 and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this chapter and such section 1321 of title 33 for those natural resources under their trusteeship.

(C) Rebuttable presumption

Any determination or assessment of damages to natural resources for the purposes of this chapter and section 1321 of title 33 made by a Federal or State trustee in accordance with the regulations promulgated under section 9651(c) of this title shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this chapter or section 1321 of title 33.

(g) Federal agencies

For provisions relating to Federal agencies, see section 9620 of this title.

(h) Owner or operator of vessel

The owner or operator of a vessel shall be liable in accordance with this section, under maritime tort law, and as provided under section 9614 of this title notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff)[1] or the absence of any physical damage to the proprietary interest of the claimant.

(i) Application of a registered pesticide product

No person (including the United States or any State or Indian tribe) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(j) Obligations or liability pursuant to federally permitted release

Recovery by any person (including the United States or any State or Indian tribe) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 9601(10)(B) or (C) of this title shall be recoverable in an action brought under section 1319(b) of title 33.

(k) Transfer to, and assumption by, Post-Closure Liability Fund of liability of owner or operator of hazardous waste disposal facility in receipt of permit under applicable solid waste disposal law; time, criteria applicable, procedures, etc.; monitoring costs; reports

(1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], shall be transferred to and assumed by the Post-closure Liability Fund established by section 9641[1] of this title when—

(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and regulations issued thereunder, which may affect the performance of such facility after closure; and

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act [42 U.S.C. 6926(b)]) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 9641[1] of this title, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 9641[1] of this title may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

(4)(A) Not later than one year after December 11, 1980, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in subchapter II[1] of this chapter.

(B) Not later than eighteen months after December 11, 1980, and after a public hearing, the President shall by rule determine whether or

[1] See References in Text note below.

not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this chapter and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under subchapter II[1] of this chapter.

(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

(5) SUSPENSION OF LIABILITY TRANSFER.—Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 9611 of this title, no liability shall be transferred to or assumed by the Post-Closure Liability Trust Fund established by section 9641[1] of this title prior to completion of the study required under paragraph (6) of this subsection, transmission of a report of such study to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.

(6) STUDY OF OPTIONS FOR POST-CLOSURE PROGRAM.—

(A) STUDY.—The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste treatment, storage, and disposal sites after their closure which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

(B) PROGRAM ELEMENTS.—The program referred to in subparagraph (A) shall be designed to assure each of the following:

(i) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

(ii) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems that may arise and to cover costs of long-term monitoring, care, and maintenance of such sites.

(iii) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

(C) ASSESSMENTS.—The study under this paragraph shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act [42 U.S.C. 6925] and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for different classes of facilities and for different classes of land disposal facilities and shall include but not be limited to—

(i) the current and future financial capabilities of facility owners and operators;

(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

(iii) the availability of mechanisms by which owners and operators of such facilities can assure that current and future costs, including post-closure costs, will be financed.

(D) PROCEDURES.—In carrying out the responsibilities of this paragraph, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

(E) CONSIDERATION OF OPTIONS.—In conducting the study under this paragraph, the Comptroller General shall consider various mechanisms and combinations of mechanisms to complement the policies set forth in the Hazardous and Solid Waste Amendments of 1984 to serve the purposes set forth in subparagraph (B) and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to—

(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq., 6991 et seq.];

(ii) voluntary risk pooling by owners and operators;

(iii) legislation to require risk pooling by owners and operators;

(iv) modification of the Post-Closure Liability Trust Fund previously established by section 9641[1] of this title, and the conditions for transfer of liability under this subsection, including limiting the transfer of some or all liability under this subsection only in the case of insolvency of owners and operators;

(v) private insurance;

(vi) insurance provided by the Federal Government;

(vii) coinsurance, reinsurance, or pooled-risk insurance, whether provided by the pri-

vate sector or provided or assisted by the Federal Government; and

(viii) creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

(F) RECOMMENDATIONS.—The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such program.

(*l*) Federal lien

(1) In general

All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a) of this section) shall constitute a lien in favor of the United States upon all real property and rights to such property which—

(A) belong to such person; and

(B) are subject to or affected by a removal or remedial action.

(2) Duration

The lien imposed by this subsection shall arise at the later of the following:

(A) The time costs are first incurred by the United States with respect to a response action under this chapter.

(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 9613 of this title.

(3) Notice and validity

The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of this subsection, the terms "purchaser" and "security interest" shall have the definitions provided under section 6323(h) of title 26.

(4) Action in rem

The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

(m) Maritime lien

All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) of this section with respect to a release or threatened release from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found. Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(n) Liability of fiduciaries

(1) In general

The liability of a fiduciary under any provision of this chapter for the release or threatened release of a hazardous substance at, from, or in connection with a vessel or facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.

(2) Exclusion

Paragraph (1) does not apply to the extent that a person is liable under this chapter independently of the person's ownership of a vessel or facility as a fiduciary or actions taken in a fiduciary capacity.

(3) Limitation

Paragraphs (1) and (4) do not limit the liability pertaining to a release or threatened release of a hazardous substance if negligence of a fiduciary causes or contributes to the release or threatened release.

(4) Safe harbor

A fiduciary shall not be liable in its personal capacity under this chapter for—

(A) undertaking or directing another person to undertake a response action under subsection (d)(1) of this section or under the direction of an on scene coordinator designated under the National Contingency Plan;

(B) undertaking or directing another person to undertake any other lawful means of addressing a hazardous substance in connection with the vessel or facility;

(C) terminating the fiduciary relationship;

(D) including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying or enforcing the term or condition;

(E) monitoring or undertaking 1 or more inspections of the vessel or facility;

(F) providing financial or other advice or counseling to other parties to the fiduciary

relationship, including the settlor or beneficiary;

(G) restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

(H) administering, as a fiduciary, a vessel or facility that was contaminated before the fiduciary relationship began; or

(I) declining to take any of the actions described in subparagraphs (B) through (H).

(5) Definitions

As used in this chapter:

(A) Fiduciary

The term "fiduciary"—

(i) means a person acting for the benefit of another party as a bona fide—

(I) trustee;

(II) executor;

(III) administrator;

(IV) custodian;

(V) guardian of estates or guardian ad litem;

(VI) receiver;

(VII) conservator;

(VIII) committee of estates of incapacitated persons;

(IX) personal representative;

(X) trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

(XI) representative in any other capacity that the Administrator, after providing public notice, determines to be similar to the capacities described in subclauses (I) through (X); and

(ii) does not include—

(I) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, 1 or more estate plans or because of the incapacity of a natural person; or

(II) a person that acquires ownership or control of a vessel or facility with the objective purpose of avoiding liability of the person or of any other person.

(B) Fiduciary capacity

The term "fiduciary capacity" means the capacity of a person in holding title to a vessel or facility, or otherwise having control of or an interest in the vessel or facility, pursuant to the exercise of the responsibilities of the person as a fiduciary.

(6) Savings clause

Nothing in this subsection—

(A) affects the rights or immunities or other defenses that are available under this chapter or other law that is applicable to a person subject to this subsection; or

(B) creates any liability for a person or a private right of action against a fiduciary or any other person.

(7) No effect on certain persons

Nothing in this subsection applies to a person if the person—

(A)(i) acts in a capacity other than that of a fiduciary or in a beneficiary capacity; and

(ii) in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(B)(i) is a beneficiary and a fiduciary with respect to the same fiduciary estate; and

(ii) as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

(8) Limitation

This subsection does not preclude a claim under this chapter against—

(A) the assets of the estate or trust administered by the fiduciary; or

(B) a nonemployee agent or independent contractor retained by a fiduciary.

(o) De micromis exemption

(1) In general

Except as provided in paragraph (2), a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under this chapter if liability is based solely on paragraph (3) or (4) of subsection (a) of this section, and the person, except as provided in paragraph (4) of this subsection, can demonstrate that—

(A) the total amount of the material containing hazardous substances that the person arranged for disposal or treatment of, arranged with a transporter for transport for disposal or treatment of, or accepted for transport for disposal or treatment, at the facility was less than 110 gallons of liquid materials or less than 200 pounds of solid materials (or such greater or lesser amounts as the Administrator may determine by regulation); and

(B) all or part of the disposal, treatment, or transport concerned occurred before April 1, 2001.

(2) Exceptions

Paragraph (1) shall not apply in a case in which—

(A) the President determines that—

(i) the materials containing hazardous substances referred to in paragraph (1) have contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility; or

(ii) the person has failed to comply with an information request or administrative subpoena issued by the President under this chapter or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility; or

(B) a person has been convicted of a criminal violation for the conduct to which the

exemption would apply, and that conviction has not been vitiated on appeal or otherwise.

(3) No judicial review

A determination by the President under paragraph (2)(A) shall not be subject to judicial review.

(4) Nongovernmental third-party contribution actions

In the case of a contribution action, with respect to response costs at a facility on the National Priorities List, brought by a party, other than a Federal, State, or local government, under this chapter, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraph (1)(A) and (B) of this subsection are not met.

(p) Municipal solid waste exemption

(1) In general

Except as provided in paragraph (2) of this subsection, a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under paragraph (3) of subsection (a) of this section for municipal solid waste disposed of at a facility if the person, except as provided in paragraph (5) of this subsection, can demonstrate that the person is—

(A) an owner, operator, or lessee of residential property from which all of the person's municipal solid waste was generated with respect to the facility;

(B) a business entity (including a parent, subsidiary, or affiliate of the entity) that, during its 3 taxable years preceding the date of transmittal of written notification from the President of its potential liability under this section, employed on average not more than 100 full-time individuals, or the equivalent thereof, and that is a small business concern (within the meaning of the Small Business Act (15 U.S.C. 631 et seq.)) from which was generated all of the municipal solid waste attributable to the entity with respect to the facility; or

(C) an organization described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title that, during its taxable year preceding the date of transmittal of written notification from the President of its potential liability under this section, employed not more than 100 paid individuals at the location from which was generated all of the municipal solid waste attributable to the organization with respect to the facility.

For purposes of this subsection, the term "affiliate" has the meaning of that term provided in the definition of "small business concern" in regulations promulgated by the Small Business Administration in accordance with the Small Business Act (15 U.S.C. 631 et seq.).

(2) Exception

Paragraph (1) shall not apply in a case in which the President determines that—

(A) the municipal solid waste referred to in paragraph (1) has contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility;

(B) the person has failed to comply with an information request or administrative subpoena issued by the President under this chapter; or

(C) the person has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility.

(3) No judicial review

A determination by the President under paragraph (2) shall not be subject to judicial review.

(4) Definition of municipal solid waste

(A) In general

For purposes of this subsection, the term "municipal solid waste" means waste material—

(i) generated by a household (including a single or multifamily residence); and

(ii) generated by a commercial, industrial, or institutional entity, to the extent that the waste material—

(I) is essentially the same as waste normally generated by a household;

(II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and

(III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

(B) Examples

Examples of municipal solid waste under subparagraph (A) include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste.

(C) Exclusions

The term "municipal solid waste" does not include—

(i) combustion ash generated by resource recovery facilities or municipal incinerators; or

(ii) waste material from manufacturing or processing operations (including pollution control operations) that is not essentially the same as waste normally generated by households.

(5) Burden of proof

In the case of an action, with respect to response costs at a facility on the National Priorities List, brought under this section or section 9613 of this title by—

(A) a party, other than a Federal, State, or local government, with respect to municipal solid waste disposed of on or after April 1, 2001; or

(B) any party with respect to municipal solid waste disposed of before April 1, 2001, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraphs (1) and (4) for exemption for entities and organizations described in paragraph (1)(B) and (C) are not met.

(6) Certain actions not permitted

No contribution action may be brought by a party, other than a Federal, State, or local government, under this chapter with respect to circumstances described in paragraph (1)(A).

(7) Costs and fees

A nongovernmental entity that commences, after January 11, 2002, a contribution action under this chapter shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney's fees and expert witness fees, if the defendant is not liable for contribution based on an exemption under this subsection or subsection (*o*) of this section.

(q) Contiguous properties

(1) Not considered to be an owner or operator

(A) In general

A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from, real property that is not owned by that person shall not be considered to be an owner or operator of a vessel or facility under paragraph (1) or (2) of subsection (a) of this section solely by reason of the contamination if—

(i) the person did not cause, contribute, or consent to the release or threatened release;

(ii) the person is not—

(I) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services); or

(II) the result of a reorganization of a business entity that was potentially liable;

(iii) the person takes reasonable steps to—

(I) stop any continuing release;

(II) prevent any threatened future release; and

(III) prevent or limit human, environmental, or natural resource exposure to any hazardous substance released on or from property owned by that person;

(iv) the person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the vessel or facility from which there has been a release or threatened release (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration at the vessel or facility);

(v) the person—

(I) is in compliance with any land use restrictions established or relied on in connection with the response action at the facility; and

(II) does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;

(vi) the person is in compliance with any request for information or administrative subpoena issued by the President under this chapter;

(vii) the person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility; and

(viii) at the time at which the person acquired the property, the person—

(I) conducted all appropriate inquiry within the meaning of section 9601(35)(B) of this title with respect to the property; and

(II) did not know or have reason to know that the property was or could be contaminated by a release or threatened release of one or more hazardous substances from other real property not owned or operated by the person.

(B) Demonstration

To qualify as a person described in subparagraph (A), a person must establish by a preponderance of the evidence that the conditions in clauses (i) through (viii) of subparagraph (A) have been met.

(C) Bona fide prospective purchaser

Any person that does not qualify as a person described in this paragraph because the person had, or had reason to have, knowledge specified in subparagraph (A)(viii) at the time of acquisition of the real property may qualify as a bona fide prospective purchaser under section 9601(40) of this title if the person is otherwise described in that section.

(D) Ground water

With respect to a hazardous substance from one or more sources that are not on the property of a person that is a contiguous property owner that enters ground water beneath the property of the person solely as a result of subsurface migration in an aquifer, subparagraph (A)(iii) shall not require the person to conduct ground water investigations or to install ground water remediation systems, except in accordance with the policy of the Environmental Protection Agency concerning owners of property containing contaminated aquifers, dated May 24, 1995.

(2) Effect of law

With respect to a person described in this subsection, nothing in this subsection—

(A) limits any defense to liability that may be available to the person under any other provision of law; or

(B) imposes liability on the person that is not otherwise imposed by subsection (a) of this section.

(3) Assurances

The Administrator may—

(A) issue an assurance that no enforcement action under this chapter will be initiated against a person described in paragraph (1); and

(B) grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 9613(f) of this title.

(r) Prospective purchaser and windfall lien

(1) Limitation on liability

Notwithstanding subsection (a)(1) of this section, a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

(2) Lien

If there are unrecovered response costs incurred by the United States at a facility for which an owner of the facility is not liable by reason of paragraph (1), and if each of the conditions described in paragraph (3) is met, the United States shall have a lien on the facility, or may by agreement with the owner, obtain from the owner a lien on any other property or other assurance of payment satisfactory to the Administrator, for the unrecovered response costs.

(3) Conditions

The conditions referred to in paragraph (2) are the following:

(A) Response action

A response action for which there are unrecovered costs of the United States is carried out at the facility.

(B) Fair market value

The response action increases the fair market value of the facility above the fair market value of the facility that existed before the response action was initiated.

(4) Amount; duration

A lien under paragraph (2)—

(A) shall be in an amount not to exceed the increase in fair market value of the property attributable to the response action at the time of a sale or other disposition of the property;

(B) shall arise at the time at which costs are first incurred by the United States with respect to a response action at the facility;

(C) shall be subject to the requirements of subsection (*l*)(3) of this section; and

(D) shall continue until the earlier of—

(i) satisfaction of the lien by sale or other means; or

(ii) notwithstanding any statute of limitations under section 9613 of this title, recovery of all response costs incurred at the facility.

(Pub. L. 96–510, title I, § 107, Dec. 11, 1980, 94 Stat. 2781; Pub. L. 99–499, title I, §§ 107(a)–(d)(2), (e), (f), 127(b), (e), title II, §§ 201, 207(c), Oct. 17, 1986, 100 Stat. 1628–1630, 1692, 1693, 1705; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–429, § 7(e)(2), Oct. 31, 1994, 108 Stat. 4390; Pub. L. 104–208, div. A, title II, § 2502(a), Sept. 30, 1996, 110 Stat. 3009–462; Pub. L. 104–287, § 6(j)(2), Oct. 11, 1996, 110 Stat. 3400; Pub. L. 107–118, title I, § 102(a), title II, §§ 221, 222(b), Jan. 11, 2002, 115 Stat. 2356, 2368, 2371.)

REFERENCES IN TEXT

Such amendments, referred to in the last sentence of subsec. (a), probably means the amendments made by Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1613, known as the "Superfund Amendments and Reauthorization Act of 1986". For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

Act of March 3, 1851 (46 U.S.C. 183ff), referred to in subsec. (h), is act Mar. 3, 1851, ch. 43, 9 Stat. 635, which was incorporated into the Revised Statutes as R.S. §§ 4282, 4283, 4284 to 4287 and 4289, which were classified to sections 182, 183, and 184 to 188 of the former Appendix to Title 46, Shipping, prior to being repealed and restated in chapter 305 of Title 46 by Pub. L. 109–304, §§ 6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (i), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (k)(1), (3), (6)(E)(i), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitles C and I of the Solid Waste Disposal Act are classified generally to subchapters III (§ 6921 et seq.) and IX (§ 6991 et seq.), respectively, of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 9641 of this title, referred to in subsec. (k), was repealed by Pub. L. 99–499, title V, § 514(b), Oct. 17, 1986, 100 Stat. 1767.

Subchapter II of this chapter, referred to in subsec. (k)(4)(A) and (C), was in the original "title II of this Act", meaning title II of Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96–510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99–499, title V, §§ 514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

The Hazardous and Solid Waste Amendments of 1984, referred to in subsec. (k)(6)(A), (E), is Pub. L. 98–616, Nov. 8, 1984, 98 Stat. 3221. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 6901 of this title and Tables.

The Small Business Act, referred to in subsec. (p)(1), is Pub. L. 85–536, July 18, 1958, 72 Stat. 384, as amended, which is classified generally to chapter 14A (§ 631 et

seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

2002—Subsecs. (o), (p). Pub. L. 107–118, §102(a), added subsecs. (o) and (p).

Subsec. (q). Pub. L. 107–118, §221, added subsec. (q).

Subsec. (r). Pub. L. 107–118, §222(b), added subsec. (r).

1996—Subsec. (c)(1)(C). Pub. L. 104–287 substituted "section 60101(a) of title 49" for "the Hazardous Liquid Pipeline Safety Act of 1979".

Subsec. (n). Pub. L. 104–208 added subsec. (n).

1994—Subsec. (c)(1)(C). Pub. L. 103–429 substituted "hazardous liquid pipeline facility" for "pipeline".

1986—Subsec. (a). Pub. L. 99–514, in penultimate sentence, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Pub. L. 99–499, §107(b), inserted concluding provisions relating to accrual and rate of interest on amounts recoverable under this section.

Subsec. (a)(1). Pub. L. 99–499, §107(a), struck out "(otherwise subject to the jurisdiction of the United States)" after "vessel".

Subsec. (a)(3). Pub. L. 99–499, §127(b)(1), inserted "or incineration vessel" after "facility".

Subsec. (a)(4). Pub. L. 99–499, §§107(b), 127(b)(2), 207(c)(1), in introductory provisions, inserted ", incineration vessels" after "vessels", in subpar. (A), inserted "or an Indian tribe" after "State", and added subpar. (D).

Subsec. (c)(1)(A). Pub. L. 99–499, §127(b)(3), inserted ", other than an incineration vessel," after "vessel".

Subsec. (c)(1)(B). Pub. L. 99–499, §127(b)(4), inserted "other than an incineration vessel," after "other vessel,".

Subsec. (c)(1)(D). Pub. L. 99–499, §127(b)(5), inserted "any incineration vessel or" before "any facility".

Subsec. (d). Pub. L. 99–499, §107(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "No person shall be liable under this subchapter for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence."

Subsec. (f)(1). Pub. L. 99–499, §107(d)(1), designated existing provisions as par. (1) and added heading.

Pub. L. 99–499, §207(c)(2)(A), inserted "and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation" after third reference to "State".

Pub. L. 99–499, §207(c)(2)(B), inserted "or Indian tribe" after fourth reference to "State".

Pub. L. 99–499, §207(c)(2)(C), inserted in first sentence ", so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe".

Pub. L. 99–499, §107(d)(2), substituted "Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) of this section shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource" for "Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources".

Pub. L. 99–499, §207(c)(2)(D), which directed the insertion of "or the Indian tribe" after "State government", could not be executed because the prior amendment by section 107(d)(2) of Pub. L. 99–499, struck out third sentence referring to "State government".

Subsec. (f)(2). Pub. L. 99–499, §107(d)(1), added par. (2).

Subsec. (g). Pub. L. 99–499, §107(e), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section."

Subsec. (h). Pub. L. 99–499, §127(e), inserted ", under maritime tort law," after "with this section" and inserted "or the absence of any physical damage to the proprietary interest of the claimant" before the period at end.

Subsec. (i). Pub. L. 99–499, §207(c)(3), inserted "or Indian tribe" after "State".

Subsec. (j). Pub. L. 99–499, §207(c)(4), inserted "or Indian tribe" after first reference to "State".

Subsec. (k)(5), (6). Pub. L. 99–499, §201, added pars. (5) and (6).

Subsec. (l). Pub. L. 99–499, §107(f), added subsec. (l).

Subsec. (l)(3). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (m). Pub. L. 99–499, §107(f), added subsec. (m).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to any claim that has not been finally adjudicated as of Sept. 30, 1996, see section 2505 of Pub. L. 104–208, set out as a note under section 6991b of this title.

EFFECT ON CONCLUDED ACTIONS

Pub. L. 107–118, title I, §103, Jan. 11, 2002, 115 Stat. 2360, provided that: "The amendments made by this title [amending this section and section 9622 of this title] shall not apply to or in any way affect any settlement lodged in, or judgment issued by, a United States District Court, or any administrative settlement or order entered into or issued by the United States or any State, before the date of the enactment of this Act [Jan. 11, 2002]."

CENTRAL HAZARDOUS MATERIALS FUND

Pub. L. 109–54, title I, Aug. 2, 2005, 119 Stat. 518, provided in part: "That hereafter, notwithstanding 31 U.S.C. 3302, sums recovered from or paid by a party in advance of or as reimbursement for remedial action or response activities conducted by the Department [of the Interior] pursuant to section 107 or 113(f) [42 U.S.C. 9601, 9613(f)] of such Act [Pub. L. 96–510], shall be credited to this account, to be available until expended without further appropriation: *Provided further*, That hereafter such sums recovered from or paid by any party are not limited to monetary payments and may include stocks, bonds or other personal or real prop-

erty, which may be retained, liquidated, or otherwise disposed of by the Secretary and which shall be credited to this account."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. E, title I, Dec. 8, 2004, 118 Stat. 3041.

Pub. L. 108–108, title I, §310, Nov. 10, 2003, 117 Stat. 1243.

Pub. L. 108–7, div. F, title I, Feb. 20, 2003, 117 Stat. 218.

Pub. L. 107–63, title I, Nov. 5, 2001, 115 Stat. 416.

Pub. L. 106–291, title I, Oct. 11, 2000, 114 Stat. 923.

Pub. L. 106–113, div. B, §1000(a)(3) [title I], Nov. 29, 1999, 113 Stat. 1535, 1501A–136.

Pub. L. 105–277, div. A, §101(e) [title I], Oct. 21, 1998, 112 Stat. 2681–231, 2681–233.

Pub. L. 105–83, title I, Nov. 14, 1997, 111 Stat. 1544.

Pub. L. 104–208, div. A, title I, §101(d) [title I], Sept. 30, 1996, 110 Stat. 3009–181, 3009–182.

Pub. L. 104–134, title I, §101(c) [title I], Apr. 26, 1996, 110 Stat. 1321–156, 1321–157; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 103–332, title I, Sept. 30, 1994, 108 Stat. 2500.

RECOVERY OF COSTS

Pub. L. 104–303, title II, §209, Oct. 12, 1996, 110 Stat. 3681, provided that: "Amounts recovered under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) for any response action taken by the Secretary in support of the civil works program of the Department of the Army and any other amounts recovered by the Secretary from a contractor, insurer, surety, or other person to reimburse the Department of the Army for any expenditure for environmental response activities in support of the Army civil works program shall be credited to the appropriate trust fund account from which the cost of such response action has been paid or will be charged."

COORDINATION OF TITLES I TO IV OF PUB. L. 99–499

Any provision of titles I to IV of Pub. L. 99–499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99–499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§ 9608. Financial responsibility

(a) Establishment and maintenance by owner or operator of vessel; amount; failure to obtain certification of compliance

(1) The owner or operator of each vessel (except a nonself-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, or $5,000,000, whichever is greater) to cover the liability prescribed under paragraph (1) of section 9607(a) of this title. Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 60105 of title 46 of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(4) In addition to the financial responsibility provisions of paragraph (1) of this subsection, the President shall require additional evidence of financial responsibility for incineration vessels in such amounts, and to cover such liabilities recognized by law, as the President deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and any other factors deemed relevant.

(b) Establishment and maintenance by owner or operator of production, etc., facilities; amount; adjustment; consolidated form of responsibility; coverage of motor carriers

(1) Beginning not earlier than five years after December 11, 1980, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after December 11, 1980, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements. Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or

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VEDDER PRICE

VEDDER PRICE P.C.
222 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
312-609-7500
FAX: 312-609-5005

CHICAGO • NEW YORK CITY • WASHINGTON, DC

PETER J. KELLY
312-609-7875
pkelly@vedderprice.com

July 22, 2010

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-153A

Sheri Bianchin
EPA Project Coordinator
U.S. Environmental Protection Agency
Region 5
Mail Station SR-6J
77 W. Jackson Boulevard
Chicago, IL 60604

Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Regional Financial Manager
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Mark Koller
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
Mail Station C-14J
77 W. Jackson Boulevard
Chicago, IL 60604

Eric Runkel
State Project Coordinator
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Re: Statement of Position
U.S. v. BFI, et al.
No. 07 C 4499

Ladies & Gentlemen:

Pursuant to Paragraph 65 of the Consent Decree entered in the referenced matter, Settling Defendants* submit their Statement of Position in support of disputing EPA's September 3, 2009 oversight cost bill. The bill for the period 5/01/2005 through 2/27/2009 totaled $1,972,788.45. In late 2004 EPA agreed to Settling Defendants' proposal to pay for permanent public water connections in the vicinity of the Wauconda landfill in lieu of an expansive hydrogeologic investigation. In the Consent Decree embodying the plan EPA acknowledges that "Settling Defendants have, by early implementation of portions of the work required by this Consent Decree, acted proactively to protect human health and the environment." The water connections

* This Statement of Position is submitted on behalf of BFI Waste Systems of North America, Inc., Borden Chemical, Inc., Exxon Mobil Corporation, Giddings &. Lewis Machine Tools, LLC, H. B. Fuller Company, Honeywell, Inc., Mail-Well Envelope Co., Morton International, Inc., Waste Management of Illinois Inc. and Weber Foreign Manufacturing, Inc.

were in place 2 years before the Consent Decree was entered. Consent Decree at ¶6. Settling Defendants had every reason to expect good faith and fair dealing from EPA. Instead, EPA went on a spending binge. EPA and its contractors charged Settling Defendants the following amounts:

Fiscal Year	Direct Costs	Indirect Costs	Total
2005	$76,915.02	$47,464.24	$124,379.26
2006	$333,710.53	$187,645.43	$521,355.96
2007	$262,764.75	$165,305.29	$428,070.04
2008	$390,416.19	$245,610.81	$636,027.00
2009	$161,411.96	$101,544.23	$262,956.19

For years 2005 and 2009 EPA's bill included only five months.

In stark contrast EPA's oversight costs until 2004 were as follows:

EPA Oversight Cost Invoices

Period	Date of Invoice	Costs	
4/20/94 – 4/19/96	7/23/96	$26,649.42	(a 2 year period)
4/20/96 – 4/19/97	12/2/97	$30,347.22	
4/20/97 – 4/19/98	7/6/98	$12,973.08	
4/20/98 – 4/19/99	6/16/99	$6,767.96	
4/20/99 – 4/19/00	7/18/00	$9,975.23	
4/20/00 – 4/30/01	6/18/01	$5,743.69	
5/1/01 – 4/30/02	7/1/02	$17,864.65	
5/1/02 – 4/30/03	7/1/03	$27,435.27	
5/1/03 – 4/30/04	6/1/04	$33,408.53	

Settling Defendants could have anticipated the discovery of vinyl chloride in residential wells would cause EPA to increase its level of oversight. Settling Defendant's could not reasonably have expected an unprecedented unreasonable increase. EPA engaged contractors under four separate contracts (TetraTech (2), Roy F. Weston and Sultrac) to complete overlapping tasks. Every time Settling Defendants' consultant (Conestoga Rovers and Associates (CRA)) took groundwater samples, an EPA contractor or two (and sometimes EPA) went along. Frequently, the contractor took split samples and sent them to a laboratory for analysis. This practice is antiquated in the era of EPA's contract lab program. Rarely did the EPA contractors' results differ from Settling Defendants' and then only insignificantly. Assuming EPA felt the need to assure the community the Settling Defendants were not pencil whipping (fudging) the data, EPA could have done random split sampling in lieu of splitting every sample.

In addition, when CRA went to the site to fix a fence, repair a seep, grade a low spot or sample a gas vent, an EPA contractor (or two and sometimes EPA) was present to observe. This practice did not occur before 2004 and could not have been related to the discovery of vinyl chloride.

EPA also used contractors to negotiate the Remedial Action Work Plan which, but for the groundwater monitoring program, is largely the same as before 2004. Multiple contractors and a representative of the Department of Interior routinely attended the tediously lengthy Consent Decree negotiations. At one point an EPA contractor expressed the ridiculous concern that grass clippings left on the landfill cover would cause erosion.

Sadly, EPA's oversight frenzy remains unabated. By letter of June 25, 2010, EPA issued a bill for $325,579.78 for the period 3/01/2009 through 2/28/2010. EPA's contractor's costs represent 70.8% of the total bill ($142,615.14 x 161.66% ÷ $325,579.78). In the documents received to date, there is no indication whether Sultrac exceeded its budget or whether it even has a budget. In the same period, Settling Defendants spent $473,467 on matters subject to EPA oversight, meaning EPA oversight equaled about 69% of the costs it oversaw. During this period the majority of Settling Defendants' activities (cap repair, gas vent installation, etc.) were unrelated to vinyl chloride. This level of oversight bears no relationship to the risks posed by the site. It is unreasonable and unnecessary.

Settling Defendants are evaluating their options, including asking Judge Lefkow to use her equitable powers to rein in the Agency. The Settling Defendants continue to believe the

unprecedented amount of the invoice relative to the total cost of site work merits a significant discount.

Settling Defendants' Statement of Position on that portion of EPA's indirect costs piled on top of the Department of Justice indirect costs follows. The amount is $163,531.43. See Attachment I for a calculation of those costs. Under the Consent Decree at Paragraph 54 Settling Defendants may dispute EPA costs if the United States made an accounting error or a cost is allegedly inconsistent with the NCP. In this case EPA made an accounting error in two ways. First, EPA's addition of its own indirect costs on top of the Department of Justice indirect costs is overreaching. It is also contrary to EPA accounting policy and Congressional policy against recovery of windfalls as a result of the Superfund process.

We assume EPA intends to collect oversight costs using the "methodology" which was Attachment 1 to Joseph Dillon's May 26, 2000, memorandum to EPA Senior Resource Officials. In its second paragraph Attachment 1 declares that "direct costs include those that are directly incurred by the United States for site-specific activities…." It would seem obvious that DOJ costs directed to Wauconda site specific activities are direct costs incurred by the United States. Based on the April 10, 2009, DOJ Cost Summary, attached as Exhibit 2, it is clear that DOJ adds its own indirect costs to its direct costs in calculating its total charges. We assume DOJ's methodology approximates EPA's own. As the DOJ Cost Summary reflects, The DOJ Indirect Costs charged for the relevant period total $266,104.43 – and this indirect charge by DOJ alone represent 189% of DOJ's direct costs claimed of $140,690.58.

The crux of our challenge is that the United States in the form of EPA is calculating its oversight costs by applying its indirect cost factor on United States indirect costs from DOJ. The policy allows EPA to multiply its indirect cost rate on direct costs incurred by the United States for site specific activities. (See above). There is no provision for adding indirect costs onto indirect costs.

In this case, as Exhibit 1 reflects, EPA is claiming, contrary to its own policy and without citation of authority, that the United States through EPA is entitled to recover a windfall of $163,531.43 of indirect costs on top of the United States through DOJ's indirect cost claim of $266,104.43. To put that in perspective, by bootstrapping EPA indirect costs on top of DOJ indirect costs, the United States is claiming that it can recover a total of $429,635.86 ($266,104.43 plus $163,531.43) in two layers of indirect costs on top of total DOJ direct costs of $140,690.58. This represents a United States claim for indirect costs that totals more than 305% of DOJ's claimed direct costs.

In Mark J. Koller's letter to me on June 21, 2010, he argues at the bottom of page 3:

> The Attachment provides, at page 9: "To apply these [indirect] rates to an individual site, identify the total direct site-specific costs of that site (including any DOJ costs but excluding ATSDR costs) and multiply that total by the appropriate region's indirect cost rate." In the present case, U.S. EPA identified the total DOJ costs (direct and indirect), included the total DOJ costs as part of U.S. EPA's direct site-specific costs of the Wauconda Site, and applied Region 5's indirect cost rate to the total DOJ costs just as it did with all other direct Site-specific costs.

The flaw with the argument is the assumption that the phrase in the first parenthetical "including any DOJ costs" means both DOJ direct and indirect costs. The more logical reading is that "including any DOJ costs" refers to the preceding phrase "total direct site-specific costs" in the same sentence. DOJ indirect costs are not "direct site-specific costs." Hence, it was an accounting error to apply Region 5's indirect cost rate to any DOJ costs that were not "direct site-specific costs."

Secondly, EPA charging indirect costs on DOJ indirect costs violates basic accounting principles. Unlike EPA contracts, EPA does not manage DOJ. EPA does not negotiate contracts with DOJ nor does EPA have any elaborate management system for DOJ like those used for EPA contractor management. And, of course, EPA rent, heat, electricity and other support systems are not overhead for either DOJ or any systems that manage DOJ. In short, the basic accounting philosophy allowing EPA to allocate EPA indirect costs to those direct costs the indirect costs support, does apply to DOJ indirect costs. EPA indirect costs do not support DOJ indirect costs. No court has held otherwise.

Third, EPA's effort here to obtain a windfall by piling its own claim for indirect charges on top of the indirect costs DOJ is charging on DOJ's direct cost claims is directly contrary to Congress's mandate precluding any parties from obtaining windfalls as a result of the Superfund process. See, e.g., the CERCLA § 107(r) 'windfall lien' provisions added to CERCLA by the Small Business Liability Relief and Brownfields Revitalization Act ("Brownfields Amendments"), P.L. 107-118. These provisions were added, *inter alia*, to preclude a prospective purchaser from reaping a significant windfall as a result of EPA's incurrence of response costs at a site. Just as a private party should not receive a windfall benefit as a result of EPA's work at a Superfund site, EPA should not be entitled to obtain a windfall itself by charging private parties

for direct or indirect costs it did not incur. And in this case, at Wauconda, EPA cannot properly pursue such a windfall by seeking to charge its own indirect costs on top of DOJ's claimed indirect costs.

Finally, the Settling Defendants should not pay almost $2,000,000 based on a policy rather than a regulation having had the benefit of notice, public comment and an opportunity for judicial review. Moreover, it seems clear EPA failed to conduct required rulemaking in 2000 when the methodology for calculating indirect costs was changed dramatically. We do not assert that EPA's adoption of an accounting policy needs to be a rule. However, the law does require rulemaking when an agency makes a change in policy having a substantial impact on the public even if the rule is interpretive. See 5 U.S.C. Section 553; National Retired Teachers Assn. v. U.S., 430 F. Supp. 141 and Committee for Fairness v. Kemp, D.D.C. 1992, 791 F. Supp. 88. EPA changed an important policy and should have done so in a rulemaking.

Because this dispute does not involve the selection or adequacy of a response action, it should be governed by Paragraph 67 of the Consent Decree.

Respectfully Submitted for
Settling Defendants,

Peter J. Kelly

PJK/jab
cc: WTG II
S. Ellis

Calculation of Disputed Costs

DOJ Indirect Costs*	EPA Indirect Rate	EPA Indirect Costs on DOJ Indirect
FY05 - $13,179.35	61.71%	$8,132.98
FY06 - $55,634.00	56.23%	$31,283.00
FY07 - $13,584.48	62.91%	$8,546.00
FY08 - $119,814.00	62.91%	$75,374.99
FY09 - $93,892.00	62.91%	$40,194.46
Total - $266,104.43		$163,531.43

Note: DOJ Direct Costs for this same period totaled $140,690.58.* The DOJ Indirect Costs charged, $266,104.43, alone represent 189% of DOJ direct costs of $140,690.58.

*From April 10, 2009 DOJ Cost Summary.

EXHIBIT
1

Pepper Hamilton LLP
Attorneys at Law

Suite 1800
4000 Town Center
Southfield, MI 48075-1505
248.359.7300
Fax 248.359.7700

Todd C. Fracassi
direct dial: 248.359.7304
fracassit@pepperlaw.com

February 12, 2013

Richard Clarizio
U.S. EPA Region V
77 W. Jackson Boulevard
Chicago, IL 60604-3590

Re: Rose Township, Michigan -
EPA December 26, 2012 Cost Recovery Demand

Dear Rich:

As a follow-up to my January 28, 2013 letter regarding the United States Environmental Protection Agency's ("EPA") demand for the recovery of oversight costs for the period of July 18, 2008 through August 31, 2012 ("Demand"), the Rose Township PRP Group[1] ("Group") is submitting this letter identifying disputed issues and costs, and requesting additional information from EPA.

Disputed issues and costs, and information requests include:

Item 1 – From the date EPA demanded the Group take over for Chrysler, on October 7, 2009, through the date the Group took over operation of the existing groundwater system on August 9, 2010, it appears the EPA is seeking approximately $1.2 million in direct and indirect costs, or roughly $120,000 per month. During the meeting with myself, Tom Wilczak and EPA on December 2, 2009, and in the EPA's March 22, 2010 letter to the Group, the EPA "anticipated…$30,000-$35,000 per month [would be incurred for operation and maintenance of the ground water pump and treat system]". Further, it is our understanding that during that time period Weston only undertook one round of groundwater sampling and did not do any capture analysis. Also, the consultant who operated the groundwater system for EPA is the same consultant who currently operates the system for the Group (CTI), and therefore, one would expect that the EPA's costs would be somewhat in line with what the Group is incurring.

Since taking over the remedy, the Group's annual expenditure for operation, maintenance and monitoring (including contingencies) is around $400,000, or less than $35,000

[1] The Rose Township PRP Group Members include Akzo Nobel Coatings, Inc., Detrex Corporation, Federal Screw Works, Ford Motor Company, CNA Holdings LLC, TRW Automotive U. S. LLC, and Michelin North America, Inc.

per month. The amount demanded by EPA significantly exceeds its prior estimates and the amount that reasonably could be expected based on the Group's experience the last 2½ years. Please provide an explanation for the increased costs along with additional documentation of EPA and its consultant costs from July 1, 2009 through September 1, 2010, including detailed consultant invoices.

Item 2 – After the Group took over the remedy on August 9, 2010, it appears that Weston and TechLaw/ENVIRON billed the EPA approximately an additional $220,000. It is unclear what activities were being performed by these consultants after the Group took over operation of the treatment system. Please provide an explanation and additional documentation for costs demanded for EPA consultants after August 9, 2010, including detailed consultant invoices.

Item 3 – Section XV of the existing Consent Decree, United States v. Akzo Coatings, Inc., et al, Civil Action No. 98-72934 ("Consent Decree"), requires that the EPA submit its oversight cost claims annually. If our understanding is correct, it appears that EPA had not made a claim for past costs for 4½ years, which includes a significant portion of time prior to Chrysler filing for bankruptcy protection. Please verify if our understanding is correct and, if not, please explain the history and any reasons for the delay. EPA's breach of its Consent Decree obligation has prejudiced the Group. Assuming our understanding is correct, the EPA's demand should be reduced by the amount sought by EPA for costs incurred prior to EPA's demand to the Group (October 7, 2009).

Item 4 – The EPA's Demand includes indirect costs, assessed as a percentage of both EPA's own personnel/travel costs and outside consultant/contractor costs. While such indirect costs may be justifiable to compensate EPA for its "overhead" (employee leave, rent, utilities, computer services, etc.), it is not appropriate to assess them for outside consultant/contractor costs where EPA has no indirect costs. Further, the Group assumes that EPA's consultants/contractors already include their own indirect/overhead in its charges to EPA. Applying an additional indirect charge to consultant/contractor costs, let alone at 49.25%, is unreasonable, and in effect, results in double billing for indirect/overhead charges. Please provide EPA's cost methodology for establishing/calculating the rate EPA applies for indirect costs. Also, please indicate whether EPA's consultants/contractors included their own indirect/overhead in its charges to EPA, and if so, identify the rates used by each EPA consultant/contractor for indirect costs.

Item 5 – The EPA's Demand should be offset by any amount recovered by the EPA in the Motors Liquidation and Old Carco bankruptcies. The Group is aware that the EPA received pursuant to a Consent Decree and Settlement Agreement ("Non-Owned Site Settlement Agreement"), *In re Motors Liquidation Corp., et al., D.J. Ref. 90-11-3-09754*, an Allowed General Unsecured Claim in the amount of $211,108. Please provide additional information

regarding all amounts recovered by EPA, or that EPA expects to recover, pursuant to Motors Liquidation, Old Carco, or any other party to the Consent Decree bankruptcies, and how such amounts have been and will be applied at the Site.

As we agreed, it is the parties' intent to informally resolve any past cost issues in advance of either party invoking any formal dispute resolution pursuant to the existing Consent Decree. Our hope is that the parties can reach agreement on the amount to be paid by the Group in advance of March 26, 2013 (i.e., 90 days from Settling Defendants' receipt of EPA's Demand), and as such, we would appreciate the EPA providing the requested documents no later than Friday, March 1, 2013. In addition, I invite you to give me or Tom Wilczak a call to discuss these issues and questions once you have an opportunity to review this letter.

We look forward to working with EPA to informally resolve this matter.

Best regards,

Todd C. Fracassi

c: Nabil Fayoumi – EPA
Rose Township PRP Group Members
Tom Wilczak – Pepper Hamilton LLP

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Pepper Hamilton LLP
Attorneys at Law

Suite 1800
4000 Town Center
Southfield, MI 48075-1505
248.359.7300
Fax 248.359.7700

Todd C. Fracassi
direct dial: 248.359.7304
fracassit@pepperlaw.com

July 31, 2013

Richard Clarizio
U.S. EPA Region V
77 W. Jackson Boulevard
Chicago, IL 60604-3590

Re: Rose Township, Michigan -
EPA December 26, 2012 Cost Recovery Demand

Dear Rich:

In consideration of your letter dated May 2, 2013, and the additional documentation you have provided regarding the United States Environmental Protection Agency's ("EPA") demand for costs at the Rose Township Site ("Site"), the Rose Township PRP Group (the "Group") has narrowed its objections to EPA's demand from my February 12, 2013 correspondence and proffers the settlement counter-offer set forth below.

First, the Group has reviewed the invoice documentation provided and, although it does not provide sufficient information for an accurate accounting of the costs incurred by the EPA (i.e., the invoices supplied insufficient detail to connect the charges for the Site with specific tasks), the Group identified costs included in the EPA's demand that are not recoverable or were incorrectly invoiced to the Site. Second, the Group maintains that it was prejudiced by EPA's failure to timely invoice Chrysler for oversight costs the agency incurred prior to Chrysler's bankruptcy.

OBJECTIONS TO COST DEMAND

Costs Inconsistent with the NCP

Although the Group maintains that EPA incurred extraordinary costs to conduct certain routine tasks at the Site, the cost-effectiveness of EPA's actions to implement the Site remedy is not being challenged. Rather, the Group is contesting costs incurred by EPA for activities that bear no relationship to the Site remedy, and thus are inconsistent with the National Contingency Plan ("NCP").

EPA may recover all costs of a remedial action for a site provided the costs are consistent with the NCP. 42 U.S.C. § 107(a)(4)(A). "Costs that arise from activities that do not

relate to the lawful remedy" are not recoverable, nor are costs that are not incurred in connection with the particular site. *United States v. Kramer*, 913 F.Supp. 848, 867 (D.N.J. 1995). In other words, costs that are not directed at abating an imminent threat to the public or the environment from the threatened release of hazardous substance are not recoverable under CERCLA. *United States v. Taylor*, No. 1:90:CV:851, 1993 U.S. Dist. LEXIS 19082, *69-70 (W.D. Mich. December 9, 1993). Accordingly, costs derived from actions taken to make the Site itself or a neighboring property less dangerous to the public or to address aesthetic concerns are inconsistent with the NCP and are not recoverable. *Id.*, at 70. Likewise, oversight of a construction project that is not part of the remedial action is not a recoverable cost. *Id.*

The limited detail included in the invoice documentation supplied by EPA does not allow for a full review of specific costs by the Group to determine whether all EPA costs are consistent with the NCP. However, the invoice documentation supplied, coupled with the summary of activities provided in your letter dated May 2, 2013, does confirm that certain types of activities completed at the Site are unconnected to the remedial action. For example, costs generated from 1) what was characterized by you as EPA's "significant oversight" of a Consumers Power project at the Site; 2) Site improvements unrelated to the remedial action, including road improvements and clearing around the fence line; 3) replacement of plumbing fixtures at a nearby residence due to "staining" and other aesthetic reasons; and 4) leasing dumpsters and other routine equipment such as toilets. These are examples of tasks that are not remedial in nature and were not completed to implement the Site remedy. The list is not exhaustive and review of additional documentation, such as timesheets and daily field reports would be necessary to prepare a more comprehensive list as the information provided by EPA does not permit an accurate accounting of the costs incurred by the EPA.

It also appears that EPA has charged the Group for activities completed at other sites or non-site specific costs have been inappropriately allocated. EPA is seeking $289,545.83 in costs for analytical laboratory services (i.e., water sample analyses) performed by TechLaw, but when reviewing the cost documentation very few samples were analyzed in relation to the costs. If the total TechLaw costs allocated to the Site are broken down by sample, the result is an astronomical cost that is substantially greater than any standard rate in the industry for similar services. The significant disparity between TechLaw's costs for laboratory analyses and the standard rate for similar services leads the Group to believe that costs from other projects have either incorrectly been allocated to the Site or non-site specific costs have been inappropriately allocated.

While the Group recognizes that certain non-site specific costs can be allocated to the Site, EPA's "*Instructions for Performing the Annual Allocation of Non-Site Specific Costs*", indicates that the distribution of costs to the Site needs to be based upon the benefits received or support provided by the activities. It further indicates that the preferred allocation method is the distribution of non-site costs based on a percentage of total costs. While based on the

documentation provided to date by EPA it is not entirely clear how TechLaw allocated its costs to the Site, it is apparent that it was not based upon the benefits received or support provided by the activities for the Site, or on a percentage of total costs. TechLaw's progress reports identify a very limited amount of work attributable to the Site compared to other sites and a large number of general non-site specific tasks that would have little or no benefit to the Site, including development of standard operating procedures (SOPs) for analytes or matrices not associated with the Rose Township site, development of SOPs for glassware washing, general laboratory cleaning, purchasing of software license for EPA database management, etc. TechLaw appears to bill EPA a lump sum amount that is the result of all work it has completed for various sites in a particular period, then, through some formula that is not apparent, allocates a portion of the lump sum to each site. Because of the considerable difference between the work actually performed by TechLaw at the Site, the costs, the standard rates in the industry and the lack of benefits to the Site, it is apparent that either TechLaw's allocation calculation is incorrect, or costs attributable to other EPA projects have been inappropriately billed to the Rose Township Site.

EPA's Untimely Invoicing

Contrary to the case law you cite in your May 2, 2013 letter, the Group was in fact prejudiced by EPA's failure to bill Chrysler before it filed for bankruptcy. EPA received notice of Chrysler's abandonment of the Site and pending bankruptcy on July 2, 2009 and should have had earlier notice from discussions with Chrysler and press accounts of the company's ongoing financial difficulties well before even that date. EPA could have billed Chrysler for costs it had incurred at an earlier date given its knowledge of the financial conditions. It chose not to. This failure to submit oversight costs to Chrysler prior to its bankruptcy filing has cost the Group $107,386 that it would not otherwise have been obligated to pay had EPA acted timely in submitting its invoice to Chrysler. Inapposite to the case law you cite, the Group has not had the benefit of holding onto money it would otherwise have paid out earlier. The Group would not have been responsible for most, if not all of this amount, had EPA acted promptly and invoiced Chrysler in a more timely manner and before the company filed for bankruptcy.

SETTLEMENT PROPOSAL

Despite the noted objections, the Group remains committed to resolving this matter informally and, as you are aware, has already made two good faith payments in the amounts of $521,000 and $300,000 toward the EPA's demand. Rather than engage in any further document review, or invoke the dispute resolution provision in the Consent Decree, the Group proposes a percentage reduction to EPA's cost recovery demand that would account for costs that are inconsistent with the NCP, incorrect or inappropriate allocation of non-site specific costs and the EPA's failure to invoice Chrysler prior to the company filing for bankruptcy, as

well as recognize the extraordinary costs incurred prior to the Group assuming control of the remedy. The Group believes that a 25% reduction of the total demand (i.e., 25% of $1,836,126.69 or $459,031) is a reasonable settlement in consideration of the objections discussed above. Applying a 25% compromised reduction, the Group would owe EPA $556,095.69 (i.e., $1,836,126.69 - $459,031 (the compromised amount) - $821,000 (amount already paid)). The Group is prepared to remit the balance of $556,095.69 within 30 days of this proposed settlement being accepted by EPA.

If you wish to discuss this proposal, Tom Wilczak and I are available to discuss it at your earliest convenience.

Best regards,

Todd C. Fracassi

c: Nabil Fayoumi – EPA
Tom Wilczak – Pepper Hamilton LLP

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

May 2, 2013

Todd C. Fracassi
Pepper & Hamilton LLP
Suite 1800
4000 Town Center
Southfield, Michigan 48075-1505

Re: Rose Township, Michigan – December 19, 2012 Cost Recovery Demand

Dear ~~Mr. Fracassi~~ Todd:

I am writing in response to your February 12, 2013, letter outlining the Settling Defendants' disputed issues related to EPA's December 19, 2012, itemized cost summary (ICS) and demand for payment of $1,836,126.69 for the period July 18, 2008 through August 31, 2012 at the Rose Township Superfund Site (Site).

The Settling Defendants raise a number of objections related to the expenses incurred by EPA through its contractors Weston Solutions, Inc. (Weston) and Techlaw, Inc. (Techlaw). The Settling Defendants suggest that EPA's earlier estimates or their costs may be a basis for objecting to actual costs incurred by EPA. They are not. EPA is entitled to recover its costs that are not inconsistent with the NCP. U.S. v. Northeastern Pharmaceutical & Chemical Co., 810 F.2d 726, 747 (8th Cir.1986), cert. denied 484 U.S. 848, 98 L.Ed. 2d 102, 108 S.Ct. 146 (1987). The burden is on the Settling Defendants to demonstrate that EPA's actions were inconsistent with the NCP. *Id* at 747. The Settling Defendants must prove that an inconsistency exists and that the amount of additional costs that were incurred as a result of the inconsistency were excessive, avoidable or unnecessary. United States v. Burlington Northern R. R. Co., 200 F.3d 679, 695 (10th Cir. 1999).

To establish that an EPA response action is inconsistent with the NCP, responsible parties must show that EPA acted arbitrarily and capriciously in choosing the response action – not that the individual response costs are arbitrary and capricious. No factor of reasonableness or necessity of individual remedial costs is explicitly or implicitly required. United States v. E.I. DuPont de Nemours & Co., 341 F. Supp.2d 215, 243 (W.D. NY 2004) (holding that response costs by themselves cannot be inconsistent with the NCP only the underlying action); United States v. Domenic Lombardi Realty, Inc., 334 F. Supp.2d 105, 108 (D.R.I. 2004) (rejecting a reasonable cost argument even where the Court believed there was duplication of litigation costs); United States v. Kramer, 913 F. Supp. at 862-63 (holding that a Defendant can challenge costs only if it

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has established that the underlying action giving rise to the costs were inconsistent with the NCP); United States v. Northeast Pharmaceutical & Chemical Co., 810 F.2d at 748 (noting that "CERCLA does not refer to all '*reasonable* costs' but simply to all costs" and those costs which are not inconsistent with the NCP are presumed reasonable). Arguments that individual response costs are unreasonable, excessive, duplicative, improper, and not cost-effective, as a matter of law, do not allege inconsistency with the NCP and do not provide any defense in a cost recovery action. United States v. Kramer, 913 F. Supp. 848, 867 (D.N.J. 1995).

The first two items in your letter raise a similar issue. What work was done and why was it more expensive than anticipated or more than the Settling Defendants have paid? In subsequent conversations I believe we have narrowed this issue primarily to the Environmental Services Assistance Team (ESAT) contract with Techlaw, contract number EPW06031 and the Superfund Technical Assistance and Response Team (START) contract with Weston, contract number EPS50604. EPA's ICS identifies a total of $315,628.58 paid toTechlaw ($146,627.02 in direct costs and $169,001.56 in costs associated with Annual Allocation for the ESAT contract). EPA's ICS identifies a total of $626,535 paid to Weston ($556,108.49 in direct costs and $70,426.51 in costs associate with Annual Allocation for the START contract).

Neither your costs nor EPA's prior cost projections are relevant. Both costs primarily pertain to normal operation and maintenance of a properly functioning ground water pump and treat system. Weston's and Techlaw's costs reflect the work necessary to repair and restore the ground water system and other components of the remedy and operate the system from the time Chrysler abandoned remediation work until the Settling Defendants resumed operation.

On July 2, 2009, representatives of Chrysler informed EPA that they were discontinuing work at the Site and shutting down the ground water pump and treat system due to their bankruptcy petition. This sudden shut-down of the system caught EPA by surprise. It was not a smooth transition from Chrysler's operation of the system to EPA's. All activity and cooperation stopped unexpectedly on July 2, 2009. Chrysler did not share information after July 2, 2009. Monitoring data and system performance information immediately prior to shutdown on July 2, 2009 was difficult to obtain and incomplete. As you can remember, normally simple issues such as site access were not simple. They required a good deal of time and energy to resolve.

On October 7, 2009, EPA notified the Settling Defendants of their legal obligation to implement the remedy agreed to in the Consent Decree. The Settling Defendants did not clearly take responsibility for the on-site operation of the remedy until June 7, 2010.

Without anyone else to operate and maintain the system EPA was forced to obtain the necessary authorizations and funding to continue operation of the ground water system. The on-site work started in late July of 2009. EPA primarily employed the services of Weston and TechLaw for the on-site work. TechLaw's work, as billed on the ICS, primarily involved the analysis of multiple samples of water and groundwater for select organic and inorganic constituents. The sampling included groundwater sampling (semi-annual and annual), residential well sampling (monthly and semi-annual) and compliance discharge sampling (weekly, monthly and quarterly).

Weston was EPA's supervising on-site contractor. It was responsible for the day-to-day management of Site activities and remediation efforts. Weston subcontracted with CTI &

Associates and others for the on-site work. The work billed under the ICS was from approximately July 2009 until October 2010. Weston's work included not only, collection, review and reporting of samples and routine operation and maintenance of the ground water treatment system but also repair and re-start of a compromised ground water treatment system. In July of 2009 the performance of the ground water capture system was poor and general maintenance and repair had been neglected. The pumps, extraction wells, air stripper and discharge piping were all evaluated and found in need of repair or refurbishment to improve the capture efficiency. The main discharge line was only operating at 50% capacity due to scaling. It was replaced. The system blowers needed repair. Sensors were installed on the wells to measure artesian pressure and surface aquifer drawdown. The galvanized piping/connections/fittings in the treatment system room were replaced due to corrosion and age. PW-1, 4, 6, 7 and 8 needed repairs. The treatment tower needed cleaning. The fence needed repair with the area around it needing clearing. The access roads needed improvement. Dumpsters and other routine equipment such as toilets had to be leased/rented. Seals needed to be replaced on the artesian monitoring wells. Removal of the treatment system at 510 Demode Road was needed. A QAPP and HSP had to be prepared. A data base for the sampling data had to be built and maintained. Potentiometric maps were made and the capture zone efficiency was analyzed. There were meetings with residents, EPA, MDNR and members of your group. During the winter the monitoring wells needed to be de-iced. Significant oversight was needed when Consumer's Edison upgraded the natural gas pipeline through the Site. This extensive work was more than the routine sampling costs we projected and the average costs your group is paying since taking over the Site. They were consistent with and required by the record of decision, the approved Operation and Maintenance Plan (O&M Plan) and the agreed Consent Decree.

The Settling Defendants requested documentation to support the ICS bill. I am not clear what further information you require to resolve this dispute. The Consent Decree provides for only an ICS. The case law cited above does not allow for questioning the amount or reasonableness of the costs. The summary information above is well-known. EPA provided the Settling Defendants with information on the work its contractors conducted on-site since EPA first notified the Settling Defendants of their obligations on October 7, 2009. The RPM was in contact with representatives of the Settling Defendants or its contractors during the time Weston and Techlaw were conducting work. Representatives of the Settling Defendants were on-site at various times prior to June 7, 2010, when the Settling Defendants' agreed to assume responsibility for the remedy.. Although EPA could provide contractor progress reports I am not sure that they are necessary. Further, since they contain confidential business information the Settling Defendants would have to execute a Confidentiality Agreement. If you require the progress reports please advise and I will provide you with a copy of the required Confidentiality Agreement.

The third item in your letter asserts that the Settling Defendants were harmed by EPA's current billing because it includes a significant amount of costs that preceded the Chrysler bankruptcy. Further, the Settling Defendants assert that the 4.5 years it has taken EPA to bill the Settling Defendants is in breach of the annual billing cycle identified in the Consent Decree. The Settling Defendants suggest that a remedy for this breach is to reduce the ICS by an amount equal to EPA's costs prior to October 7, 2009, (the date we demanded work from your group). As I

understand the Settling Defendants' position this would include not only the costs related to the Weston and TechLaw contracts but also all work conducted by other contracts, interagency and cooperative agreement costs, EPA personnel and travel, prior to October 7, 2009.

EPA strongly disagrees with the Settling Defendants. Their position is unsupported by law or facts. A similar breach of a Consent Decree was rejected in United States v. Witco Corp., 76 F. Supp.2d 519 (D. Del. 1999). In that case EPA had not sent an oversight bill for five years even though a CERCLA Consent Decree provided for annual billing. In deciding the case the Court examined whether there was a material breach which impacted the Defendant's ability to challenge the accuracy of the billing. The Court did not find any material breach. In dismissing the claim, the Court noted that Witco "benefited from EPA's tardiness by retaining the money over the five-year period" without any interest charges accruing. Id.

In this case, prior to July 2, 2009, the date of EPA's notice of Chrysler's abandonment and bankruptcy, EPA annually sent out Site bills in November. The bills covered the time period from July to July of the preceding year. The last bill for the Site was sent on November 26, 2008. It covered the time period July 18, 2007, through July 17, 2008. See Exhibit 1. It was paid in full. The next bill was due November of 2009. By that time, however, Chrysler had filed for bankruptcy. The proper procedure for obtaining recovery from Chrysler was not sending the bill but filing a proof of claim. The United States, on behalf of EPA, filed a proof of claim against both Chrysler and General Motors for the Site. The Chrysler bankruptcy has not yet been resolved. To the extent there is any recovery from that bankruptcy EPA will apply it to future costs.

Similar to the Witco case, EPA's delay in billing caused the Settling Defendants no harm and was to their benefit. EPA filed proofs of claims and has applied bankruptcy payments to the Site. Further, during the 4.5 years EPA did not charge the Settling Defendants interest. Further, the Settling Defendants received the benefit of using that money for their own investment purposes.

The Settling Defendants' letter suggests that if EPA had billed earlier it would have resulted in full payment. On October 7, 2009, EPA specifically requested the Settling Defendants to provide a commitment to comply with all provisions of the Consent Decree – including payment of costs. The Settling Defendants had the opportunity to take over the remedy and avoid EPA's incurrence of these costs. They did not commit to assuming their Consent Decree responsibilities until June 7, 2010.

Given the unresolved Chrysler bankruptcy claims and the problems encountered with restarting the remedy EPA's delay in billing, although unfortunate, was understandable and did not cause the Settling Defendant's any harm. As stated above, EPA is entitled to all cost incurred not inconsistent with the NCP. Neither the NCP nor the Consent Decree justify non-payment because a bill is submitted late.

The fourth issue in your letter requests clarification and disagreement related to the assessment of indirect costs. You request information related to EPA's methodology for assessing indirect costs; whether EPA's contractors include their own indirect or overhead in their charges to EPA

and the rates for each contractor or consultant. You object to the Indirect Rate and the Annual Allocation.

EPA is entitled to recover *all* of the response costs it has incurred. United States v. W.R. Grace & Co., 429 F.3d 1224, 1232 (9th Cir. 2005), affirming District Court's grant of $11,322,225.60 in indirect costs for the Libby Asbestos Site in Montana. EPA may recover as part of its response costs its indirect costs involved in remedial action. United States v. Dico, Inc., 266 F.3d 864 (8th Cir. 2001), affirming District Court's grant of summary judgment for indirect costs associated with remedial action. The burden is on the Defendant to show that the actions taken by EPA were inconsistent with the NCP. United States v. Chrysler Corp., 168 F.Supp. 2d 754, 763-764, (N.D.Ohio 2001), granting summary judgment in the amount of $22,986,247.99 for the Krajci and East and West Tracts in Summit County, Ohio.

The annual Indirect Rate represents *EPA's* indirect costs for a site. EPA correctly applies the annual Indirect Rate to all costs incurred during a year, including payroll, travel, interagency and cooperative agreements, and contract costs. United States v. Grace & Co., 280 F.Supp. 2d 1149, 1167-1170, 1186, affirming EPA's indirect rate methodology and application at the Libby Asbestos Site where provisional indirect rates of 35.53% were acceptable and comparable to rates at other sites. EPA's methodology for recovering its indirect costs is not inconsistent with the NCP and is consistent with Statement of Federal Financial Accounting Standard #4 (SFFAS #4). See, *Grace at 1185,* KPMG's *"Review of Proposed Superfund Indirect Rates Methodology"*, September 1999 (Exhibit 2) and GAO letter dated December 22, 1999. http://www.epa.gov/superfund/policy/pdfs/gao-letter.pdf. The methodology is also detailed in *"Accounting for Indirect Costs Associated with Superfund Site-Specific Activities"* Comptroller Policy Announcement 00-05, May 26, 2000 and Attachment 1, *"Superfund Full Cost Indirect Cost Methodology"*, http://www.epa.gov/superfund/policy/pdfs/pa00-05a.pdf.

Annual Allocation ensures that non-site-specific costs for multi-site contracts are accurately included in the cost recovery for a site. Chrysler, 772-773, affirming use of the Annual Allocation methodology and awarding EPA its annual allocation amount for both the Weston and Jacobs contracts at the Summit County sites. Annual Allocation is a multi-step process that distributes the costs of program management costs; fixed, base and award fees; and some non-site activity costs to sites and activities the contractor worked on during the fiscal year. EPA calculates a provisional rate at 80% of the most recently established final annual allocation where a final rate is not yet available.

The methodology EPA employs to calculate the Annual Allocation Rate is explained in *Chrysler* at 772-773 and in *"Instructions for Performing the Annual Allocation on Non-Site-Specific Costs"*, U.S. EPA, Office of Financial Management, August 4, 2004. http://www.epa.gov/ocfo/finstatement/superfund.pdf.

The fifth issue the Settling Defendants raise requests clarification of bankruptcy payments. To date, EPA has received payments of $90,166.27 from the General Motors and Eagle Picher

bankruptcies which were allocated to the Rose Township Site. These amounts will be applied to the ICS to reduce the amount of the bill to $1,745,960.42. EPA has not received any proceeds from the Chrysler bankruptcy. Those payments will be applied to future costs, when they are received.

As we verbally agreed, your group has made a payment in the amount of $521,000. This represents your calculation of the amount not in dispute. Please identify how you calculated this amount. The remaining amount of $1,224,960.42 is in dispute.

In prior conversations and e-mails you have requested clarification related to interest on the disputed amount. The Consent Decree allows for payment within 90 days of receiving EPA's itemized cost summary and bill. Within approximately 45 days, on February 12, 2013, you timely notified EPA of the dispute and the issues in dispute. We mutually agreed that your group would pay the undisputed amount by March 26, 2013. With this letter, we are providing you with the remaining 45 days to make the remaining payment in full. After that date, if the dispute is not resolved, you should place the remaining amount due to the EPA in an interest-bearing account, payable to the EPA upon resolution of the dispute. If needed, I am open to providing additional time for the Parties to work through the issues in dispute and resolving this informally.

If you have any questions do not hesitate to contact me.

Sincerely,

Richard J. Clarizio
Associate Regional Counsel

Enclosures

VEDDERPRICE

PETER J. KELLY
312-609-7875
pkelly@vedderprice.com

VEDDER PRICE P.C.
222 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
312-609-7500
FAX: 312-609-5005

CHICAGO • NEW YORK CITY • WASHINGTON, DC

June 2, 2010

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-153A

Sheri Bianchin
EPA Project Coordinator
U.S. Environmental Protection Agency
Region 5
Mail Station SR-6J
77 W. Jackson Boulevard
Chicago, IL 60604

Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Regional Financial Manager
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Mark Koller
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
Mail Station C-14J
77 W. Jackson Boulevard
Chicago, IL 60604

Eric Runkel
State Project Coordinator
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Re: U.S. v. BFI, et al.
No. 07 C 4499
Notice of Dispute

Ladies & Gentlemen:

Certain Settling Defendants to the Consent Decree in the referenced civil matter hereby notify EPA and DOJ of a dispute over some of the costs included in the September 3, 2009 oversight cost invoice. This Notice issues pursuant to Paragraphs 54 and 64 of the Decree. The time to initiate a Notice of Dispute was extended to and through June 3, 2010, by agreement of the Parties. This letter is written on behalf of certain Settling Defendants consisting of BFI Waste Systems of North America, Inc., Borden Chemical, Inc., successor to IB Distributors, Inc., Exxon Mobil Corporation, Giddings & Lewis Machine Tools, as successor to Basic Electronics

Mfg. Corp., H.B. Fuller Company, Honeywell, Inc., Mail-Well Envelope Co., Morton International, Inc., Waste Management of Illinois, Inc. and Weber Foreign Manufacturing, Inc., f/k/a Ink Specialties Company, Inc.

Specifically, Settling Defendants dispute $163,531.43 of EPA's indirect costs. EPA's adding its own indirect costs on top of the Department of Justice indirect costs is overreaching. It is also contrary to EPA policy. We assume EPA calculated oversight costs using the "methodology" which was Attachment 1 to Joseph Dillon's May 26, 2000, memorandum to EPA Senior Resource Officials. In its second paragraph Attachment 1 declares that "direct costs include those that are directly incurred by the United States for site-specific activities...." It would seem obvious that DOJ costs directed to Wauconda site specific activities are direct costs incurred by the United States. Based on the April 10, 2009, DOJ Cost Summary, it seems clear that DOJ adds its own indirect costs to its direct costs in its charges. We assume DOJ's methodology approximates EPA's own. The crux of our challenge is that the United States in the form of EPA is calculating its oversight costs by multiplying its indirect costs on United States' indirect costs from DOJ. The policy allows EPA to multiply its indirect cost rate on direct costs incurred by the United States for site specific activities. (See above). There is no provision for adding indirect costs onto indirect costs. As noted, the amount in question is $163,531.43. I have attached another copy of the calculation of those costs .

We are depositing that amount in an interest bearing account and will provide the documentation required by Paragraph 54 of the Consent Decree shortly. Please let us know your availability for informal negotiations.

Very truly yours,

Peter J. Kelly

PJK/jab
cc: WTG II

Calculation of Disputed Costs

DOJ Indirect Costs*	EPA Indirect Rate	EPA Indirect Costs on DOJ Indirect
FY05 - $13,179.35	61.71%	$8,132.98
FY06 - $55,634.00	56.23%	$31,283.00
FY07 - $13,584.48	62.91%	$8,546.00
FY08 - $119,814.00	62.91%	$75,374.99
FY09 - $93,892.00	62.91%	$40,194.46
		$163,531.43

*From April 10, 2009 DOJ Cost Summary.

VEDDER PRICE

VEDDER PRICE P.C.
222 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
312-609-7500
FAX: 312-609-5005

CHICAGO • NEW YORK CITY • WASHINGTON, DC

PETER J. KELLY
312-609-7875
pkelly@vedderprice.com

July 22, 2010

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-153A

Sheri Bianchin
EPA Project Coordinator
U.S. Environmental Protection Agency
Region 5
Mail Station SR-6J
77 W. Jackson Boulevard
Chicago, IL 60604

Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

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U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

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Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
Mail Station C-14J
77 W. Jackson Boulevard
Chicago, IL 60604

Eric Runkel
State Project Coordinator
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Re: Statement of Position
U.S. v. BFI, et al.
No. 07 C 4499

Ladies & Gentlemen:

Pursuant to Paragraph 65 of the Consent Decree entered in the referenced matter, Settling Defendants* submit their Statement of Position in support of disputing EPA's September 3, 2009 oversight cost bill. The bill for the period 5/01/2005 through 2/27/2009 totaled $1,972,788.45. In late 2004 EPA agreed to Settling Defendants' proposal to pay for permanent public water connections in the vicinity of the Wauconda landfill in lieu of an expansive hydrogeologic investigation. In the Consent Decree embodying the plan EPA acknowledges that "Settling Defendants have, by early implementation of portions of the work required by this Consent Decree, acted proactively to protect human health and the environment." The water connections

* This Statement of Position is submitted on behalf of BFI Waste Systems of North America, Inc., Borden Chemical, Inc., Exxon Mobil Corporation, Giddings &. Lewis Machine Tools, LLC, H. B. Fuller Company, Honeywell, Inc., Mail-Well Envelope Co., Morton International, Inc., Waste Management of Illinois Inc. and Weber Foreign Manufacturing, Inc.

were in place 2 years before the Consent Decree was entered. Consent Decree at ¶6. Settling Defendants had every reason to expect good faith and fair dealing from EPA. Instead, EPA went on a spending binge. EPA and its contractors charged Settling Defendants the following amounts:

Fiscal Year	Direct Costs	Indirect Costs	Total
2005	$76,915.02	$47,464.24	$124,379.26
2006	$333,710.53	$187,645.43	$521,355.96
2007	$262,764.75	$165,305.29	$428,070.04
2008	$390,416.19	$245,610.81	$636,027.00
2009	$161,411.96	$101,544.23	$262,956.19

For years 2005 and 2009 EPA's bill included only five months.

In stark contrast EPA's oversight costs until 2004 were as follows:

EPA Oversight Cost Invoices

Period	Date of Invoice	Costs	
4/20/94 – 4/19/96	7/23/96	$26,649.42	(a 2 year period)
4/20/96 – 4/19/97	12/2/97	$30,347.22	
4/20/97 – 4/19/98	7/6/98	$12,973.08	
4/20/98 – 4/19/99	6/16/99	$6,767.96	
4/20/99 – 4/19/00	7/18/00	$9,975.23	
4/20/00 – 4/30/01	6/18/01	$5,743.69	
5/1/01 – 4/30/02	7/1/02	$17,864.65	
5/1/02 – 4/30/03	7/1/03	$27,435.27	
5/1/03 – 4/30/04	6/1/04	$33,408.53	

Settling Defendants could have anticipated the discovery of vinyl chloride in residential wells would cause EPA to increase its level of oversight. Settling Defendant's could not reasonably have expected an unprecedented unreasonable increase. EPA engaged contractors under four separate contracts (TetraTech (2), Roy F. Weston and Sultrac) to complete overlapping tasks. Every time Settling Defendants' consultant (Conestoga Rovers and Associates (CRA)) took groundwater samples, an EPA contractor or two (and sometimes EPA) went along. Frequently, the contractor took split samples and sent them to a laboratory for analysis. This practice is antiquated in the era of EPA's contract lab program. Rarely did the EPA contractors' results differ from Settling Defendants' and then only insignificantly. Assuming EPA felt the need to assure the community the Settling Defendants were not pencil whipping (fudging) the data, EPA could have done random split sampling in lieu of splitting every sample.

In addition, when CRA went to the site to fix a fence, repair a seep, grade a low spot or sample a gas vent, an EPA contractor (or two and sometimes EPA) was present to observe. This practice did not occur before 2004 and could not have been related to the discovery of vinyl chloride.

EPA also used contractors to negotiate the Remedial Action Work Plan which, but for the groundwater monitoring program, is largely the same as before 2004. Multiple contractors and a representative of the Department of Interior routinely attended the tediously lengthy Consent Decree negotiations. At one point an EPA contractor expressed the ridiculous concern that grass clippings left on the landfill cover would cause erosion.

Sadly, EPA's oversight frenzy remains unabated. By letter of June 25, 2010, EPA issued a bill for $325,579.78 for the period 3/01/2009 through 2/28/2010. EPA's contractor's costs represent 70.8% of the total bill ($142,615.14 x 161.66% ÷ $325,579.78). In the documents received to date, there is no indication whether Sultrac exceeded its budget or whether it even has a budget. In the same period, Settling Defendants spent $473,467 on matters subject to EPA oversight, meaning EPA oversight equaled about 69% of the costs it oversaw. During this period the majority of Settling Defendants' activities (cap repair, gas vent installation, etc.) were unrelated to vinyl chloride. This level of oversight bears no relationship to the risks posed by the site. It is unreasonable and unnecessary.

Settling Defendants are evaluating their options, including asking Judge Lefkow to use her equitable powers to rein in the Agency. The Settling Defendants continue to believe the

unprecedented amount of the invoice relative to the total cost of site work merits a significant discount.

Settling Defendants' Statement of Position on that portion of EPA's indirect costs piled on top of the Department of Justice indirect costs follows. The amount is $163,531.43. See Attachment I for a calculation of those costs. Under the Consent Decree at Paragraph 54 Settling Defendants may dispute EPA costs if the United States made an accounting error or a cost is allegedly inconsistent with the NCP. In this case EPA made an accounting error in two ways. First, EPA's addition of its own indirect costs on top of the Department of Justice indirect costs is overreaching. It is also contrary to EPA accounting policy and Congressional policy against recovery of windfalls as a result of the Superfund process.

We assume EPA intends to collect oversight costs using the "methodology" which was Attachment 1 to Joseph Dillon's May 26, 2000, memorandum to EPA Senior Resource Officials. In its second paragraph Attachment 1 declares that "direct costs include those that are directly incurred by the United States for site-specific activities...." It would seem obvious that DOJ costs directed to Wauconda site specific activities are direct costs incurred by the United States. Based on the April 10, 2009, DOJ Cost Summary, attached as Exhibit 2, it is clear that DOJ adds its own indirect costs to its direct costs in calculating its total charges. We assume DOJ's methodology approximates EPA's own. As the DOJ Cost Summary reflects, The DOJ Indirect Costs charged for the relevant period total $266,104.43 – and this indirect charge by DOJ alone represent 189% of DOJ's direct costs claimed of $140,690.58.

The crux of our challenge is that the United States in the form of EPA is calculating its oversight costs by applying its indirect cost factor on United States indirect costs from DOJ. The policy allows EPA to multiply its indirect cost rate on direct costs incurred by the United States for site specific activities. (See above). There is no provision for adding indirect costs onto indirect costs.

In this case, as Exhibit 1 reflects, EPA is claiming, contrary to its own policy and without citation of authority, that the United States through EPA is entitled to recover a windfall of $163,531.43 of indirect costs on top of the United States through DOJ's indirect cost claim of $266,104.43. To put that in perspective, by bootstrapping EPA indirect costs on top of DOJ indirect costs, the United States is claiming that it can recover a total of $429,635.86 ($266,104.43 plus $163,531.43) in two layers of indirect costs on top of total DOJ direct costs of $140,690.58. This represents a United States claim for indirect costs that totals more than 305% of DOJ's claimed direct costs.

In Mark J. Koller's letter to me on June 21, 2010, he argues at the bottom of page 3:

> The Attachment provides, at page 9: "To apply these [indirect] rates to an individual site, identify the total direct site-specific costs of that site (including any DOJ costs but excluding ATSDR costs) and multiply that total by the appropriate region's indirect cost rate." In the present case, U.S. EPA identified the total DOJ costs (direct and indirect), included the total DOJ costs as part of U.S. EPA's direct site-specific costs of the Wauconda Site, and applied Region 5's indirect cost rate to the total DOJ costs just as it did with all other direct Site-specific costs.

The flaw with the argument is the assumption that the phrase in the first parenthetical "including any DOJ costs" means both DOJ direct and indirect costs. The more logical reading is that "including any DOJ costs" refers to the preceding phrase "total direct site-specific costs" in the same sentence. DOJ indirect costs are not "direct site-specific costs." Hence, it was an accounting error to apply Region 5's indirect cost rate to any DOJ costs that were not "direct site-specific costs."

Secondly, EPA charging indirect costs on DOJ indirect costs violates basic accounting principles. Unlike EPA contracts, EPA does not manage DOJ. EPA does not negotiate contracts with DOJ nor does EPA have any elaborate management system for DOJ like those used for EPA contractor management. And, of course, EPA rent, heat, electricity and other support systems are not overhead for either DOJ or any systems that manage DOJ. In short, the basic accounting philosophy allowing EPA to allocate EPA indirect costs to those direct costs the indirect costs support, does apply to DOJ indirect costs. EPA indirect costs do not support DOJ indirect costs. No court has held otherwise.

Third, EPA's effort here to obtain a windfall by piling its own claim for indirect charges on top of the indirect costs DOJ is charging on DOJ's direct cost claims is directly contrary to Congress's mandate precluding any parties from obtaining windfalls as a result of the Superfund process. See, e.g., the CERCLA § 107(r) 'windfall lien' provisions added to CERCLA by the Small Business Liability Relief and Brownfields Revitalization Act ("Brownfields Amendments"), P.L. 107-118. These provisions were added, *inter alia*, to preclude a prospective purchaser from reaping a significant windfall as a result of EPA's incurrence of response costs at a site. Just as a private party should not receive a windfall benefit as a result of EPA's work at a Superfund site, EPA should not be entitled to obtain a windfall itself by charging private parties

for direct or indirect costs it did not incur. And in this case, at Wauconda, EPA cannot properly pursue such a windfall by seeking to charge its own indirect costs on top of DOJ's claimed indirect costs.

Finally, the Settling Defendants should not pay almost $2,000,000 based on a policy rather than a regulation having had the benefit of notice, public comment and an opportunity for judicial review. Moreover, it seems clear EPA failed to conduct required rulemaking in 2000 when the methodology for calculating indirect costs was changed dramatically. We do not assert that EPA's adoption of an accounting policy needs to be a rule. However, the law does require rulemaking when an agency makes a change in policy having a substantial impact on the public even if the rule is interpretive. See 5 U.S.C. Section 553; National Retired Teachers Assn. v. U.S., 430 F. Supp. 141 and Committee for Fairness v. Kemp, D.D.C. 1992, 791 F. Supp. 88. EPA changed an important policy and should have done so in a rulemaking.

Because this dispute does not involve the selection or adequacy of a response action, it should be governed by Paragraph 67 of the Consent Decree.

Respectfully Submitted for
Settling Defendants,

Peter J. Kelly

PJK/jab
cc: WTG II
S. Ellis

Calculation of Disputed Costs

DOJ Indirect Costs*	EPA Indirect Rate	EPA Indirect Costs on DOJ Indirect
FY05 - $13,179.35	61.71%	$8,132.98
FY06 - $55,634.00	56.23%	$31,283.00
FY07 - $13,584.48	62.91%	$8,546.00
FY08 - $119,814.00	62.91%	$75,374.99
FY09 - $93,892.00	62.91%	$40,194.46
Total - $266,104.43		$163,531.43

Note: DOJ Direct Costs for this same period totaled $140,690.58.* The DOJ Indirect Costs charged, $266,104.43, alone represent 189% of DOJ direct costs of $140,690.58.

*From April 10, 2009 DOJ Cost Summary.

EXHIBIT
tabbies
1

DOJ COST SUMMARY

Dated: April 10, 2009

CASE NAME: U.S. v. Wauconda Sand and Gravel

D.J. NUMBER: 90-11-2-153/1

	FY05 05-01/05 - 09/30/05	FY06	FY07	FY08	FY09 10/1/08 - 02/28/09	TOTAL
Hours	121.25	428.25	108.25	1,539.55	888.75	3,086.05
Direct Labor	$ 6,126.74	$ 25,816.18	$ 6,543.97	$ 60,480.85	$ 33,580.33	$ 132,548.07
Other Direct Costs	542.34	2,129.97	-	4,328.04	1,142.16	8,142.51
Indirect Costs	13,179.35	55,634.60	13,584.48	119,814.00	63,892.00	266,104.43
TOTAL:	$ 19,848.43	$ 83,580.75	$ 20,128.45	$ 184,622.89	$ 98,614.49	$ 406,795.01

EXHIBIT

tabbies

2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 21 2010

Via Electronic Mail
Via First Class Mail

REPLY TO THE ATTENTION OF:

Peter Kelly, Esq.
Vedder Price P.C.
222 North LaSalle Street
Chicago, Illinois 60601

Re: *United States v. BFI, et al.*, Case No. 07-CV-4499, Response to Notice of Dispute

Dear Mr. Kelly:

I write in response to your notice of dispute dated June 2, 2010, written on behalf of certain Settling Defendants (the "Settling Defendants") to the Consent Decree in the civil action referenced above, disputing a portion of the September 3, 2009 bill for Future Response Costs sent by the United States Environmental Protection Agency ("U.S. EPA"). As I understand it, the Settling Defendants dispute the portion of the bill relating to indirect costs calculated by U.S. EPA. Specifically, the Settling Defendants have disputed certain U.S. EPA indirect costs that they allege are applied to the Department of Justice's ("DOJ") line item on the U.S. EPA bill. The Settling Defendants allege that U.S. EPA improperly charged its own indirect costs upon a portion of DOJ's charges to U.S. EPA attributed as DOJ's indirect costs, which the Settling Defendants have calculated as $163,531.43. You have characterized that portion of the charges as "overreaching" and as contrary to language in the "Background" section of Appendix 1 to a memorandum, dated May 26, 2000, by U.S. EPA's Acting Comptroller.

As I understand your letter, the Settling Defendants do not dispute any other amounts in the September 3, 2009 billing, other than the $163,531.43 in U.S. EPA indirect costs calculated upon the DOJ line item.

After closely reviewing the notice of dispute, and having listened to the Settling Defendants' positions on previous conference calls, the U.S. EPA Wauconda team concludes that the amount billed to the Settling Defendants is correct and has been calculated in accordance with U.S. EPA's procedures and applicable law as described in more detail below.

According to Paragraph 53 of the Consent Decree, the Settling Defendants have agreed to reimburse the United States for all Future Response Costs (including Interim Response Costs) not inconsistent with the National Contingency Plan. The Consent Decree defines Future Response Costs in pertinent part as

> all costs... including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports or other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to

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Sections VII, IX, (including, but not limited to, the cost of attorney time...), XV, and Paragraph 85 of Section XXI."

The dispute centers on the nature of U.S. EPA's indirect costs and how these costs are calculated. EPA's indirect cost methodology, like the indirect cost methodology of any organization, is the manner the organization uses to identify and distribute its indirect costs to the goods and services the organization produces. These goods and services are referred to as "products" or "outputs." When determining the costs of their products, organizations include the direct cost of producing that product and the indirect cost of producing that product. Examples of U.S. EPA's direct costs include the salary of U.S. EPA personnel for time spent directing cleanup activities at a site, the cost of travel to the site, and the cost of contractors performing work at the site. Indirect costs include those costs incurred by an organization that support a product or service, but which cannot be specifically identified with that product or service, such as administration and management costs of the organization. U.S. EPA accounts for the cost of its Superfund activities through both direct and indirect costs. Contracts, interagency agreements, and state cooperative agreements are part of U.S. EPA's activities within the Superfund program.

In developing its indirect cost methodology, U.S. EPA follows the Statement of Federal Financial Accounting Standards No. 4 ("Standard No. 4"), issued by the Office of Management and Budget on July 31, 1995. The Federal Financial Management Improvement Act of 1996 requires the federal government to comply with published Federal Accounting Standards in its activities. Standard No. 4 does not require that U.S. EPA use any particular methodology to calculate its indirect costs, nor does it tell U.S. EPA how it must develop its methodology for calculating the indirect rate. Rather, the language of Standard No. 4 is intentionally broad to allow maximum flexibility for federal agencies in developing costing methodologies that best suit their agencies. The requirements of Standard No. 4 are: (1) cost accounting (meaning accumulate and report the costs of activities on a regular basis); (2) Responsibility Segments (meaning define and establish responsibility segments to match costs with outputs); (3) Full Costs (meaning report the full costs of government goods and services); (4) Inter-entity Costs (meaning incorporate the full cost of goods and services provided among federal entities); and (5) Costing methodology (meaning use appropriate costing methodologies to accumulate and assign costs to outputs).

In 2000, U.S. EPA revised its indirect cost methodology to employ a "full cost" methodology for indirect costs, based on the guidance provided by Standard No. 4. U.S. EPA's prior indirect cost methodology, which was based upon U.S. EPA labor hours charged to a Superfund site for determining its indirect costs, was criticized for failing to take into account the full cost of Superfund site cleanups because it did not take into account the complexity and magnitude of all of the activities that take place at a Superfund site, as labor hours are only a small component of site-specific costs. The revised methodology allocates indirect costs to sites based on the total costs of cleaning up Superfund sites. To compute its indirect cost rate, U.S. EPA identifies its total direct Superfund site expenditures by region (the allocation base) and allocates indirect costs over that amount to produce a percentage. The allocation is the means to reflect the relationship of indirect costs to direct expenditures for the Superfund program. To determine indirect costs attributable to an individual Superfund site, that percentage is then multiplied by total direct costs for the individual site.

The indirect cost pool for the Superfund program includes indirect costs such as rent, electricity, training, management and supervision of employees, and the management and implementation of the Superfund program as a whole. There is a different indirect cost pool for each region within U.S. EPA. The allocation base is the mechanism used to distribute, or allocate, the direct costs associated with the Superfund program to the program's product (or output) – in this case, Superfund activity. Under U.S. EPA's revised methodology, the allocation base is total site-specific expenditures (*i.e.*, total direct costs). Total site-specific costs is a reasonable basis for allocating direct costs because it reflects the magnitude and complexity of all of the Superfund program's activities at contaminated sites. To compute the indirect rate, U.S. EPA takes the indirect cost pool and divides it by the allocation base to produce a percentage. A separate rate for each fiscal year is generated for each regional office within EPA, such as Region 5, and that rate applies to all sites in that region. Finally, to determine the amount of indirect costs charged to a particular Superfund site, U.S. EPA multiplies the indirect rate percentage (obtained by dividing the pool by the allocation base) by the total direct costs for that site.

From an accounting perspective, it is appropriate for U.S. EPA to include indirect costs of those who have performed services for the U.S. EPA, such as its contractors (TetraTech, etc.) and other federal government agencies (such as Department of the Interior and DOJ) into the Superfund program's allocation base under U.S. EPA's indirect cost methodology. This is because all of the Superfund program's costs, including the indirect costs of those who have performed services for the Superfund program, are necessary to produce the Superfund program's product – the cleanup of contaminated sites and recovery of costs for the cleanup. As a result, these costs are appropriately included as part of the total (direct) cost of activity at the site. U.S. EPA's contractors are paid by U.S. EPA pursuant to contract. The contract price billed to U.S. EPA includes the contractors' direct and indirect costs, plus the contractors' profit in accordance with its contract with U.S. EPA. Similarly, DOJ is paid by U.S. EPA for its work pursuant to an interagency agreement. U.S. EPA's payment to DOJ reflects DOJ's direct and indirect costs. The total cost incurred by U.S. EPA for DOJ's services is part of the total direct costs attributed to the Wauconda Site, and thus becomes part of the direct cost base upon which U.S. EPA calculates its indirect costs. From a cost accounting viewpoint, the indirect portion of total DOJ costs U.S. EPA incurs pursuant to an interagency agreement is conceptually and practically indistinguishable from the indirect portion of a contractor's total costs billed to U.S. EPA pursuant to contract. In both cases, this is not double billing; rather, this is U.S. EPA's standard procedure for applying indirect costs upon ***total*** U.S. EPA site costs.

Similarly, the Settling Defendants' claim that U.S. EPA did not follow its own instruction for calculating indirect costs for a site, based on Attachment 1 to the May 26, 2000 memorandum written by U.S. EPA's Acting Comptroller, is incorrect. The memo's Attachment 1 instructs U.S. EPA to follow the very procedure for assessing indirect costs on total DOJ costs outlined in this letter. The Attachment provides, at page 9: "To apply these [indirect] rates to an individual site, identify the total direct site-specific costs of that site (including any DOJ costs but excluding ATSDR costs) and multiply that total by the appropriate region's indirect cost rate." In the present case, U.S. EPA identified the total DOJ costs (direct and indirect), included the total DOJ costs as part of U.S. EPA's direct site-specific costs of the Wauconda Site, and applied Region 5's indirect cost rate to the total DOJ costs just as it did with all other direct Site-specific costs.

Accordingly, U.S. EPA's billing, including applying U.S. EPA's indirect cost rate to total DOJ's costs, is appropriate, and accords with U.S. EPA's standard practices. You have asked us for dates to hold informal negotiations, and we are generally available on June 22, June 23 (before 3 PM), and June 24 (before 3 PM). In order to provide time for negotiations, we are willing to extend the period for informal dispute resolution ten days, up to and including July 2, 2010. Please contact us with your availability. Also, if you have further questions or would like to discuss this matter further, please do not hesitate to contact me at (312) 353-2591 or Steven Ellis at DOJ at (202) 514-3163.

Sincerely,

Mark J. Koller
Associate Regional Counsel

cc: Steven Ellis, U.S. DOJ (via Email)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 16 2010

Richard Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

REPLY TO THE ATTENTION OF:

Peter J. Kelly
Vedder Price PC
222 North LaSalle Street
Chicago, Illinois 60601

United States Environmental Protection Agency's
Statement of Position
***United States v. BFI Waste Systems of North America, Inc.*, Case No. 07 C 4499 (N.D. IL)**

This dispute centers on the nature of United States Environmental Protection Agency's ("U.S. EPA") indirect costs and how these costs should be calculated. The dispute, therefore, concerns neither science nor environmental law, but rather the proper application of accounting rules and principals. U.S. EPA's response costs under this Consent Decree include both direct costs – the expenses paid for site-related response activities – and indirect costs – a share of Superfund program expenses that are not directly tied to specific sites but support U.S. EPA's response capacity. U.S. EPA's indirect cost methodology, like the indirect cost methodology of any organization, is the manner in which the organization identifies and allocates its indirect costs acroess the goods and services the organization produces. On July 23, 2010, the Settling Defendants[1] to the Consent Decree in this matter (the "Consent Decree") invoked formal dispute resolution involving $163,531.43 (the "disputed amount") of U.S. EPA's indirect costs, which the Settling Defendants placed into escrow.

Paragraph 54 of the Consent Decree provides that the Settling Defendants may contest payment of Future Response Costs billed to them only on the basis that an "accounting error" has been made or that "a cost item that is included represents costs that are inconsistent with the [National Contingency Plan] or the provisions of this Consent Decree." The Settling Defendants claim that U.S. EPA committed an accounting error. Pursuant to the Consent Decree, U.S. EPA charges the Settling Defendants its direct and indirect Superfund costs incurred in connection with the Wauconda Sand and Gravel Superfund Site (the "Site"). U.S. EPA calculates its

[1] The Settling Defendants in this matter are BFI Waste Systems of North America, Inc.; Borden Chemical, Inc.; Exxon Mobil Corporation; Giddings & Lewis Machine Tools, LLC; H.B. Fuller Company; Honeywell, Inc.; Mail-Well Envelope Co.; Morton International, Inc.; Waste Management of Illinois Inc.; and Weber Foreign Manufacturing, Inc.

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indirect costs as an annually-based, region-wide percentage of its direct costs for a Superfund site. The Settling Defendants claim that U.S. EPA improperly applied its own indirect cost charges upon a portion of the costs it pays to the Department of Justice ("DOJ") for DOJ's work in connection with the Site, namely, the indirect part of DOJ's total costs. In this Statement of Position, U.S. EPA explains that DOJ's total costs charged to the Site (direct and indirect) are part of U.S. EPA's *direct* cost base, upon which U.S. EPA's indirect costs are calculated. This practice is part of U.S. EPA's indirect costs methodology that U.S. EPA has used for ten years. The method in which U.S. EPA calculates its indirect costs is a judicially approved, permissible way to recover its total Superfund costs as applied to the Site. The Settling Defendants have failed to show that U.S. EPA's charge of its indirect costs based on total DOJ costs incurred for the Site is an accounting error. As the charges are proper, the U.S. EPA enforcement team requests that the Superfund Division Director direct the amount in dispute to be paid to the United States, plus interest, as Future Response Costs pursuant to the Consent Decree.[2]

PROCEDURAL HISTORY

The District Court entered the Consent Decree on February 6, 2009. (Exhibit 1). On September 3, 2009, U.S. EPA issued a bill (which included an Itemized Cost Summary Statement, also referred to as an "ICS") to the Settling Defendants for the reimbursement of costs incurred by U.S. EPA for response activities incurred at the Site from May 1, 2005 through February 27, 2009. (Exhibit 2). The total amount billed on September 3, 2009 was $1,972,788.45. Pursuant to the Consent Decree, the Settling Defendants had until October 9, 2009 to pay the bill. On September 14, 2009, the Settling Defendants requested backup documentation for the bill and an extension of time to pay the bill.

On September 17, 2009, U.S. EPA granted the Settling Defendants a sixty-day extension to pay U.S. EPA's bill, but required that interest on the bill continue to accrue. U.S. EPA provided various documents to the Settling Defendants in response to their request for backup documentation for U.S. EPA's bill. The Settling Defendants then requested that DOJ furnish a cost summary of its costs for the Site upon which U.S. EPA's bill was based; DOJ prepared a cost summary and on December 16, 2009, submitted it to the Settling Defendants. (Exhibit 3).

On January 14, 2010, the Settling Defendants wrote U.S. EPA claiming that U.S. EPA's bill was "unreasonable." (Exhibit 4, at 1). The Settling Defendants requested that U.S. EPA accept a reduced sum to settle the bill. *Id.* U.S. EPA responded to the Settling Defendants on March 23, 2010, explaining that the bill was properly calculated, and that there was no basis on which to accept a reduced sum. (Exhibit 5). The parties continued to correspond and discuss by telephone issues involving the bill (Exhibits 6, 7). On June 2, 2010, the Settling Defendants paid U.S. EPA $1,837,028.82, the undisputed amount of U.S. EPA's September 3, 2009 billing plus accrued interest on the undisputed amount. The Settling Defendants put the disputed amount, $163,531.43, into an interest-bearing escrow account, and initiated informal dispute resolution. (Exhibits 8, 9). U.S. EPA responded to the Settling Defendants' informal dispute resolution position by letter of June 21, 2010, but the dispute was not resolved. (Exhibit 10).

[2] In their Statement of Position, the Settling Defendants contend that this dispute should be governed by the procedures of Paragraph 67 of the Consent Decree. U.S. EPA agrees.

THE COSTS IN DISPUTE

The Settling Defendants claim that U.S. EPA has made an accounting error, and are disputing a portion of the costs identified as "EPA indirect costs." (Exhibit 2, at page 1 of ICS). As discussed further below, U.S. EPA's indirect costs are calculated by multiplying U.S. EPA Region 5's applicable indirect cost percentage rate by the direct costs incurred by U.S. EPA in connection with the Site. One of the categories of costs that form part of the direct costs used by U.S. EPA in this calculation are DOJ's total costs, calculated to be $406,795.01. (Exhibit 4). The Settling Defendants claim that a portion of "EPA indirect costs" results from a double application of indirect costs; first the indirect costs portion of DOJ's charges to U.S. EPA for its work done at the Site, and second, U.S. EPA's use of that portion of DOJ's charges as a direct costs basis for U.S. EPA's own indirect costs. Reduced to its gravamen, the Settling Defendants argue that such an application of costs is unfair, against U.S. EPA policy, and contrary to the bona fide prospective purchaser provisions of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(r). (Exhibit 11). The Settling Defendants also argue that U.S. EPA's entire method of determining indirect costs is invalid because a rulemaking was required to make it effective. The United States does not contest the Settling Defendants' calculation of the disputed amount -- $163,531.43; that amount represents the Settling Defendants' calculation of U.S. EPA's indirect costs that are based on the indirect portion of DOJ costs charged to U.S. EPA for its work at the Site.[3] However, as set forth below, the Settling Defendants do not demonstrate that U.S. EPA's billing for indirect costs constituted an accounting error or that they are entitled to relief under the Consent Decree.

THE COSTS *NOT* IN DISPUTE

The Settling Defendants do not specifically contest any other portion of U.S. EPA's September 3, 2009 bill.[4] The Settling Defendants express generalized grievances about the size of the bill and U.S. EPA's practices with respect to the Site that they allege may lead to higher costs being incurred in connection with the Site. However, the Settling Defendants do not claim that any additional costs, outside of the disputed amount, entitle them to relief under the Consent Decree. The Settling Defendants also complain about U.S. EPA's June 25, 2010 bill, seeking reimbursement of U.S. EPA's costs incurred from March 1, 2009 through February 28, 2010, but do not put that bill at issue in this dispute resolution. Accordingly, U.S. EPA will address only the $163,531.43 actually in dispute. Indeed, the Settling Defendants addressed no other charge when the Settling Defendants opened informal dispute resolution with its June 2, 2010 letter to U.S. EPA placing only the $163,531.43 in dispute. (Exhibit 8).[5]

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[3] If the U.S. EPA enforcement team prevail in this dispute, the Settling Defendants will be required to pay the United States the $163.531.43 in dispute, plus interest calculated pursuant to Paragraph 55 of the Consent Decree

[4] The Settling Defendants state in their Statement of Position that "they should not pay almost $2,000,000 based on a policy rather than a regulation, having had the benefit of notice, public comment and an opportunity for judicial review." (Exhibit 12 at 6). However, the only amount specifically in dispute is the $163,531.43 and Paragraph 54 of the Consent Decree requires that the Settling Defendants specifically identify the contested amount and basis of objection.

[5] Paragraph 64 of the Consent Decree provides that "[a]ny dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute."

ARGUMENT

THE DISPUTED CHARGES WERE CALCULATED CORRECTLY AND IN ACCORDANCE WITH U.S. EPA'S INDIRECT COSTS METHODOLOGY

A. THE DISPUTED CHARGES WERE CALCULATED PURSUANT TO U.S. EPA'S INDIRECT COSTS METHODOLOGY, WHICH IS DESIGNED, PURSUANT TO CONGRESSIONAL MANDATE, TO CAPTURE U.S. EPA'S FULL COSTS OF ITS SUPERFUND PROGRAM.

1. The Consent Decree Requires the Settling Defendants to Reimburse the United States for All Future Costs, Direct and Indirect.

Paragraph 53 of the Consent Decree requires the Settling Defendants to reimburse the United States for all "Future Response Costs" not inconsistent with the National Contingency Plan. The Consent Decree defines Future Response Costs in pertinent part as:

> all costs... including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX, (including, but not limited to, the cost of attorney time...), XV, and Paragraph 85 of Section XXI.

(Exhibit 1, Para. 4 at 11-12).

2. U.S. EPA's Indirect Costs Method Follows Federal Law and is Consistent with the Pertinent Financial Accounting Standard to Account for Indirect Costs By Accounting for the Full Cost of the Superfund Program.

This dispute centers on the nature of U.S. EPA's indirect costs and how these costs are calculated. U.S. EPA's cleanup costs under this Consent Decree, incurred pursuant to its authority under CERCLA, includes both direct costs and indirect costs. (Exhibit 1, Para. 4 at 11-12). U.S. EPA's indirect cost methodology, like the indirect cost methodology of any organization, is the way the organization identifies and distributes its indirect costs to the goods and services the organization produces. (Exhibit 13, Para. 11). These goods and services are referred to as "products" or "outputs." *Id.* When determining the costs of their products, organizations include the direct cost of producing that product and the indirect cost of producing that product. *Id.* Examples of U.S. EPA's direct costs include the salary of U.S. EPA personnel for time spent directing cleanup activities at a site, the cost of travel to the site, the cost of attorneys performing legal work related to the site, and the cost of contractors performing work at the site. *Id.* at Para. 21. Indirect costs include those costs incurred by an organization that support a product or service, but which cannot be specifically identified with that product or service, such as administration and management costs of the organization. *Id.* at Para. 11. U.S.

EPA accounts for the cost of its Superfund activities through both direct and indirect costs. *Id.* at Para. 21, 23.

The manner in which U.S. EPA calculates its indirect costs, including the costs it pays to other federal agencies under CERCLA[6], was litigated and upheld in *United States v. W.R. Grace & Co.-Conn.*, 280 F. Supp. 2d 1149 (D. Mont. 2003), *aff'd United States v. W.R. Grace & Co.*, 429 F.3d 1224 (9th Cir. 2005). (Exhibits 14, 15). In developing its indirect cost methodology, U.S. EPA follows the Statement of Federal Financial Accounting Standards No. 4 ("Standard No. 4") (Exhibit 16), issued by the Office of Management and Budget on July 31, 1995. *Id.* at 1185-86. The Federal Financial Management Improvement Act of 1996, Title VIII, Pub. L. No. 104-208, 110 Stat. 309 (1996) (Exhibit 17), requires the federal government to comply with published Federal Accounting Standards in its activities. *See* Guidance on Exercising CERCLA Enforcement Discretion in Anticipation of Full Cost Accounting Consistent with the "Statement of Federal Financial Accounting Standards No. 4," 65 Fed. Reg. 35,339, 35,339 (June 2, 2000) ("U.S. EPA's 2000 Guidance"). (Exhibit 18). Standard No. 4 does not require that U.S. EPA use any particular methodology to calculate its indirect costs, nor does it tell U.S. EPA how it must develop its methodology for calculating the indirect rate. *W.R. Grace*, 280 F. Supp. 2d at 1167. Rather, the language of Standard No. 4 is intentionally broad to allow maximum flexibility for federal agencies in developing costing methodologies that best suit their agencies. *See Id.*, Exhibit 16 at 1. The requirements of Standard No. 4 are: (1) cost accounting (meaning accumulate and report the costs of activities on a regular basis); (2) responsibility segments (meaning define and establish responsibility segments, such as components within U.S. EPA, to match costs with outputs); (3) full costs (meaning report the full costs of government goods and services); (4) inter-entity costs (meaning incorporate the full cost of goods and services provided among federal entities); and (5) costing methodology (meaning use appropriate costing methodologies to accumulate and assign costs to outputs). *See W.R. Grace*, 280 F. Supp. 2d at 1167; Exhibit 13, at Para. 15.

In 2000, U.S. EPA revised its indirect cost methodology to employ a "full cost" methodology for indirect costs, based on the guidance provided by Standard No. 4. (Exhibit 16, at 35,341; Exhibit 13, at Para. 16). U.S. EPA's prior indirect cost methodology, which was based upon U.S. EPA labor hours charged to a Superfund site for determining its indirect costs, was criticized for failing to take into account the full cost of Superfund site cleanups because it did not take into account the complexity and magnitude of all of the activities that take place at a Superfund site, as labor hours are only a small component of site-specific costs. *W.R. Grace*, 280 F. Supp. 2d at 1167-68. The Court in *W.R. Grace* sums up how U.S. EPA's revised methodology calculates indirect costs with respect to a Superfund site:

> The revised methodology allocates indirect costs to Superfund sites based on the total costs of cleaning up the sites. To compute its indirect cost rate, EPA identifies its total direct Superfund site expenditures by region and allocates indirect costs over that amount to produce a percentage. The allocation is the means to reflect the relationship of indirect costs to direct expenditures for the Superfund program. To determine indirect costs

[6] Interagency agreements, contracts, and state cooperative agreements are part of U.S. EPA's activities within the Superfund program. *W.R. Grace*, 280 F. Supp. 2d at 1167.

> attributable to an individual Superfund site, that percentage is then multiplied by total direct costs for the individual site.

W.R. Grace, 280 F. Supp. 2d at 1168 (transcript citations omitted).

The Court in *W.R. Grace* explains how U.S. EPA calculates its indirect cost pool, as follows:

> The indirect cost pool for the Superfund program includes indirect costs such as rent, electricity, training, management and supervision of employees, and the management and implementation of the Superfund program as a whole. EPA's direct costs and EPA's indirect costs associated with other programs besides Superfund, such as EPA's water program, are excluded from the indirect cost pool. There is a different indirect cost pool for each region within EPA.
>
> The allocation base is the mechanism used to allocate the direct costs associated with the Superfund program to the program's output, or in this case, Superfund activity. Under EPA's [2000 indirect costs] methodology, the allocation base is total site-specific costs.

Id. Or, in other words, the allocation base is U.S. EPA's total site-specific direct costs. The Court determined that "[t]otal site-specific costs is a reasonable basis for allocating direct costs because it reflects the magnitude and complexity of all of the Superfund program's activities at contaminated sites." *Id.* U.S. EPA then computes its indirect rate by dividing the indirect cost pool by the allocation base (total site specific costs for the region) to produce a region-wide percentage. *W.R. Grace*, 280 F. Supp. 2d at 1168-1169; Exhibit 13, Para. 37. U.S. EPA calculates a separate indirect costs rate for each fiscal year for each regional office. *W.R. Grace*, 280 F. Supp. 2d at 1168; Exhibit 13, Para. 37. U.S. EPA then applies that annual indirect cost percentage for the region to each site by multiplying the indirect rate percentage by U.S. EPA's total direct costs for that Site. *W.R. Grace*, 280 F. Supp. 2d at 1169; Exhibit 13, Para. 37. The Court determined that

> EPA's revised indirect methodology complies with the five requirements of Standard No. 4, because it has 1) reported the costs of its [Superfund] activities (outputs) on a regular basis; 2) identified organizations that produce major products or services; 3) identified the full costs of producing those products or services; 4) identified inter-entity costs, or costs from other federal organizations that provide products or services to the EPA; and 5) provided a means of identifying all of the agency's costs so that they can be assigned to outputs.

W.R. Grace, 280 F. Supp. 2d at 1185-86.

3. The Settling Defendants Have Not Established that U.S. EPA Made an Accounting Error in Applying its Indirect Costs on Total DOJ Costs.

The Settling Defendants make three specific arguments. First, they claim that as a matter of policy, U.S. EPA cannot charge indirect costs upon the indirect portion of DOJ's total costs for a site. (Exhibit 12, at 4). They claim specifically that U.S. EPA's policy, expressed as an Attachment to U.S. EPA's 2000 Guidance, provides that U.S. EPA may only calculate indirect charges upon direct charges incurred by the United States. (Exhibit 12, at 4). The Settling

Defendants argue that since DOJ is part of the United States, U.S. EPA can only charge indirect costs upon DOJ's direct costs, not DOJ's indirect costs. (Exhibit 12, at 4). Second, the Settling Defendants claim that this method of accounting for indirect costs is inconsistent with sound accounting principles, because they claim that U.S. EPA does not incur indirect costs to support DOJ's indirect costs. (Exhibit 12, at 5). Third, the Settling Defendants argue that by calculating indirect costs upon the indirect portion of DOJ's total costs, U.S. EPA seeks to obtain a windfall, which the Settling Defendants claim is contrary to congressional policy reflected in 42 U.S.C. § 9607(r), a provision which addresses windfalls that bona fide prospective purchasers of property may experience resulting from an increase in the value of the property following a Superfund cleanup conducted or supervised by U.S. EPA. (Exhibit 12, at 5-6). The paragraphs below explain why it is appropriate for U.S. EPA to apply the indirect portion of DOJ's total costs when calculating its indirect costs, and why the Settling Defendants' arguments to the contrary are without merit.

Consistent with U.S. EPA's indirect cost methodology, DOJ charges U.S. EPA for its total costs incurred in connection with a Superfund site, including both direct and indirect costs. (Exhibit 13, Para. 22). Since total DOJ costs are charged to particular sites, U.S. EPA considers total DOJ costs to be site specific and thus direct costs. *Id.* As with all direct costs, these charges become part of U.S. EPA's allocation base, from which U.S. EPA determines the proper region-wide annual percentage rate for indirect costs for Region 5. *Id.* Also, as direct costs, total DOJ costs become part of the site-specific direct cost base, which is multiplied by the pertinent annual indirect cost percentage to determine U.S. EPA's direct cost for a site. *Id.* This is the method U.S. EPA used to calculate the annual U.S. EPA region-wide allocation base, and the method U.S. EPA used to calculate indirect costs for the Site. *Id.* Total DOJ costs, direct and indirect, incurred in connection with DOJ's work for the Site were used as part of the allocation base for Region 5, and these costs were charged to U.S. EPA as direct costs for the Site. *Id.*; Exhibit 19, Para. 4. This practice is part of U.S. EPA's procedure to meet the requirement of Statement No. 4 to incorporate the full cost of goods and services provided among federal entities. (Exhibit 13, Para. 22).

The Court in *W.R. Grace* approved this method of billing:

> It is appropriate for EPA to include in its allocation base the indirect costs of those who have performed services for EPA, such as other agencies and contractors, because all of these costs are considered necessary to cleaning up contaminated sites, and they are included in the total direct cost of the activity at the site.

W.R.Grace, 280 F. Supp. 2d at 1186.

The Settling Defendants base their first argument, that U.S. EPA policy prevents U.S. EPA from applying its indirect cost calculation upon the indirect portion of total DOJ costs, upon a single document, Attachment 2 to U.S. EPA's 2000 Guidance. (Exhibit 18, at 35,341-45). The cited policy statement does not support the Settling Defendants' claim. The Settling Defendants quote part of the statement saying that "direct costs include those that are directly incurred by the United States for site-specific activities..." (Exhibit 12, at 4). The sentence quoted however, continues: "...performed at or in connection with a site or a particular group of sites. Site-specific activities include the assessment, investigation and clean-up of a site, ancillary site-

associated activities, and related enforcement actions...The government's full cost at a Superfund site consists of the direct costs incurred for the site-specific activities and the proportionate share of all the costs that provide indirect support to the site." (Exhibit 18, at 35,342.)

As noted above and in Exhibit 13, Para. 22, the total DOJ costs, including DOJ's direct and indirect costs, are billed to U.S. EPA as site-specific costs. U.S. EPA thus incurs DOJ costs, assigned to specific sites, as *direct* U.S. EPA costs for those Sites, which are billed by U.S. EPA to responsible parties, such as the Settling Defendants, accordingly. As such, these costs are the type of "direct costs" of the United States referred to in the passage quoted by the Settling Defendants. In fact, the very policy statement cited by the Settling Defendants instructs EPA to include *any* DOJ costs in calculating EPA's indirect costs for the Site:

> To apply these [indirect percentage] rates to an individual site, identify the total direct site-specific costs of that site (including any DOJ costs, but excluding any ATSDR costs) and multiply that total by the appropriate region's indirect cost rate... Adding the direct site-specific costs and the indirect costs calculated under the new methodology will result in the full cost of that site.

(Exhibit 18, at 35,345.)[7] The instructions state that "any DOJ costs," not just "direct DOJ costs," are considered part of the "total direct site-specific costs of that site" for purposes of applying the indirect cost rate. *Id.* Thus, the Settling Defendants have no basis to claim that U.S. EPA's billing in question is against U.S. EPA's policy.

The Settling Defendant's second argument, that U.S. EPA's billing violates basic accounting principles, is utterly without merit. (Exhibit 12, at 5). First, the Settling Defendants do not identify such "basic accounting principles," and provide no evidentiary support that such accounting principles, if they exist, apply to circumstances of a government agency's requirement to identify its costs, including indirect costs. Secondly, the Settling Defendants fail to mention Standard No. 4, which *is* the applicable accounting standard. *See e.g.:* Exhibit 18, at 35,339 (The Federal Financial Management Improvement Act of 1996, Public Law 104-208, "requires all agencies to develop and use cost accounting methodologies that are consistent with [Standard no. 4] and other applicable standards."); *W.R. Grace*, 280 F. Supp. 2d at 1185 ("Standard No. 4 is the accounting standard applicable to EPA's cost accounting."). As the Court held in the *W.R. Grace* case, U.S. EPA's indirect cost methodology complies with the requirements of Standard No. 4, including U.S. EPA's use of another agency's indirect costs to be part of the allocation base for the calculation of the region-wide indirect cost rate, and as part of EPA's total direct cost for a site, upon which the indirect cost rate is applied. *See Id.* at 1186. Accordingly, the Court held specifically that it is appropriate for U.S. EPA to include in its allocation base the indirect costs of those who have performed services for U.S. EPA, such as other agencies and contractors. *Id.*

The Settling Defendants mistakenly argue that U.S. EPA's indirect costs don't apply to the indirect portion of total DOJ costs because U.S. EPA does not supply items such as office space, heat, or electricity for DOJ. (Exhibit 12, at 5). If the Settling Defendants' correlation were required between U.S. EPA's indirect costs and an agency's or contractor's direct costs,

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[7] "ATSDR" stands for the Agency for Toxic Substances and Disease Registry, a federal public health agency of the U.S. Department of Health and Human Services.

U.S. EPA would never be able to account for and recover many of its indirect costs incurred in support of the Superfund program. These costs include Superfund offices located at U.S. EPA headquarters, regional U.S. EPA Superfund management and support activities, U.S. EPA's Office of Chief Financial Officer (budget and finance), Office of Information and Resources Management (computer and information management), Personnel and Human Resources offices, Office of General Counsel, Office of Policy, Planning, and Evaluation, etc. *See e.g.*, Exhibit 13, Para. 28. The Settling Defendants cite no applicable accounting standard to support their position. Thus, the Settling Defendants' second argument fails.

The Settling Defendants' third argument, that U.S. EPA's application of its indirect costs rate to total DOJ costs provides a windfall to U.S. EPA in contravention of Congressional mandate, is wrong. (Exhibit 12, at 6-7). First, the only Congressional mandate the Settling Defendants cited is 42 U.S.C. § 9607(r), which applies only to bona fide prospective purchasers of property being cleaned-up under U.S. EPA's Superfund program. (Exhibit 11). The provision outlines circumstances in which such a prospective purchaser may avoid liability for site clean-up costs, but provides a mechanism to prevent such purchasers gaining a windfall under certain circumstances if their property increases in fair market value resulting from the clean-up activities at the site. *Id.* The provision has nothing to do with this dispute. The Settling Defendants have offered no evidence supporting their claim that U.S. EPA would obtain a windfall by applying its indirect cost rate to total DOJ costs. U.S. EPA's indirect costs methodology seeks to account for all indirect costs, nothing more.

4. The Settling Defendants Fail to Establish that U.S. EPA's Entire Indirect Cost Methodology is Illegal or Should Not Be Employed in this Case.

The Settling Defendants close their Statement of Position by arguing that U.S. EPA's indirect cost methodology should have been adopted only after a formal rulemaking on the claimed basis that a change in policy that has a substantial impact on the public requires a rulemaking. (Exhibit 12, at 6). The Settling Defendants do not request that EPA's indirect cost methodology be struck down, so it is unclear what relief the Settling Defendants request based on this argument. The Settling Defendants also provide no evidence of the claimed impact on the public to support their argument. Since the Settling Defendants have not offered any evidence demonstrating that U.S. EPA's indirect cost methodology has the binding effect of a rule, their argument fails.

Indeed, U.S. EPA's adoption of its current indirect cost methodology was not a binding substantive rule. U.S. EPA announced its indirect cost methodology as guidance to U.S. EPA personnel on how to exercise enforcement discretion as it relates to U.S. EPA's then new indirect cost accounting methodology, in order to better meet the requirements of Standard No. 4 and the Federal Financial Management improvement Act of 1996. (Exhibit 18, at 35,339). It did not impose binding dictates on how U.S. EPA should use its enforcement discretion. Instead, U.S. EPA stated:

> Except for the specific transition related adjustments noted above, existing policy and guidance applicable to considering or accepting settlement offers is unchanged. Implementing the revised indirect rates will not affect the discretion of the Agency or DOJ to settle or compromise cost recovery claims, including those cases where costs are based on the revised rates. Litigation risk, equitable considerations, and other factors that

> are considered in determining whether to settle or compromise claims may still be taken into account. As always, EPA will exercise its discretion to ensure that any resulting settlements are fair, reasonable, and consistent with CERCLA.

Id. at 35,340.

In this matter, negotiations for the Consent Decree at issue took several years; the negotiations were lengthy, and at times, contentious. The Consent Decree was entered in February 2009, more than eight years following U.S. EPA's 2000 Guidance, announcing the revised indirect costs methodology. The Consent Decree incorporates indirect costs as part of the defined term "Future Response Costs," which the Settling Defendants are obligated to pay. (Exhibit 1, Para. 4 at 11-12). The Settling Defendants were aware, or should have been aware, of the current indirect cost methodology at the time the Consent Decree was negotiated and lodged. The Consent Decree does not limit U.S. EPA's ability in collecting indirect costs in any way, including the application of U.S. EPA's indirect cost methodology. U.S. EPA thus used its enforcement discretion in entering into a Consent Decree that authorizes it to collect U.S. EPA's indirect costs. The Settling Defendants have not established that lack of a rulemaking relieves the Settling Defendants from its responsibility to pay for U.S. EPA's indirect costs based upon U.S. EPA's indirect cost methodology.

CONCLUSION

For the reasons set forth above, the U.S. EPA enforcement team requests that the Superfund Division Director uphold U.S. EPA's September 3, 2009 billing to Settling Defendants, including U.S. EPA's application of indirect costs, and direct the Settling Defendants to pay the bill in accordance with the time limits set forth in Paragraph 54 of the Consent Decree.

cc: Eric Runkel
State Project Coordinator
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

EXHIBITS

1. Consent Decree for Remedial Action/Cost Recovery, Wauconda Sand & Gravel Site, Wauconda, Illinois (Civil Action No. 07 C 4499), without appendices

2. September 3, 2009 bill (including Itemized Cost Summary Statement) to Peter Kelly from Richard Hackley

3. December 16, 2009 Email from Steven Ellis to Peter Kelly, including attachment

4. January 14, 2009 Correspondence from Peter Kelly to Mark Koller (attachments not relevant to dispute and not included)

5. March 23, 2010 Correspondence from Mark Koller to Peter Kelly (attachments not relevant to dispute and not included)

6. March 31, 2010 Correspondence from Peter Kelly to Mark Koller

7. April 21, 2010 Correspondence from Peter Kelly to Mark Koller

8. June 2, 2010 Notice of Dispute from Peter Kelly to Consent Decree distribution list, including attachment

9. June 2, 2010 Correspondence from Peter Kelly to Consent Decree distribution list

10. June 21, 2010 Correspondence from Mark Koller to Peter Kelly

11. 42 U.S.C. § 9607

12. July 22, 2010 Statement of Position from Peter Kelly to Consent Decree distribution list

13. August 16, 2010 Declaration of Christopher Osborne

14. *United States v. W.R. Grace & Co.-Conn.*, 280 F. Supp. 2d 1149 (D. Mont. 2003)

15. *United States v. W.R. Grace & Co.,* 429 F.3d 1224 (9th Cir. 2005)

16. Managerial Cost Accounting Concepts and Standards for the Federal Government: Statement of Federal Financial Accounting Standards Number 4 (July 31, 1995)

17. Federal Financial Management Improvement Act of 1996, Title VIII, P. Law No. 104-208, 110 Stat. 309 (1996)

18. Environmental Protection Agency "Guidance on Exercising CERCLA Enforcement Discretion in Anticipation of Full Cost Accounting Consistent With the 'Statement of Federal Financial Accounting Standards No. 4'", 65 Fed. Reg. 35,339 (June 2, 2000)

19. August 13, 2010 Declaration of Linda Haile

1

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

IN THE MATTER OF	)
	)
CONRAIL RAIL YARD	)
	)
	)
	)
	)

DECLARATION OF RICHARD HACKLEY

I, Richard D. Hackley, state as follows:

1. I am a resident of Illinois, and am an employee of the United States Environmental Protection Agency, Region V (U.S. EPA). I began my employment with U.S. EPA, Region 5 as an Staff Accountant in January, 1984. Currently, I am the Superfund Cost Documentation Team Leader in Region 5 in the Resources Management Division, Comptroller Branch. I have worked as an accountant for EPA for 18 years and worked specifically on accounting for the Superfund program for 15 years.

2. I am professionally trained. I received a Bachelors of Business Administration degree in 1981 from the University of Michigan, majoring in Accounting.. I have also received supplemental education and training in the financial policies and procedures of the Superfund program.

3. As part of my work in the Resources Management Division, I am responsible for overseeing a team of 5 accountants. The team's work includes litigation support for the Superfund program, financial reporting in regard to the Superfund program, and putting together oversight and response cost packages for Superfund enforcement activities. My duties include ensuring that the accountants in my team follow pertinent Governmental Accounting Standards and Agency guidance in reconciling cost documentation and financial reports to be released under discovery, as well as Superfund Site-specific cost information released as Itemized Cost Summaries.

4. Under various orders and consent decrees, EPA bills responsible parties (RPs) on a periodic basis for EPA's response costs at Superfund sites, which includes EPA's contractors costs. The billing of EPA's direct contractor costs to the responsible parties at a Superfund site for a response action is done on a cash basis instead of an accrual basis. Cash basis accounting is a standard and legitimate accounting practice.

5. Billing on a cash basis means that EPA bills the costs of its Superfund contractors only

after it receives a voucher or invoice from its contractors and the invoice or voucher is paid.. A cost is incurred by EPA only after it receives an invoice or voucher from its Superfund contractors and the invoice or voucher is paid.

I state under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Richard D Hackley
Richard D. Hackley

September 10, 2002
Date

2816 S. Austin
Street Address

Cicero IL
City, State

Ex. 2

CONRAIL RAIL YARD, IN
SUPERFUND SITE # 7Y
PREPARED 01/29/96

EPA EXPENDITURES	Cumulative Costs Through December 31, 1995
EPA PAYROLL --	
--Headquarters	$ 2883.07
--Regional	239,659.63
INDIRECT COST --	
--	308,460.40
EPA TRAVEL --	
--Headquarters	1,177.01
--Regional	15,028.22
ARCS CONTRACT --	
--Ecology & Environment (68-W8-0086)	3,219,005.97
CLP CONTRACTS --	
--Financial Cost Summary	284,874.64
ERCS CONTRACT --	
--IT Environmental Programs, Inc. (68-01-7460)	3,501.27
ESAT CONTRACTS --	
--Roy F. Weston (68-01-7443)	2,765.28
--Lockheed Engineering & Sciences (68-D1-0158)	43,623.59
INTERAGENCY AGREEMENT --	
--Agency For Toxic Subs. & Disease Registry (057Y)	499,777.27
MISCELLANEOUS EXPENDITURES --	
--Dennis Dalga (91052Q0208)	7.34
--Dun & Bradstreet (1U0024NBLX)	112.55
--Dun & Bradstreet (DU0024NBLX)	23.38
--Guest Quarter Suite Hotel (91052Q0184)	43.73
--Imprest Reimbursement Claim (S20093)	11.70
--Imprest Reimbursement Claim (S20094)	16.00
--Kurt Norman Lindland (9405DH0073)	11.67
OVERFLIGHTS (OVR) --	
--Epic - Bionetics (68-03-3532)	890.51
STATE COOPERATIVE AGREEMENTS --	
--Indiana D.E.M. (589901)	56,018.00
--Indiana D.E.M. (599501)	103.00
--Indiana D.E.M. (99537001)	31,786.00
TES CONTRACTS --	
--Jacobs Engineering (68-01-7351)	407.95
--Ronson Management Corporation (68-W3-0023)	1,436.50
--Planning Research Corporation (68-W9-0006)	1,898.16
--Metcalf & Eddy (68-W9-0007)	4,129.43

CONRAIL RAIL YARD, IN
SUPERFUND SITE # 7Y
PREPARED 01/29/96

EPA EXPENDITURES		Cumulative Costs Through December 31, 1995
TOTAL EPA COSTS BEFORE INTEREST	$	4,717,652.27
TOTAL COSTS RECOVERED TO DATE		20,000.00
TOTAL EPA COSTS FOR CONRAIL RAIL YARD	$	4,697,652.27
Pre–Judgement Interest		1,116,999.35
TOTAL EPA UNRECOVERED COSTS FOR CONRAIL RAIL YARD, IN.	$	5,814,651.62

Please Note:

National Contract Laboratory program costs may be significantly understated. These costs do not include any lab costs that may have been billed to EPA prior to FY 1986, if such costs were incurred, and no estimate of the CLP Sample Management Cost (ranges from 6.1 % to 17.0 % of Analytical costs) is provided. A complete accounting of Contract Laboratory Costs normally is provided by VIAR within the documentation process.

This summary does not include Department of Justice costs. Those costs will be documented separately by the Department of Justice.

Ex. 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
C-14J

MAY 30 2001

Gerard Finn, Esq.
Bingham Dana
Suite 800
1120 Street, NW
Washington, DC 20036

Jonathan A. Conte, Esq.
Blank Rome Comiskey & McCauley LLP
PNC Center
201 East Fifth Street, Suite 1700
Cincinnati, Ohio 45202

Re. Conrail Superfund Site, Elkhart, IN

Dear Sirs:

In Gerard Finn's letter of June 6, 2000 you asked us to provide the legal authority for the proposition that discretionary Award Fees are recoverable costs. Enclosed is a copy of the decision in the case of United States Of America v. Alcan Aluminum Corporation, et al., 87-CV-920, 91-CV-1132 (U.S. Dist. Ct. Northern District of New York - November 4, 2000). This case does not specifically talk about fees, but discusses recovery of costs and cites to other decisions on costs. Also see United States v. Findett Corporation, 220 Fed.3rd 842 (8th Cir.2000).

I have also included with this letter the Statement of Work, Oversight Remedial Design by Respondents Conrail Railyard Site, Elkhart Indiana (Revision No. 1)[1] and the Statement of Work for Conducting a Remedial Investigation/Feasibility Study, and Phased Feasibility Study at the Robert Young Conrail Rail Yard, Elkhart County, Indiana (Revision No. 1) and the attached Scope of Work, Community Relations Activities Consolidated Rail Yard Elkhart, Indiana

[1]There may have been additional revisions after revision number 1.

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(Revision No. 1.).[2] These documents describe the work that was done under the ARCs contract for the two ARCS work assignments at issue at the Conrail site.

Also in your letter of June 6, 2000, you asked what percentage of the costs is for work actually performed versus what percentage is for fees such as Base or Award Fees for the vouchers at issue under the ARCs contract. The May 8th 2000 letter does contain information in regard to this, but I have restated it below:

1. Voucher 109 - The $1.26 is for Remedial Investigation and the Feasibility Study (RI/FS) Community Relations(CR) direct costs, for General and Administrative (G&A) Costs and for award and/or base fees (the fee component was not referenced in the May 8, 2000 letter). This means that some of the $1.26 actually went for Community Relations work on the site in regard to the RI/FS and some for G&A costs and fees associated with the Community Relations work (See the attached sheet of definitions for an explanation of G&A costs and other technical terms used in this letter[3]).

I am hopeful we can resolve this and other small amounts expeditiously, because of the expenditure of resources. The addressing of each issue costs us time and effort and does result in a billing of our time on these matters to the site.

2. Voucher 110 - $289 - This amount is for award and/or base fees for the RI/FS community relations work.

3. Voucher 110 - $8.50 - This amount is for award and/or base fees for Remedial Design (RD) Oversight. EPA oversees the Remedial Design work and the fees are for the oversight contractor that assists EPA in this work. .

4. Voucher 115 - $1428.78 - This was an indirect cost rate adjustment for the contractor's fiscal year ending July 31, 1995 (See attached sheet). This is for the RI/FS Community Relations work.

5. Voucher 115 - $148.49 - This is also an indirect cost rate adjustment. This is in regard to the Remedial Design Oversight contract.

6. Voucher 119 - $44118.61- This amount is for award and/or base fees for the RI/FS community relations work.

7. Voucher 119 - $1953.04 - This amount is for award and/or base fees for the Remedial Design (RD) Oversight contract.

8. Voucher 132 - $2.34 - This was an indirect cost rate adjustment for the contractor's fiscal

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[2]There were additional revisions after revision number 1.

[3]The attachment is the same sheet that was included in the May 8, 2000 letter.

year ending July 31, 1996. This is for the RI/FS Community Relations work.

9. Voucher 132 - $142.18 - This is also an indirect cost rate adjustment for contractor's fiscal year ending July 31, 1996. This is in regard to the Remedial Design Oversight contract.

10. Annual Allocation - $7,867.49 -This is broken down for each ARCS voucher in the bill and the allocation rate is listed for each voucher. See attached copy of these pages from the bill.

You also had previously raised an issue about the TAT contract. We are in the process of trying to get information on the type of work that was done under this contract. This bill contains three vouchers in regard to this contract:

11. Voucher 93 - $412.70 - We think this might relate to removal work, such as placing or maintaining filters on water systems.

12. Voucher 95 - $33.42 - We think this would also relate to removal work.

13. Voucher 131 - $40.65 - We think this would also relate to removal work

14. Annual Allocation - $449.48 - This is broken down for each TAT voucher in the bill and the allocation rate is listed for each voucher. See attached copy of this page from the bill.

I am still working on responding to your request for supporting documents. Let me know if we can resolve any of the outstanding items at the present time. If you have any questions, please call me at (312) 886-6837.

Sincerely,

S

Michael Berman
Associate Regional Counsel

Enclosures

Attachment A

For clarification and to help you better understand the terminology used above and why indirect rate adjustments and award fee payments are made after work is completed, the following definitions are provided.

1. Indirect cost is any cost not directly identified with a single, final cost objective such as one particular contract or project. An indirect cost can not be allocated to a final cost objective and are accumulated in the contractor's general ledger until the end of the contractor's fiscal year. These are the contractor overhead costs which the contractor passes along to its customers/clients.

Under cost reimbursement contracts indirect rates for a particular year are applied to direct costs incurred in that same year. Indirect rates are applied retroactively because rates can not be established until all costs within a contractor's fiscal year are recorded, the contractors books are closed for that year, and the contractor submits its indirect rate proposal. The contractor's indirect cost rate proposal are than audited and final rates negotiated. This takes several years to complete and this is why indirect rate adjustment invoices are received after work has been completed.

2. General and Administrative Costs (G&A) consists of the costs incurred for operation of a company's general offices in the management, supervision, and conduct of the business as a whole. These cost include administrative and office salaries and other compensation related to personal services: rent, depreciation, auditing, supplies, utilities, postage, etc.

3. Fees refers to the Base Fee and the Award fee. The Base Fee is the allowed profit. The percent used to calculate profit is negotiated prior to award of the contract. The Award Fee is a performance incentive fee paid to the contractor based on the agency's evaluation of the contractor's performance. Fees can be for the contractor and/or the subcontractor.

4. Annual allocation are non-site specific costs that are allocated to the sites for recovery of non-site specific costs. Non-site specific costs are those costs incurred by a contractor for activities in support of the overall contract and not a specific site. Examples of the type of activities considered non-site specific are calibrating and tracking EPA-owned equipment used under the contract, participating in general meetings and or conferences and training, or equipment training, that relate to only to the ARCS contract. (If an activity benefits multiple contracts/clients the cost is not direct charged to any one contract but is recorded in the contractor's overhead and allocated to all contracts/clients receiving benefit through the contractor's indirect rate.) Once a year these costs are totaled and an allocation rate is determined (please see bill for the allocation rate).

Ex. 3

CONRAIL RAIL YARD, ELKHART, IN SITE ID = 05 7Y

FROM 01/01/1996 THROUGH 02/17/1999

TECHNICAL ASSISTANCE TEAM (TAT) CONTRACT

CONTRACTOR : ECOLOGY AND ENVIRONMENT, INC.

CONTRACT NUMBER : 68-W0-0037

PROJECT OFFICER : ESTER E. WILLIFORD

DATES OF SERVICE : FROM :11/26/1995 TO :12/31/1995

SUMMARY OF SERVICE :

TOTAL COSTS : $ 936.25

DOCUMENTATION : Copies of Applicable Paid Vouchers and Treasury Schedules

VOUCHER NUMBER	VOUCHER DATE	VOUCHER AMOUNT	TREASURY SCHEDULE NUMBER AND DATE		SITE AMOUNT	ANNUAL ALLOCATION
93	01/22/1996	2,181,555.46	R6334	03/01/1996	412.70	381.08
95	02/21/1996	578,303.41	R6471	07/25/1996	33.42	30.86
131	12/15/1997	444,774.03	R8278	01/13/1998	40.65	37.54
					486.77	449.48

CONRAIL RAIL YARD, ELKHART, IN SITE ID = 05 7Y

FROM 01/01/1996 THROUGH 02/17/1999

TECHNICAL ASSISTANCE TEAM (TAT) CONTRACT

CONTRACTOR : ECOLOGY AND ENVIRONMENT, INC.

CONTRACT NUMBER : 68-W0-0037

VOUCHER NUMBER	SCHEDULE NUMBER	RATE TYPE	ALLOCATION RATE
93	R6334	Region - Provisional	0.923374
95	R6471	Region - Provisional	0.923374
131	R8278	Region - Provisional	0.923374

CONRAIL RAIL YARD, ELKHART, IN SITE ID = 05 7Y

FROM 01/01/1996 THROUGH 02/17/1999

ALTERNATIVE REMEDIAL CONTRACT SUPPORT (ARCS)

CONTRACTOR : ECOLOGY AND ENVIRONMENT

CONTRACT NUMBER : 68-W8-0086

VOUCHER NUMBER	SCHEDULE NUMBER	RATE TYPE	ALLOCATION RATE
109	96211	Site - Final	0.163844
110	96236	Site - Final	0.163844
110	96236	Site - Final	0.163844
115	96565	Site - Final	0.163844
115	96565	Site - Final	0.163844
119	96890	Site - Final	0.163844
119	96890	Site - Final	0.163844
132	97A09	National- Final	0.079921
132	97A09	National- Final	0.079921

Ex. 5

REPORT DATE: 03/09/1999

CONRAIL RAIL YARD, ELKHART, IN SITE ID = 05 7Y

FROM 01/01/1996 THROUGH 02/17/1999

ALTERNATIVE REMEDIAL CONTRACT SUPPORT (ARCS)

CONTRACTOR : ECOLOGY AND ENVIRONMENT

CONTRACT NUMBER : 68-W8-0086

PROJECT OFFICER : PATRICIA VOGIMAN

DATES OF SERVICE : FROM :09/24/1995 TO :07/31/1996

SUMMARY OF SERVICE :

TOTAL COSTS : $ 55,959.69

DOCUMENTATION : Copies of Applicable Paid Vouche and Treasury Schedules

VOUCHER NUMBER	VOUCHER DATE	VOUCHER AMOUNT	TREASURY SCHEDULE NUMBER	AND DATE	SITE AMOUNT	ANNUAL ALLOCATION
109	11/16/1995	163,373.27	96211	01/02/1996	1.26	0.21
110	12/14/1995	101,234.68	96236	01/17/1996	289.00	47.35
110	12/14/1995	101,234.68	96236	01/17/1996	8.50	1.39
115	04/10/1996	127,029.13	96565	05/23/1996	1,428.78	234.10
115	04/10/1996	127,029.13	96565	05/23/1996	148.49	24.33
119	08/19/1996	115,096.06	96890	09/27/1996	44,118.61	7,228.57
119	08/19/1996	115,096.06	96890	09/27/1996	1,953.04	319.99
132	08/29/1997	155,990.43	97A09	09/30/1997	2.34	0.19
132	08/29/1997	155,990.43	97A09	09/30/1997	142.18	11.36
					48,092.20	7,867.49

Ex. 6 Voucher #109

FORM 800-05
INVOICE # 49167
ECOLOGY & ENVIRONMENT INC.
REMEDIAL PLANNING ACTIVITIES AT HAZARDOUS WASTE SITES IN REGION V
CONTRACT #: 68-W8-0086
PERIOD COVERED - MONTH ENDING 28-OCT-95

SITE IDENTIFIER:	ZF3
WORK ASSIGNMENT:	01-5L7Y
DESCRIPTION:	CONRAIL RI/FS, CR

Total Amount Billed 1.26

Voucher 110

FORM 800-05
INVOICE # 49184
ECOLOGY & ENVIRONMENT INC.
REMEDIAL PLANNING ACTIVITIES AT HAZARDOUS WASTE SITES IN REGION V
CONTRACT #: 68-W8-0086
PERIOD COVERED - MONTH ENDING 25-NOV-95

SITE IDENTIFIER:	ZF3
WORK ASSIGNMENT:	01-5L7Y
DESCRIPTION:	CONRAIL RI/FS, CR

Total Amount Billed 289.00

Voucher 110

FORM 800-05
INVOICE # 49184
ECOLOGY & ENVIRONMENT INC.
REMEDIAL PLANNING ACTIVITIES AT HAZARDOUS WASTE SITES IN REGION V
CONTRACT #: 68-W8-0086
PERIOD COVERED - MONTH ENDING 25-NOV-95

SITE IDENTIFIER: ZI4
WORK ASSIGNMENT: 31-5P7Y
DESCRIPTION: CONRAIL RD (O)

Total Amount Billed 8.50

VOUCHER #115

SUPPLEMENTAL INVOICE FOR AUGUST 1, 1994 - JULY 31, 1995
ECOLOGY & ENVIRONMENT, INC.
REMEDIAL PLANNING ACTIVITIES AT HAZARDOUS WASTE SITES IN REGION V
CONTRACT# 68-W8-0086

31-5P7Y CONRAIL RD (O) ZI4

MAJOR COST ELEMENT	BILLED	EARNED	DIFFERENCE
1) DIRECT LABOR			
2) FRINGE			
3) OVERHEAD			
4) SUBTOTAL			
5) OTHER DIRECT CHARGES			
6) SUBTOTAL			
7) G & A			
8) SUBCONTRACT			
9) SUB HANDLING FEE			
10) LABORATORY SERVICE			
11) DRILLING			
12) EQUIPMENT RENTAL			
13) MISC RECEIPTS			
14) TOTAL COST			
15) BASE FEE (E&E)			
16) BASE FEE (SUBS)			
18) TOTAL			148.49

VOUCHER #115

SUPPLEMENTAL INVOICE FOR AUGUST 1, 1994 - JULY 31, 1995
ECOLOGY & ENVIRONMENT, INC.
REMEDIAL PLANNING ACTIVITIES AT HAZARDOUS WASTE SITES IN REGION V
CONTRACT# 68-W8-0086

01-5L7Y CONRAIL RI/FS, CR ZF3

MAJOR COST ELEMENT	BILLED	EARNED	DIFFERENCE
1) DIRECT LABOR			
2) FRINGE			
3) OVERHEAD			
4) SUBTOTAL			
5) OTHER DIRECT CHARGES			
6) SUBTOTAL			
7) G & A			
8) SUBCONTRACT			
9) SUB HANDLING FEE			
10) LABORATORY SERVICE			
11) DRILLING			
12) EQUIPMENT RENTAL			
13) MISC RECEIPTS			
14) TOTAL COST			
15) BASE FEE (E&E)			
16) BASE FEE (SUBS)			
18) TOTAL			1428.78

VOUCHER [redacted] 119

FORM 800-05
INVOICE # 70598
ECOLOGY & ENVIRONMENT INC.
REMEDIAL PLANNING ACTIVITIES AT HAZARDOUS WASTE SITES IN REGION V
CONTRACT #: 68-W8-0086
PERIOD COVERED - MONTH ENDING 27-JUL-96

SITE IDENTIFIER:	ZF3
WORK ASSIGNMENT:	01-5L7Y
DESCRIPTION:	CONRAIL RI/FS, CR

Total Amount Billed 44118.61

VOUCHER 114

FORM 800-05
INVOICE # 70598
ECOLOGY & ENVIRONMENT INC.
REMEDIAL PLANNING ACTIVITIES AT HAZARDOUS WASTE SITES IN REGION V
CONTRACT #: 68-W8-0086
PERIOD COVERED - MONTH ENDING 27-JUL-96

SITE IDENTIFIER: ZI4
WORK ASSIGNMENT: 31-5P7Y
DESCRIPTION: CONRAIL RD (O)

Total Amount Billed 1953.04

VOUCHER# 132

SUPPLEMENTAL INVOICE FOR AUGUST 1, 1995 - JULY 31, 1996
ECOLOGY & ENVIRONMENT, INC.
REMEDIAL PLANNING ACTIVITIES AT HAZARDOUS WASTE SITES IN REGION V
CONTRACT# 68-W8-0086

01-5L7Y COMRAIL RI/FS, CR ZF3

MAJOR COST ELEMENT	BILLED	EARNED	DIFFERENCE
1) DIRECT LABOR			
2) FRINGE			
3) OVERHEAD			
4) SUBTOTAL			
5) OTHER DIRECT CHARGES			
6) SUBTOTAL			
7) G & A			
8) SUBCONTRACT			
9) SUB HANDLING FEE			
10) LABORATORY SERVICE			
11) DRILLING			
12) EQUIPMENT RENTAL			
13) MISC RECEIPTS			
14) TOTAL COST			
15) BASE FEE (E&E)			
16) BASE FEE (SUBS)			
18) TOTAL			2.34

VOUCHER # 132

SUPPLEMENTAL INVOICE FOR AUGUST 1, 1995 - JULY 31, 1996
ECOLOGY & ENVIRONMENT, INC.
REMEDIAL PLANNING ACTIVITIES AT HAZARDOUS WASTE SITES IN REGION V
CONTRACT# 68-W8-0086

31-5P7Y CONRAIL RD (O) ZI4

MAJOR COST ELEMENT	BILLED	EARNED	DIFFERENCE
1) DIRECT LABOR			
2) FRINGE			
3) OVERHEAD			
4) SUBTOTAL			
5) OTHER DIRECT CHARGES			
6) SUBTOTAL			
7) G & A			
8) SUBCONTRACT			
9) SUB HANDLING FEE			
10) LABORATORY SERVICE			
11) DRILLING			
12) EQUIPMENT RENTAL			
13) MISC RECEIPTS			
14) TOTAL COST			
15) BASE FEE (E&E)			
16) BASE FEE (SUBS)			
18) TOTAL			142.18

Ex. 7

PART IV - Narrative Project Statement

Part IV,A1

Our Group is NOT A PART OF:

Any Potentially Responsible Party(s), Academic Institution, Political Subdivision, or A group established and/or sustained by a state or local government.

Part IV, A-2

Our group (50 current members, see attached membership list) was formed in 1987 in response to the numerous ground water contamination problems in Elkhart County. There is no other groups involved in a coalition in this effort with our group. The primary objective of the group at that time was to promote the passage of an affective local ground water protection ordinance. This ordinance was passed in 1988. At this time the focus of the group changed to active involvement in the Conrail/C.R. 1 site. This was due to the high percentage of active members that were affected by the contamination plume.

Part IV, B-1

CLEAN has operated since 1987 as a non-profit organization and has an existing administrative structure that oversees its activities. One member of the Board of Directors will be the group's designated representative for purposes of signing all documents related to the TAG. The Board of Directors will direct the technical advisor(s) and oversee the entire project. The treasurer of CLEAN will be responsible for all financial oversight of the TAG. The attached by-laws provide additional information on the administrative structure of CLEAN.

Part IV, B-2

We estimate that we will need the services of a technical advisor for three years. At this time an estimated budget for the entire project is $62,500. The federal share for the entire project is $50,000. We will match the federal share of $50,000 with $12,500 - twenty percent of the total project with a combination of cash and in-kind contributions. The cash portion will come from annual dues, donations, and fund rasing activities such as chicken barbecues and other fund raising activities. In-kind contributions will come from donated meeting space, planning activities, executive committee meetings, time spent managing the technical advisor, accounting services, newsletter and editing services, and time required to put out the required mailings and distribute the newsletter. Attachment 1A provides a detailed budget including a breakdown of federal and matching shares.

Part IV, B-3

Although CLEAN has received federal funds in the past, we know that with the receipt of additional funds, the group can continue to monitor the progress of the Conrail site cleanup and report those activities to the public. The narrative Statement of Work included in the Attachment 1.B, "Proposed Schedule and Costs for Technical Advisor", ties our Statement of Work to our budget. The primary areas of past involvement are health and environmental concerns.

Part IV, B-4

Our financial management system complies with generally accepted accounting procedures. We will establish a separate bank account and general ledger solely for the management of the TAG. A member of CLEAN, will maintain all financial records related to the grant. These files will be stored in a central file located with the CLEAN files. A phone log will be maintained by all of CLEAN officers and board members. The technical advisor will be expected to maintain a telephone log along with the other records of his/her expenditures and activities. It is also the intent of CLEAN to seek outside volunteer assistance in keeping the financial logs. There will also be an outside accounting firm brought in every other year to audit the records as required by federal law. The application describes in detail our proposed plan for the use of the technical advisors services.

Part IV, B-5

We are and remain an incorporated, not for profit, organization in the State of Indiana. Attached is a copy of the letter from the state approving the groups incorporation and a copy of the groups by-laws are also attached. The by-laws describe CLEAN's administrative structure and general goals of the group.

Part IV, B-6

The primary areas of involvement of CLEAN has been in the area of health and environmental concerns. CLEAN has held numerous open meetings to discuss the status of the site. Activities that CLEAN has conducted include holding press conferences to raise awareness of the problem, written letters to the editors of local papers to inform the community of the problems and concerns the group has, actively assisted the EPA and IDEM in appealing for all affected households to join in the proposed water system, involvement in the question of land use in the area of the contamination plume, written and personally contacted local, state and federal officials and elected representatives for assistance in obtaining additional sampling outside the official plume area, and accompanied EPA and IDEM officials during sampling events in the contaminated areas. It should be noted that in the past EPA recognized CLEAN, though not by name, in the Interim Record of Decision as well as the Consent Decree, as the local interest group that was extensively involved with the site. CLEAN as a group has been involved with this site since our founding and incorporation and was noted in the EPA interim ROD as "the concerned citizen group formed to address the problem".

Since the Record of Decision in 1991, CLEAN has been counted on for their opinion and as a necessary liaison between the community and the agency.

Part IV, B-7

CLEAN, Inc. promises not to engage in illegal drug-related activities while carrying out activities using TAG funds

Part IV, C-1

Concerns by the members of CLEAN about the contaminated wells and the potential health effects led to an effort to document the types and amounts of cancers and other diseases in the area. These efforts have led to the Center for Disease Control to choose the Conrail/C.R. 1 area to be monitored as part of the Toxic Registry program to assess the effects of long term and high level exposure to carcinogenic chemicals such as trichloroethylene and carbon tetrachloride. There is also concern in our group of the effects that this site potentially has had on children that were raised on formula mixed from contaminated well water. CLEAN is also concerned about the future degradation of the local environment due to these chemicals being left in the ground water. It is a goal of CLEAN to assure that all present and future households and businesses in the contaminated area are provided protection against exposure to this problem. There are still about 70 homes and businesses that are not connected to the city water supply and should be tested to assure the safety of the drinking water. CLEAN has also insisted that vapors be tested for in homes. This has led to the current vapor monitoring program that has revealed a number of homes with vapor contamination at unacceptable levels.

Part IV, C-2

The primary purposes of the tasks performed by the technical advisor is to help the members of CLEAN and the other affected members of the community to understand the technical information, data, reports, designs, and other information presented by the EPA, settling defendants and IDEM in the course of study and remediation of the Conrail/C.R. 1 site. The interpretations, opinions, and evaluations of the technical advisor will aid our group in submitting useful comments on the remedial activities being undertaken by the EPA, IDEM and other responsible parties. It will also be expected that the technical advisor may act as the representative for CLEAN to assure that the interest and concerns of the local residents are not ignored. The ultimate goal is to evaluate the studies, designs and activities performed by the responsible parties to insure that they are appropriate to the restoration of our natural resources. A more detailed description of the tasks to be performed by the technical advisor(s) is given in the Narrative Statement of Work (Attachment 1.A.) and in the Proposed Schedule of Tasks and Costs for Technical Advisors (Attachment 1.B.)

Part IV, C-3

To keep the community members informed of the activities at the Conrail/C.R. 1 site, CLEAN will

produce 12 issues of a newsletter that will contain the information generated by the technical advisor(s). Approximately 1200 copies will be produced for each issue, with 1150 distributed to the households in the Conrail/C.R. 1 area, and the remaining copies mailed directly to CLEAN members and the local press. In addition, all final documents produced by the technical advisor(s) will be sent to the EPA for placement in the information repository maintained both in the community and at the EPA. In addition, CLEAN will attempt to coordinate with the local television stations and cable companies to produce informational public service commercials and public access programs. As usual, all meetings of CLEAN will be open to the general public and additionally advertised in the local papers.

Part IV, C-4

The members of CLEAN have seen an economic impact on their property values since the discovery of the contamination plume from the Conrail yards. A local property assessor estimated that the properties had suffered a 20% depreciation due to the contamination. This area is predominately middle-class and these households cannot afford to lose any value in their investments, i.e. their houses. Residents that hoped to move from the area to better housing have had a stigma attached to the houses due to the plume.

CLEAN has been active in working with local planning agencies and realtors to attempt to reverse the stigma that is attached to the area. The properties are considered "polluted" even though they may now have city water supply. Local officials at both the county and city level have been contacted on these issues and are reacting as noted above.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

C-14J

March 10, 2003

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gerard Finn, Esq.
Bingham Dana
Suite 800
1120 20th Street, NW
Washington, DC 20036

Jonathan A. Conte, Esq.
Blank Rome Comisky & McCauley LLP
PNC Center
201 East Fifth Street, Suite 1700
Cincinnati, Ohio 45202

Re. Final Decision on Dispute Resolution
Conrail Superfund Site, Elkhart, IN

Dear Mr. Finn and Mr. Conte:

This letter represents the final decision of the Director of the United States Environmental Protection Agency's ("EPA") Region 5, Superfund Division, resolving the dispute raised by American Premier Underwriters, Inc.(f/k/a Penn Central Corp.)("APU") and Consolidated Rail Corporation (n/k/a Norfolk Southern Corporation)("Conrail"), by their Statement of Position ("SOP").

After reviewing APU's and Conrail's ("Settling Defendants" or "Defendants") SOP and the EPA's SOP in response to APU's and Conrail's SOP, I have reached the following conclusions: (1) APU and Conrail have not demonstrated that Technical Assistance Team ("TAT") contract costs of $936.00, billed on March 12, 1999 for the period November 26,1995 to December 31, 1995, are not covered under the Partial Consent Decree; (2) APU and Conrail have not demonstrated that ARCS contract and award fee costs of $55,959.69, billed on March 12, 1999 for the period January 1, 1996 through February 17, 1999, are not covered under the Partial Consent Decree; (3) APU and Conrail have not demonstrated that

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costs, that the United States incurs not inconsistent with the NCP after December 31, 1995, in connection with releases of hazardous substances outside the Conrail Railyard and releases of hazardous substances outside the Conrail Railyard which the Final Record of Decision attributes to releases at the Railyard. These costs include without limitation, the costs of reviewing or developing plans, reports and other items pursuant to this Partial Consent Decree and any Consent Decree and/or Administrative Order by Consent entered into in connection with the Conrail Site, verifying the Work or otherwise implementing, overseeing, or enforcing this Partial Consent Decree and any Consent Decree and/or Administrative Order by Consent entered in connection with the Conrail site, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and any other future response costs that the United States is entitled to recover under the terms of any Consent Decree concerning the Conrail Site entered into subsequently by the parties to this Partial Consent Decree. Partial Consent Decree at pp. 2-3(emphasis supplied)

The relevant portions of the final Consent Decree's definitions of Past Response Costs and Future Response Costs are identical to those portions of the Partial Consent Decree set forth above.

Under paragraph 4.c. of the Partial Consent Decree the Settling Defendants may contest payment of any Future Response Costs if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the National Contingency Plan, 40 CFR Part 300, et seq. (NCP) or with the definition of Future Response Costs set forth in Paragraph 1 (Definitions). The Settling Defendants are to make such objection in writing within 30 days of receipt of the bill and shall initiate the dispute resolution procedures in Subparagraphs 4 d.-i of the Partial Consent Decree.

APU and Conrail disputed certain costs that were billed by EPA on March 12, 1999, December 6, 2001, and May 31, 2002 (on page 3 of APU's and Conrail's SOP they listed the bill as May 21, 2002 instead of May 31, 2002) and invoked an informal dispute resolution period in regard to them[1]. The EPA and the APU and Conrail were unable to resolve their differences under informal

[1] The informal dispute resolution period was extended from the period allowed for under the Partial Consent Decree by agreement of the Parties.

windfall for APU and Conrail. It does not seem reasonable that the parties intended to create a windfall for one party.

The purpose of the "past response cost" definition is to make exactly clear what costs have been compromised by virtue of the past costs payment APU and Conrail are required to make under the Partial Consent Decree. The purpose of the "future response cost" definition is to make clear which costs APU and Conrail are to pay upon receipt of a bill. APU and Conrail argue that there are costs that fall outside either category. What then is the status of those costs? If APU and Conrail argue that EPA must have intended to relinquish its right to those costs, then why were those costs not included in the definition of past costs, as to which EPA's compromise was made explicit? The purpose of inserting "and paid" into the past costs definition is to make clear that unless a cost was actually paid before 12/31/95, the claim for that cost is not compromised. The only way to construe the "future response cost" definition while honoring that intent is to hold that a cost was "incurred" if it was billed and paid after 12/31/95, even if the services paid for were rendered before 12/31/95.

To support their argument APU and Conrail cite Trimble v. Asarco, Inc., 232 F.3d 946, 957 (8th Cir. 2000).[2] Trimble concerned a contingency fee agreement between the plaintiffs in that case and their lawyers. Id. At 956. Trimble does not stand for the proposition that Defendants cite it for. Trimble does not, as APU and Conrail claim "hold that a party may incur a cost without actually having paid for it" (APU's and Conrail's' SOP, p.4). Instead, the Trimble court concluded that the plaintiffs had failed to show that costs were incurred before they were paid, Id. at 958. Only in dicta did the Court say that "...a party may be found to have "incurred" a cost without having actually paid for it." Id. at 958.

APU and Conrail also say that EPA "has provided no assurance that the TAT costs were not included in" past costs (APU's and Conrail's SOP, p.4). But the bill for the challenged TAT costs did not come to EPA until after the past costs cutoff date. Please see Exhibit 2 to EPA's SOP, an itemized cost summary from January 1996. You will see there were no TAT costs listed at that time. The TAT costs were only invoiced to EPA in 1996. Exhibit

---

[2]Trimble was a private cost-recovery claim under CERCLA (Property owners alleged their properties had been contaminated by pollution from the defendant's site) and the government was not a party to the case.

efforts, at best, consisted of routine well installation and sample collection performed in an incompetent manner" (APU's and Conrail's' SOP, p.4).

APU and Conrail add that, for example, E&E's sample collection and field screening analyses efforts during the remedial investigation (RI) were improper. Because of this APU and Conrail spent hundreds of thousands of additional dollars to fill in the holes and correct the flaws in E&E's remedial investigation. In addition E&E's feasibility study, including its risk assessment, was fundamentally and fatally flawed (APU's and Conrail's SOP, p. 5).

Under the Partial Consent Decree APU and Conrail are required to pay all Future Response Costs, see p. 2 above. The Partial Consent Decree defines Future Response Costs as costs "that the United States incurs not inconsistent with the NCP after December 31, 1995,.... including, but not limited to, ... contractor costs, ..." (See p. 3 above).

Whether a cost is considered a future response cost or not depends on whether it is included in the definition of "future response costs" in the Partial Consent Decree for the Site. Since the award fee cost is part of the EPA contracting process and EPA contract costs are future response costs, then it is to be reimbursed to EPA pursuant to the Partial Consent Decree.

APU and Conrail apparently are not disputing that the costs for EPA's contractor, that is helping EPA oversee the Site, are Future Response Costs and that award fees under that contract are Future Response Costs (See APU's and Conrail's SOP, pp. 4-5). APU and Conrail are objecting to the fact that the final amount of the award fees are subject to EPA's discretion and that since the quality of the work was unsatisfactory, in APU's and Conrail's view, the discretionary award fees should not have been awarded to the contractor (Id. at 4-5).

On page 2 of their SOP, APU and Conrail recite the bases the Partial Consent Decree allows them to dispute payment of a billed response cost. APU and Conrail may contest payment of any Future Response Costs if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP or with the definition of Future Response Costs set forth in Paragraph 1 (Definitions) of the Partial Consent Decree (See para. 4.c., p. 9 of the Partial Consent Decree).

The Partial Consent Decree does not include a right to

> government to recover "*all* costs of removal or remedial action incurred . . . not inconsistent with the [NCP]." The NCP regulates *choices of response actions*, not costs. Costs, by themselves, cannot be inconsistent with the NCP. . . . As long as the government's choice of response action is not inconsistent with the NCP, its costs are presumed to be reasonable and therefore recoverable.

Id. at 1443 (citations omitted).

The ARCS contract and award fee costs of $55,959.69, billed on March 12, 1999 for the period January 1, 1996 through February 17, 1999, are recoverable costs under the Partial Consent Decree.

3. Technical Assistance Grant ("TAG") costs totaling $46,346.24 billed on December 6, 2001 and May 21, 2002.

A. Does CERCLA provide statutory authority to recover TAG costs from PRPs?

APU and Conrail recognize that it is EPA's position that TAG costs are recoverable from PRPs such as APU and Conrail. See Federal Register, Vol. 53, No. 57, March 24, 1988, p. 9746, APU's and Conrail's SOP, pp. 5-6.[3] However, APU and Conrail believe that this position has no statutory basis under CERCLA. APU and Conrail argue that Section 117(e) authorizes grants for technical assistance, but is silent on whether those costs are recoverable from PRPs. 42 U.S.C. §117(e). They point out that Section 107(a)(4) of CERCLA provides that PRPs shall be liable for "all costs of removal or remedial action incurred by the United States government... not inconsistent with the NCP plan." 42 U.S.C. §9607(a)(4). They argue that as a threshold matter, TAG costs must be either included in the definitions of either "removal" or "remedial" actions, 42 U.S.C. §9601(23) and (24), respectively.

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[3]Also see EPA memorandum concerning Response Selection and Enforcement Approach for Superfund Alternative Sites, from Barry Breen, Office of Site Remediation Enforcement and Michael B,. Cook, Director, Office of Emergency and Remedial Response, to National Program Managers, Regions I - X and Regional Counsel, Regions I - X, OSWER 92-08.0-17. This memorandum says in part, "If a Superfund Alternative site was proposed on the NPL and a TAG grant was awarded, Regions should continue to administer the site TAG grant and recover TAG costs as part of the site costs."

public may be aware of facts with which APU and Conrail or the Agency are not familiar. The public participation process militates against errors being made.

Congressional intent is also shown in Section 117(a) of CERCLA, 42 U.S.C. §9617(a). Section 117(a) makes public participation mandatory before adoption of any plan for remedial action. TAGs are recoverable because they are authorized as aids to public participation. Of even more significance is Section 104(b) of CERCLA, 42 U.S.C. §9604(b). The definition of "removal" includes action taken under 104(b) of CERCLA (See pp. 9 - 10 above). 104(b) states in part that the President " ... may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof,... and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, ...and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions...",42 U.S.C. §9604(b). In effect, the Agency has broad authority to do what it deems is needed in order to conduct a response action and the costs for these activities are recoverable.

The NCP demonstrates that public participation is an integral part of a response action and describes in more detail what is meant by public participation.

In the section on "Public information and community relations" the NCP describes the importance of public knowledge and participation in the process:

> (a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs/RPMs and community relations personnel should ensure that <u>all appropriate public and private interests are kept informed and that their concerns are considered throughout a response</u>....(emphasis supplied)
>
> .....
>
> (c) The community relations requirements ... apply to removal, remedial, and enforcement actions and <u>are intended to promote active communication between communities affected by discharges or releases and the lead agency responsible for response action.</u>...(emphasis supplied)

. . . .

(4) The lead agency may conduct technical discussions involving PRPs and the public. These technical discussions may be held separately from, but contemporaneously with the negotiations/settlement discussions. (emphasis supplied)

40 CFR §300.430(c)

Public involvement and technical assistance grants are part of the response process described in the NCP. In order to facilitate public involvement in selection of the remedy and to help the public understand the technical issues involved in the response process, technical assistance grants are provided and recognized as part of the response process.

As described in the NCP this process also continues during the remedial design/remedial action and operation and maintenance stage of the remedial action,40 CFR §300.435(c).

CLEAN through its TAG is supporting activities described in the NCP as "ensuring the public appropriate opportunities for involvement in a wide variety of site-related decisions, including site analysis and characterization, alternative analysis and selection of remedy" and "Provide appropriate opportunities for the community to learn about the site." 40 CFR §300.430(c)(2)(ii)(A) and (C). This is precisely the type of activities the TAG provides to the community. CLEAN in its application for the TAG indicated that among other things it distributed information in the community, helped in the communication process between EPA, the responsible parties and the community, assisted EPA and IDEM in appealing for all affected households to join the proposed water system, which is part of the remedial action. Application for TAG, Part IV, pp. 2-4. (Exhibit 7 of EPA's SOP).

As stated above APU and Conrail supported their position with the case of Rohm and Haas,2 F.3d 1265, There are two reasons Rohm and Haas, does not provide guidance in this matter. One is that Rohm and Haas, Id., does not prohibit the EPA from collecting oversight costs as a term of a settlement agreement. United States v. Witco Corporation, 76 F. Supp. 2d 519, 528, 529 (Dist Ct. Del. 1999). The definition of "Future Response Costs" in the Partial Consent Decree refers simply to "all costs ... the United States incurs not inconsistent with the NCP ... in connection with releases..." [from the Site]. The TAGs were costs incurred in connection with the releases at the Site, and are not inconsistent with the NCP (See pp. 9-13 above) and APU

APU and Conrail already argued that TAT costs were incurred the moment work purportedly was done under a contract, even before EPA had been presented with, approved, or paid a bill for the work. Therefore it is not logical to argue that TAG costs were never incurred, even though they had been paid. Their argument is that the cost was not "incurred" because it was "discretionary" and EPA was not "obligated" to issue a grant. This is not logical. EPA wasn't obligated to contract with a TAT contractor, either. Once EPA approved the grant, however, it undertook a legal obligation to disburse it. Once EPA actually paid the grant, it incurred the cost.

Also see the discussion on the word "incurred" and the Trimble case, 232 F. 3d 946 on pp. 4-5 above. In the case of Town of New Windsor v. Tesa Truck, Inc., 935 F. Supp. 317 (S.D.N.Y. 1996), the government, pursuant to an agreement, reimbursed the owner of a landfill a portion of the clean-up costs. The government then pursued the landfill users for reimbursement of its clean-up costs. The defendants (landfill users) in that case argued that because the State itself took no remedial action at the landfill and was not obligated to provide assistance under State law, that it did not incur costs, Id. at 320. The Court in the Town of New Windsor decision said that "Because CERCLA speaks of reimbursement in connection with a 107 cost recovery action, defendant's argument that "incurred" costs under CERCLA cannot include money spent reimbursing a private party for costs of response is unconvincing." Id. at 320. The Court stated that the State as a public entity has a mandate to protect the environment and the responsibility to see cleanups happen. Id. at 321. This case does not support APU's and Conrail's argument. In fact it is supportive of the point that EPA has a responsibility to conduct cleanups in accordance with the NCP and a right to seek reimbursement of response costs.

APU and Conrail also raise the separate argument, again, that the money EPA spent on the TAG grant did not directly fund the response action. However, as already expressed on pages 9 to 13 above, TAG costs are part of the response action and are not inconsistent with the NCP.

TAG costs are incurred costs and are recoverable under the Partial Consent Decree.

3. Do the TAG Costs Improperly Include Oversight Costs?

APU and Conrail argue that the TAG costs are inconsistent with the NCP, because they improperly include oversight costs. They point out that, according to the budget submitted by CLEAN,

> technical information, data, reports, designs, and other information presented by the EPA, settling defendants and IDEM in the course of study and remediation of the Conrail/C.R. 1 site. ... [to help group submit] useful comments on the remedial activities being undertaken by the EPA, IDEM, and other responsible parties....

In addition, even if CLEAN did some oversight work or even if some of the work was duplicative, APU and Conrail still need to reimburse EPA for these costs. Under the Partial Consent Decree, all costs are recoverable "...that the United States incurs not inconsistent with the NCP ..." (Definition of "Future Response Costs", Partial Consent Decree, pp. 2-3). To be inconsistent with the NCP there has to be a problem selecting the remedial action. As long as the government's choice of response action is not inconsistent with the NCP, its costs are presumed to be reasonable and therefore recoverable. United States v. Royal Hardage, 982 F.2d at 1443. Also see United States v. Kramer, 757 F. Supp. at 436, United States v. American Cyanamid Co, 786 F.Supp. at 161. Also see the discussion of cases on p. 8 above. APU and Conrail do not identify any NCP provision with which the response action at the Site is inconsistent.

The TAG costs of $46,346.24, billed on December 6, 2001 and May 21, 2002, are recoverable under the Partial Consent Decree.

Therefore, it is the final decision of the Director of the Superfund Division that Respondents are to submit payment of these disputed past costs plus interest within 15 calendar days of receipt of this decision. Failure to do so will be a violation of the Partial Consent Decree and may lead U.S. EPA to seek penalties for noncompliance and/or stipulated penalties.

Sincerely,

Wm. E. Muno

William E. Muno, Director
Superfund Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF	)
	)
Conrail Rail Yard	)
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U.S. EPA'S STATEMENT OF POSITION IN RESPONSE TO STATEMENT OF POSITION OF SETTLING DEFENDANTS UNDER THE FORMAL DISPUTE RESOLUTION PROCEDURES OF SECTION IV OF THE PARTIAL CONSENT DECREE

The United States Environmental Protection Agency ("U.S. EPA") Region 5 hereby sets forth its Statement of Position in accordance with Paragraph IV of the Partial Consent Decree. This Statement of Position is filed in response to American Premier Underwriters, Inc.'s (f/k/a Penn Central Corp., "APU") and Consolidated Rail Corporation's (n/k/a Norfolk Southern Corporation, "Conrail") Statement of Position with regard to certain disputed response costs ("Disputed Costs") billed by the Environmental Protection Agency to APU and Conrail ("Settling Defendants"or "Defendants") in connection with the Conrail Railyard Superfund site ("Site") in Elkhart, Indiana.

I. BACKGROUND

The Site encompasses 2,500 acres, including a 675 acre rail yard facility located in Elkhart, Indiana. The Site is on the National Priorities List and a remedial clean up by the Defendants is underway at the Site.

On March 18, 1997 a Partial Consent Decree was entered by the United States District Court for the Northern District of

and shall initiate the dispute resolution procedures in Subparagraphs 4 d.-i of the Partial Consent Decree.

The Defendants disputed certain costs that were billed by EPA on March 12, 1999, December 6, 2001, and May 31, 2002 (on page 3 of Defendant's Statement of Position they listed the bill as May 21, 2002 instead of May 31, 2002) and invoked an informal dispute resolution period in regard to them[1]. The EPA and the Defendants were unable to resolve their differences under informal dispute resolution and the Defendants invoked the formal dispute provision procedures of paragraph 4 of the Partial Consent Decree by filing a Statement of Position that was received by EPA on August 27, 2002. Under paragraph 4-g of the Partial Consent Decree the United States has 15 days to serve on the Defendants a Statement of Position in response to the Defendants' Statement of Position. This is the EPA's response.

II. ISSUES PRESENTED

In the Statement of Position the Defendants disputed the following costs billed to them in three different bills:

1. Technical Assistance Team ("TAT") contract costs of $936.00 billed on March 12, 1999 for the period November 26,1995 to December 31, 1995;

2. ARCS contract and award fee costs of $55,959.69 billed on March 12, 1999 for the period January 1, 1996 through February 17, 1999.

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[1] The informal dispute resolution period was extended from the period allowed for under the Partial Consent Decree by agreement of the Parties.

States before December 31, 1995 (and that Future Response Costs are those "incurred"(actually incurs) by the EPA after December 31, 1995. The Defendants' position is that because the TAT costs were for dates of service between November 26, 1995 and December 31, 1995, but not "paid" by EPA until after December 31, 1995 they are not part of Past Costs. They also argue that the TAT costs are not part of Future Response Costs, since they were "incurred" by EPA before December 31, 1995 and the definition of Future Response Costs says EPA can only bill these costs that were incurred after December 31, 1995. Therefore the defendants argue that the TAT costs are not owed under the Partial Consent Decree.

Defendant's assumption is that a cost is "incurred" when the services are rendered for which payment is required. However, EPA's accounting system does not assign a cost to a Site until that cost has been paid (See Declaration of Richard Hackley, Exhibit 1). For example, EPA's itemized cost summary, which is part of the bill sent to Responsible Parties at Superfund sites, goes to date certain of costs we have paid. Defendants are asking EPA to treat past and future costs differently, to consider when future costs are "incurred" on an accrual basis where the past costs cutoff was based on when past costs were "paid" on a cash basis. EPA's view is that it didn't "incur" the questioned TAT costs for this site until it paid them. EPA does not know what costs are assigned to a site until an invoice is submitted and the costs are then paid. EPA cannot pursue costs where there is

EPA would be pursuing undocumented costs, but Defendants would not want to pay any undocumented costs.

To accept defendants' argument on the TAT costs, the court would have to find that both parties (including EPA) intended to create a loophole category of costs -- those incurred before 12/31/95 but paid after 12/31/95 -- that were neither "past response costs" nor "future response costs." This creates a windfall for the Defendants. In fact, if a cost is neither a "past response cost" nor a "future response cost," it is possible EPA retains a right to sue the defendants for recovery of these costs. It does not seem reasonable that the parties intended to create a windfall for one party or an ongoing right to sue for oversight costs for the other party.

The purpose of the "past response cost" definition is to make exactly clear what costs have been compromised by virtue of the past costs payment defendants are required to make under the decree. The purpose of the "future response cost" definition is to make clear which costs defendants are to pay upon receipt of a bill. Defendants argue that there are costs that fall outside either category. What then is the status of those costs? If defendants argue that EPA must have intended to relinquish its right to those costs, then why were those costs not included in the definition of past costs, as to which EPA's compromise was made explicit? The purpose of inserting "and paid" into the past costs definition is to make clear that unless a cost was actually paid before 12/31/95, the claim for that cost is not compromised.

Defendants' argue that "There was no basis .... for U.S. EPA to issue a discretionary award to the contractor Ecology & Environment ("E&E") for work performed at the Site. E&E's efforts did not approach "excellence." Rather E&E's efforts, at best, consisted of routine well installation and sample collection performed in an incompetent manner" (Defendants' Statement of Position, p.4).

Before discussing these issues, it is important to realize that all of the ARCS contract costs that are disputed are not for award fees. Defendants dispute ARCS award fees for the period January 1 through February 17, 1996 in the amount of $55,959.69 (Defendants' Statement of Position, pp. 4-5). However, $1993.24 of the $55,959.69 was not spent on award fees. $1991.77 represents indirect cost rate adjustments that did not involve award fees. In addition, voucher 109 for $1.47 does not include an award fee, but only a base fee. See Exhibits 4-6. Therefore $53,966.45 is the actual amount of the vouchers containing ARCS award fees.

The Defendants in their Statement of Position are critical of the technical work[3] done by EPA's contractor at the Site and therefore question the propriety of a contract award (Defendants' Statement of Position, pp. 4-5). But $51,683.53 of the amount in question was for Community Relations work and not for technical

[3]In the Defendants' Statement of Position they assert that E&E selected the remedy (page 5), however, the lead agency, in this case EPA, selects the remedy pursuant to the NCP. 40 CFR §300.430(f).

EPA pursuant to the Partial Consent Decree and the Consent Decree.

Defendants apparently are not disputing that the costs for EPA's contractor, that is helping EPA oversee the Site, are Future Response Costs and that award fees under that contract are Future Response Costs (See Defendants' Statement of Position, pp. 4-5). The Defendants are objecting to the fact that the final amount of the award fees are subject to EPA's discretion and that since the quality of the work was unsatisfactory, in Defendants' view, the discretionary award fees should not have been awarded to the contractor (Id. at 4-5).

On page 2 of their submission (Id. at 2), defendants recite the bases the decree allows them to dispute payment of a billed response cost. In their discussion of the ARCS award fees on pages 4-5, however, any mention of these bases is absent. The decree does not include a right to challenge a cost on grounds that EPA is alleged to have inappropriately exercised its discretion to pay a contractor an award fee. Such a claim is not a claim of "accounting error": the accounting correctly reflects that the award fee was paid and that it was paid in connection with response actions at this Site. It is not an allegation of NCP inconsistency: defendants cite no violation of the NCP and in fact the NCP provides no basis for such a challenge. And it is not a claim of inconsistency with the definition of future response costs; the award fee paid under the ARCS contract is undeniably a cost of response incurred after the cutoff date.

recovery by the United States to "reasonable" or "necessary" costs.

In order to challenge costs on the basis of the NCP, however, a defendant "must identify a particular provision in the NCP with which a specific response action is inconsistent." American Cyanamid Co., 786 F. Supp. at 161 (emphasis added); see also Kramer, 757 F. Supp. at 436. As noted above, the Defendants do not identify any NCP provision with which the response action at the Site is inconsistent.

B. An Award Fee That Is Too Much or Unreasonable Is Not a Proper Challenge to the Payment of Response Costs

The courts have uniformly distinguished between the contention that EPA failed to consider costs or selected a remedy known not to be cost-effective, which do allege inconsistency with the NCP, and the contention that the response action at a Superfund site was not implemented in a cost-effective way, which does not. As the Court in American Cyanamid held:

> Once EPA validly chooses a permanent remedy for a site, cost-effectiveness is no longer a viable challenge to the implementation of that remedy. (emphasis added)

786 F. Supp. at 162.] Just as in Kramer, 757 F. Supp. at 420, the Court in American Cyanamid ruled that neither CERCLA nor the NCP imposes an "obligation on the United States to minimize its response costs for the benefit of responsible parties who are liable for the costs." Id. at 161.

United States v. Royal Hardage, supra, 982 F.2d 1436, is directly on point. In that case, defendants sought to oppose the

There are good policy reasons for this limitation on the right to attack costs as actually incurred. If defendants were allowed to challenge the "reasonableness" or "propriety" of the government's costs, they would have no incentive to do the work themselves. Instead, defendants would have great incentive to "sit back and watch the Government sift through the rubble of a polluted site, formulate a remedial solution and take action, and then attack every cost associated therewith." United States v. Gurley Ref. Co., 788 F. Supp. 1473, 1484 (E.D. Ark. 1992), aff'd in part, rev'd in part on other grounds, 43 F.3d 1188 (8th Cir. 1994).

There is no place in the statutory and regulatory scheme under CERCLA for the Defendants' claim that costs incurred in implementing a remedy to protect human health and the environment must be measured against a yardstick of "cost effectiveness" in order to be recoverable. That is not the law, and proof even of too high or unreasonable costs does not demonstrate "inconsistency" with the NCP. Accordingly, it should be determined that there are no grounds for Defendants' alleged dispute and a decision on the dispute should be made in favor of EPA.

The issue of ARCS contract award fees raised by the Defendants has nothing to do with being inconsistent with the NCP and that EPA did not follow the NCP in determining the remedy. It is just an objection to the fact EPA has discretion in the amount of the award fees for EPA contractors. This is not a

> the grant, to contribute at least 20 percent of the total of costs of the technical assistance for which such grant is made. The President may waive the 20% contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. But more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.

CERCLA, 42 U.S.C. 9617(e).

The regulations further specify the role of TAGs:

> Eligible applicants,..., are any group of individuals that may be affected by a release or a threatened release at any facility that is listed on the NPL or is proposed for listing under the NCP and at which response action has begun.

40 CFR 35.4025.

> TAGs may be used to obtain technical assistance in interpreting information with regard to the nature of hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or a significant removal action at a facility that is listed on the NPL or proposed for listing and at which a response action has begun. TAGs shall be used to fund activities that will contribute to the <u>public's ability to participate in the decision-making process by improving the public's understanding of overall conditions and activities.</u> (Emphasis supplied)

40 CFR 4060.

CLEAN Inc. ("CLEAN") applied for and received a Technical Assistance Grant on August 8, 1993. The grant was subsequently amended 4 times. The fourth amendment on January 10, 2000 resulted in an additional award of $50,000 to CLEAN. This was the money billed to the Defendants on December 6, 2001 and May 21, 2002 in the amount of $46,346.24 and is disputed. CLEAN in its application indicated it had conducted activities involving the Site that included keeping the public informed by publishing

not prohibit the EPA from collecting oversight costs as a term of a settlement agreement, United States v. Witco Corporation, 76 F. Supp. 2d 519, 528, 529 (Dist Ct. Del. 1999) The definition of "Future Response Costs" in the Partial Consent Decree refers simply to "all costs ... the United States incurs not inconsistent with the NCP ... in connection with releases [at the Site]." The TAGs were "costs ... incurred in connection with the releases at the Site," and the defendants accordingly agreed to pay them.

Defendants argue particularly that the portion of the TAG costs "budgeted" for community monitoring of the performing PRPs' work is not within the definition of Future Response Costs. However, TAGs can be used "to obtain technical assistance in interpreting information with regard to the ... remedial design, selection and construction of remedial action, operation and maintenance, or removal action ...." CERCLA § 117(e)(1). So Congress clearly contemplated TAG recipients keeping an eye on those who implement remedies, regardless of whether EPA or PRPs do so.

EPA's position is that TAG grants are not only recoverable under the Partial Consent Decree, but are an integral part of the Superfund process and are not inconsistent with the NCP, and are therefore recoverable costs under CERCLA.

In the preamble to the Interim Final Rule for TAG grants it states:

> The process of cleaning up a Superfund site requires detailed technical study of site conditions and wastes,

The Defendants cite the case of United States v. Rohm & Haas Co, 2 F.3d 1265, 1274 (3rd cir. 1993)(Concerning whether EPA oversight costs are recoverable, but not specifically addressing TAGS) to argue that "because there is no express Congressional intent that TAG costs are recoverable from PRPs," they do not have to reimburse the EPA for the TAG costs (Defendants' Statement of Position, p. 6). However, other courts in other Circuits have not agreed with this holding. In U.S. v. Dico, Inc., 979 F. Supp. 1255, 1263 (S.D. Iowa, 1997), the Court pointed out that "... Rohm & Haas is somewhat of an aberrant decision. Courts reviewing the issue prior to Rohm & Haas consistently allowed indirect and oversight costs." The Court went on to say that, since Rohm & Haas, the majority of Courts outside of the Third Circuit have declined to follow the decision." Id. at 1263.

However, Congressional intent is displayed in a number of places in CERCLA. A TAG can fall within the portion of the "removal" definition" that includes ... " ... such actions as may be necessary to monitor, assess and evaluate the release" 42 U.S.C. §101(23). Also a TAG can fall within the portion of the "remedial definition" that includes "...so that they do not migrate to cause substantial danger to public health, welfare or the environment...provision of alternative water supplies (alternative water supplies are part of the response action at

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approval to destroy records after the record retention period.

(a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs/RPMs and community relations personnel should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response. They should coordinate with available public affairs/community relations resources to carry out their responsibility by establishing, as appropriate, a Joint Information Center bringing together resources from federal and state agencies and the responsible party. (emphasis supplied)

.....

(c) The community relations requirements specified in §§300.415, 300.430, and 300.435 apply to removal, remedial, and enforcement actions and are intended to promote active communication between communities affected by discharges or releases and the lead agency responsible for response action. Community Relations Plans (CRPs) are required by EPA for certain response actions. The OSC/RPM should ensure coordination with such plans which may be in effect at the scene of a discharge or release or which may need to be developed during follow-up activities. (emphasis supplied)

40 CFR §300.155

In the section on "Remedial Investigation/Feasibility Study and selection of remedy" the NCP discusses community relations requirements, refers directly to TAGs and says:

(c) *Community relations.* (1) The community relations requirements described in this section apply to all remedial activities undertaken pursuant to CERCLA section 104 and to section 106 or section 122 consent orders or decrees or section 106 administrative orders.

(2) The lead agency shall provide for the conduct of the following community relations activities, to the extent practicable, prior to commencing field work for the remedial investigation:

(i) Conducting interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns and information needs, and to learn how and when citizens would like to be involved in the Superfund process.

As described in the NCP this process also continues during the remedial design/remedial action and operation and maintenance stage of the remedial action:

> (c) Community relations. (1) Prior to the initiation of RD, the lead agency shall review the CRP to determine whether it should be revised to describe <u>further public involvement activities</u> during RD/RA that are not already addressed or provided for in the CRP. (emphasis supplied)

40 CFR §300.435

CLEAN through its TAG is supporting activities described in the NCP as "ensuring the public appropriate opportunities for involvement in a wide variety of site-related decisions, including site analysis and characterization, alternative analysis and selection of remedy" and "Provide appropriate opportunities for the community to learn about the site." 40 CFR §300.430(c)(2)(ii)(A) and (C). This is precisely the type of things the TAG provides to the community. CLEAN in its application for the TAG indicated that among other things it distributed information in the community, helped in the communication process between EPA, the responsible parties and the community, assisted EPA and IDEM in appealing for all affected households to join the proposed water system, which is part of the remedial action. Application for TAG, Part IV, pp. 2-4. (Exhibit 7)

Defendants also argue that they should not have to pay the costs of the technical adviser hired by CLEAN. However, the technical adviser's role as stated in the grant application is described as follows (See Exhibit 7):

More to the point, once EPA actually paid the grant, it surely "incurred" the cost.

IV. CONCLUSION

Based on the above discussion, it is the position of the EPA that the formal dispute be decided in its favor.

Respectfully submitted,

Michael R. Berman

Michael R. Berman
Associate Regional Counsel

List of Exhibits

1. Declaration of Richard Hackley, 2 pp.

2. Itemized Cost Summary - First two pages, Prepared 1/29/96.

3. Pages that detail TAT costs from Itemized Cost Summary attached to EPA bill of March 12, 1999, 2 pp.

4. Letter of May 30, 2002 from Michael Berman of EPA to Gerard Finn and Jonathan Conte, 4 pp.

5. Pages that detail ARCS costs from Itemized Cost Summary attached to EPA bill of March 12, 1999, 2 pp.

6. Pages from ARCS vouchers (redacted) showing what part of project voucher was for (e.g. Community Relations, Remedial Design or Remedial Investigation /Feasibility Study), 9 pp.

7. CLEAN application for federal assistance, Part IV, 4 pp.

to complete work identified in the milestones set forth in the RAWP:

Penalty Per Violation Per Day	Period of Noncompliance
$500.00	1st through 14th day
$1,000.00	15th through 30th day
$5,000.00	31st day and beyond

71. **Stipulated Penalty Amounts - Reports.**

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents, including but not limited to notifications, pursuant to this Consent Decree or RAWP:

Penalty Per Violation Per Day	Period of Noncompliance
$250.00	1st through 14th day
$500.00	15th through 30th day
$1,000.00	31st day and beyond

72. 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: (1) with respect to a deficient submission under Section XI (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 Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under Paragraph 66.b or 67.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution),

during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

73. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

74. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA - Region 5, P.O. Box 371531, Pittsburgh, PA 15251-7531, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region 5, CERCLA Number 0851, and DOJ Case Number 90-11-2-153A, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the Director, Superfund Division, U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604, and to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station,

Washington, D.C. 20044.

75. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

76. Penalties shall continue to accrue as provided in Paragraph 72 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

77. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 74.

78. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

79. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

80. **United States' Covenant Not to Sue.** In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 81, 82, and 84 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607, relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the Past Response Costs payments required by Paragraph 52 of Section XVI (Payments for Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action (installation of the municipal water lines and monitoring wells) by EPA pursuant to Paragraph 48.b of Section XIV (Certification of Completion). These covenants not to

sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

81. **United States' Pre-certification Reservations.** Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants:

a. to perform further response actions relating to the Site, or

b. to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

(1) conditions at the Site, previously unknown to EPA, are discovered, or

(2) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

82. **United States' Post-certification Reservations.** Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants

a. to perform further response actions relating to the Site, or

b. to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

(1) conditions at the Site, previously unknown to EPA, are discovered, or

(2) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

83. For purposes of Paragraph 81, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of January 31, 2006, and set forth in the March 31, 1989 Record of Decision, the administrative record supporting the Record of Decision, UAO2, the administrative record supporting UAO2, and those documents set forth in Appendix B. "Information and conditions known to EPA" does not include the possibility that vinyl chloride or any other contaminant exists in groundwater in locations or concentrations beyond those made known to EPA as of January 31, 2006, as specified above. For purposes of Paragraph 82, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the March 31, 1989 Record of Decision, the administrative record supporting the Record of Decision, UAO2, the administrative record supporting UAO2, and those documents set forth in Appendix B, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action. "Information and conditions known to EPA" does not include the possibility that vinyl chloride or any other contaminant exists in groundwater in locations or concentrations beyond those made known to EPA as of January 31, 2006, as specified above.

84. **General reservations of rights.** The United States reserves, and this Consent

Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the RODs, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants;

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

e. criminal liability;

f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 13 (Modification of the RAWP).

85. **Work Takeover.** In the event EPA determines that Settling Defendants have

ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 66, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Payment for Response Costs).

86. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS

87. **Covenant Not to Sue.** Subject to the reservations in Paragraph 88, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site, past response actions, and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or

c. any claims arising out of response actions at or in connection with the Site,

including any claim under the United States Constitution, the Illinois Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

88. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671 and/or a State employee; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

89. Nothing in this Consent Decree shall be deemed to constitute 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).

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

90. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), 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.

91. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree.

92. **Matters Addressed.** The "matters addressed" in this Consent Decree include all "removal" and "remedial" work, as those terms are defined in CERCLA and the NCP, performed in the past by and/or to be performed in the future by the Settling Defendants with regard to the Site and all Past Response Costs, Future Response Costs, and Future Oversight Costs pursuant to ROD1, ROD2, AOC1, AOC2, UAO1, the 1994 Consent Decree, and this Consent Decree. "Matters addressed" do not include any matter reserved by the United States under Paragraphs 81 and 82 of this CD.

93. The Settling Defendants agree that with respect to any suit or claim for cost recovery or contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or

claim.

94. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify in writing the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

95. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff).

XXIV. ACCESS TO INFORMATION

96. Settling Defendants shall provide to EPA, 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 Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information

gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

97. **Business Confidential and Privileged Documents.**

a. Subject to Paragraph 98, Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to the Plaintiff under this Consent Decree 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 they are submitted to EPA, or if EPA has notified Settling Defendants 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 Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the

grounds that they are privileged.

98. No claim of confidentiality or privilege 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.

XXV. RETENTION OF RECORDS

99. Until 5 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 49.b of Section XIV (Certification of Completion of the Work), each Settling Defendant or Settling Defendants collectively, as applicable, shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in their possession or control or which come into their possession or control that relate in any manner to their liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in their possession or control or which come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate

document retention policy to the contrary.

100. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

101. Each Settling Defendant 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 notification of potential liability by the United States or the State 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 Section 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.

XXVI. NOTICES AND SUBMISSIONS

102. Whenever, under the terms of this Consent Decree, written notice is required to

be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-153A

and

Director, Superfund Division
United States Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

As to EPA:

Mark Koller
Assistant Regional Counsel
United States Environmental Protection Agency
Region 5
Mail Station C-14J
77 W. Jackson Boulevard
Chicago, Illinois 60604

and

Lolita Hill
EPA Project Coordinator
United States Environmental Protection Agency
Region 5
Mail Station SR-6J
77 W. Jackson Boulevard
Chicago, Illinois 60604

As to the Regional Financial Management Officer:

Regional Financial Manager
United States Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

As to the State

Eric Runkel
State Project Coordinator
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Settling Defendants:

Peter J. Kelly
Vedder, Price, Kaufman & Kammholz
222 North LaSalle
Chicago, Illinois 60601

XXVII. EFFECTIVE DATE

103. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

104. This Court retains jurisdiction over both the subject matter of this Consent

Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

105 The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the Remedial Action Work Plan.

"Appendix B" is the list of documents referred to in Paragraph 83.

XXX. COMMUNITY RELATIONS

106. Settling Defendants shall propose to EPA their participation in the Revised Community Involvement Plan. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA in providing to the public information regarding the Work. As requested by EPA, Settling Defendants 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 relating to the Site. Settling Defendants deny certain statements made in the Revised Community Involvement Plan. No statement of fact set forth in the Revised Community Involvement Plan shall be deemed by and of itself to be an admission by Settling Defendants.

XXXI. MODIFICATION

107. There shall be no modification of the Consent Decree, other than the RAWP, without the written agreement of the Parties filed with the Court. Any material modification of the Consent Decree shall be approved by the Court.

108. Schedules specified in the RAWP for completion of the Work may be modified by written agreement of EPA and the Settling Defendants. Except as provided in Paragraph 13 (Modification of the RAWP or Related Work Plans), no material modifications shall be made to the RAWP without written notification to and written approval of the United States, Settling Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the RAWP that do not materially alter that document, or material modifications to the RAWP that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii), may be made by written agreement between EPA and the Settling Defendants.

109. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

110. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to

withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

XXXIII. SIGNATORIES/SERVICE

112. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

113. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

114. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court

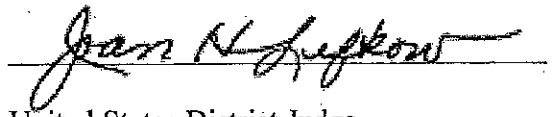
expressly declines to enter this Consent Decree.

XXXIV. FINAL JUDGMENT

115. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

116. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 5th DAY OF February, 2009.



United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date

W. BENJAMIN FISHEROW
Deputy Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

8/8/07
Date

STEVEN D. ELLIS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone (202) 514-3163
steven.ellis@usdoj.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR THE UNITED STATES OF AMERICA (Cont.)

PATRICK J. FITZGERALD
United States Attorney
Northern District of Illinois

8/8/07
Date

JONATHAN C. HAILE
Assistant United States Attorney
Northern District of Illinois
219 South Dearborn Street
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc., relating to the Wauconda Sand & Gravel Superfund Site.

FOR THE UNITED STATES OF AMERICA (Cont.)

3/29/07
Date

for RICHARD C. KARL
Superfund Division Director, Region 5
U.S. Environmental Protection Agency
77 West Jackson, Blvd.
Chicago, IL 60604

3/20/2007
Date

Mark J. Koller
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson, Blvd. (C-14J)
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR BFI Waste Systems of North America, Inc.
Signature: E Ballenger
Date Name (print): 1/26/07 Eric Ballenger
Title: Manager, Hydrogeology
Address: Mallard Lake Landfill
24 W. 580 Schick Rd.
Hanover Park, IL 60133

Agent Authorized to Accept Service on Behalf of Above-signed Party:
Name (print): Thomas A. Ryan
Title: Counsel
Address: 2345 Grand Boulevard
Kansas City, MO 64108
816-292-2000
Ph. Number:

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR Borden Chemical, Inc. (n/k/a Hexion Specialty Chemicals, Inc.) as successor to IB Distributors, Inc.
Signature: _____
Date Name (print): Bruce White
Title: Attorney and Authorized Representative
Address: Karaganis White & Magel Ltd.
414 North Orleans Street, Suite 810
Chicago, Illinois 60610

Agent Authorized to Accept Service on Behalf of Above-signed Party:
Name (print): William Haak
Title: Senior EH&S Counsel
Address: 180 Broad Street
Columbus, Ohio 43215

Ph. Number: (614)225-3369

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR EXXON MOBIL CORPORATION
Signature: _____
Date Name (print): 01/26/07 Andrew T. Warrell
Title: Global Remediation Manager (Major Projects)
Address: 3225 Gallows Road
Fairfax, VA 22037

Agent Authorized to Accept Service on Behalf of Above-signed Party:
Name (print): Illinois Corporation Service Company
Title: _____
Address: 801 Adlai Stevenson Drive
Springfield, IL 62703

Ph. Number: (217) 522-1010
*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc., *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR: Giddings & Lewis Machine Tools, LLC, as successor in interest to Basic Electronics Mfg. Corp.

Signature: Elizabeth R Sitterly

Name (Print): Elizabeth Sitterly

Date: 2/9/07

Address: Giddings & Lewis Machine Tools, LLC

142 Doty Street

Fond du Lac, WI 54935

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

Name (Print): James M. Porter

Title: Attorney

Address: 2920 SunTrust International Center

One Southeast Third Ave.

Miami, FL 33131

Ph. Number: 786 425-2299

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR H.B. Fuller Company
Signature: Timothy J. Keenan
Date Name (print): February 7, 2007
Title: General Counsel and Corporate Secretary
Address: 1200 Willow Lake Boulevard
P.O. Box 64683
St. Paul, MN 55164-0683

Agent Authorized to Accept Service on Behalf of Above-signed Party:
Name (print): CT Corporation System
Title:
Address: 208 S. LaSalle Street, Suite 814
Chicago, IL 60604

Ph. Number: 312-263-1414
*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. BFI Waste Systems of North America, Inc. et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

For HONEYWELL INTERNATIONAL INC._____

Signature: _____

Date & Name (print): Troy (Meyer) Kennedy____

Title: Remediation Portfolio Director_____
Address: Health, Safety, Environmental and Remediation
Honeywell International Inc._____
101 Columbia Drive
Morristown, NJ 07962

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

Name (print): Brian D. Israel, Arnold & Porter LLP_____
Title: Counsel_____
Address: 555 12th Street_____
Washington, DC 20004

Ph. Number: 202-942-6546_____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR Jensen Disposal Service, Inc.
Signature: Grace Oberhauf
Date Name (print): Grace Oberhauf
Title: Chairman of the Board
Address: 3336 N. Berry Drive
Arlington Heights IL
60004

Agent Authorized to Accept Service on Behalf of Above-signed Party:
Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR Mail-Well Envelope Co.
Signature: [signature]
Date Name (print): 2/14/07 J. MICHAEL DAVIS
Title: CHIEF COUNSEL ENVIRONMENTAL
Address: 133 PEACHTREE STREET
ATLANTA, GA 30303

Agent Authorized to Accept Service on Behalf of Above-signed Party:
Name (print): _____
Title: _____
Address: _____

Ph. Number: _____
*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR Morton International, Inc. (A Rohm and Haas Company)
Signature: _____
Date Name (print): Jacques Croisetiere gw February 14, 2007
Title: Vice President and Chief Financial Officer
Address: 100 Independence Mall West
Philadelphia, PA 19106

Agent Authorized to Accept Service on Behalf of Above-signed Party:
Name (print): Jeffrey C. Wyant
Title: Chief Regulatory Counsel
Address: 100 Independence Mall West
Philadelphia, PA 19106

Ph. Number: 215-592-6782

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR Mundelein Disposal Service, Inc.
Signature: Grace Oberauf
Date Name (print): Grace Oberauf
Title: Chairman of the Board
Address: 33316 N Betty Dr.
Arlington Heights IL
60004

Agent Authorized to Accept Service on Behalf of Above-signed Party:
Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR Village of Wauconda, Illinois
Signature: Salvatore J. Saccomanno
Date Name (print): SALVATORE J. SACCOMANNO
Title: MAYOR
Address: 101 N. MAIN STREET
WAUCONDA, ILLINOIS 60084

Agent Authorized to Accept Service on Behalf of Above-signed Party:
Name (print): DANIEL E. QUICK
Title: VILLAGE ADMINISTRATOR
Address: 101 N. MAIN STREET
WAUCONDA, ILLINOIS 60084

Ph. Number: (847) 526-9700
*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. et al., relating to the Wauconda Sand & Gravel Superfund Site.

FOR Waste Management of Illinois, Inc.

Signature:
Date Name: Jack Dowden January 22, 2007
Title: Area Director
Address: 720 Butterfield Road
Lombard, IL 60148

Agent Authorized to Accept Service on Behalf of Above-signed Party:
Name: CT Corporation System
Address: 208 S. LaSalle Street
Suite 814
Chicago, IL 60604
Ph. Number: 312/345-4336

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v **BFI Waste Systems of North America, Inc.** *et al.*, relating to the **Wauconda Sand & Gravel Superfund Site.**

FOR Wauconda Sand and Gravel Company
Signature: Grace Oberaut
Date Name (print): Grace Oberaut
Title: President
Address: 3336 N. Betty Dr.
Arlington Heights IL
60004

Agent Authorized to Accept Service on Behalf of Above-signed Party:
Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

***/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.**

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

Weber Foreign Manufacturing Inc.
f/k/a Ink Specialties Company, Inc.

Signature: George A. Stieber

Name (print): GEORGE A. STIEBER

Title: VICE PRESIDENT OF MANUFACTURING

Address: George Stieber

Weber Marking Systems, Inc.

711 W. Algonquin Road

Arlington Heights, IL 60050

Date: 2-14-2007

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

Louis M. Rundio, Jr.
McDermott Will & Emery
227 West Monroe Street
Chicago, IL 60606

*/A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Peter J. Kelly
Vedder Price P.C
222 North LaSalle
Chicago, Illinois 60601

RE: Wauconda Sand & Gravel, Superfund Site, 0581

Dear Mr. Kelly:

The enclosed billing is for the recovery of costs incurred by the U.S. Environmental Protection Agency (EPA) for response activities, performed under the authority of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) as amended for the period 05/01/2005 through 02/27/2009. EPA is due $1,972,788.45. This bill is solely for the recovery of response costs. Any fines and/or penalties due will be billed separately.

This billing invoice is being forwarded to you for payment based upon the Consent Decree No. 07-C-4499 for this site. Please forward your payment by electronic funds transfer to the following bank:

Federal Reserve Bank of New York
ABA = 021030004
Acount = 68010727
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read 'D68010727 Environmental Protection Agency'

To avoid additional charges, payment must be received by EPA within 30 days of receipt of this bill. If payment is not received within that time frame, interest will accrue from the date of your receipt at the rate of 2.15% annually. If there are questions regarding this bill please contact EPA's Associate Regional Counsel, Mark Koller at (312) 353-2591 or mail them to the following address:

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U.S. Environmental Protection Agency
ATTN: Mark Koller - C-14J
77 West Jackson Blvd.
Chicago, Illinois 60604

If there are any other questions, please contact U.S. EPA's Regional Project Manager, Lolita Hill at (312) 353-1621 or mail them to the following address:

U.S. Environmental Protection Agency
ATTN: Lolita Hill -SR-6J
77 West Jackson Blvd.
Chicago, Illinois 60604

To ensure that your payment is properly recorded by EPA, the following information must be included in your remittance:

Wauconda Sand & Gravel Site
U.S.EPA Region 5
Account No.2750926S098
Site ID Number 0581
Civil Action 07-C-4499

Thank you for your cooperation.

Sincerely,

Richard D. Hackley

Richard D. Hackley, Chief
Program Accounting & Analysis Section

Enclosures

cc: Mark Koller, C-14J
Lolita Hill, SR-6J

Report Date: 09/01/2009

Itemized Cost Summary

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

REGIONAL PAYROLL COSTS	$210,476.54
HEADQUARTERS PAYROLL COSTS	$1,151.75
REGIONAL TRAVEL COSTS	$160.67
ENVIRONMENTAL SERVICES ASSISTANCE TEAMS (ESAT)	
ALION SCIENCE AND TECHNOLOGY CORPORATION (68-W0-1014)	$14,347.50
INTERAGENCY AGREEMENT (IAG)	
DEPARTMENT OF JUSTICE (DOJ/OVERSIG)	$406,795.01
DEPARTMENT OF INTERIOR (DW14948147)	$1,718.97
REMOTE SENSING SUPPORT/EPIC	
LOCKHEED MARTIN SERVICES, INC (68-D0-0267)	$74.92
RESPONSE ACTION (RAC) CONTRACT	
TETRA TECH EM INC. (68-W6-0037)	$89,568.70
ROY F. WESTON, INC. (68-W7-0026)	$25,870.74
SULTRAC, JV (EPS50602)	$331,634.85
SUPERFUND COOPERATIVE AGREEMENT (SCA)	
WAUCONDA SUPERFUND (196588301)	$45,400.00
SUPERFUND TECH. ASSISTANCE & RESPONSE TEAM (START)	
TETRA TECH EM, INC. (68-W0-0129)	$85,294.53
TECHNICAL SERVICE AND SUPPORT	
ARCTIC SLOPE REGIONAL CORP(ASRC) (68-W0-1002)	$436.68
ASRC MANAGEMENT SERVICES, INC. (EPW05052)	$5,484.66
CONTRACT LAB PROGRAM (CLP) COSTS	
FINANCIAL COST SUMMARY	$6,802.93
EPA INDIRECT COSTS	$747,570.00

Itemized Cost Summary

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

TOTAL SITE COSTS BEFORE COST RECOVERY COLLECTIONS	$1,972,788.45
COLLECTIONS/ADJUSTMENTS	$0.00
Total Site Costs:	$1,972,788.45

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
BALL, STEPHANIE M	2007	21	4.00	235.95
		24	2.00	117.66
	2008	01	0.50	29.27
			6.50	$382.88
BIANCHIN, SHERI L.	2008	17	5.75	343.02
ENVIRONMENTAL ENGINEER				
			5.75	$343.02
BRUCE, DONALD J.	2005	16	3.00	196.30
SUPERVISORY ENVIRONMENTAL ENGINEER		17	3.00	196.30
		18	4.00	261.73
		19	2.00	130.86
		20	12.00	785.18
		22	9.00	588.89
		23	9.00	588.89
		24	7.00	458.03
		25	3.00	196.30
	2006	02	4.00	261.73
		03	8.00	523.45
		04	11.00	719.77
		05	8.00	523.45
		06	4.00	261.73
		07	4.00	261.73
		08	4.00	261.73
		09	3.00	203.13
		10	6.00	406.26
		11	2.00	135.41
		18	4.00	270.84
		19	3.00	203.14
		20	3.00	203.14
		21	2.00	135.42
		22	3.00	203.14
		24	3.00	260.21
		25	4.00	270.86
		26	2.00	135.42
		27	1.00	67.72
	2007	01	5.00	338.58

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
BRUCE, DONALD J.	2007	02	3.00	203.14
		03	4.00	270.86
		05	2.00	135.42
		06	1.00	67.72
		07	2.00	135.42
		08	4.00	276.84
		09	3.00	207.63
		14	1.00	69.21
		16	1.00	69.21
		17	8.00	553.69
		18	1.00	69.21
		19	1.00	69.21
		21	4.00	276.84
		23	4.00	276.84
		24	2.00	139.06
		26	1.00	69.21
	2008	08	2.00	143.33
		10	3.00	215.00
		12	6.00	430.00
		14	2.00	143.33
		15	11.00	788.33
		16	4.00	286.68
		17	3.00	215.00
		19	5.00	358.33
		21	10.00	716.67
		25	4.00	287.95
	2009	01	6.00	430.00
		02	4.00	286.68
		03	19.00	1,361.66
		04	6.00	430.00
		05	4.00	286.68
		06	3.00	215.00
		07	1.00	71.68
		08	4.00	298.70
		09	2.00	149.35
		10	4.00	298.70
			281.00	$19,351.92

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
CANO, RANDOLPH O.	2008	14	0.25	12.47
ENVIRONMENTAL PROTECTION SPECIALIST				
			0.25	$12.47
CARLSON, JANET R.	2007	21	4.00	321.10
GENRAL ATTORNEY		22	3.00	240.81
		23	4.50	361.21
			11.50	$923.12
CARNEY, WENDY L.	2006	04	3.00	218.01
SUPV ENVIRONMENTAL SCIENTIST	2008	14	1.00	85.95
		15	1.00	85.95
			5.00	$389.91
CO, GRACE	2008	16	1.00	45.01
ENFORCEMENT SPECIALIST				
			1.00	$45.01
DRAUGELIS, ARUNAS K.	2006	05	22.00	1,107.38
		06	15.00	755.01
	2007	03	3.00	156.31
		04	3.00	156.31
		05	6.00	312.64
			49.00	$2,487.65
GARCIA, MARGARITA F.	2005	20	5.00	204.02
FINANCIAL SPECIALIST				
			5.00	$204.02
HANS, MICHAEL E.	2005	19	0.25	13.38
PUBLIC AFFAIRS SPECIALIST		20	1.00	53.53
		21	0.70	37.61
		22	0.68	36.32
		24	0.25	13.39
	2006	02	0.50	28.81
		04	0.50	28.79
		16	0.50	27.41
		20	0.50	27.68
	2007	02	0.25	13.84

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
HANS, MICHAEL E.	2007	10	1.00	56.58
		14	0.50	28.26
		21	2.00	116.41
		23	0.50	29.06
		24	1.50	87.29
	2008	15	0.75	43.81
	2009	03	0.25	15.09
		04	0.25	15.07
		05	1.75	105.61
		06	0.25	15.07
			13.88	$793.01
HILL, LOLITA A.	2005	16	22.00	1,245.71
ENVIRONMENTAL ENGINEER		17	29.00	1,642.05
		18	42.00	2,378.16
		19	22.00	1,245.70
		20	20.50	1,160.79
		21	11.50	651.16
		22	21.25	1,203.22
		23	12.25	693.63
		24	20.00	1,132.46
		25	10.50	594.52
		26	10.50	594.50
		27	2.00	113.24
	2006	03	30.00	1,698.57
		04	27.75	1,571.16
		05	33.00	1,868.43
		06	4.00	225.05
		07	28.50	1,613.64
		09	19.00	1,111.91
		10	4.00	234.08
		11	23.00	1,346.01
		13	32.75	1,916.59
		14	23.00	1,346.13
		19	25.00	1,463.13
		20	44.00	2,575.09
		21	15.75	921.78
		22	17.00	994.92

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
HILL, LOLITA A.	2006	23	17.50	1,024.20
		24	37.50	2,194.71
	2007	01	11.00	643.77
		07	16.75	980.29
		09	35.00	2,094.99
		11	3.00	179.56
		12	7.00	419.01
		13	2.00	119.72
		15	10.00	598.59
		16	10.00	598.59
		17	11.00	658.43
		18	13.00	778.14
		19	25.50	1,526.37
		20	27.00	1,616.13
		21	43.00	2,573.84
		22	27.25	1,631.09
		23	31.00	1,855.57
		24	2.25	135.75
		25	3.75	224.46
		26	23.50	1,406.64
	2008	02	19.75	1,182.17
		03	23.75	1,421.63
		04	14.50	867.93
		05	23.50	1,406.63
		06	22.75	1,320.50
		09	1.00	62.02
		10	2.50	155.05
		12	12.25	780.27
		13	28.00	1,783.46
		14	19.75	1,257.99
		15	37.00	2,356.73
		16	27.25	1,735.71
		18	24.00	1,528.70
		19	11.50	732.50
		20	1.50	95.55
		21	15.00	955.44
		22	8.25	525.50
		23	2.00	127.41

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
HILL, LOLITA A.	2008	25	10.00	640.73
		27	4.00	268.80
	2009	01	6.00	378.18
		03	4.00	254.78
		04	4.50	286.63
		05	3.75	238.86
		07	1.00	63.69
		08	0.00	50.20
		09	2.50	165.71
			1,237.25	$73,444.25
HILL, STUART, T.	2006	04	1.00	53.96
PUBLIC AFFAIRS SPECIALIST		09	3.00	167.75
			4.00	$221.71
JONES, EVETTE L.	2007	17	5.00	314.88
INVESTIGATOR				
			5.00	$314.88
JONES, TERESA	2006	22	0.25	12.19
ENV.PROTECTION SPECIALIST	2008	09	0.25	13.67
			0.50	$25.86
JOYCE, EMMETT M.	2005	16	8.00	397.71
PUBLIC AFFAIRS SPECIALIST		17	11.00	546.85
		18	5.00	251.40
		19	4.00	198.86
		20	10.00	497.15
		21	3.00	149.15
		22	9.00	447.42
		23	8.00	397.71
		24	9.00	446.44
		25	7.00	348.77
		26	5.00	253.37
		27	6.00	298.32
	2006	02	14.00	696.08
		03	5.00	248.60
		04	7.50	372.91
		05	4.50	223.74

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
JOYCE, EMMETT M.	2006	06	9.00	447.48
		07	5.00	248.55
		08	4.00	198.84
		09	14.00	765.34
		10	7.00	382.67
		11	11.00	566.95
		12	3.25	167.52
		15	6.00	312.67
		16	4.00	206.16
		19	9.00	493.33
		21	2.00	110.79
		22	14.00	810.85
		23	3.00	166.19
		24	12.00	664.80
		25	2.00	112.59
		26	7.00	430.39
		27	5.00	272.71
	2007	03	10.00	601.35
		04	5.50	304.70
		05	6.50	360.10
		06	18.00	1,038.76
		07	9.50	524.23
		08	9.00	527.54
		09	4.00	226.43
		10	7.00	396.25
		11	10.00	566.08
		12	6.50	367.95
		13	12.50	748.18
		14	4.00	206.58
		15	7.00	446.46
		16	4.50	254.75
		17	9.00	539.19
		19	2.50	141.54
		20	2.00	113.22
		21	8.00	496.14
		22	5.00	273.92
		23	11.00	622.70
		24	10.50	594.30

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
JOYCE, EMMETT M.	2007	25	14.00	819.30
		26	7.00	396.26
	2008	01	1.00	55.54
		02	5.00	283.05
		06	0.00	0.00
		11	6.00	391.11
		13	2.50	146.62
		14	2.00	117.30
		15	5.50	322.54
		16	4.00	234.58
		24	5.00	293.23
		25	1.00	59.89
	2009	03	3.50	205.26
		04	2.00	100.40
		05	3.50	146.13
		06	1.00	58.65
		09	3.00	176.72
		10	13.50	795.25
			474.75	$26,084.60
KOLLER, MARK J. ATTORNEY	2005	16	12.00	502.58
		17	5.25	219.91
		18	8.25	345.52
		19	18.50	774.83
		20	21.00	879.53
		21	11.00	460.69
		22	13.25	554.93
		23	15.50	649.17
		24	11.50	564.90
		25	18.00	884.18
		26	2.00	98.24
		27	6.75	331.57
	2006	02	7.50	368.43
		03	19.50	957.86
		04	25.75	1,264.86
		05	15.75	773.67
		06	17.50	859.64
		07	19.00	933.30

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
KOLLER, MARK J.	2006	08	6.75	331.58
		09	12.50	635.58
		10	22.50	1,144.03
		11	8.00	406.77
		12	20.75	1,055.04
		13	29.00	1,474.52
		14	12.00	610.12
		15	20.00	1,016.91
		16	16.25	826.23
		17	5.75	292.36
		18	12.00	610.15
		19	8.50	397.50
		20	28.25	1,436.55
		21	4.25	216.13
		22	6.75	343.26
		23	4.25	216.14
		24	4.25	252.40
		25	8.50	508.07
		26	19.25	1,104.98
		27	3.75	224.42
	2007	01	7.00	418.91
		02	5.25	314.17
		03	10.00	598.43
		04	6.00	358.25
		05	9.00	523.90
		06	9.75	582.67
		07	13.00	777.47
		08	8.00	487.60
		09	1.25	76.18
		10	7.75	473.79
		11	3.00	183.25
		12	5.00	304.06
		13	11.00	670.93
		14	3.50	212.84
		15	4.00	244.53
		16	2.25	137.55
		17	7.50	458.49
		18	1.25	81.80

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
KOLLER, MARK J.	2007	19	15.00	829.22
		20	2.50	157.61
		21	15.75	954.60
		22	3.50	220.65
		23	15.00	974.30
		24	9.00	583.71
		25	8.25	535.86
		26	1.50	97.38
	2008	03	10.50	681.99
		04	14.25	925.57
		05	15.50	983.23
		06	34.25	2,099.40
		08	24.25	1,621.66
		09	24.75	1,571.64
		10	24.75	1,664.89
		11	17.75	1,194.01
		12	14.00	941.77
		13	13.25	850.76
		14	18.50	1,216.07
		15	11.00	739.95
		16	8.25	554.96
		17	0.00	0.00
		18	1.75	117.72
		19	11.00	739.95
		20	11.25	756.77
		21	13.75	876.56
		22	18.50	1,244.47
		23	8.50	588.54
		24	0.50	34.62
		25	14.75	1,028.34
	2009	01	23.50	1,627.15
		03	30.50	2,111.83
		04	5.00	333.76
		05	1.50	103.86
		06	3.50	234.65
		07	0.25	17.31
		08	1.25	90.13
		09	2.75	198.29

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
KOLLER, MARK J.	2009	10	5.50	396.55
			1,071.00	$61,331.10
KYTE, LAWRENCE W.	2006	03	0.75	54.40
SUPERVISORY GENERAL ATTORNEY		16	0.75	56.27
	2007	06	0.25	18.76
	2008	05	1.75	134.23
		16	1.00	79.46
		23	0.50	39.74
		25	2.75	218.51
		26	0.25	19.87
	2009	01	0.25	19.92
		03	0.75	61.13
		04	0.50	35.66
		06	0.25	20.36
		10	0.50	42.02
			10.25	$800.33
MARKS, THOMAS C.	2008	21	1.00	68.22
SUPV ENVIRONMENTAL PROTECTION SPEC				
			1.00	$68.22
MAROUF, AFIF A.	2006	11	0.25	13.98
TOXICOLOGIST		12	19.00	1,061.79
			19.25	$1,075.77
MOLITOR, PAMELA J.	2006	15	4.75	272.26
REMEDIAL PROJECT MANAGER		16	2.00	114.64
		17	2.00	113.75
			8.75	$500.65
NATHAN, STEPHEN J.	2005	24	0.75	40.33
ENVIRONMENTAL ENGINEER	2006	04	1.50	80.65
		07	0.25	13.44
		10	0.50	27.79
		17	0.50	27.79
		25	1.50	83.38
		26	0.25	13.68
	2007	06	0.25	13.90

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
NATHAN, STEPHEN J.	2007	15	1.00	56.87
		16	0.50	28.43
			7.00	$386.26
NELSON, THOMAS LEVERETT	2005	22	0.25	18.98
SUPERVISORY GENERAL ATTORNEY	2006	03	0.25	18.06
		05	0.25	18.06
		08	0.25	18.97
		14	1.00	80.72
		21	0.25	20.19
		24	0.25	20.19
		26	0.25	19.23
	2007	10	0.25	20.46
		13	0.50	40.90
		16	0.50	41.27
		17	0.25	20.62
		20	0.25	20.47
		21	0.25	20.05
	2008	14	0.25	21.20
		15	0.75	64.15
		19	0.25	21.38
		25	0.50	42.33
		26	0.25	20.35
	2009	01	0.25	20.22
		02	0.25	20.35
		10	0.25	23.23
			7.50	$611.38
PASTOR, SUSAN J.	2005	16	9.00	526.99
PUBLIC AFFAIRS SPECIALIST		17	1.00	58.54
		20	2.00	117.10
		21	2.50	146.39
		23	1.00	58.56
	2006	03	1.50	87.83
		13	1.25	75.69
			18.25	$1,071.10
PUCHALSKI, CONNIE L.	2006	03	1.00	74.33

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
SUPERVISORY GENERAL ATTORNEY	2006	04	5.00	371.60
		06	20.00	1,486.38
		07	6.00	468.67
		09	4.00	323.03
		13	5.00	403.79
		14	1.00	80.75
		15	1.00	80.75
		17	1.00	80.76
		18	1.00	80.76
	2007	05	8.00	614.78
		13	4.00	330.23
		23	2.00	165.10
	2008	14	2.00	170.41
		15	1.00	85.21
		26	2.00	166.56
	2009	08	1.00	91.09
			65.00	$5,074.20
QUIGLEY, EDWARD J. CHEMIST	2008	09	3.25	166.70
		10	4.00	205.15
		11	1.50	76.93
		23	2.00	102.58
	2009	09	1.00	53.90
		10	2.00	107.80
			13.75	$713.06
ROBERMAN, ALIDA I.	2006	11	41.00	2,294.23
		12	22.00	1,231.04
		17	24.00	1,342.97
		18	4.00	223.83
		19	2.00	115.07
		20	3.00	172.60
		21	6.00	345.20
	2008	13	10.00	608.50
			112.00	$6,333.44
RODRIGUEZ, FRANCISCA	2005	18	1.00	29.02

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
SECRETARY (TYPING)	2005	22	0.50	14.51
			1.50	$43.53
SAMUEL, JANET R.	2009	09	0.25	13.05
ENVIRONMENTAL PROTECTION ASSISTANT				
			0.25	$13.05
SHORT, THOMAS R.	2006	17	1.50	111.02
ENVIRONMENTAL ENGINEER	2007	14	0.25	18.91
		24	2.50	194.72
	2008	14	2.00	161.34
			6.25	$485.99
SINGH, JATINDER P.	2007	13	1.00	69.19
SUPERVISORY ENVIR. ENGINEER				
			1.00	$69.19
TAYLOR, DARIUS L.	2006	24	0.50	24.73
FINANCIAL SPECIALIST	2007	01	1.00	49.48
		02	1.00	49.48
		16	1.50	75.94
			4.00	$199.63
THOMPSON, HENRY E., JR.	2005	26	1.00	50.23
ENVIRONMENTAL SCIENTIST				
			1.00	$50.23
THORN, STEPHEN	2005	23	5.50	170.20
ATTORNEY		24	10.00	322.55
		25	3.00	96.77
	2006	02	0.50	16.12
		03	0.50	16.12
		04	0.50	16.12
			20.00	$637.88
URSIC, JAMES R.	2006	25	1.75	114.53
GEOLOGIST		27	23.00	1,505.34
			24.75	$1,619.87
VOGTMAN, PATRICIA	2006	20	5.00	283.56

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
ENVIRONMENTAL SCIENTIST	2006	21	1.00	56.71
		22	2.00	113.42
		24	4.00	226.84
		25	6.00	340.27
		26	1.00	56.72
		27	1.00	56.72
	2007	10	1.00	58.07
		12	1.00	58.09
		17	1.00	58.08
		18	0.25	14.45
		19	0.25	14.51
		21	3.00	174.22
		22	2.00	115.13
		23	0.25	14.52
	2008	02	2.00	116.14
		08	0.25	15.05
			31.00	$1,772.50
WALTERS, LAVETTA C.	2008	13	0.25	13.26
ENVIRONMENTAL PROTECTION ASSISTANT		14	2.00	106.11
		27	0.25	13.26
	2009	01	1.00	53.05
		02	1.50	79.52
		03	0.50	26.52
			5.50	$291.72
WILLIAMS, THOMAS M.	2006	19	2.00	137.82
GENERAL ATTORNEY				
			2.00	$137.82
WILLIS, DOROTHY L	2005	18	1.50	40.81
SECRETARY (TYPING)		19	1.00	27.20
		20	1.50	40.81
		21	0.50	13.61
		23	1.50	40.81
		24	2.00	54.44
		25	3.00	81.67
		27	4.00	108.88

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
WILLIS, DOROTHY L	2006	03	2.00	54.45
		04	2.00	54.45
		05	1.50	40.82
		06	1.00	27.20
		07	2.00	54.45
		09	2.00	56.30
		10	2.00	56.30
		11	2.50	70.37
		12	2.50	71.80
		13	3.00	86.12
		14	2.50	71.78
		15	2.00	57.42
		17	3.50	100.50
		19	1.00	28.71
		20	2.00	57.41
		22	1.50	43.06
		23	1.50	43.08
	2007	02	1.50	43.07
		04	2.00	57.42
		08	0.50	14.63
		09	2.00	58.57
		12	1.00	29.29
		13	2.50	73.21
		14	1.00	29.28
		17	1.50	43.92
		19	0.50	14.63
		21	1.50	43.92
		22	1.00	30.01
		24	1.00	29.29
		25	3.50	102.48
		26	0.50	14.63
	2008	02	0.50	14.64
		11	3.50	106.50
		12	0.50	15.21
		15	1.00	30.44

Regional Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
WILLIS, DOROTHY L	2008	21	1.00	31.72
			76.00	$2,165.31
Total Regional Payroll Costs			3,607.38	$210,476.54

Report Date: 09/01/2009

Headquarters Payroll Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Employee Name	Fiscal Year	Pay Period	Payroll Hours	Payroll Costs
EPSTEIN, JOSHUA N.				
LAW CLERK	2007	15	1.50	74.94
		16	0.25	12.20
			1.75	$87.14
LEFF, KARIN S.				
ENVIRONMENTAL PROTECTION SPECIALIST	2006	05	1.00	74.15
			1.00	$74.15
LEGARE, AMY R.				
ENVIRONMENTAL SCIENTIST	2006	20	1.00	67.12
			1.00	$67.12
MOTT, PATRICIA D.				
ATTORNEY ADVISOR (GENERAL)	2006	05	2.00	151.94
			2.00	$151.94
ROEMELE, JULIE				
Environmental Protection Specialist	2007	22	6.00	215.81
		23	4.00	145.80
			10.00	$361.61
WATKINS, ERNEST E., II				
ENVIRONMENTAL PROTECTION SPECIALIST	2006	04	4.00	273.19
		05	2.00	136.60
			6.00	$409.79
Total Headquarters Payroll Costs			21.75	$1,151.75

Regional Travel Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Traveler/Vendor Name	Travel Number	Treasury Schedule	Treasury Schedule Date	Travel Costs
BRUCE, DONALD J.	TM0521059	000A07138	05/22/2007	25.65
SUPERVISORY ENVIRONMENTAL ENGINEER				
				$25.65
KOLLER, MARK J.	TM0329704	000A05167	06/20/2005	56.95
ATTORNEY	TM0334171	000A05187	07/08/2005	31.57
	TM0350046	000A05244	09/06/2005	23.25
				$111.77
THORN, STEPHEN	TM0350604	000A05269	09/28/2005	23.25
ATTORNEY				
				$23.25
Total Regional Travel Costs				$160.67

Report Date: 09/01/2009

Headquarters Travel Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Traveler/Vendor Name	Travel Number	Treasury Schedule	Treasury Schedule Date	Travel Costs

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

ENVIRONMENTAL SERVICES ASSISTANCE TEAMS (ESAT)

Contractor Name: ALION SCIENCE AND TECHNOLOGY CORPORATION

EPA Contract Number: 68-W0-1014

Delivery Order Information

DO #	Start Date	End Date
24	02/01/2006	03/31/2006
25	09/01/2005	01/31/2006

Project Officer(s): PETERSON, STEVEN
THAKKAR, JAYANTILAL

Dates of Service: From: 09/01/2005 To: 03/31/2006

Summary of Service: ENVIRON SERVICES ASSIST TEAMS(SUB-REDI)

Total Costs: $14,347.50

Voucher Number	Voucher Date	Voucher Amount	Treasury Schedule Number	and Date	Site Amount	Annual Allocation
24						
230569-25	03/08/2006	4,169.96	R6391	04/13/2006	3,044.93	3,913.97
231479-26	04/11/2006	18,389.49	R6445	05/12/2006	1,187.19	1,526.02
		Subtotal for 24:			4,232.12	5,439.99
25						
227211-21	10/12/2005	19,792.07	R6077	11/10/2005	558.50	717.90
228724-23	12/09/2005	7,220.32	R6204	01/12/2006	-67.82	-87.18
230002-25	02/14/2006	23,895.93	R6338	03/17/2006	1,555.08	1,998.91
		Subtotal for 25:			2,045.76	2,629.63
				Total:	$6,277.88	$8,069.62

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

ENVIRONMENTAL SERVICES ASSISTANCE TEAMS (ESAT)

Contractor Name: ALION SCIENCE AND TECHNOLOGY CORPORATION

EPA Contract Number: 68-W0-1014

Delivery Order Information

DO #	Start Date	End Date
24	02/01/2006	03/31/2006
25	09/01/2005	01/31/2006

Project Officer(s): PETERSON, STEVEN
THAKKAR, JAYANTILAL

Dates of Service: From: 09/01/2005 To: 03/31/2006

Summary of Service: ENVIRON SERVICES ASSIST TEAMS(SUB-REDI)

Total Costs: $14,347.50

Voucher Number	Schedule Number	Rate Type	Annual Allocation Rate
24			
230569-25	R6391	Class	1.285406
231479-26	R6445	Class	1.285406
25			
227211-21	R6077	Class	1.285406
228724-23	R6204	Class	1.285406
230002-25	R6338	Class	1.285406

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

INTERAGENCY AGREEMENT (IAG)

Federal Agency: DEPARTMENT OF JUSTICE

IAG Number: DOJ/OVERSIG

Project Officer(s):

Dates of Service: From: To:

Summary of Service:

Total Costs: $406,795.01

Voucher Number	Voucher Date	Voucher Amount	Treasury Schedule Number	and Date	Site Amount
FY05	04/10/2009	19,848.43	N/APPL	09/30/2005	19,848.43
FY06	04/10/2009	83,580.75	N/APPL	09/30/2006	83,580.75
F0Y7	04/10/2009	20,128.45	N/APPL	09/30/2007	20,128.45
FYO8	04/10/2009	184,622.89	N/APPL	09/30/2008	184,622.89
FY09	04/10/2009	98,614.49	NAPPL	02/01/2009	98,614.49
				Total:	$406,795.01

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

INTERAGENCY AGREEMENT (IAG)

Federal Agency: DEPARTMENT OF INTERIOR

IAG Number: DW14948147

Project Officer(s): PADOVANI, STEVEN

Dates of Service: From: To:

Summary of Service:

Total Costs: $1,718.97

Voucher Number	Voucher Date	Voucher Amount	Treasury Schedule Number	and Date	Site Amount
2714 1	04/10/2008	0.00	27081209	04/10/2008	1,718.97
				Total:	$1,718.97

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

REMOTE SENSING SUPPORT/EPIC

Contractor Name: LOCKHEED MARTIN SERVICES, INC

EPA Contract Number: 68-D0-0267

Project Officer(s): GAROFALO, DONALD

Dates of Service: From: 12/29/2005 To: 01/26/2006

Summary of Service: REMOTE SENSING SUPPORT/EPIC(REDI)

Total Costs: $74.92

Voucher Number	Voucher Date	Voucher Amount	Treasury Schedule Number	and Date	Site Amount	Annual Allocation
75	12/29/2005	1,660.13	R6235	01/26/2006	72.75	2.17
				Total:	$72.75	$2.17

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

REMOTE SENSING SUPPORT/EPIC

Contractor Name:	LOCKHEED MARTIN SERVICES, INC
EPA Contract Number:	68-D0-0267
Project Officer(s):	GAROFALO, DONALD
Dates of Service:	From: 12/29/2005 To: 01/26/2006
Summary of Service:	REMOTE SENSING SUPPORT/EPIC(REDI)
Total Costs:	$74.92

Voucher Number	Schedule Number	Rate Type	Annual Allocation Rate
75	R6235	Provisional	0.029883

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

REMOTE SENSING SUPPORT/EPIC

Contractor Name: LOCKHEED MARTIN SERVICES, INC

EPA Contract Number: 68-D0-0267

Contractor Information

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Report Date: 09/01/2009

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

RESPONSE ACTION (RAC) CONTRACT

Contractor Name: TETRA TECH EM INC.

EPA Contract Number: 68-W6-0037

Project Officer(s): MCCLURG, RENA
THOMPSON, HENRY

Dates of Service: From: 05/02/2005 To: 03/02/2007

Summary of Service: RESPONSE ACTION CONTRACT-SUBCLASS(REDI)

Total Costs: $89,568.70

Voucher Number	Voucher Date	Voucher Amount	Treasury Schedule Number	and Date	Site Amount	Annual Allocation
43-A	04/12/2005	612,159.19	R5439	05/10/2005	2,387.30	61.57
44-A	05/10/2005	1,162,751.50	R5495	06/08/2005	694.04	17.90
45-A	06/03/2005	1,242,575.45	R5537	06/29/2005	512.20	13.21
46-A	07/12/2005	845,991.72	R5618	08/10/2005	360.55	9.30
47-A	08/09/2005	644,002.02	R5675	09/08/2005	2,511.34	64.77
48-A	09/02/2005	675,454.44	R5719	09/30/2005	7,239.52	186.71
49-A	10/17/2005	1,432,795.82	R6076	11/10/2005	2,323.12	59.91
50-A	09/02/2005	701,245.51	R6119	12/01/2005	4,831.52	124.60
51-A	09/02/2005	404,156.95	R6166	12/22/2005	5,198.64	134.07
52-A	01/06/2006	7,884,067.97	R6237	01/27/2006	14,077.50	363.06
53-A	02/07/2006	280,225.35	R6317	03/07/2006	8,241.73	212.55
54-A	03/03/2006	309,229.35	R6355	03/28/2006	5,895.00	152.03
55-A	04/11/2006	335,402.03	R6432	05/08/2006	5,510.67	142.12
56-A	05/09/2006	288,056.39	R6497	06/07/2006	904.33	23.32
57-A	06/02/2006	254,443.64	R6541	06/28/2006	5,530.14	142.62
58-A	07/11/2006	317,533.70	R6634	08/10/2006	3,639.22	93.85
59-A	08/08/2006	197,729.00	R6693	09/07/2006	10,895.76	281.00
60-A	09/01/2006	197,540.22	R6737	09/26/2006	1,026.88	26.48
61-A	10/12/2006	146,196.96	R7A96	11/13/2006	21.49	0.55
63-A	03/02/2007	480,190.16	R7D78	03/22/2007	5,515.88	142.25
				Total:	$87,316.83	$2,251.87

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

RESPONSE ACTION (RAC) CONTRACT

Contractor Name: TETRA TECH EM INC.

EPA Contract Number: 68-W6-0037

Project Officer(s): MCCLURG, RENA
THOMPSON, HENRY

Dates of Service: From: 05/02/2005 To: 03/02/2007

Summary of Service: RESPONSE ACTION CONTRACT-SUBCLASS(REDI)

Total Costs: $89,568.70

Voucher Number	Schedule Number	Rate Type	Annual Allocation Rate
43-A	R5439	Provisional	0.025790
44-A	R5495	Provisional	0.025790
45-A	R5537	Provisional	0.025790
46-A	R5618	Provisional	0.025790
47-A	R5675	Provisional	0.025790
48-A	R5719	Provisional	0.025790
49-A	R6076	Provisional	0.025790
50-A	R6119	Provisional	0.025790
51-A	R6166	Provisional	0.025790
52-A	R6237	Provisional	0.025790
53-A	R6317	Provisional	0.025790
54-A	R6355	Provisional	0.025790
55-A	R6432	Provisional	0.025790
56-A	R6497	Provisional	0.025790
57-A	R6541	Provisional	0.025790
58-A	R6634	Provisional	0.025790
59-A	R6693	Provisional	0.025790
60-A	R6737	Provisional	0.025790
61-A	R7A96	Provisional	0.025790
63-A	R7D78	Provisional	0.025790

Report Date: 09/01/2009

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

RESPONSE ACTION (RAC) CONTRACT

Contractor Name: ROY F. WESTON, INC.

EPA Contract Number: 68-W7-0026

Project Officer(s): NATHAN, STEPHEN
VOGTMAN, PATRICIA

Dates of Service: From: 05/12/2005 To: 05/28/2008

Summary of Service: RESPONSE ACTION CONTRACT-SUBCLASS(REDI)

Total Costs: $25,870.74

Voucher Number	Voucher Date	Voucher Amount	Treasury Schedule Number	and Date	Site Amount	Annual Allocation
212	04/13/2005	253,797.34	R5452	05/13/2005	2,484.62	48.84
213	05/12/2005	245,371.33	R5508	06/13/2005	343.81	6.76
214	06/10/2005	270,984.67	R5561	07/12/2005	998.31	19.62
215	07/15/2005	251,800.57	R5637	08/18/2005	2,044.09	40.18
222Z	11/03/2005	72,883.17	R6127	12/07/2005	301.17	5.92
223	11/11/2005	207,748.84	R6148	12/14/2005	442.88	8.70
224	12/12/2005	174,401.89	R6208	01/13/2006	910.89	17.90
225	01/13/2006	201,411.43	R6272	02/15/2006	1,737.48	34.15
226	02/10/2006	218,927.67	R6329	03/14/2006	1,119.13	22.00
227	03/13/2006	179,983.07	R6388	04/12/2006	440.86	8.67
228	04/14/2006	308,436.53	R6452	05/16/2006	35.87	0.71
232	08/18/2006	302,291.44	R6716	09/15/2006	107.59	2.11
240Z	12/11/2006	208,829.09	R7C34	01/10/2007	109.98	2.16
245	01/19/2006	543,666.70	R7D23	02/22/2007	283.55	5.57
246	02/19/2007	713,168.41	R7D82	03/23/2007	2,935.31	57.69
247	03/19/2007	564,328.58	R7E47	04/19/2007	2,856.24	56.14
248	04/25/2007	827,424.58	R7F36	06/01/2007	4,159.65	81.76
249	05/18/2007	265,258.55	R7F74	06/19/2007	727.33	14.30
254	07/18/2007	1,084,471.00	R7G98	08/17/2007	27.17	0.53
262	11/14/2007	1,762,691.65	R8491	12/19/2007	2,504.69	49.23
265	04/24/2008	13,788.04	R8D54	05/23/2008	792.95	15.59
266Z	05/08/2008	245,419.42	R8D74	06/04/2008	18.70	0.37
267Z	05/08/2008	-26,860.66	R8D74	06/04/2008	-10.23	-0.20
				Total:	$25,372.04	$498.70

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

RESPONSE ACTION (RAC) CONTRACT

Contractor Name: ROY F. WESTON, INC.

EPA Contract Number: 68-W7-0026

Project Officer(s): NATHAN, STEPHEN
VOGTMAN, PATRICIA

Dates of Service: From: 05/12/2005 To: 05/28/2008

Summary of Service: RESPONSE ACTION CONTRACT-SUBCLASS(REDI)

Total Costs: $25,870.74

Voucher Number	Schedule Number	Rate Type	Annual Allocation Rate
212	R5452	Provisional	0.019655
213	R5508	Provisional	0.019655
214	R5561	Provisional	0.019655
215	R5637	Provisional	0.019655
222Z	R6127	Provisional	0.019655
223	R6148	Provisional	0.019655
224	R6208	Provisional	0.019655
225	R6272	Provisional	0.019655
226	R6329	Provisional	0.019655
227	R6388	Provisional	0.019655
228	R6452	Provisional	0.019655
232	R6716	Provisional	0.019655
240Z	R7C34	Provisional	0.019655
245	R7D23	Provisional	0.019655
246	R7D82	Provisional	0.019655
247	R7E47	Provisional	0.019655
248	R7F36	Provisional	0.019655
249	R7F74	Provisional	0.019655
254	R7G98	Provisional	0.019655
262	R8491	Provisional	0.019655
265	R8D54	Provisional	0.019655
266Z	R8D74	Provisional	0.019655
267Z	R8D74	Provisional	0.019655

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

RESPONSE ACTION (RAC) CONTRACT

Contractor Name: SULTRAC, JV

EPA Contract Number: EPS50602

Project Officer(s): QUIGLEY, EDWARD
VOGTMAN, PATRICIA

Dates of Service: From: 06/29/2006 To: 12/28/2008

Summary of Service: RESPONSE ACTION CONTRACT-SUBCLASS(REDI)

Total Costs: $331,634.85

Voucher Number	Voucher Date	Voucher Amount	Treasury Schedule Number	and Date	Site Amount
A001	09/19/2006	79,697.51	R7A36	10/16/2006	10,234.34
A002	10/20/2006	181,433.36	R7B08	11/15/2006	14,956.24
A003	11/17/2006	212,423.00	R7B71	12/14/2006	12,945.73
A004	12/11/2006	214,642.76	R7C24	01/05/2007	18,914.15
A005	01/19/2007	328,769.88	R7D09	02/14/2007	16,036.36
A006	02/16/2007	246,989.94	R7D63	03/15/2007	11,459.74
A007	03/09/2007	212,304.37	R7E11	04/04/2007	8,955.53
A008	04/17/2007	328,800.74	R7E95	05/16/2007	6,325.85
A009	05/15/2007	234,633.01	R7F53	06/11/2007	4,565.05
A010	06/06/2007	226,090.47	R7F96	07/02/2007	16,251.14
A011	07/16/2007	342,440.30	R7G77	08/10/2007	9,543.49
A012	08/10/2007	199,636.79	R7H31	09/05/2007	4,688.02
A013	09/07/2007	275,430.25	R8104	10/03/2007	13,573.77
A014	10/15/2007	400,858.53	R8336	11/08/2007	23,550.58
A015	11/09/2007	285,251.30	R8457	12/06/2007	8,830.80
A016	12/07/2007	304,699.39	R8A21	01/03/2008	13,741.78
A017	01/14/2008	272,132.98	R8B05	02/08/2008	15,033.57
A018	02/11/2008	220,609.17	R8B74	03/11/2008	22,708.43
A019	03/10/2008	206,586.87	R8C36	04/03/2008	9,414.17
A020	04/17/2008	454,725.86	R8D23	05/13/2008	11,555.29
A021	05/13/2008	551,439.86	R8D81	06/06/2008	4,538.73
A022	06/11/2008	730,952.90	R8E51	07/09/2008	6,390.21
A023	07/16/2008	600,675.35	R8F36	08/12/2008	14,862.00
A024	08/18/2008	490,735.68	R8G27	09/12/2008	2,690.20
A025	09/12/2008	604,053.07	R9457	10/10/2008	15,530.35
A026R	10/22/2008	758,837.64	R9570	11/20/2008	13,714.69
A027	11/14/2008	803,828.08	R9624	12/10/2008	5,556.97
A028	12/12/2008	611,934.77	R9703	01/09/2009	8,415.25

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

RESPONSE ACTION (RAC) CONTRACT

Contractor Name: SULTRAC, JV

EPA Contract Number: EPS50602

Project Officer(s): QUIGLEY, EDWARD
VOGTMAN, PATRICIA

Dates of Service: From: 06/29/2006 To: 12/28/2008

Summary of Service: RESPONSE ACTION CONTRACT-SUBCLASS(REDI)

Total Costs: $331,634.85

Voucher Number	Voucher Date	Voucher Amount	Treasury Schedule Number	and Date	Site Amount
A029	01/16/2009	605,029.30	R9822	02/20/2009	6,652.42
				Total:	$331,634.85

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

SUPERFUND COOPERATIVE AGREEMENT (SCA)

State Agency: WAUCONDA SUPERFUND

SCA Number: 196588301

Project Officer(s): Glynis Landers

Dates of Service: From: 07/01/2005 To: 08/31/2008

Summary of Service:

Total Costs: $45,400.00

Drawdown Number	Drawdown Date	Drawdown Amount	Treasury Schedule Number and	Date	Site Amount
202273228	02/16/2006	2,000.00	02152006	02/16/2006	2,000.00
202273228	08/30/2006	2,000.00	08252006	08/30/2006	2,000.00
202273228	03/19/2007	1,300.00	70791769755	03/19/2007	1,300.00
202273228	03/20/2007	200.00	70801769755	03/20/2007	200.00
202273228	03/23/2007	8,400.00	70851769755	03/23/2007	8,400.00
202273228	04/19/2007	6,750.00	71101769755	04/19/2007	6,750.00
202273228	05/17/2007	2,200.00	71381769755	05/17/2007	2,200.00
202273228	07/03/2007	9,500.00	71861769755	07/03/2007	9,500.00
202273228	08/23/2007	12,800.00	72361769755	08/23/2007	12,800.00
202273228	02/25/2008	250.00	80571769755	02/25/2008	250.00
				Total:	$45,400.00

Report Date: 09/01/2009

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

SUPERFUND TECH. ASSISTANCE & RESPONSE TEAM (START)

Contractor Name: TETRA TECH EM, INC.

EPA Contract Number: 68-W0-0129

Project Officer(s): KOSIK, LORRAINE

Dates of Service: From: 07/04/2005 To: 07/03/2007

Summary of Service: S/F TECH ASSESSMENT&RESPONSE TEAM (REDI)

Total Costs: $85,294.53

Voucher Number	Voucher Date	Voucher Amount	Treasury Schedule Number	and Date	Site Amount	Annual Allocation
G9009-53	04/15/2005	387,027.22	R5447	05/12/2005	3,402.22	1,042.91
G9009-054A	05/12/2005	-43,620.23	05491	06/07/2005	-416.41	-127.65
G9009-054B	05/12/2005	294,573.53	R5491	06/07/2005	410.65	125.88
G9009-055	06/03/2005	235,176.89	R5538	06/29/2005	744.93	228.35
G9009-057	08/11/2005	381,093.57	R5674	09/08/2005	387.25	118.71
G9009-058	09/02/2005	332,350.00	R5716	09/29/2005	1,205.73	369.60
G9009-059	10/18/2005	433,758.46	R6081	11/14/2005	160.98	49.35
G9009-060	11/09/2005	435,525.06	R6123	12/05/2005	209.78	64.31
G9009-061	12/02/2005	344,487.64	R6179	12/30/2005	1,567.30	480.44
G9009-062	01/12/2006	401,246.95	R6253	02/07/2006	3,910.10	1,198.59
G9009-063	02/10/2006	397,274.13	R6320	03/08/2006	5,182.26	1,588.56
G9009-064	03/03/2006	365,630.13	R6364	03/30/2006	7,978.90	2,445.84
G9009-065	04/14/2006	396,513.31	R6441	05/11/2006	9,134.07	2,799.94
G9009-066	05/12/2006	343,159.79	R6498	06/08/2006	8,344.69	2,557.96
G9009-067	06/02/2006	449,812.60	R6542	06/28/2006	12,185.05	3,735.18
G9009-068	07/14/2006	362,364.09	R6632	08/10/2006	9,071.86	2,780.87
G9009-069	08/11/2006	132,524.64	R6691	09/07/2006	1,674.97	513.44
G9009-070	09/12/2006	66,491.93	R7A15	10/10/2006	47.88	14.68
G9009-071	06/07/2007	97,566.29	R7F98	07/03/2007	80.64	24.72
				Total:	$65,282.85	$20,011.68

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

SUPERFUND TECH. ASSISTANCE & RESPONSE TEAM (START)

Contractor Name:	TETRA TECH EM, INC.
EPA Contract Number:	68-W0-0129
Project Officer(s):	KOSIK, LORRAINE
Dates of Service:	From: 07/04/2005 To: 07/03/2007
Summary of Service:	S/F TECH ASSESSMENT&RESPONSE TEAM (REDI)
Total Costs:	$85,294.53

Voucher Number	Schedule Number	Rate Type	Annual Allocation Rate
G9009-53	R5447	Class	0.306538
G9009-054A	05491	Class	0.306538
G9009-054B	R5491	Class	0.306538
G9009-055	R5538	Class	0.306538
G9009-057	R5674	Class	0.306538
G9009-058	R5716	Class	0.306538
G9009-059	R6081	Class	0.306538
G9009-060	R6123	Class	0.306538
G9009-061	R6179	Class	0.306538
G9009-062	R6253	Class	0.306538
G9009-063	R6320	Class	0.306538
G9009-064	R6364	Class	0.306538
G9009-065	R6441	Class	0.306538
G9009-066	R6498	Class	0.306538
G9009-067	R6542	Class	0.306538
G9009-068	R6632	Class	0.306538
G9009-069	R6691	Class	0.306538
G9009-070	R7A15	Class	0.306538
G9009-071	R7F98	Class	0.306538

Report Date: 09/01/2009

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

TECHNICAL SERVICE AND SUPPORT

Contractor Name: ARCTIC SLOPE REGIONAL CORP(ASRC)

EPA Contract Number: 68-W0-1002

Delivery Order Information	DO #	Start Date	End Date
	409	03/28/2005	08/28/2005

Project Officer(s): PFUNDHELLER, JANET

Dates of Service: From: 03/28/2005 To: 08/28/2005

Summary of Service: TECHNICAL SERVICES AND SUPPORT

Total Costs: $436.68

Voucher Number	Voucher Date	Voucher Amount	Treasury Schedule Number	and Date	Site Amount
409					
7	05/04/2005	59,209.48	R5477	05/31/2005	55.73
8	06/08/2005	70,678.90	R5548	07/06/2005	73.62
9	07/01/2005	55,045.75	R5601	08/02/2005	104.39
10	08/09/2005	69,157.42	R5663	09/02/2005	187.55
11	09/12/2005	50,387.44	R6006	10/06/2005	15.39
		Subtotal for 409:			436.68
				Total:	$436.68

Contract Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

TECHNICAL SERVICE AND SUPPORT

Contractor Name: ASRC MANAGEMENT SERVICES, INC.

EPA Contract Number: EPW05052

Delivery Order Information

DO #	Start Date	End Date
66	10/19/2006	10/30/2008

Project Officer(s): PFUNDHELLER, JANET

Dates of Service: From: 10/19/2006 To: 10/30/2008

Summary of Service: ADMINISTRATIVE SUPPORT SERVICES

Total Costs: $5,484.66

Voucher Number	Voucher Date	Voucher Amount	Treasury Schedule Number	and Date	Site Amount
66					
1	11/08/2006	20,762.12	R7B58	12/08/2006	15.45
2	12/05/2006	53,470.23	R7C14	01/04/2007	7.73
6	04/04/2007	66,107.18	R7E66	05/01/2007	24.26
7	05/09/2007	85,097.71	R7F43	06/05/2007	176.82
8	06/11/2007	62,319.90	R7G07	07/09/2007	73.96
9	07/06/2007	55,789.18	R7G65	08/03/2007	96.42
11	09/10/2007	62,357.35	R8146	10/10/2007	32.13
14	12/07/2007	55,385.28	R8A33	01/09/2008	96.42
6	02/11/2008	58,739.03	R8B84	03/13/2008	15.14
7	03/05/2008	63,858.70	R8C48	04/09/2008	18.06
8	04/08/2008	87,434.08	R8D64	05/30/2008	28.28
9	05/07/2008	67,726.11	R8E08	06/17/2008	2,787.36
1	06/05/2008	65,803.23	R8E53	07/09/2008	432.61
	07/09/2008	84,862.98	R8F25	08/07/2008	891.64
	08/11/2008	61,807.95	R8G09	09/09/2008	541.69
	09/10/2008	84,932.39	R9452	10/09/2008	73.58
	10/10/2008	70,502.39	R9546	11/14/2008	128.44
	12/18/2008	77,147.96	R9731	01/15/2009	44.67
	Subtotal for 66:				5,484.66
				Total:	$5,484.66

Report Date: 09/01/2009

Financial Cost Summary for the Contract Lab Program

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

CONTRACT LAB PROGRAM (CLP) COSTS

Total Routine Analytical Services (RAS) Costs	$6,802.93
Total Financial Cost Summary	$6,802.93

Financial Cost Summary for the Contract Lab Program
WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81
Cumulative Costs from 05/01/2005 through 02/27/2009

CONTRACT LAB PROGRAM (CLP) COSTS

Routine Analytical Services (RAS)

Total Costs: $6,802.93

Voucher Number	Voucher Date	Voucher Amount	Treasury Schedule Number	and Date	Site Amount	SMO Amount
Case Number:						
EPA Contract Number: 68-W0-1034, DYNCORP INFORMATION & ENGINEERING TECH.						
1-22	10/06/2005	1,107,746.81	R6066	11/08/2005	75.92	53.75
1-25	01/06/2006	1,120,654.88	R6248	02/06/2006	138.56	98.10
1-26	02/08/2006	955,794.12	R6319	03/08/2006	16.86	11.94
1-27	03/06/2006	1,024,884.64	R6371	04/04/2006	406.30	287.66
1-28	04/10/2006	1,132,163.23	R6454	05/17/2006	16.86	11.94
JVF5515	09/27/2006	0.00	F5515	09/27/2006	-7.77	-5.50
JVF5568	10/02/2006	0.00	F5568	10/02/2006	-3.71	-2.63
		Totals for 68-W0-1034:			$643.02	$455.26
		Totals for Case Number :			$643.02	$455.26
Case Number: 34539						
EPA Contract Number: 68-W0-3018, CEIMIC CORPORATION						
50649	09/15/2005	798.00	R6044	10/26/2005	798.00	564.98
		Totals for 68-W0-3018:			$798.00	$564.98
		Totals for Case Number 34539:			$798.00	$564.98
Case Number: 34909						
EPA Contract Number: 68-W0-1038, A4 SCIENTIFIC						
AR2006007	01/03/2006	1,280.00	R6251	02/07/2006	1,280.00	906.23
		Totals for 68-W0-1038:			$1,280.00	$906.23
		Totals for Case Number 34909:			$1,280.00	$906.23
Case Number: 35020						
EPA Contract Number: 68-W0-1038, A4 SCIENTIFIC						
AR2006095	02/01/2006	760.00	R6332	03/15/2006	760.00	538.08

Report Date: 09/01/2009

Financial Cost Summary for the Contract Lab Program

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

CONTRACT LAB PROGRAM (CLP) COSTS

Routine Analytical Services (RAS)

Total Costs: $6,802.93

Voucher Number	Voucher Date	Voucher Amount	Treasury Schedule Number and Date		Site Amount	SMO Amount
Case Number: 35020						
EPA Contract Number: 68-W0-1038; A4 SCIENTIFIC						
AR2006116	02/16/2006	501.97	R6355	03/28/2006	501.97	355.39
		Totals for 68-W0-1038:			$1,261.97	$893.47
		Totals for Case Number 35020:			$1,261.97	$893.47
Totals for Routine Analytical Services:					$3,982.99	$2,819.94

Financial Cost Summary for the Contract Lab Program
WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81
Cumulative Costs from 05/01/2005 through 02/27/2009

CONTRACT LAB PROGRAM (CLP) COSTS

Fiscal Year	Rate Type	SMO Rate
2006	Provisional	0.707996
2007	Provisional	0.707996

Report Date: 09/01/2009

Miscellaneous (MIS) Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

Fiscal Year	Direct Costs	Indirect Rate(%)	Indirect Costs
2005	76,915.02	61.71%	47,464.24
2006	333,710.53	56.23%	187,645.43
2007	262,764.75	62.91%	165,305.29
2008	390,416.19	62.91%	245,610.81
2009	161,411.96	62.91%	101,544.23
Total EPA Indirect Costs	1,225,218.45		$747,570.00

Report Date: 09/01/2009

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
BRUCE, DONALD J.	2005	16	196.30	61.71%	121.14
		17	196.30	61.71%	121.14
		18	261.73	61.71%	161.51
		19	130.86	61.71%	80.75
		20	785.18	61.71%	484.53
		22	588.89	61.71%	363.40
		23	588.89	61.71%	363.40
		24	458.03	61.71%	282.65
		25	196.30	61.71%	121.14
			3,402.48		$2,099.66
GARCIA, MARGARITA F.	2005	20	204.02	61.71%	125.90
			204.02		$125.90
HANS, MICHAEL E.	2005	19	13.38	61.71%	8.26
		20	53.53	61.71%	33.03
		21	37.61	61.71%	23.21
		22	36.32	61.71%	22.41
		24	13.39	61.71%	8.26
			154.23		$95.17
HILL, LOLITA A.	2005	16	1,245.71	61.71%	768.73
		17	1,642.05	61.71%	1,013.31
		18	2,378.16	61.71%	1,467.56
		19	1,245.70	61.71%	768.72
		20	1,160.79	61.71%	716.32
		21	651.16	61.71%	401.83
		22	1,203.22	61.71%	742.5
		23	693.63	61.71%	428.0
		24	1,132.46	61.71%	698.8
		25	594.52	61.71%	366.8
		26	594.50	61.71%	366.8

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
HILL, LOLITA A.	2005	27	113.24	61.71%	69.88
			12,655.14		$7,809.49
JOYCE, EMMETT M.	2005	16	397.71	61.71%	245.43
		17	546.85	61.71%	337.46
		18	251.40	61.71%	155.14
		19	198.86	61.71%	122.72
		20	497.15	61.71%	306.79
		21	149.15	61.71%	92.04
		22	447.42	61.71%	276.10
		23	397.71	61.71%	245.43
		24	446.44	61.71%	275.50
		25	348.77	61.71%	215.23
		26	253.37	61.71%	156.35
		27	298.32	61.71%	184.09
			4,233.15		$2,612.28
KOLLER, MARK J.	2005	16	502.58	61.71%	310.14
		17	219.91	61.71%	135.71
		18	345.52	61.71%	213.22
		19	774.83	61.71%	478.15
		20	879.53	61.71%	542.76
		21	460.69	61.71%	284.29
		22	554.93	61.71%	342.45
		23	649.17	61.71%	400.60
		24	564.90	61.71%	348.60
		25	884.18	61.71%	545.63
		26	98.24	61.71%	60.62
		27	331.57	61.71%	204.61
			6,266.05		$3,866.78

Report Date: 09/01/2009

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
NATHAN, STEPHEN J.	2005	24	40.33	61.71%	24.89
			40.33		$24.89
NELSON, THOMAS LEVERETT	2005	22	18.98	61.71%	11.71
			18.98		$11.71
PASTOR, SUSAN J.	2005	16	526.99	61.71%	325.21
		17	58.54	61.71%	36.13
		20	117.10	61.71%	72.26
		21	146.39	61.71%	90.34
		23	58.56	61.71%	36.14
			907.58		$560.08
RODRIGUEZ, FRANCISCA	2005	18	14.51	61.71%	8.95
			14.51	61.71%	8.95
		22	14.51	61.71%	8.95
			43.53		$26.85
THOMPSON, HENRY E., JR.	2005	26	50.23	61.71%	31.00
			50.23		$31.00
THORN, STEPHEN	2005	23	170.20	61.71%	105.03
		24	322.55	61.71%	199.05
		25	96.77	61.71%	59.72
			589.52		$363.8[illegible]
WILLIS, DOROTHY L	2005	18	40.81	61.71%	25.1[illegible]
		19	27.20	61.71%	16.7[illegible]
		20	40.81	61.71%	25.1
		21	13.61	61.71%	8.4

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
WILLIS, DOROTHY L	2005	23	40.81	61.71%	25.18
		24	54.44	61.71%	33.59
		25	81.67	61.71%	50.40
		27	108.88	61.71%	67.19
			408.23		$251.91
Total Fiscal Year 2005 Payroll Direct Costs:			28,973.47		$17,879.52

TRAVEL DIRECT COSTS

Traveler/Vendor Name	Travel Number	Treasury Schedule Date	Travel Costs	Ind. Rate (%)	Indirect Costs
KOLLER, MARK J.	TM0329704	06/20/2005	56.95	61.71%	35.14
	TM0334171	07/08/2005	31.57	61.71%	19.48
	TM0350046	09/06/2005	23.25	61.71%	14.35
			111.77		$68.97
THORN, STEPHEN	TM0350604	09/28/2005	23.25	61.71%	14.35
			23.25		$14.35
Total Fiscal Year 2005 Travel Direct Costs:			135.02		$83.32

OTHER DIRECT COSTS

Contract, AG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
3-W0-0129	G9009-53	05/12/2005	3,402.22	1,042.91	61.71%	2,743.09
	G9009-054B	06/07/2005	410.65	125.88	61.71%	331.09
	G9009-054A	06/07/2005	-416.41	-127.65	61.71%	-335.74
	G9009-055	06/29/2005	357.68	109.64	61.71%	288.38
	G9009-057	09/08/2005	387.25	118.71	61.71%	312.23
			-8,205.97	-2,515.44	61.71%	

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
68-W0-0129	G9009-057	09/08/2005	-768.33	-235.52	61.71%	-619.48
			-4,922.76	-1,509.01	61.71%	-3,969.05
			14,284.31	4,378.68	61.71%	11,516.93
			387.25	118.71	61.71%	312.23
			-387.25	-118.71	61.71%	-312.23
	G9009-058	09/29/2005	1,205.73	369.60	61.71%	972.14
			5,734.37	1,757.80		$4,623.41
68-W0-1002	7	05/31/2005	55.73	0.00	61.71%	34.39
	8	07/06/2005	73.62	0.00	61.71%	45.43
	9	08/02/2005	104.39	0.00	61.71%	64.42
	10	09/02/2005	187.55	0.00	61.71%	115.74
			421.29	0.00		$259.98
68-W6-0037	43-A	05/10/2005	2,387.30	61.57	61.71%	1,511.20
	44-A	06/08/2005	694.04	17.90	61.71%	439.34
	45-A	06/29/2005	512.20	13.21	61.71%	324.23
	46-A	08/10/2005	360.55	9.30	61.71%	228.23
	47-A	09/08/2005	1,288.08	33.22	61.71%	815.37
			1,223.26	31.55	61.71%	774.34
	48-A	09/30/2005	7,239.52	186.71	61.71%	4,582.73
			13,704.95	353.46		$8,675.44
68-W7-0026	212	05/13/2005	2,484.62	48.84	61.71%	1,563.40
	213	06/13/2005	343.81	6.76	61.71%	216.34
	214	07/12/2005	998.31	19.62	61.71%	628.16
	215	08/18/2005	2,044.09	40.18	61.71%	1,286.20
			5,870.83	115.40		$3,694.10

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
DOJ/OVERSIG	FY05	09/30/2005	19,848.43	0.00	61.71%	12,248.47
			19,848.43	0.00		$12,248.47
Total Fiscal Year 2005 Other Direct Costs:			45,579.87	2,226.66		$29,501.40
Total Fiscal Year 2005:			76,915.02			$47,464.24

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
BRUCE, DONALD J.	2006	02	261.73	56.23%	147.17
		03	523.45	56.23%	294.34
		04	719.77	56.23%	404.73
		05	523.45	56.23%	294.34
		06	261.73	56.23%	147.17
		07	261.73	56.23%	147.17
		08	261.73	56.23%	147.17
		09	203.13	56.23%	114.22
		10	406.26	56.23%	228.44
		11	135.41	56.23%	76.14
		18	270.84	56.23%	152.29
		19	203.14	56.23%	114.23
		20	203.14	56.23%	114.23
		21	135.42	56.23%	76.15
		22	203.14	56.23%	114.23
		24	260.21	56.23%	146.32
		25	270.86	56.23%	152.30
		26	135.42	56.23%	76.15
		27	67.72	56.23%	38.08
			5,308.28		$2,984.87

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EPA Indirect Costs

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PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
CARNEY, WENDY L.	2006	04	218.01	56.23%	122.59
			218.01		$122.59
DRAUGELIS, ARUNAS K.	2006	05	1,107.38	56.23%	622.68
		06	755.01	56.23%	424.54
			1,862.39		$1,047.22
HANS, MICHAEL E.	2006	02	28.81	56.23%	16.20
		04	28.79	56.23%	16.19
		16	27.41	56.23%	15.41
		20	27.68	56.23%	15.56
			112.69		$63.36
HILL, LOLITA A.	2006	03	1,698.57	56.23%	955.11
		04	1,571.16	56.23%	883.46
		05	1,868.43	56.23%	1,050.62
		06	225.05	56.23%	126.55
		07	1,613.64	56.23%	907.35
		09	1,111.91	56.23%	625.23
		10	234.08	56.23%	131.62
		11	1,346.01	56.23%	756.86
		13	1,916.59	56.23%	1,077.70
		14	1,346.13	56.23%	756.93
		19	1,463.13	56.23%	822.72
		20	2,575.09	56.23%	1,447.97
		21	921.78	56.23%	518.32
		22	994.92	56.23%	559.44
		23	1,024.20	56.23%	575.9
		24	2,194.71	56.23%	1,234.0
			22,105.40		$12,429.8
HILL, STUART, T.	2006	04	53.96	56.23%	30.3

EPA Indirect Costs

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Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
HILL, STUART, T.	2006	09	167.75	56.23%	94.33
			221.71		$124.67
JONES, TERESA	2006	22	12.19	56.23%	6.85
			12.19		$6.85
JOYCE, EMMETT M.	2006	02	696.08	56.23%	391.41
		03	248.60	56.23%	139.79
		04	372.91	56.23%	209.69
		05	223.74	56.23%	125.81
		06	447.48	56.23%	251.62
		07	248.55	56.23%	139.76
		08	198.84	56.23%	111.81
		09	765.34	56.23%	430.35
		10	382.67	56.23%	215.18
		11	566.95	56.23%	318.80
		12	167.52	56.23%	94.20
		15	312.67	56.23%	175.81
		16	206.16	56.23%	115.92
		19	493.33	56.23%	277.40
		21	110.79	56.23%	62.30
		22	810.85	56.23%	455.94
		23	166.19	56.23%	93.45
		24	664.80	56.23%	373.82
		25	112.59	56.23%	63.31
		26	430.39	56.23%	242.01
		27	272.71	56.23%	153.34
			7,899.16		$4,441.72
)LLER, MARK J.	2006	02	368.43	56.23%	207.17
		03	957.86	56.23%	538.60
		04	1,264.86	56.23%	711.23
		05	773.67	56.23%	

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EPA Indirect Costs

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PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
KOLLER, MARK J.	2006	06	859.64	56.23%	483.38
		07	933.30	56.23%	524.79
		08	331.58	56.23%	186.45
		09	635.58	56.23%	357.39
		10	1,144.03	56.23%	643.29
		11	406.77	56.23%	228.73
		12	1,055.04	56.23%	593.25
		13	1,474.52	56.23%	829.12
		14	610.12	56.23%	343.07
		15	1,016.91	56.23%	571.81
		16	826.23	56.23%	464.59
		17	292.36	56.23%	164.39
		18	610.15	56.23%	343.09
		19	397.50	56.23%	223.51
		20	1,436.55	56.23%	807.77
		21	216.13	56.23%	121.53
		22	343.26	56.23%	193.02
		23	216.14	56.23%	121.54
		24	252.40	56.23%	141.92
		25	508.07	56.23%	285.69
		26	1,104.98	56.23%	621.33
		27	224.42	56.23%	126.19
			18,260.50		$10,267.8
KYTE, LAWRENCE W.	2006	03	54.40	56.23%	30.5
		16	56.27	56.23%	31.6
			110.67		$62.
LEFF, KARIN S.	2006	05	74.15	56.23%	41.
			74.15		$41

EPA Indirect Costs

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Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
LEGARE, AMY R.	2006	20	67.12	56.23%	37.74
			67.12		$37.74
MAROUF, AFIF A.	2006	11	13.98	56.23%	7.86
		12	1,061.79	56.23%	597.04
			1,075.77		$604.90
MOLITOR, PAMELA J.	2006	15	272.26	56.23%	153.09
		16	114.64	56.23%	64.46
		17	113.75	56.23%	63.96
			500.65		$281.51
MOTT, PATRICIA D.	2006	05	151.94	56.23%	85.44
			151.94		$85.44
NATHAN, STEPHEN J.	2006	04	80.65	56.23%	45.35
		07	13.44	56.23%	7.56
		10	27.79	56.23%	15.63
		17	27.79	56.23%	15.63
		25	83.38	56.23%	46.88
		26	13.68	56.23%	7.69
			246.73		$138.74
LSON, THOMAS LEVERETT	2006	03	18.06	56.23%	10.16
		05	18.06	56.23%	10.16
		08	18.97	56.23%	10.67
		14	80.72	56.23%	45.39
		21	20.19	56.23%	11.35
		24	20.19	56.23%	11.35

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EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
NELSON, THOMAS LEVERETT	2006	26	19.23	56.23%	10.81
			195.42		$109.89
PASTOR, SUSAN J.	2006	03	87.83	56.23%	49.39
		13	75.69	56.23%	42.56
			163.52		$91.95
PUCHALSKI, CONNIE L.	2006	03	74.33	56.23%	41.80
		04	371.60	56.23%	208.95
		06	1,486.38	56.23%	835.79
		07	468.67	56.23%	263.53
		09	323.03	56.23%	181.64
		13	403.79	56.23%	227.05
		14	80.75	56.23%	45.41
		15	80.75	56.23%	45.41
		17	80.76	56.23%	45.41
		18	80.76	56.23%	45.41
			3,450.82		$1,940.40
ROBERMAN, ALIDA I.	2006	11	2,294.23	56.23%	1,290.05
		12	1,231.04	56.23%	692.2
		17	1,342.97	56.23%	755.1
		18	223.83	56.23%	125.8
		19	115.07	56.23%	64.7
		20	172.60	56.23%	97.0
		21	345.20	56.23%	194.
			5,724.94		$3,219.
SHORT, THOMAS R.	2006	17	111.02	56.23%	62.
			111.02		$62.

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
TAYLOR, DARIUS L.	2006	24	24.73	56.23%	13.91
			24.73		$13.91
THORN, STEPHEN	2006	02	16.12	56.23%	9.06
		03	16.12	56.23%	9.06
		04	16.12	56.23%	9.06
			48.36		$27.18
URSIC, JAMES R.	2006	25	114.53	56.23%	64.40
		27	1,505.34	56.23%	846.45
			1,619.87		$910.85
VOGTMAN, PATRICIA	2006	20	283.56	56.23%	159.45
		21	56.71	56.23%	31.89
		22	113.42	56.23%	63.78
		24	226.84	56.23%	127.55
		25	340.27	56.23%	191.33
		26	56.72	56.23%	31.89
		27	56.72	56.23%	31.89
			1,134.24		$637.78
/ATKINS, ERNEST E., II	2006	04	273.19	56.23%	153.61
		05	136.60	56.23%	76.81
			409.79		$230.42
LLIAMS, THOMAS M.	2006	19	137.82	56.23%	77.50
			137.82		$77.50
LIS, DOROTHY L	2006	03	54.45	56.23%	30.62
		04	54.45	56.23%	

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EPA Indirect Costs

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PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
WILLIS, DOROTHY L	2006	05	40.82	56.23%	22.95
		06	27.20	56.23%	15.29
		07	54.45	56.23%	30.62
		09	56.30	56.23%	31.66
		10	56.30	56.23%	31.66
		11	70.37	56.23%	39.57
		12	71.80	56.23%	40.37
		13	86.12	56.23%	48.43
		14	71.78	56.23%	40.36
		15	57.42	56.23%	32.29
		17	100.50	56.23%	56.51
		19	28.71	56.23%	16.14
		20	57.41	56.23%	32.28
		22	43.06	56.23%	24.21
		23	43.08	56.23%	24.22
			974.22		$547.80
Total Fiscal Year 2006 Payroll Direct Costs:			72,222.11		$40,610.53

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
196588301	202273228	02/16/2006	2,000.00	0.00	56.23%	1,124.60
		08/30/2006	2,000.00	0.00	56.23%	1,124.60
			4,000.00	0.00		$2,249.20
68-D0-0267	75	01/26/2006	72.75	2.17	56.23%	42.13
			72.75	2.17		$42.13
68-W0-0129	G9009-059	11/14/2005	160.98	49.35	56.23%	118.27
	G9009-060	12/05/2005	209.78	64.31	56.23%	154.1[illegible]

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
68-W0-0129	G9009-061	12/30/2005	1,567.30	480.44	56.23%	1,151.44
	G9009-062	02/07/2006	3,910.10	1,198.59	56.23%	2,872.62
	G9009-063	03/08/2006	5,182.26	1,588.56	56.23%	3,807.23
	G9009-064	03/30/2006	7,978.90	2,445.84	56.23%	5,861.83
	G9009-065	05/11/2006	9,134.07	2,799.94	56.23%	6,710.49
	G9009-066	06/08/2006	8,344.69	2,557.96	56.23%	6,130.56
	G9009-067	06/28/2006	12,185.05	3,735.18	56.23%	8,951.95
	G9009-068	08/10/2006	9,071.86	2,780.87	56.23%	6,664.79
	G9009-069	09/07/2006	1,674.97	513.44	56.23%	1,230.54
			59,419.96	18,214.48		$43,653.84
68-W0-1002	11	10/06/2005	15.39	0.00	56.23%	8.65
			15.39	0.00		$8.65
68-W0-1014	227211-21	11/10/2005	558.50	717.90	56.23%	717.72
	228724-23	01/12/2006	-67.82	-87.18	56.23%	-87.16
	230002-25	03/17/2006	1,555.08	1,998.91	56.23%	1,998.41
	230569-25	04/13/2006	3,044.93	3,913.97	56.23%	3,912.99
	231479-26	05/12/2006	1,187.19	1,526.02	56.23%	1,525.64
			6,277.88	8,069.62		$8,067.60
68-W0-1034	1-22	11/08/2005	75.92	53.75	56.23%	72.91
	1-25	02/06/2006	138.56	98.10	56.23%	133.07
	1-26	03/08/2006	16.86	11.94	56.23%	16.19
	1-27	04/04/2006	406.30	287.66	56.23%	390.21
	1-28	05/17/2006	16.86	11.94	56.23%	16.19
	JVF5515	09/27/2006	-7.77	-5.50	56.23%	-7.46
			646.73	457.89		$621.11
I-W0-1038	AR2006007	02/07/2006	1,280.00	906.23	56.23%	1,229.32
	AR2006095	03/15/2006	760.00	538.08	56.23%	729.91

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OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
68-W0-1038	AR2006116	03/28/2006	501.97	355.39	56.23%	482.09
			2,541.97	1,799.70		$2,441.32
68-W0-3018	50649	10/26/2005	798.00	564.98	56.23%	766.40
			798.00	564.98		$766.40
68-W6-0037	49-A	11/10/2005	2,323.12	59.91	56.23%	1,339.98
	50-A	12/01/2005	4,831.52	124.60	56.23%	2,786.83
	51-A	12/22/2005	5,198.64	134.07	56.23%	2,998.58
	52-A	01/27/2006	14,077.50	363.06	56.23%	8,119.93
	53-A	03/07/2006	8,241.73	212.55	56.23%	4,753.84
	54-A	03/28/2006	5,895.00	152.03	56.23%	3,400.24
	55-A	05/08/2006	5,510.67	142.12	56.23%	3,178.56
	56-A	06/07/2006	904.33	23.32	56.23%	521.62
	57-A	06/28/2006	5,530.14	142.62	56.23%	3,189.79
	58-A	08/10/2006	898.57	23.17	56.23%	518.29
	59-A	09/07/2006	2,740.65	70.68	56.23%	1,580.81
	60-A	09/26/2006	10,868.35	280.29	56.23%	6,268.88
			27.41	0.71	56.23%	15.81
			1,026.88	26.48	56.23%	592.30
			68,074.51	1,755.61		$39,265.46
68-W7-0026	222Z	12/07/2005	301.17	5.92	56.23%	172.6
	223	12/14/2005	442.88	8.70	56.23%	253.9
	224	01/13/2006	910.89	17.90	56.23%	522.2
	225	02/15/2006	1,737.48	34.15	56.23%	996.1
	226	03/14/2006	1,119.13	22.00	56.23%	641.6
	227	04/12/2006	440.86	8.67	56.23%	252.7
	228	05/16/2006	35.87	0.71	56.23%	20.5
	232	09/15/2006	107.59	2.11	56.23%	61.
			5,095.87	100.16		$2,921.

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
DOJ/OVERSIG	FY06	09/30/2006	83,580.75	0.00	56.23%	46,997.46
			83,580.75	0.00		$46,997.46
Total Fiscal Year 2006 Other Direct Costs:			230,523.81	30,964.61		$147,034.90
Total Fiscal Year 2006:			333,710.53			$187,645.43

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
BALL, STEPHANIE M	2007	21	235.95	62.91%	148.44
		24	117.66	62.91%	74.02
			353.61		$222.46
BRUCE, DONALD J.	2007	01	338.58	62.91%	213.00
		02	203.14	62.91%	127.80
		03	270.86	62.91%	170.40
		05	135.42	62.91%	85.19
		06	67.72	62.91%	42.60
		07	135.42	62.91%	85.19
		08	276.84	62.91%	174.16
		09	207.63	62.91%	130.62
		14	69.21	62.91%	43.54
		16	69.21	62.91%	43.54
		17	553.69	62.91%	348.33
		18	69.21	62.91%	43.54
		19	69.21	62.91%	43.54
		21	276.84	62.91%	174.16
		23	276.84	62.91%	174.16
		24	139.06	62.91%	87.48

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EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
BRUCE, DONALD J.	2007	26	69.21	62.91%	43.54
			3,228.09		$2,030.79
CARLSON, JANET R.	2007	21	321.10	62.91%	202.00
		22	240.81	62.91%	151.49
		23	361.21	62.91%	227.24
			923.12		$580.73
DRAUGELIS, ARUNAS K.	2007	03	156.31	62.91%	98.33
		04	156.31	62.91%	98.33
		05	312.64	62.91%	196.68
			625.26		$393.34
EPSTEIN, JOSHUA N.	2007	15	74.94	62.91%	47.14
		16	12.20	62.91%	7.68
			87.14		$54.82
HANS, MICHAEL E.	2007	02	13.84	62.91%	8.71
		10	56.58	62.91%	35.59
		14	28.26	62.91%	17.78
		21	116.41	62.91%	73.23
		23	29.06	62.91%	18.28
		24	87.29	62.91%	54.9
			331.44		$208.5
HILL, LOLITA A.	2007	01	643.77	62.91%	405.0
		07	980.29	62.91%	616.7
		09	2,094.99	62.91%	1,317.9
		11	179.56	62.91%	112.
		12	419.01	62.91%	263.
		13	119.72	62.91%	75.

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
HILL, LOLITA A.	2007	15	598.59	62.91%	376.57
		16	598.59	62.91%	376.57
		17	658.43	62.91%	414.22
		18	778.14	62.91%	489.53
		19	1,526.37	62.91%	960.24
		20	1,616.13	62.91%	1,016.71
		21	2,573.84	62.91%	1,619.20
		22	1,631.09	62.91%	1,026.12
		23	1,855.57	62.91%	1,167.34
		24	135.75	62.91%	85.40
		25	224.46	62.91%	141.21
		26	1,406.64	62.91%	884.92
			18,040.94		$11,349.57
JONES, EVETTE L.	2007	17	314.88	62.91%	198.09
			314.88		$198.09
JOYCE, EMMETT M.	2007	03	601.35	62.91%	378.31
		04	304.70	62.91%	191.69
		05	360.10	62.91%	226.54
		06	1,038.76	62.91%	653.48
		07	524.23	62.91%	329.79
		08	527.54	62.91%	331.88
		09	226.43	62.91%	142.45
		10	396.25	62.91%	249.28
		11	566.08	62.91%	356.12
		12	367.95	62.91%	231.48
		13	748.18	62.91%	470.68
		14	206.58	62.91%	129.96
		15	446.46	62.91%	280.87
		16	254.75	62.91%	160.26
		17	539.19	62.91%	339.20
		19	141.54	62.91%	89.04
		20	[illegible]		

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EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
JOYCE, EMMETT M.	2007	21	496.14	62.91%	312.12
		22	273.92	62.91%	172.32
		23	622.70	62.91%	391.74
		24	594.39	62.91%	373.93
		25	819.30	62.91%	515.42
		26	396.26	62.91%	249.29
			10,566.02		$6,647.08
KOLLER, MARK J.	2007	01	418.91	62.91%	263.54
		02	314.17	62.91%	197.64
		03	598.43	62.91%	376.47
		04	358.25	62.91%	225.38
		05	523.90	62.91%	329.59
		06	582.67	62.91%	366.56
		07	777.47	62.91%	489.11
		08	487.60	62.91%	306.75
		09	76.18	62.91%	47.92
		10	473.79	62.91%	298.06
		11	183.25	62.91%	115.28
		12	304.06	62.91%	191.28
		13	670.93	62.91%	422.08
		14	212.84	62.91%	133.90
		15	244.53	62.91%	153.83
		16	137.55	62.91%	86.53
		17	458.49	62.91%	288.44
		18	81.80	62.91%	51.46
		19	829.22	62.91%	521.66
		20	157.61	62.91%	99.1
		21	954.60	62.91%	600.5
		22	220.65	62.91%	138.8
		23	974.30	62.91%	612.9
		24	583.71	62.91%	367.2
		25	535.86	62.91%	337.

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
KOLLER, MARK J.	2007	26	97.38	62.91%	61.26
			11,258.15		$7,082.49
KYTE, LAWRENCE W.	2007	06	18.76	62.91%	11.80
			18.76		$11.80
NATHAN, STEPHEN J.	2007	06	13.90	62.91%	8.74
		15	56.87	62.91%	35.78
		16	28.43	62.91%	17.89
			99.20		$62.41
NELSON, THOMAS LEVERETT	2007	10	20.46	62.91%	12.87
		13	40.90	62.91%	25.73
		16	41.27	62.91%	25.96
		17	20.62	62.91%	12.97
		20	20.47	62.91%	12.88
		21	20.05	62.91%	12.61
			163.77		$103.02
PUCHALSKI, CONNIE L.	2007	05	614.78	62.91%	386.76
		13	330.23	62.91%	207.75
		23	165.10	62.91%	103.86
			1,110.11		$698.37
DEMELE, JULIE	2007	22	215.81	62.91%	135.77
		23	145.80	62.91%	91.72
			361.61		$227.49
ORT, THOMAS R.	2007	14	18.91	62.91%	11.90

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EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
SHORT, THOMAS R.	2007	24	194.72	62.91%	122.50
			213.63		$134.40
SINGH, JATINDER P.	2007	13	69.19	62.91%	43.53
			69.19		$43.53
TAYLOR, DARIUS L.	2007	01	49.48	62.91%	31.13
		02	49.48	62.91%	31.13
		16	75.94	62.91%	47.77
			174.90		$110.03
VOGTMAN, PATRICIA	2007	10	58.07	62.91%	36.53
		12	58.09	62.91%	36.54
		17	58.08	62.91%	36.54
		18	14.45	62.91%	9.09
		19	14.51	62.91%	9.13
		21	174.22	62.91%	109.60
		22	115.13	62.91%	72.43
		23	14.52	62.91%	9.13
			507.07		$318.99
WILLIS, DOROTHY L	2007	02	43.07	62.91%	27.10
		04	57.42	62.91%	36.12
		08	14.63	62.91%	9.20
		09	58.57	62.91%	36.85
		12	29.29	62.91%	18.43
		13	73.21	62.91%	46.06
		14	29.28	62.91%	18.42
		17	43.92	62.91%	27.63
		19	14.63	62.91%	9.20
		21	43.92	62.91%	27.63
		22	30.01	62.91%	18.88

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
WILLIS, DOROTHY L	2007	24	29.29	62.91%	18.43
		25	102.48	62.91%	64.47
		26	14.63	62.91%	9.20
			584.35		$367.62
Total Fiscal Year 2007 Payroll Direct Costs:			49,031.24		$30,845.53

TRAVEL DIRECT COSTS

Traveler/Vendor Name	Travel Number	Treasury Schedule Date	Travel Costs	Ind. Rate (%)	Indirect Costs
BRUCE, DONALD J.	TM0521059	05/22/2007	25.65	62.91%	16.14
			25.65		$16.14
Total Fiscal Year 2007 Travel Direct Costs:			25.65		$16.14

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
196588301	202273228	03/19/2007	1,300.00	0.00	62.91%	817.83
		03/20/2007	200.00	0.00	62.91%	125.82
		03/23/2007	8,400.00	0.00	62.91%	5,284.44
		04/19/2007	6,750.00	0.00	62.91%	4,246.43
		05/17/2007	2,200.00	0.00	62.91%	1,384.02
		07/03/2007	5,904.00	0.00	62.91%	3,714.21
			3,596.00	0.00	62.91%	2,262.24
		08/23/2007	12,800.00	0.00	62.91%	8,052.48
			41,150.00	0.00		$25,887.47
58-W0-0129	G9009-070	10/10/2006	47.88	14.68	62.91%	39.36

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EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
68-W0-0129	G9009-071	07/03/2007	80.64	24.72	62.91%	66.28
			128.52	39.40		$105.64
68-W0-1034	JVF5568	10/02/2006	-3.71	-2.63	62.91%	-3.99
			-3.71	-2.63		$-3.99
68-W6-0037	61-A	11/13/2006	21.49	0.55	62.91%	13.87
	63-A	03/22/2007	5,515.88	142.25	62.91%	3,559.53
			5,537.37	142.80		$3,573.40
68-W7-0026	240Z	01/10/2007	109.98	2.16	62.91%	70.55
	245	02/22/2007	283.55	5.57	62.91%	181.89
	246	03/23/2007	2,935.31	57.69	62.91%	1,882.90
	247	04/19/2007	2,856.24	56.14	62.91%	1,832.18
	248	06/01/2007	4,159.65	81.76	62.91%	2,668.27
	249	06/19/2007	727.33	14.30	62.91%	466.56
	254	08/17/2007	27.17	0.53	62.91%	17.43
			11,099.23	218.15		$7,119.78
DOJ/OVERSIG	F0Y7	09/30/2007	20,128.45	0.00	62.91%	12,662.81
			20,128.45	0.00		$12,662.81
EPS50602	A001	10/16/2006	10,234.34	0.00	62.91%	6,438.42
	A002	11/15/2006	14,956.24	0.00	62.91%	9,408.97
	A003	12/14/2006	12,945.73	0.00	62.91%	8,144.16
	A004	01/05/2007	18,914.15	0.00	62.91%	11,898.89
	A005	02/14/2007	16,036.36	0.00	62.91%	10,088.47
	A006	03/15/2007	11,459.74	0.00	62.91%	7,209.32
	A007	04/04/2007	8,955.53	0.00	62.91%	5,633.92
	A008	05/16/2007	67.07	0.00	62.91%	42.19
			6,258.78	0.00	62.91%	3,937.40

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
EPS50602	A009	06/11/2007	4,565.05	0.00	62.91%	2,871.87
	A010	07/02/2007	16,251.14	0.00	62.91%	10,223.59
	A011	08/10/2007	9,543.49	0.00	62.91%	6,003.81
	A012	09/05/2007	4,688.02	0.00	62.91%	2,949.23
			134,875.64	0.00		$84,850.24
EPW05052	1	12/08/2006	15.45	0.00	62.91%	9.72
	2	01/04/2007	7.73	0.00	62.91%	4.86
	6	05/01/2007	24.26	0.00	62.91%	15.26
	7	06/05/2007	176.82	0.00	62.91%	111.24
	8	07/09/2007	73.96	0.00	62.91%	46.53
	9	08/03/2007	96.42	0.00	62.91%	60.66
			394.64	0.00		$248.27
Total Fiscal Year 2007 Other Direct Costs:			213,310.14	397.72		$134,443.62
Total Fiscal Year 2007:			262,764.75			$165,305.29

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
BALL, STEPHANIE M	2008	01	29.27	62.91%	18.41
			29.27		$18.41
BIANCHIN, SHERI L.	2008	17	343.02	62.91%	215.79
			343.02		$215.79
BRUCE, DONALD J.	2008	08	143.33	62.91%	90.17
		10	215.00	62.91%	135.26
		12	[illegible]		

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EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
BRUCE, DONALD J.	2008	14	143.33	62.91%	90.17
		15	788.33	62.91%	495.94
		16	286.68	62.91%	180.35
		17	215.00	62.91%	135.26
		19	358.33	62.91%	225.43
		21	716.67	62.91%	450.86
		25	287.95	62.91%	181.15
			3,584.62		$2,255.10
CANO, RANDOLPH O.	2008	14	12.47	62.91%	7.84
			12.47		$7.84
CARNEY, WENDY L.	2008	14	85.95	62.91%	54.07
		15	85.95	62.91%	54.07
			171.90		$108.14
CO, GRACE	2008	16	45.01	62.91%	28.32
			45.01		$28.32
HANS, MICHAEL E.	2008	15	43.81	62.91%	27.56
			43.81		$27.56
HILL, LOLITA A.	2008	02	1,182.17	62.91%	743.7
		03	1,421.63	62.91%	894.3
		04	867.93	62.91%	546.0
		05	1,406.63	62.91%	884.9
		06	1,320.50	62.91%	830.7
		09	62.02	62.91%	39.
		10	155.05	62.91%	97.
		12	780.27	62.91%	490.
		13	1,783.46	62.91%	1,121

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
HILL, LOLITA A.	2008	14	1,257.99	62.91%	791.40
		15	2,356.73	62.91%	1,482.62
		16	1,735.71	62.91%	1,091.94
		18	1,528.70	62.91%	961.71
		19	732.50	62.91%	460.82
		20	95.55	62.91%	60.11
		21	955.44	62.91%	601.07
		22	525.50	62.91%	330.59
		23	127.41	62.91%	80.15
		25	640.73	62.91%	403.08
		27	268.80	62.91%	169.10
			19,204.72		$12,081.69
JONES, TERESA	2008	09	13.67	62.91%	8.60
			13.67		$8.60
JOYCE, EMMETT M.	2008	01	55.54	62.91%	34.94
		02	283.05	62.91%	178.07
		06	0.00	62.91%	0.00
		11	391.11	62.91%	246.05
		13	146.62	62.91%	92.24
		14	117.30	62.91%	73.79
		15	322.54	62.91%	202.91
		16	234.58	62.91%	147.57
		24	293.23	62.91%	184.47
		25	59.89	62.91%	37.68
			1,903.86		$1,197.72
LLER, MARK J.	2008	03	681.99	62.91%	429.04
		04	925.57	62.91%	582.28
		05	983.23	62.91%	618.55
		06	2,099.40	62.91%	1,320.73
		08	[illegible]		

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EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
KOLLER, MARK J.	2008	09	1,571.64	62.91%	988.72
		10	1,664.89	62.91%	1,047.38
		11	1,194.01	62.91%	751.15
		12	941.77	62.91%	592.47
		13	850.76	62.91%	535.21
		14	1,216.07	62.91%	765.03
		15	739.95	62.91%	465.50
		16	554.96	62.91%	349.13
		17	0.00	62.91%	0.00
		18	117.72	62.91%	74.06
		19	739.95	62.91%	465.50
		20	756.77	62.91%	476.08
		21	876.56	62.91%	551.44
		22	1,244.47	62.91%	782.90
		23	588.54	62.91%	370.25
		24	34.62	62.91%	21.78
		25	1,028.34	62.91%	646.93
			20,432.87		$12,854.32
KYTE, LAWRENCE W.	2008	05	134.23	62.91%	84.44
		16	79.46	62.91%	49.99
		23	39.74	62.91%	25.00
		25	218.51	62.91%	137.46
		26	19.87	62.91%	12.50
			491.81		$309.39
MARKS, THOMAS C.	2008	21	68.22	62.91%	42.92
			68.22		$42.92
NELSON, THOMAS LEVERETT	2008	14	21.20	62.91%	13.3
		15	64.15	62.91%	40.3
		19	21.38	62.91%	13.4
		25	42.33	62.91%	26.6

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
NELSON, THOMAS LEVERETT	2008	26	20.35	62.91%	12.80
			169.41		$106.58
PUCHALSKI, CONNIE L.	2008	14	170.41	62.91%	107.20
		15	85.21	62.91%	53.61
		26	166.56	62.91%	104.78
			422.18		$265.59
QUIGLEY, EDWARD J.	2008	09	166.70	62.91%	104.87
		10	205.15	62.91%	129.06
		11	76.93	62.91%	48.40
		23	102.58	62.91%	64.53
			551.36		$346.86
ROBERMAN, ALIDA I.	2008	13	608.50	62.91%	382.81
			608.50		$382.81
SHORT, THOMAS R.	2008	14	161.34	62.91%	101.50
			161.34		$101.50
VOGTMAN, PATRICIA	2008	02	116.14	62.91%	73.06
		08	15.05	62.91%	9.47
			131.19		$82.53
VALTERS, LAVETTA C.	2008	13	13.26	62.91%	8.34
		14	106.11	62.91%	66.75
		27	13.26	62.91%	8.34
			132.63		$83.43

Report Date: 09/01/2009

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
WILLIS, DOROTHY L	2008	02	14.64	62.91%	9.21
		11	106.50	62.91%	67.00
		12	15.21	62.91%	9.57
		15	30.44	62.91%	19.15
		21	31.72	62.91%	19.96
			198.51		$124.89
Total Fiscal Year 2008 Payroll Direct Costs:			48,720.37		$30,649.99

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
196588301	202273228	02/25/2008	250.00	0.00	62.91%	157.28
			250.00	0.00		$157.28
68-W7-0026	262	12/19/2007	2,504.69	49.23	62.91%	1,606.67
	265	05/23/2008	792.95	15.59	62.91%	508.65
	266Z	06/04/2008	18.70	0.37	62.91%	12.00
	267Z	06/04/2008	-10.23	-0.20	62.91%	-6.56
			3,306.11	64.99		$2,120.76
DOJ/OVERSIG	FYO8	09/30/2008	184,622.89	0.00	62.91%	116,146.26
			184,622.89	0.00		$116,146.26
DW14948147	2714 1	04/10/2008	1,718.97	0.00	62.91%	1,081.4
			1,718.97	0.00		$1,081.4
EPS50602	A013	10/03/2007	860.01	0.00	62.91%	541.(
			12,713.76	0.00	62.91%	7,998.:

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
EPS50602	A014	11/08/2007	17,040.46	0.00	62.91%	10,720.15
	A015	12/06/2007	6,510.12	0.00	62.91%	4,095.52
			8,758.25	0.00	62.91%	5,509.82
	A016	01/03/2008	72.55	0.00	62.91%	45.64
	A017	02/08/2008	13,741.78	0.00	62.91%	8,644.95
	A018	03/11/2008	15,033.57	0.00	62.91%	9,457.62
	A019	04/03/2008	22,708.43	0.00	62.91%	14,285.87
	A020	05/13/2008	9,414.17	0.00	62.91%	5,922.45
	A021	06/06/2008	11,555.29	0.00	62.91%	7,269.43
	A022	07/09/2008	4,538.73	0.00	62.91%	2,855.32
	A023	08/12/2008	6,390.21	0.00	62.91%	4,020.08
	A024	09/12/2008	14,862.00	0.00	62.91%	9,349.68
			2,690.20	0.00	62.91%	1,692.40
			146,889.53	0.00		$92,408.19
EPW05052	11	10/10/2007	32.13	0.00	62.91%	20.21
	14	01/09/2008	96.42	0.00	62.91%	60.66
	16	03/13/2008	15.14	0.00	62.91%	9.52
	17	04/09/2008	18.06	0.00	62.91%	11.36
	18	05/30/2008	28.28	0.00	62.91%	17.79
	19	06/17/2008	2,787.36	0.00	62.91%	1,753.53
	20	07/09/2008	432.61	0.00	62.91%	272.15
	21	08/07/2008	891.64	0.00	62.91%	560.93
	22	09/09/2008	541.69	0.00	62.91%	340.78
			4,843.33	0.00		$3,046.93
Total Fiscal Year 2008 Other Direct Costs:			341,630.83	64.99		$214,960.82
Total Fiscal Year 2008:			390,416.19			$245,610.81

Report Date: 09/01/2009

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
BRUCE, DONALD J.	2009	01	430.00	62.91%	270.51
		02	286.68	62.91%	180.35
		03	1,361.66	62.91%	856.62
		04	430.00	62.91%	270.51
		05	286.68	62.91%	180.35
		06	215.00	62.91%	135.26
		07	71.68	62.91%	45.09
		08	298.70	62.91%	187.91
		09	149.35	62.91%	93.96
		10	298.70	62.91%	187.91
			3,828.45		$2,408.47
HANS, MICHAEL E.	2009	03	15.09	62.91%	9.49
		04	15.07	62.91%	9.48
		05	105.61	62.91%	66.44
		06	15.07	62.91%	9.48
			150.84		$94.89
HILL, LOLITA A.	2009	01	378.18	62.91%	237.91
		03	254.78	62.91%	160.28
		04	286.63	62.91%	180.32
		05	238.86	62.91%	150.27
		07	63.69	62.91%	40.07
		08	50.20	62.91%	31.58
		09	165.71	62.91%	104.25
			1,438.05		$904.68
JOYCE, EMMETT M.	2009	03	205.26	62.91%	129.1
		04	100.40	62.91%	63.1
		05	146.13	62.91%	91.9
		06	58.65	62.91%	36.9
		09	176.72	62.91%	111.

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
JOYCE, EMMETT M.	2009	10	795.25	62.91%	500.29
			1,482.41		$932.58
KOLLER, MARK J.	2009	01	1,627.15	62.91%	1,023.64
		03	2,111.83	62.91%	1,328.55
		04	333.76	62.91%	209.97
		05	103.86	62.91%	65.34
		06	234.65	62.91%	147.62
		07	17.31	62.91%	10.89
		08	90.13	62.91%	56.70
		09	198.29	62.91%	124.74
		10	396.55	62.91%	249.47
			5,113.53		$3,216.92
KYTE, LAWRENCE W.	2009	01	19.92	62.91%	12.53
		03	61.13	62.91%	38.46
		04	35.66	62.91%	22.43
		06	20.36	62.91%	12.81
		10	42.02	62.91%	26.43
			179.09		$112.66
NELSON, THOMAS LEVERETT	2009	01	20.22	62.91%	12.72
		02	20.35	62.91%	12.80
		10	23.23	62.91%	14.61
			63.80		$40.13
JCHALSKI, CONNIE L.	2009	08	91.09	62.91%	57.30
			91.09		$57.30
IGLEY, EDWARD J.	2009	09	53.90	62.91%	33.91

Report Date: 09/01/2009

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
QUIGLEY, EDWARD J.	2009	10	107.80	62.91%	67.82
			161.70		$101.73
SAMUEL, JANET R.	2009	09	13.05	62.91%	8.21
			13.05		$8.21
WALTERS, LAVETTA C.	2009	01	53.05	62.91%	33.37
		02	79.52	62.91%	50.03
		03	26.52	62.91%	16.68
			159.09		$100.08
Total Fiscal Year 2009 Payroll Direct Costs:			12,681.10		$7,977.65

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
DOJ/OVERSIG	FY09	02/01/2009	98,614.49	0.00	62.91%	62,038.38
			98,614.49	0.00		$62,038.38
EPS50602	A025	10/10/2008	15,530.35	0.00	62.91%	9,770.14
	A026R	11/20/2008	13,715.75	0.00	62.91%	8,628.58
			-1.06	0.00	62.91%	-0.67
	A027	12/10/2008	5,556.97	0.00	62.91%	3,495.89
	A028	01/09/2009	8,415.25	0.00	62.91%	5,294.03
	A029	02/20/2009	6,529.64	0.00	62.91%	4,107.80
			122.78	0.00	62.91%	77.24
			49,869.68	0.00		$31,373.01
EPW05052	23	10/09/2008	73.58	0.00	62.91%	46.29

EPA Indirect Costs

WAUCONDA SAND AND GRAVEL, WAUCONDA, IL SITE ID = 05 81

Cumulative Costs from 05/01/2005 through 02/27/2009

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
EPW05052	24	11/14/2008	128.44	0.00	62.91%	80.80
	26	01/15/2009	44.67	0.00	62.91%	28.10
			246.69	0.00		$155.19
Total Fiscal Year 2009 Other Direct Costs:			148,730.86	0.00		$93,566.58
Total Fiscal Year 2009:			161,411.96			$101,544.23
Total EPA Indirect Costs						$747,570.00

3

"Ellis, Steven (ENRD)"
<SEllis@ENRD.USDOJ.GOV
>

12/16/2009 02:50 PM

To "PETER KELLY" <pkelly@vedderprice.com>

cc Mark Koller/R5/USEPA/US@EPA, "Lux, Kelly (ENRD)"
<KLux@ENRD.USDOJ.GOV>

bcc

Subject DOJ Cost Summary

Peter: Pursuant to your request from our phone call today, here is the DOJ total cost summary page for the Wauconda matter from May 1, 2005 through Feb. 28, 2009. We will get back to you as soon as we can about the question you had raised about EPA indirect costs.

Sincerely,

Steven D. Ellis
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
Phone (202) 514-3163
Fax: (202) 616-6584
Email: steven.ellis@usdoj.gov

For overnight packages:
601 D. St., N.W., Room 8030
Washington, D.C. 20004

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DOJ COST SUMMARY

Dated: April 10, 2009

CASE NAME: U.S. v. Wauconda Sand and Gravel

D.J. NUMBER: 90-11-2-153/1

	FY05 05-01/05 - 09/30/05	FY06	FY07	FY08	FY09 10/1/08 - 02/28/09	TOTAL
Hours	121.25	428.25	108.25	1,539.55	888.75	3,086.05
Direct Labor	$ 6,126.74	$ 25,816.18	$ 6,543.97	$ 60,480.85	$ 33,580.33	$ 132,548.07
Other Direct Costs	542.34	2,129.97	-	4,328.04	1,142.16	8,142.51
Indirect Costs	13,179.35	55,634.60	13,584.48	119,814.00	63,892.00	266,104.43
TOTAL:	$ 19,848.43	$ 83,580.75	$ 20,128.45	$ 184,622.89	$ 98,614.49	$ 406,795.01

4

VEDDER PRICE

VEDDER PRICE P.C.
222 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
312-609-7500
FAX: 312-609-5005

CHICAGO • NEW YORK CITY • WASHINGTON, DC

PETER J. KELLY
312-609-7875
pkelly@vedderprice.com

January 14, 2010

Mark J. Koller, Esq.
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

Re: Wauconda Sand & Gravel Superfund Site

Dear Mr. Koller:

Thank you for the information first received on November 23, 2009, in response to our[1] request for the documents relied on by the U.S.EPA in support the Agency's response cost billing of $1,972,788.45 for the period 5/01/2005 through 2/27/2009. We were, as the Agency is already aware, taken completely by surprise by the amount of this invoice, as the Agency had given us no reason to expect a bill anywhere near this magnitude during the course of Consent Decree negotiations. After consideration of the information received thus far, we believe that the overall bill is unreasonable, disproportionate to our responsibility, and seeks to impose an arbitrary burden on us. Considering all the circumstances – including our dispute over the reasonableness of the overall amount and the accuracy and propriety of the component parts – for the reasons set forth below, we respectfully request that the Agency accept a substantially reduced sum to resolve the Agency's claim.

The amount invoiced, $1,972,788.45, represents an average of $42,886.70 for each of the 46 months in the period. The run-rate at Wauconda is virtually unprecedented. The government costs cannot be justified by the relatively benign condition of the site. In fact, the government spent on 'oversight' more than 50% of the amount spent by the CD Respondents for the actual work during that same 46 month period.

In this case, hundreds of parties' waste was sent to the landfill during the twenty-plus years of its operation. The small group of Respondents that stepped up, undertook response actions in the past and signed onto to the most recent CD have already paid for installation of a public water system and a record setting amount of groundwater monitoring. Respondents

[1] This letter is written on behalf of the Wauconda Task Groups I and II consisting of BFI Waste Systems of North America, Inc., Borden Chemical, Inc., successor to IB Distributors, Inc., Exxon Mobil Corporation, Giddings & Lewis Machine Tools, as successor to Basic Electronics Mfg. Corp., H.B. Fuller Company, Honeywell, Inc., Mail-Well Envelope Co., Morton International, Inc., Waste Management of Illinois, Inc., Weber Foreign Manufacturing, Inc., f/k/a Ink Specialties Company, Inc. and Wells Manufacturing Company.

agreed in 2005 to pay EPA oversight costs based on their collective experience at other NPL sites. In no way could they have anticipated that by assuming the monitoring and water system responsibilities of hundreds of other PRPs they were also agreeing to pay a record oversight cost bill incurred to oversee our efforts to address conditions caused by these hundreds of responsible parties that have not contributed any resources – time or money – to help address the issues. The Respondents to the CD strongly believe the size of the oversight cost bill is disproportionate to the risks associated with the landfill and, in light of the large orphan share, an arbitrary burden.

In addition to our overall concern that EPA spent an excessive amount on oversight and is unfairly asking only a few of the potentially responsible parties to pay, we have some more specific concerns and questions about specific elements of the claim:

1. Five of the contracts included on the EPA roster allowed the contractor to include an "Allocation Amount" in the invoices:

	Site Work	Annual Allocation
Alion (68-W0-1014)	$6,277.88	$8,069.62
Lockheed (68-D0-0267	$72.75	$2.17
TetraTech (68-W6-0837)	$87,316.83	$2,251.87
Weston (68-W7-0026)	$25,372.04	$498.70
TetraTech (68-W0-0129)	$65,282.85	$20,011.68
		$30,834.04

The "Annual Allocation" for each contractor is an amount spread over all the sites where that contractor is working that covers the contractors overhead, training costs and related indirect type costs, and is effectively the equivalent of EPA indirect costs. The 'Annual Allocation' factor for these contractors ranges from a few percent to more than 30% of direct costs for some of TetraTech's work and more than 125% for Alion's work.

As we understand the invoice materials provided, after charging these 'annual allocation' amounts, EPA went on to apply its own indirect cost factor (about 63%) on the sum of the contractor's direct costs plus its annual allocation. By way of example, for Alion, it appears that the Agency charged $6,277.88 for direct costs, plus $8,069.62 for 'annual allocation' plus $9,308.93 (63% of $14,347.50) for indirect costs, for a total of $23,386.43. Stated another way, the Agency is seeking to charge us 373% of the actual direct cost it was charged by Alion.

We believe that the Agency should not be charging any USEPA 'indirect cost' factor on top of the contractor's direct costs plus its annual allocation because the Agency is, in fact, not incurring any indirect costs or other overhead on the contractors charges. The Agency is separately being paid for its employees direct and indirect time to manage the contractors and, when those sums are added to the contractor's direct costs plus their annual allocation, 100% of

the Agency's response costs are being covered. In effect, EPA's tagging its indirect costs onto contractor indirect costs and is "double dipping;" and, as the Alion example reflects, this represents an arbitrary, unreasonable and unfair charge.

2. Sultrac's May 2007 Progress Report (Voucher No. A01) for Task 8 describes review of a "proposed site development." Sultrac's October 7, 2007 monthly progress Report for Task 8 discusses reviews of "Mr. Dale Berger and Washington Land Management Group" construction designs. Washington Land Management is affiliated with Mr. Berger and owns the south third of the property on which the landfill is located. Berger seeks to develop the unfilled portion of the referenced parcel. No charges by Sultrac, EPA or EPA's other contractors for reviewing Berger's designs are appropriate oversight costs and should be deleted from the oversight cost bill. Neither Mr. Berger not Washington Land Management is paying for any response costs. Any costs incurred by EPA or its contractors in dealing with the commercial development of Berger's property should be paid by Berger. As it is not possible to determine costs attributable to Berger from the documents provided, we request that EPA identify them.

3. By memo of December 16, 2009, Steven Ellis provided a single page summary of Department of Justice costs. DOJ incurred direct labor of $132,548.07 and other direct costs of $8,142.51. Onto DOJ's $140,690.58 of direct costs DOJ added $266,104.43 of "indirect costs." Then, EPA added $250,093.38 of its own "indirect costs" on top of DOJ's total direct and indirect costs. In sum, DOJ incurred $140,690.58 of actual costs on the Wauconda site and the government is asking us to pay an additional $516,197.81 of its costs not related to any specific site. Indirect costs equal 370% of Direct costs. If this were the North Pole, there are a lot of elves not making toys. We do not believe this result is fair or rational.

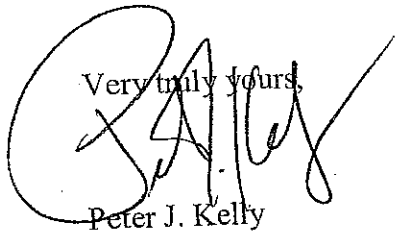
4. The documentation provided for the Department of Interior charge of $1,718.97 offers no explanation of the basis for those charges. It appears that assignment of the amount was arbitrary. See Attachment A. No information is provided about the nature of the work. What did DOI do and how was the charge determined?

5. Finally, much of TetraTech's and Sultrac's oversight was unnecessary, duplicative and arbitrary. For example, EPA's contractors took splits of most of Respondent's samples from groundwater wells. EPA's contractors took splits of every sample of the wells at homes on North Garland Road. This type of sampling is archaic and dates to the era before EPA developed the Contract Laboratory Program. As evidence of the caprice associated with this practice, not a single analytical result from EPA's split sampling differed from Respondent's contractors' results. In addition, many of our field events were attended by at least one EPA contractor representative (frequently two) in addition to an EPA representative.

For all the foregoing reasons, we reiterate our request that the Agency consider accepting a substantially reduced sum to resolve the Agency's past response cost claim, and close this

chapter. We are willing to enter into direct negotiations with the Agency; and, alternatively, we would be amenable to participating in mediation of this dispute. Please let us know how you would like to proceed.

Very truly yours,



Peter J. Kelly

PJK/jab
Enclosure
cc: WTG

5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 23 2010

Via Certified Mail
Return Receipt Requested

REPLY TO THE ATTENTION OF:

Peter J. Kelly, Esq.
Vedder Price P.C.
222 North LaSalle Street
Chicago, Illinois 60601

Dear Mr. Kelly:

This letter is in response to your correspondence dated January 14, 2010. In that letter, you request additional supporting information regarding certain charges that appear in the response cost billing for May 1, 2005 to February 27, 2009. You also argue that the bill is unreasonable and you make a non-specific offer of a "substantially reduced sum" in order to resolve the matter. The first part of the response addresses some of the initial assertions you made. The second part addresses Items #1 through #5. The final part addresses the proper procedure for handling disputed portions of the bill.

In 1993, the members of the Wauconda Task Group I ("WTG I") and other parties agreed to reimburse U.S. EPA for oversight costs at the Site. The WTG I entered into a consent decree, entered in 1994 ("1994 CD"), knowing at the time that many parties sent garbage to the Wauconda Sand & Gravel landfill over the course of its life and that these parties were not going to participate in a consent decree. The discovery of widespread drinking water contamination by a known carcinogen, vinyl chloride, in drinking water wells near the landfill in 2003 prompted renewed activity at the Site. U.S. EPA issued a Unilateral Administrative Order in 2004 when an agreement could not be reached regarding the proper amount of drinking water monitoring. The WTG II, which arose when Wells Manufacturing refused to participate in any groundwater remedy, offered to connect residences to the Village of Wauconda water supply. In conjunction with that offer, the WTG II requested that a new consent decree be negotiated. The purposes of negotiating a new consent decree, as explained by the WTG II's attorney Gary Gengel, was to (1) reach agreement on the response to the discovery of vinyl chloride in the drinking water wells; (2) consolidate all of the rights and obligations of the parties as to the Site into one judicially enforceable document; and (3) preserve as much as the law allows the Settling Defendants' right to seek contribution from non-settling parties. The WTG II may have also desired protection, in the form of a final settlement with the U.S. EPA, from the private lawsuits being threatened against the WTG II. Consent Decree negotiations took several years to complete and were difficult; many of the central terms under negotiations were vigorously contested by the parties. Finally, after the United States received 109 comments questioning whether the Consent Decree was sufficiently protective of human health and the environment, the Decree was entered in February 2009 ("2009 CD"). Given that the WTG I and II is

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represented by counsel, experienced in CERLCA matters, and that the law on the issues described in your letter are well settled in law, I am surprised by the nature of your arguments.

To the extent the WTG II believes it is bearing a disproportionate share of the costs, it must remember that significant public funding has been provided to address the drinking water problem since 2004 and other decisions have been made to make sure that other liable parties pay their fair share for costs incurred at the Site. For example, the United States compromised $300,000 from oversight costs incurred by the United States between May 1, 2004 and April 30, 2005 that the WTG II parties owed under the 1994 CD. The United States intends to seek payment for those costs from non-paying parties, such as Wells Manufacturing. The WTG II was also assisted by a $750,000 Congressional appropriation for water infrastructure. In addition, the WTG II and the Village of Wauconda secured low-interest loans from the State of Illinois for the construction of new water infrastructure. The Illinois EPA provided grants in the amount of $363,000 to close drinking water wells. These mechanisms of public funding significantly lowered the WTG II's costs. Without calculating the amount of money saved from paying back a low-interest loan versus a loan acquired on the open market, the WTG II lowered its costs of creating water infrastructure and closing drinking water wells by $1,413,000.

You claim that the amount of the U.S. EPA's September 2009 bill was a surprise. That was not U.S. EPA's intent. The WTG II asked at least once, informally, what the costs were shortly before concluding consent decree negotiations, and U.S. EPA informally provided the WTG II with that information. Had the WTG II asked the U.S. EPA for further updates, U.S. EPA would have willingly provided the information. In fact, the reason U.S. EPA did not provide a bill between 2006 and 2009 was that Mr. Gengel asked U.S. EPA not to bill during the negotiations. When Mr. Gengel was replaced, the WTG II requested no change to Mr. Gengel's request not to be billed. U.S. EPA obliged, but it should have been very clear from the definition of Interim Response Costs in the 2009 CD that U.S. EPA and the Department of Justice would seek reimbursement for that time period.

Items #1 and #3

In your letter, you dispute the way U.S. EPA calculated indirect costs at the Site. U.S. EPA incurs costs that are attributable to the Superfund program. Certain costs can be accounted for on a site-specific basis and are identified as direct costs. Other costs, by their nature, cannot be accounted for on a site-specific basis but are necessary for the operation of the Superfund program and support site-specific cleanup efforts. Such costs are referred to as "indirect costs." The process to allocate, or distribute, those indirect costs to Superfund is accomplished through U.S. EPA's indirect cost methodology. Claiming that the indirect costs are unfair by simply comparing them to direct labor costs by U.S. EPA, Department of Justice, or a contractor is simply inappropriate considering U.S. EPA's responsibility to recover the costs for U.S EPA's Superfund program as allocated to specific sites under U.S. EPA's indirect cost methodology.

On July 31, 1995, the Office of Management and Budget issued the Statement of Federal Financial Accounting Standard #4, "Managerial Cost Accounting Concepts and Standards for the Federal Government" ("SFFAS #4"). SFFAS #4 sets forth the cost accounting principles for the federal government. The Federal Financial Management Improvement Act of 1996 (P.L. 104-

208) requires the federal government to comply with published Federal Accounting Standards in their activities.

To comply with SFFAS #4, U.S. EPA developed a full cost indirect cost methodology. This full cost indirect cost methodology is designed for use with all Agency programs (i.e., all programs that represent the products or outputs of U.S. EPA.) The methodology is then tailored to each program so that only the appropriate indirect costs are allocated to that program. By tailoring the methodology to each program, only those support costs associated and allocated to that program will be considered in a full cost computation. The full cost indirect cost rates are computed for the Superfund program beginning in FY 1990 and forward.

The indirect cost methodology developed by U.S. EPA has been reviewed by the international accounting firm of KPMG and by the General Accounting Office ("GAO"). Both KPMG and GAO concluded that U.S. EPA's indirect cost methodology is in compliance with SFFAS #4. Judicial approval of EPA's indirect cost methodology is now well-established law. The District Court in United States v. W.R. Grace & Co, 280 F.Supp.2d 1149 (D. Mont. 2003), *aff'd* United States v. W.R. Grace & Co., 429 F.3d 1224 (9th Cir. 2005), provided a detailed explanation of the appropriateness of EPA's indirect cost methodology.

Item #4

In your letter you request information about what the Department of Interior ("DOI") did at the Site. The charge of $1,718.97 by the DOI is for Bob Kay's work at the Site. Bob Kay is a hydrogeologist with the United States Geological Survey, a branch of the DOI. Mr. Kay has been detailed on a part time basis with U.S. EPA, Region 5 via an interagency agreement. Enclosed with this letter is documentation regarding Mr. Kay's work at the Site, including the Statement of Work that was attached to the interagency agreement. Mr. Kay's charge to the Site amounts to five percent of his work time with U.S. EPA.

Item #2

In your letter you contend that no charges by Sultrac, U.S. EPA or any other U.S. EPA contractor for reviewing Mr. Berger's development proposal are appropriate oversight costs. The Settling Defendants committed under the 2009 CD to reimburse the United States for Future Response Costs, which includes Interim Response Costs. Interim Response Costs are defined, in part, as all response costs paid or incurred by the United States *in connection with the Site.* (Emphasis added.) The Site is defined, in part, as the three tax parcels now owned by Washington Land Management, Inc. and First Land Group, Inc., which are affiliated with Mr. Berger. U.S. EPA reviewed the development proposal for portions of the Site in order to ensure construction would not damage a key part of the remedy—the landfill cap—into which the WTG I and II have invested a great deal of money.

You request additional information that would isolate U.S. EPA or SulTrac Site charges that involved Dale Berger's proposed development of the southwest corner of the landfill. The primary U.S. EPA activity for which costs were incurred was a meeting with Mr. Berger and an inspection of the southwest corner of the landfill. On June 21, 2007, I traveled to Wauconda to

meet with Mr. Berger regarding his development plans. Lolita Hill and Bob Kay attended this meeting as well. I charged six hours that day. Lolita charged seven hours that particular day, though she recalls charging both for the time to travel and meet as well as other Wauconda Sand & Gravel-related work. The paperwork for Bob Kay's charges do not differentiate his total charges and his charges for reviewing Mr. Berger's proposed development. Based on the date of the meeting, the charges appeared in Pay Period 17 (PP17) of 2007. U.S. EPA charged approximately $1,000 in direct costs for review of Mr. Berger's proposed development.

You cite SulTrac vouchers for May 2007 and October 2007 as evidence that SulTrac made Site charges for reviewing Mr. Berger's plans. However, these vouchers indicate the opposite. SulTrac Voucher A010, pertaining to May 2007, indicates SulTrac did not review any documents relating to Mr. Berger's proposed development. (See Section 3: "Schedule Variances and Corrective Actions" on page 5.) SulTrac's Voucher A015 for October 2007 indicates the same. (See Section 1, Task 8 on page 2.) My review of SulTrac's vouchers between May 2007 and December 2008 revealed no reports of work performed that included reviewing Mr. Berger's plans to develop the southwest corner of the landfill. No SulTrac charges are related to reviewing Mr. Berger's plans.

Item #5

In your letter you argue that TetraTech and SulTrac oversight was unnecessary, duplicative, and arbitrary, drawing particular attention to the practice of splitting water samples and sending the samples for an independent analysis. For many years split sampling was not conducted by U.S. EPA or its contractors at the Site. However, the revelation in late 2003 that vinyl chloride was detected in multiple residential drinking water wells in proximity to the Site, in some cases above the federal standard for safe drinking water (2.0 ppb), led to changes. Approximately 100 residential drinking water wells in proximity to the Site contained detectable levels of vinyl chloride. Yet the groundwater monitoring network put in place in the early 1990s failed to provide warning that vinyl chloride was moving underneath the Hillcrest Subdivision and to points beyond. Independent analysis of water samples by U.S. EPA contractors was necessary in order to restore trust, both with U.S. EPA and with residents, some of whom suspected the WTG and its contractor had deceived government agencies and the public about the results of earlier sampling. It was thus neither arbitrary nor archaic nor unnecessary for U.S. EPA, as the lead agency at the Site, to keep a closer eye on activities at the Site. The independent analysis had a useful side effect. The accumulated monitoring results enabled the United States to respond to the large number of comments from the public concerned about threats to human health following the lodging of the 2009 Consent Decree. Following entry of the Consent Decree, and U.S. EPA's confidence in how the sampling was being conducted, in spring 2009, U.S. EPA agreed to largely curtail split sampling.

Next Steps

The process for resolving the WTG concerns addressed in the January 14, 2010 letter, is contained in the 2009 CD, particularly paragraphs 53, 54, 55 and Section XIX. The first step, as outlined in paragraph 54, is for the Settling Defendants to submit a written objection to U.S. EPA, followed by the payment of any uncontested Future Responses Costs. Contested Future

Response Costs must be put in an interest-bearing escrow account. Normally, the timeline for these actions is within thirty days of receipt of the bill. On September 17, 2009, Connie Puchalski agreed to a request for a sixty-day extension to respond to the response costs bill given the size of the bill, starting from the date U.S. EPA provided the cost-justifying information that you requested on September 14, 2009. You received the information on November 23, 2009. Given the fact that additional cost-justifying information was requested in your January 14, 2010 letter, I believe it is appropriate to have tolled the remainder of the sixty-day extension until you receive this response. By my calculation, there are eight days remaining in the sixty-day extension.

I look forward to your response. Feel free to contact me with any further questions or if you wish to schedule a meeting to discuss the issues.

Sincerely,

Mark J. Koller

Mark J. Koller
Associate Regional Counsel

Enclosures

cc: Steven Ellis, U.S. DOJ (via email)
Kelly Lux, U.S. DOJ (via email)

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VEDDER PRICE P.C.
222 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
312-609-7500
FAX: 312-609-5005

CHICAGO • NEW YORK CITY • WASHINGTON, DC

PETER J. KELLY
312-609-7875
pkelly@vedderprice.com

March 31, 2010

Mark J. Koller, Esq.
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

Re: Wauconda Sand & Gravel Superfund Site.

Dear Mr. Koller:

Wauconda Task Groups I and II have received your March 23, 2010 letter and are disappointed with your apparent rejection of their request to negotiate or mediate the Agency's oversight cost invoice of $1,972,788.45. The Groups continue to believe the unprecedented amount of the invoice relative to the total cost of site work merits a significant discount. At a minimum, the Groups intend to invoke Dispute Resolution with respect to that portion of EPA's indirect costs added on to the Department of Justice indirect costs. The amount is $163,531.43. See Attachment I for a calculation of those costs.

The Groups argument with EPA adding its own indirect cost calculation on top of DOJ's indirect costs is that it is double-dipping—akin to adding interest on interest. The EPA policy requires EPA to multiply its indirect rate by EPA direct costs not by DOJ indirect costs.

In addition, the Groups will be disputing the computation of EPA indirect costs added to contractors indirect costs. To begin with Alion's own indirect costs were128% of its direct costs. After adding EPA indirect costs, the Agency is asking the Groups to pay 373% of Alion's direct costs. Moreover, from the documents provided, it is not possible to determine whether Sultrac's vouchers included an annual allocation and, if so, the amounts.

Under the Consent Decree the Settling Defendants are to pay the bill and/or dispute the invoice or portions thereof within 30 days or receipt of the bill. Ms. Puchalski's September 17, 2009 e-mail response to my request for an extension granted a 60-day extension to pay the bill beginning on the date we receive the back-up documents from EPA. Your March 23, 2010 letter contained additional back-up documents which would suggest the Defendants have until May 22, 2010 to pay or dispute. We will pay and dispute before April 23, 2010.

In the meantime if you feel a meeting could resolve the Groups' issues we are available.

Very truly yours,

Peter J. Kelly

PJK/jab
Enclosure
cc: WTG I and II

Calculation of Disputed Costs

DOJ Indirect Costs*	EPA Indirect Rate	EPA Indirect Costs on DOJ Indirect
FY05 - $13,179.35	61.71%	$8,132.98
FY06 - $55,634.00	56.23%	$31,283.00
FY07 - $13,584.48	62.91%	$8,546.00
FY08 - $119,814.00	62.91%	$75,374.99
FY09 - $93,892.00	62.91%	$40,194.46
		$163,531.43

*From April 10, 2009 DOJ Cost Summary.

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VEDDER PRICE P.C.
222 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
312-609-7500
FAX: 312-609-5005

CHICAGO • NEW YORK CITY • WASHINGTON, DC

PETER J. KELLY
312-609-7875
pkelly@vedderprice.com

April 21, 2010

Mark J. Koller, Esq.
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

Re: Wauconda Sand & Grave Superfund Site

Dear Mr. Koller:

This will follow-up on the phone call involving Steven Ellis, Kelly Lux, you and me on Monday April 12. During that call Mr. Ellis said that my March 31, 2010, letter to you incorrectly characterized the government's position as a rejection of the WTG's invitation to negotiate. Rather, Mr. Ellis stated the government could not negotiate because the WTGs had made no offer in response to the demand for oversight costs in the amount of $1,972,788.45.

While the members of the WTGs continue to believe the four year tally of oversight costs for the Wauconda site far exceeded what was reasonable or necessary, we make the offer below in the hope that we can avoid formal dispute resolution under the Consent Decree.

First, as noted in my letter of March 31, 2010, EPA's adding its own indirect costs on top of the Department of Justice indirect costs is overreaching. We also believe it to be contrary to EPA policy. We assume EPA intends to collect oversight costs using the "methodology" which was Attachment 1 to Joseph Dillon's May 26, 2000, memorandum to EPA Senior Resource Officials. In its second paragraph Attachment 1 declares that "direct costs include those that are directly incurred by the United States for site-specific activities…." It would seem obvious that DOJ costs directed for Wauconda site specific activities are direct costs incurred by the United States. Based on the April 10, 2009, DOJ Cost Summary, it seems clear that DOJ adds its own indirect costs to its direct costs in its charges. We assume DOJ's methodology approximates EPA's own. The crux of our challenge is that the United States in the form of EPA is calculating its oversight costs by multiplying its indirect costs on United States indirect costs from DOJ. The policy allows EPA to multiply its indirect cost rate on direct costs incurred by the United States for site specific activities. (See above). There is no provision for adding indirect costs onto indirect costs. As noted in my March 31 letter, the amount in question is $163,531.43. I have attached another copy of the calculation of those costs .

In addition to our concerns that EPA is acting inconsistent with its own policy, we have concerns that the WTGs would be required to pay almost $2,000,000 based on a policy rather than a regulation having had the benefit of notice, public comment and an opportunity for judicial review. Moreover, it seems clear EPA failed to conduct required rulemaking in 2000 when the methodology for calculating indirect costs was changed dramatically. The law requires rulemaking when an agency makes a change in policy having a substantial impact on the public even if the rule is interpretive. See 5 U.S.C. Section 553; National Retired Teachers Assn. v. U.S., 430F. Supp. 141 and Committee for Fairness v. Kemp, D.D.C. 1992, 791 F. Supp. 88.

We also have issues with the computation of EPA indirect costs on contractor allocated costs. However, to avoid the costs and resources required to lodge and process a formal dispute, we offer to pay $1,750,000 in settlement of EPA's oversight cost invoice. In order to allow the government time to respond, the WTGs will not file a formal notice of dispute earlier than the extended date (5/23/10) previously forecast.

We look forward to hearing from you.

Very truly yours,

Peter J. Kelly

PJK/jab
Enclosure
cc: S. Ellis
K. Lux
WTG I and II

Calculation of Disputed Costs

DOJ Indirect Costs*	EPA Indirect Rate	EPA Indirect Costs on DOJ Indirect
FY05 - $13,179.35	61.71%	$8,132.98
FY06 - $55,634.00	56.23%	$31,283.00
FY07 - $13,584.48	62.91%	$8,546.00
FY08 - $119,814.00	62.91%	$75,374.99
FY09 - $93,892.00	62.91%	$40,194.46
		$163,531.43

*From April 10, 2009 DOJ Cost Summary.

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DOJ COST SUMMARY

Dated: April 10, 2009

CASE NAME: U.S. v. Wauconda Sand and Gravel

D.J. NUMBER: 90-11-2-153/1

	FY05 05-01/05 - 09/30/05	FY06	FY07	FY08	FY09 10/1/08 - 02/28/09	TOTAL
Hours	121.25	428.25	108.25	1,539.55	888.75	3,086.05
Direct Labor	$ 6,126.74	$ 25,816.18	$ 6,543.97	$ 60,480.85	$ 33,580.33	$ 132,548.07
Other Direct Costs	542.34	2,129.97	-	4,328.04	1,142.16	8,142.51
Indirect Costs	13,179.35	55,634.60	13,584.48	119,814.00	63,892.00	266,104.43
TOTAL:	$ 19,848.43	$ 83,580.75	$ 20,128.45	$ 184,622.89	$ 98,614.49	$ 406,795.01

EXHIBIT

2

13

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
Plaintiff,	)	Civil Action No. 07 C 4499
v.	)	Judge Lefkow
BFI WASTE SYSTEMS OF NORTH AMERICA, INC., BORDEN CHEMICAL, INC., AS SUCCESSOR IN INTEREST TO IB DISTRIBUTORS, INC. EXXON MOBIL CORPORATION, GIDDINGS & LEWIS MACHINE TOOLS, LLC, AS SUCCESSOR IN INTEREST TO BASIC ELECTRONICS MFG. CORP., H. B. FULLER COMPANY, HONEYWELL, INC., JENSEN DISPOSAL SERVICE, INC. MAIL-WELL ENVELOPE CO., MORTON INTERNATIONAL, INC., MUNDELEIN DISPOSAL SERVICE, INC., VILLAGE OF WAUCONDA, ILLINOIS, WASTE MANAGEMENT OF ILLINOIS, INC., WAUCONDA SAND & GRAVEL, CO., and WEBER FOREIGN MANUFACTURING, INC., f/k/a INK SPECIALTIES COMPANY, INC.	)	
Defendants,	)	

DECLARATION OF CHRISTOPHER S. OSBORNE

I, Christopher S. Osborne, in accordance with 28 U.S.C. § 1746, declare as follows:

1. This declaration describes the methodology used by the United States Environmental Protection Agency (EPA) to calculate the indirect costs attributable to the Wauconda Sand & Gravel Superfund Site in Wauconda, Illinois ("Site"). I will also describe the method used by EPA to account for the annual allocation of contractors' non-site-specific costs.

2. I am employed by the EPA as a Financial Manager in the Immediate Office (IO), Office of Financial Management (OFM). I have served in my current position since December 2003.

3. Before my current position, I served as the Director of the Reports and Analysis Staff within the OFM (August 2002 through December 2003).

4. Prior to the EPA, at the USDA Forest Service, I served as the Director of Financial Reports and Analysis (November 2000 to August 2002), Acting Director of Financial Reports and Analysis (July 2000 through November 2000), and Assistant Director of Financial Analysis (November 1999 through July 2000).

5. Prior to the USDA Forest Service, at Financial Management Service, Department of the Treasury, I served as the Accounting Manager of the Financial Operations Branch (April 1998 through November 1999), FFS Implementation Director (February 1998 through April 1998), and Supervisory Accountant of the Financial Operations Branch (June 1992 through February 1998).

6. Prior to the Financial Management Service, at the Pension Benefit Guaranty Corporation, I served as a Supervisory Operating Accountant of the Trust Receivables Section (March 1990 through June 1992).

7. Prior to Federal service, I served in the positions of Chief Financial Officer, Controller, Accountant, Internal Auditor, and Staff Accountant in private industry (January 1983 through November 1989).

8. In 1983, I received a Bachelor's Degree in Accounting from George Mason University, and passed the Certified Public Accountant exam in the State of Virginia in 1986. During my career, I have had the opportunity to develop an activity based costing pilot and currently review and analyze the EPA cost allocation process. I am generally familiar with many existing cost accounting and allocation principles and standards including the Federal Accounting Standards Advisory Board Standard #4 on cost accounting for the Federal government.

9. As a Financial Manager in the IO, I oversee the indirect rate calculation for Superfund cost recovery, among other duties, and I provide Superfund cost accounting and policy guidance expertise to EPA. The Statement of Experience included as Attachment A further sets forth my qualifications and includes a list of cases in which I have appeared as an expert witness at trial within the preceding four years. Attachment B lists the documents I consider in forming the opinions set forth in this Report.

OPINIONS AND DISCUSSION THEREOF

I. INDIRECT COSTS

10. EPA incurs costs that are attributable to the Superfund program. Certain costs are accounted for on a site-specific basis and are identified as direct costs. Other costs, by their nature, cannot be accounted for on a site-specific basis but are necessary for the administration and operation of the Superfund program and support site-specific cleanup efforts. Such costs are referred to as "indirect costs." The process to allocate, or distribute, those indirect costs to Superfund is accomplished through an indirect cost methodology.

General Indirect Cost Methodology Cost Accounting Concepts

11. An indirect cost methodology is the manner which any organization uses to identify and distribute its indirect costs to the goods and services the organization produces (referred to as "products" or "outputs"). All organizations, when they determine the cost of their products, include the direct cost of producing that product and the indirect cost of producing that product. Direct costs are those costs that are incurred in producing the product and can be specifically identified to producing the product. Indirect costs are those costs incurred by an organization for the administration and management of the organization. These costs are not specifically associated with the products themselves, but apply to all products because without them the products could not be produced. The indirect cost methodology is the means by which an organization distributes those costs in a reasonable and appropriate manner. All organizations need to develop an indirect cost methodology. The indirect cost methodology is the means the

organization uses to allocate the indirect costs, their indirect expenses, to the products they produce. In developing the indirect cost methodology, the organization first needs to determine the direct costs – what goods and services the organization produces. The organization then identifies the indirect costs – the administrative and management support costs incurred to operate the organization. Finally, the organization determines the method of allocating the indirect costs to their products.

12. The purpose of an indirect cost methodology is to allocate the indirect costs in a "causal/beneficial" approach. What "causal/beneficial" approach means is the support costs - the indirect costs - are allocated to the organizations receiving the support in a manner that reflects the provided services. For example, the personnel office of an organization would be allocated to offices within that organization based upon the payroll dollars. Suppose the personnel office provides services to Office A and Office B. Office A has 30% of the payroll costs and Office B has 70% of the payroll costs. Office A would receive as an allocation 30% of the personnel office costs and Office B would receive as an allocation 70% of the personnel office costs.

13. When preparing an indirect cost methodology, in addition to cost accounting allocation practices and requirements, other cost accounting factors need to be considered. These other factors include the organizational structure, the level of accounting detail available, and the economic feasibility of gathering allocation basis information (such as payroll dollars within an office).

Federal Government Cost Accounting Requirements

14. The Office of Management and Budget issued the Statement of Federal Financial

Accounting Standard #4, "Managerial Cost Accounting Concepts and Standards for the Federal Government" (SFFAS #4). SFFAS #4 sets forth the cost accounting principles for the Federal government. The Federal Financial Management Improvement Act of 1996 requires the Federal government to comply with published Federal Accounting Standards in their activities

15. SFFAS #4 sets forth five fundamental standards of cost accounting. The first standard is the Requirement for Cost Accounting – that an organization accumulates and reports its cost on a regular basis. The second standard is Responsibility Segments – that an organization identifies its internal organizations and what each organization produces. The third standard is Full Cost – that an organization identifies and reports the full cost of its outputs. The fourth standard is Inter-Entity Costs – that an organization incorporates the full costs of goods and services it receives from other entities. The fifth standard is Costing Methodology – that an organization accumulates costs and assigns those costs to outputs through an appropriate and economically feasible cost accounting approach.

EPA's Implementation

16. To comply with SFFAS #4, EPA developed a full cost indirect cost methodology. This full cost indirect cost methodology is designed for use with all Agency programs, i.e., all programs that represent the products or outputs of EPA. The methodology is then tailored to each program so that only the appropriate indirect costs are allocated to that program. By tailoring the methodology to each program, only those support costs associated and allocated to that program will be considered in a full cost computation. For example, computations for the Air program will only allocate those support costs that support the Air program, the computations

for the Water program will only allocate those support costs that support the Water program, and the computations for the Superfund program, explained below, will only allocate those support costs that support the Superfund program. The full cost indirect cost rates are computed for the Superfund program beginning in FY 1990 and forward.

17. The indirect cost methodology developed by EPA has been reviewed by the international accounting firm of KPMG and by the General Accounting Office (GAO). Both KPMG and GAO concluded that EPA's indirect cost methodology is in compliance with SFFAS #4.

18. As previously stated, EPA's approach to developing the full cost indirect cost methodology is based upon the guidance provided by SFFAS #4. In addition, certain other factors were also taken into account, such as the nature and classification of Agency costs, the accounting detail associated with Agency costs, the Agency's organizational structure, and the cost/benefit of obtaining the data necessary to compute indirect cost rates. EPA also followed standard cost accounting practices in developing the revised Superfund indirect cost rates. For example, EPA calculated indirect cost rates by EPA region by fiscal year. Computing indirect cost rates by fiscal year is a generally accepted practice.

EPA Indirect Cost Methodology Development

19. In developing the indirect cost methodology and tailoring it to Superfund, EPA's approach was to allocate the Agency support costs to Superfund sites in a reasonable and rational cost accounting manner. As with any methodology, EPA identified its direct costs, its indirect costs, and an appropriate manner to distribute the indirect costs to the direct costs.

Identifying Direct Costs

20. EPA used the SFFAS #4 definition for direct costs. EPA produces a number of outputs/products. These outputs/products, or direct costs, include those activities associated with clean water, clean air, and clean food, in addition to Superfund activities. Within EPA's accounting system, Agency costs are identified to various EPA programs. EPA analyzed the Agency costs and identified those non-Superfund products (direct costs) and the Superfund products (direct costs). The identified non-Superfund costs do receive their proportionate share of the Agency's indirect costs. However, since this indirect cost methodology is being tailored to the Superfund program, the indirect costs associated with the non-Superfund costs are reflected only in the early stages of the allocation and subsequently dropped out. Therefore, Superfund sites are not charged with the indirect costs that support other Agency programs.

21. After identifying the non-Superfund direct costs, EPA analyzed the Superfund program itself. The purpose of analyzing the Superfund program is to identify those activities that represent the products of Superfund and identify the support costs of Superfund. The costs associated with Superfund site response activities (salary of U.S. EPA personnel for time spent directing cleanup activities at a site (i.e. On-Scene Coordinator, Remedial Project Manager), the cost of travel to the site, the cost of attorneys performing legal work related to the site, and the cost of contractors performing work at the site, etc.) represent direct costs of the Superfund program. The Superfund program also incurs direct costs for certain other activities. EPA, for example, defines the activities associated with the National Institute of Environmental Health Sciences (NIEHS), and with certain activities with the Office of Solid Waste and

Emergency Response (OSWER) -- such as the Chemical Emergency Preparedness and Prevention Office (CEPPO) - as a direct cost of the Superfund program. Because they are direct costs, they receive their own proportionate share of indirect costs. Moreover, they are not further allocated to Superfund sites.

22. Consistent with EPA's indirect cost methodology, DOJ charges EPA for its total costs incurred in connection with a Superfund site, including both direct and indirect costs. Since DOJ costs are charged to particular sites, EPA considers DOJ costs to be site specific and thus direct costs. DOJ's costs charged to the particular sites are composed of DOJ's direct costs and indirect costs. The calculation of DOJ's costs as it applies to particular sites are calculated by DOJ. As with all direct costs, the DOJ charges become part of EPA's allocation base, from which EPA determines the proper region-wide annual percentage rate for indirect costs for a Region. Also, as direct costs, the DOJ costs become part of the site-specific direct cost base which is multiplied by the pertinent annual indirect cost percentage to determine EPA's indirect cost for a site. This is the method EPA uses to calculate the annual EPA region-wide allocation base, and the method EPA uses to calculate indirect costs for the Site. Total DOJ costs, direct and indirect, incurred in connection with DOJ's work for the Site are used as part of the allocation base for the affected Region, and these costs are charged to EPA as direct costs for the Site. This practice is part of EPA's procedure to meet the requirement of Statement No. 4 to incorporate the full cost of goods and services provided among federal entities.

Identifying Indirect Costs

23. The indirect costs represent costs and activities incurred by EPA in supporting the production of EPA products and services. The costs and organizations not identified as direct costs by definition become indirect costs. EPA analyzed the service the organization provided, which organizations received the service, and where the organization fit in EPA's organizational structure. All of these items are important because in order to properly allocate those support costs, the organization and its costs must be placed in the proper sequence within the indirect cost methodology. EPA's organization is hierarchical and the support services provided also fall into a hierarchical structure. Thus, there are EPA Headquarters organizations that provide support services to the entire Agency. There are regional support organizations that provide support to all regional programs. There is also a Headquarters Superfund office that provides support not to the whole Agency but to all of Superfund. On a regional level there is a regional Superfund office that provides support not to the region as a whole but to regional Superfund activities. The indirect cost methodology takes these costs and organizations and allocates them in an appropriate cost accounting manner.

24. In the allocation, indirect costs are allocated from the widest level of support to the narrowest level of support. It is important to identify the support organizations and their associated costs, because these costs will be allocated to the direct costs. There is a series of interim allocations from wider levels to narrower levels of support. Ultimately, together, the result is the identification of all appropriate indirect costs allocated to Superfund sites. These indirect costs represent organizations and costs that provide support to produce the product.

Allocating Indirect Costs

25. Once a particular cost is identified as an indirect cost, it must be allocated to the programs and products it supports in a manner reflecting the nature of the support provided. The allocation base or allocation statistic is the process by which indirect costs are identified with Agency outputs/products. Generally, during the interim steps in the allocation process, the allocation of support costs is based upon total dollars. EPA views total dollars as the appropriate measure of allocating support services to receiving organizations. For example, the Office of Chief Financial Officer (OCFO) provides planning, budgeting, and payment services for the entire Agency. OCFO's costs are allocated to all organizations of the Agency on a proportionate basis of the organization's total expenditures to total expenditures. To illustrate, if Organization A has 1% of the total expenditures of all organizations, Organization A would receive as an allocation 1% of OCFO's costs.

26. However, not all allocations are based upon total dollars, or are allocated to all organizations. The costs of EPA's Personnel office, the Office of Human Resources and Organizational Services (OHROS) and Facilities office are allocated based upon payroll dollars. There is also a further distinction between Headquarters support and nationwide support. The OHROS costs and Facility costs are captured within EPA's accounting system as Headquarters support and nationwide support. Those dollars identified as Headquarters support are only allocated to Headquarters' organizations; these costs are not allocated to Regional offices. Those costs identified as nationwide support are allocated to all of EPA, as befits their nationwide status. These costs are allocated in this manner for three reasons: (1) allocating OHROS and

Facilities based upon payroll and number of people, respectively, represents a better reflection of the services provided, (2) the Agency accounts for these costs in this detailed manner, and, (3) from a cost accounting perspective, this approach provides a better means to allocating these costs.

Computing Superfund Indirect Cost Rates

27. EPA's Superfund indirect cost computation consists of three distinct areas - allocation of administrative support costs, allocation of programmatic support costs, and computation of the indirect cost rates. Each of these distinct areas is discussed below.

Allocation of Administrative Support Costs

28. When developing the indirect cost methodology, EPA identified those Headquarters offices that provide administrative support to the rest of the Agency. These offices include the Office of the Administrator, the Office of Administration and Resources Management (human resources, procurement, facilities), the Office of the Chief Financial Officer (budget and finance), the Office of Information and Resources Management (computer and information management), the Office of Policy, Planning, and Evaluation, the Office of General Counsel, and the Office of Inspector General. Also included in this area are the costs of fringe benefits funded by the Office of Personnel Management. In accordance with SFFAS #4, these costs should be included as part of any "full cost" calculation. The costs associated with personnel and facilities are allocated to all organizations based upon payroll costs and number of people within the office (full time equivalents [FTE]), respectively. The remaining support costs are allocated based upon the total costs of all supported organizations, i.e., the rest of the Agency.

29. Those support costs allocated to the Superfund program continue on within the allocation. Those costs allocated to programs other than the Superfund program -- the Air or Water program, for example, are not further allocated to the Superfund program and drop out of this calculation.

30. Continuing down the hierarchical allocation, the Regional administrative support costs are allocated to those programs managed and operated within each region. The Regional administrative support costs are similar to the Headquarters support costs, except they are incurred on a regional level. Each EPA Region's administrative support costs are allocated to programs within that region.

31. These Regional administrative support costs are grouped (pooled) and allocated to all costs and activities they support, i.e., those programs operated and administered within each EPA region. EPA considers the allocation of the regional administrative support costs to all costs as the appropriate allocation base. These costs support the programs as a whole and therefore should be allocated to the programs as a whole. Allocation based upon total program costs is the most appropriate means to reflect the services provided to these organizations and programs. The costs allocated in these steps are set aside and used later in the allocation and indirect cost computation process.

Allocating Programmatic Support Costs

32. The programmatic support costs identified in the "Identifying Indirect Costs" step are allocated to the Superfund program and Superfund sites. The Agency takes a multi-step approach in identifying and allocating the Superfund support costs to the Superfund program and

Superfund sites. The overall management of the Superfund program is performed in the Office of Solid Waste and Emergency Response (OSWER). The Superfund support costs identified within OSWER are first allocated to subordinate organizations within OSWER. Those organizations and dollars that support Superfund, primarily the Office of Emergency and Remedial Response (OERR), are identified and further allocated. Those organizations that are non-Superfund-related receive their proportionate share of the allocation, but are not further allocated.

33. Within each step of the allocation, Superfund program support costs are identified and allocated to the direct activities of the Superfund program. Those support costs that are allocated to Superfund site activities continue on in the allocation. Those support costs that are allocated to direct activities, but are not Superfund site-specific activities are not further allocated within this allocation. All organizations receive their proportionate share of support dollars, for example, if a particular organization represents 10% of the total direct costs, that organization would receive as an allocation 10% of the support costs. Those support dollars that apply to Superfund response/clean-up are then further allocated.

34. The same steps taken for OSWER are also taken for the Office of Enforcement and Compliance Assurance (OECA). The support dollars are allocated to subordinate organizations - those organizations that provide enforcement actions. Those subordinate organizations that support Superfund are then further allocated. Those support dollars that do not support Superfund enforcement are not further allocated.

35. Continuing with the allocation, there is a further refinement of support dollars to

Superfund response/clean-up. In this further allocation, the support dollars are allocated based upon the EPA program results code (formally referred to as the program element). A program results code is an integral part of EPA's accounting system and designates the use or purpose for which the funds are expended. The program results code is a means by which EPA can further identify the support costs of the Superfund response/clean-up program.

36. The regional Superfund programmatic support costs are then identified and summarized. The regional Support programmatic support costs can be identified within EPA's accounting system. Using the appropriate designator, the Superfund program support costs are gathered and compiled.

Computing Superfund Indirect Cost Rates

37. The final phase of the allocation is the computation of the indirect cost rate by region. In this final step the administrative support costs and the programmatic support costs allocated and identified in prior steps are gathered and summarized. The costs are pooled by EPA region and consist of the appropriate amount of Headquarters support costs, regional support costs, Headquarters program management costs, and regional program management costs. The indirect cost rate is then calculated by dividing the total pool of indirect costs by total regional site-specific (direct) costs. The result is an indirect cost rate for each EPA region by each fiscal year. Indirect cost rates are not computed for a Superfund site, but rather for each EPA region for each fiscal year.

38. To determine the indirect costs associated with any particular Superfund site, each region identifies the direct costs EPA incurred at a particular Superfund site (direct costs are also

known as site-specific costs) by fiscal year and applies (multiplies) the appropriate indirect cost rate for that fiscal year by the total site-specific costs. The product is the amount of indirect costs allocated to that site -- equivalent to that site's proportionate share of the program's supporting costs. Adding together the direct (site-specific) costs and the indirect costs will result in the full costs to EPA of the response action at that site.

Conclusion Regarding EPA's Indirect Cost Rates

39. In my opinion, EPA's methodology results in a fair and equitable allocation of indirect costs to an individual Superfund site, such as the Wauconda Sand & Gravel Superfund Site in Wauconda, Illinois. This opinion is based upon my familiarity with the details of EPA's implementation, the requirements of SFFAS #4 and its five supporting principles and my twenty-seven years of experience as an accountant, auditor, and analyst, including review of cost allocations as practiced by public sector organizations.

II. ANNUAL ALLOCATION

40. EPA response contractors who perform both site and non-site-specific work under a contract incur and are paid by EPA certain costs that are not site-specifically charged. The annual allocation process allocates to sites those non-site-specifically charged costs that nevertheless support, benefit or relate to site response actions.

41. The general concepts of the annual allocation methodology are as follows: (a) only the contractor's non-site-specific costs that are determined to relate to, benefit or support sites should be distributed to sites; and (b) inclusion of the allocated costs that benefit sites along

with the site-specific costs will yield the total costs of the site work performed by EPA contractors who work on multiple sites under a single contract.

42. The allocation process results in a determination of a national, regional or site-specific allocation rate per contract. This rate is based on an Annual Allocation report prepared by the contractor, submitted to EPA, and reviewed by EPA staff in the Program Costing Staff (formerly the Program and Cost Accounting Branch) of the Office of Financial Management. Multiplying the rate by the direct site amount billed by the contractor yields the site's share of the non-site-specific costs charged to EPA by the contractor.

43. Provisional annual allocation rates are established to determine allocable costs when a final rate has not been established. These provisional rates are established as follows:

a. For each contract where final rates have been established for a prior year, the provisional rate is 80% of the most recent final rate.

b. For the certain types of contracts, e.g., Alternative Remedial Contracting Services, Emergency Response Cleanup Support, and Technical Enforcement Support contracts, without a prior year final rate, provisional rates are established using 80% of the weighted average of the final rates for each type of contract. This weighted average provisional rate is recalculated every October.

c. Once a final rate is established for a contract, the final rate supersedes any previously-established provisional rate(s).

44. The multi-step annual allocation process applicable to the contracts at issue in this action is described below:

a. *Reconciliation of amounts paid.* The first step in the allocation process is the determination of the amount the contractor received for work performed under the contract, based on both the contractor's documents and EPA's accounting information.

b. *Identification of the category of non-site-specific costs.* The non-site-specific Superfund costs determined in the first step are then classified into one of the following categories: program management, start-up costs, capital equipment and non-site activities.

(1) National and regional program management costs are costs attributable to contract activities associated with the management and administration of the contract as a whole (national program management) and to the region (regional program management). In addition, some contracts include work assignment project management which consists of management activities applicable to the work assignment as a whole for those work assignments which cover more than one site.

(2) Start-up costs are costs incurred generally in the first year of the contract but associated with efforts benefiting the entire contract term. Examples may include the preparation of the contract work plan, establishment of a contract quality assurance program and calibration of equipment.

(3) Capital equipment costs are costs for equipment valued at more than $5,000, with a one-year minimum life. For the purpose of the allocation, the cost of such equipment is depreciated over its useful life.

(4) Non-site activities costs are costs of those activities undertaken under the contract, other than program management, start-up, or capital equipment, which cannot be identified to sites. These are costs attributable to activities which either support response actions (site-support non-site activities) performed under the contract; or support the Superfund program as a whole (program-wide non-site activities). Program-wide non-site activities are allocated a share of the program management, start-up and equipment costs; but program-wide non-site activity costs are not in turn allocated to sites through the annual allocation process.

(5) Some general examples of site-support non-site activities include: training for contractor employees on site clean-up technologies; safety training for site employees; equipment training; and development of CERCLA site standard operating procedures.

(6) Some general examples of program-wide non-site activities, the costs of which are not allocated through the annual allocation process, include: review of EPA sampling procedures; creation of databases or software programs; training provided to states by contractors; and CERCLA Title III evaluations.

c. Once the costs are thus classified, as described in the previous subparagraph, eligible costs are allocated to sites as well as to non-site activities using a step-down allocation process -- one which allocates the costs with the widest benefit

(program management) first and the narrowest benefit (site-support non-site activities) last.

d. National program management, start-up and equipment costs are allocated to sites and non-site activities based on the ratio of the particular site or non-site activity's direct site costs to the total cost of all site and non-site activities. This method equitably reflects the benefit received by sites and non-site activities.

e. Regional program management and regional site-support non-site-specific costs are allocated to sites in the respective regions based on the ratio of each site's direct site-specific costs to the total regional site-specific costs.

f. Work assignment project management is allocated to the sites covered under the work assignment. In addition, any program management costs, such as equipment, which has not been charged to the site at the time of contract invoicing but which can be directly attributed to the site is allocated directly to the site in this process.

g. The annual allocation rate is calculated for each contract by dividing the allocated costs applicable to sites by the total direct site-specific costs incurred.

45. All of the Agency's Superfund response action contracts active since Fiscal Year 1986 have included provisions for the contractors' preparation and submission of Annual Allocation Reports. EPA determined that the detailed requirements for identifying the appropriate types of non-site-specific costs to be allocated should be revised to reflect accounting policies described in the previous paragraph. Accordingly, EPA directed the contractors to defer

submission of their Annual Allocation reports pending revision to the detailed requirements and incorporation of such revisions in the contract terms. These revisions were completed in Fiscal Year 1992.

Conclusion Regarding Annual Allocation

46. In my opinion, the methodology used in the annual allocation process results in a fair and equitable allocation of non-site-specific costs to an individual Superfund site, such as the Wauconda Sand & Gravel Superfund Site in Wauconda, Illinois, and is consistent with generally accepted cost accounting concepts and principles. This opinion is based on my familiarity with the details of EPA's annual allocation process, and my twenty-seven years experience as an accountant, auditor and analyst, including review of cost allocations as practiced by public sector organizations.

I hereby swear, under penalty of perjury, that the foregoing is true and correct.

Dated this 16th day of August, 2010

Christopher S. Osborne
Financial Manager

Immediate Office
Office of Financial Management
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Ronald Reagan Building, MC 2733R
Washington, DC 20460

Attachment A

STATEMENT OF EXPERIENCE

Work Experience

12/2003-present: Financial Manager, Immediate Office, Office of Financial Management, EPA

8/2002-12/2003: Director, Reports and Analysis Staff, Office of Financial Management, EPA

11/2000-8/2002: Director, Reports and Analysis Staff, Forest Service

7/2000-11/2000: Acting Director, Reports and Analysis Staff, Forest Service

11/99-7/2000: Assistant Director, Financial Analysis, Forest Service

4/98-11/99: Accounting Manager, Financial Operations Branch, Financial Management Service, Department of the Treasury

2/98-4/98: FFS Implementation Director, Financial Management Service, Department of the Treasury

6/92-2/98: Supervisory Accountant, Financial Operations Branch, Financial Management Service, Department of the Treasury

3/90-6/92: Supervisory Operating Accountant, Trust Receivables Section, Pension Benefit Guaranty Corporation

7/89-11/89: Chief Financial Officer, Oo-Cluh-Quache

2/88-7/89: Controller, Matrix International Logistics, Inc.

6/85-2/88: Accountant, Computer Sciences Corporation

6/84-6/85: Accountant, Russell R. Burnett, CPA

11/83-4/84: Internal Auditor, National Tire Wholesale

1/83-10/83: Staff Accountant, Laventhol and Horwath, Certified Public Accountants

Education

1983 - Bachelors Degree, Accounting, George Mason University

Professional Certification

1986 - Certified Public Accountant, Virginia

Listing of Expert Witness or Declaration Testimony

- US v. D.S.C. of Newark Enterprises, Inc. Declaration Report – July 8, 2010
- US v. General Electric Company Declaration Report – January 15, 2010
- US v. Halliburton Energy Services, Inc., GE Healthcare Bio-Sciences Corp, GE Healthcare Inc., GE Healthcare Holdings Inc, QSA Global Inc., Pengo Industries, Inc., DII Industries, LLC, Precision Energy Services, Inc., and NL Industries, Inc. Expert Report – December 22, 2009
- US v. Logistics International Georgia, Inc. Declaration Report – August 24, 2009
- Preservation Aviation, Inc. v. US; Declaration Report – June 23, 2009
- US v Mascot Mines, Inc.; United Resource Holdings Group, Inc.; Nabob Silver-Lead Co., and Zanetti Brothers, Inc; Expert Report - April 30, 2009
- US v Malvern TCE; Declaration Report– September 11, 2008
- U.S. v. John Charles Mazoch, and Coastal Welding Supply, Inc.; Expert Report and trial appearance – August 28, 2008

Attachment B

Documents Relied Upon for This Report

Indirect Costs

- SFFAS #4 - Managerial Cost Accounting Concepts and Standards for the Federal Government
- OC Policy Announcement 00-05 - Accounting for Indirect Costs Associated with Superfund Site-Specific Activities
- KPMG Report - Review of Proposed Superfund Indirect Rates Methodology
- GAO Letter, dated December 22, 1999
- EPA Memorandum, dated 08/11/2009 – Superfund and Oil Spill Actual Indirect Cost Rates for FY 2008

Annual Allocation

Instructions For Performing the Annual Allocation of Non-Site-Specific Costs
Annual Allocation Provisional Rate Guidance, dated June 12, 1995

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LEXSEE

UNITED STATES OF AMERICA, Plaintiff, vs. W. R. GRACE & COMPANY-CONN. and KOOTENAI DEVELOPMENT CORPORATION, Defendants.

CV 01-72-M-DWM

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, MISSOULA DIVISION

280 F. Supp. 2d 1149; 2003 U.S. Dist. LEXIS 15928

August 26, 2003, Decided
August 26, 2003, Filed

SUBSEQUENT HISTORY: Affirmed by *United States v. W.R. Grace & Co., 2005 U.S. App. LEXIS 26155 (9th Cir. Mont., Dec. 1, 2005)*

PRIOR HISTORY: *United States v. W. R. Grace & Co., 280 F. Supp. 2d 1135, 2002 U.S. Dist. LEXIS 26721 (D. Mont., 2002)*

DISPOSITION: Judgment in favor of the United States and against Defendants in accordance with the courts Findings of Fact and Conclusions of Law.

COUNSEL: **[**1]** For USA, PLAINTIFF: Sherry S Matteucci, Office of the US Attorney, Billings, MT USA. Victoria L Francis, Office of the US Attorney, Billings, MT USA. David F Askman, US Department of Justice, Denver, CO USA. John C Cruden, US Environmental Enforcement Section, Washington, DC USA. Thomas Sansonetti, US Department of Justice-Wildlife & Marine Resources, Washington, DC USA. James D Freeman, US Department of Justice-Environmental Enforcement, Denver, CO USA. Heidi Kukis, US Department of Justice-Environmental Enforcement, Denver, CO USA. Mark C Elmer, US Department of Justice-Environmental Enforcement, Denver, CO USA.

For W.R. Grace & Company, DEFENDANT: Kenneth W Lund, Holme Roberts & Owen, Denver, CO USA. Gary L Graham, Dean A Hoistad, David C Berkoff, Terry J MacDonald, Garlington, Lohn & Robinson, PLLP, Missoula, MT USA. John D McCarthy, Holme Roberts & Owen, Denver, CO USA.

For W R Grace & Company Conn, DEFENDANT: Kenneth W Lund, Linnea Brown, Holme Roberts & Owen, Denver, CO USA. Gary L Graham, Dean A Hoistad, David C Berkoff, Terry J MacDonald, Garlington, Lohn & Robinson, PLLP, Missoula, MT USA. John D McCarthy, Holme Roberts & Owen, Denver, CO USA.

For Kootenai Development **[**2]** Corporation, DEFENDANT: Kenneth W Lund, Holme Roberts & Owen, Denver, CO USA. Gary L Graham, Dean A Hoistad, David C Berkoff, Terry J MacDonald, Garlington, Lohn & Robinson, PLLP, Missoula, MT USA. John D McCarthy, Holme Roberts & Owen, Denver, CO USA.

JUDGES: Donald W. Molloy, Chief Judge United States District Court.

OPINION BY: Donald W. Molloy

OPINION

[*1153] ORDER

The United States brought this action against Defendants W.R. Grace & Co.-Conn. ("Grace-Conn.") and Kootenai Development Corporation ("KDC") under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), *42 U.S.C. § 9601 et seq.* to recover costs the United States has incurred responding to releases or threats of releases of asbestos in and around Libby, Montana. A bench trial

was held January 6-8, 2003. Following the trial, the Court ordered the parties to submit proposed findings of fact and conclusions of law with citations to the record before the court. After the parties submitted their proposed findings and conclusions, the Court heard closing arguments on April 25, 2003. After considering the evidence and testimony submitted at trial, along with the parties' arguments and proposed **[**3]** findings of fact and conclusions of law, I find in favor of the United States in the amount of $ 54,527,081.11 and such other relief as is set forth below. I base my decision on the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

A. CERCLA LIABILITY AND DEFENSES

1. Liability

1. The parties have stipulated that Grace-Conn. is a liable party under CERCLA, *42 U.S.C. § 9607(a)*, for the Mine site, the former Screening Plant, the Flyway, the Bluffs, the former Export Plant, the Libby High School, the Libby Middle School, Plummer Elementary School, Kootenai Valley Christian School, Champion Haul Road, Rainy Creek Road, and the following residential or commercial properties in and near Libby, Montana: Beaulia, Belangie, Bowker, Brown (653 Flower Creek), Brown (346 Granite), Brownlee, Burshia, Cady, Calhoun, Cote, Dennis, Downey, Drury, Epperson, Fuhlendorf, Geer, Graham, Hebenstreit, Hilliard, Hoff, Jacabson, Jeresek, Jordon, Kootenai Angler, Long, McCulley, Mohr, Munro, Nixon, Nores, Parker (1421 Main), Parseau, Peterson, Phillips, Powers (2297 Kootenai River Rd.), Powers (2293 Kootenai River Rd.), Ray, Rice, Rodgers, **[**4]** Sanderson (123 Hamann), Sanderson (4241 Hwy 37), Sanderson (113 Oak), Schenck, Skramstad, Siefke, Smith, Spencer (500 Jay Effar), Spencer (229 Pinewood), Spencer Law Firm, Struck, Stubbs, Temple, Visger, Westfall, Wilkes (461 Parmenter), Wilkes (600 Ave. B). Revised Agreed Fact 48.

2. The parties have stipulated that KDC is a liable party under CERCLA, *42 U.S.C. § 9607(a)(1)*, for the Mine Site, Kootenai Bluffs and Kootenai Flyway because it is the "current owner" of the properties. Revised Agreed Fact 51.

3. Asbestos is a hazardous substance under CERCLA. Agreed Fact 7. See also *42 U.S.C. § 9601(14)(E)* (referencing hazardous air pollutants listed under *42 U.S.C. § 7412(b)*); *40 C.F.R. § 302.4* (asbestos on list of hazardous substances).

4. The parties have stipulated that any release or threat of release of asbestos at the properties that form the Libby Asbestos Site was not caused by an act of war. Revised Agreed Fact 52.

5. The parties have stipulated that any release or threat of release of asbestos at the Libby Asbestos Site was not caused by an act or omission of a third **[**5]** party. Revised Agreed Fact 53.

6. On May 23, 2000, the Environmental Protection Agency ("EPA") sent W.R. Grace & Co. and Grace-Conn. a letter demanding payment of response costs of $ 561,790.85 that the United States had incurred **[*1154]** through April 30, 2000. Agreed Fact 56.

2. Naturally-occurring Asbebtos

7. Paul Peronard is the EPA's On-Scene Coordinator at the Libby Asbestos Site. Tr. at 38:9-19.

8. In this capacity, Mr. Peronard is responsible for overseeing the investigation and cleanup of hazardous waste sites. Tr. at 38:1-2. He has personal knowledge of the work done at the Site, and work done by the Department of Transportation (Volpe Center) and the Agency for Toxic Substances and Disease Registry (hereinafter "ATSDR") under interagency agreements with EPA. Tr. at 39:25 to 44:11.

9. Mr. Peronard's testimony is very credible.

10. Vermiculite Mountain (the "Mine Site") is a geologic formation that includes naturally occurring asbestos. Tr. at 54:19-20.

11. EPA's removal actions in and near Libby were not based on the presence of naturally-occurring asbestos undisturbed by human activity. Tr. at 55:19 to 56:8. Rather, EPA sought to remove vermiculite material disposed **[**6]** of in and near Libby during the mining, processing, and sale of vermiculite. Tr. at 56:5-8.

12. EPA excavated three to four feet of soil from part of the former Screening Plant north of Rainy Creek, currently owned by the Parker family. Tr. at 63:7-19.

13. On part of the Parker property where the Parkers

intend to build a house, EPA encountered processed vermiculite at greater depths than at the rest of the former Screening Plant. This material was excavated so that installation of a septic system and drain field at the planned house would not require a future EPA response. Tr. at 63:20 to 64:14.

14. This area appears to have been a borrow pit or depression that was filled with processed vermiculite. Tr. at 63:23-24. Approximately 3,000 cubic yards of material were removed from this area. Tr. at 619:4-21.

15. At the former Screening Plant, EPA took steps to avoid removing soils that were not related to vermiculite mining and processing. These steps included visual observation and refraining from excavating soils that were below a volcanic layer of ash that pre-dated vermiculite mining and processing. Tr. at 60:23 to 61:11.

16. EPA did not encounter the ash layer while excavating **[**7]** on the part of the Parker property discussed above in paragraphs 13 and 14. Tr. at 65:15 to 66:4.

17. Testimony by Mike Hutchinson, the geologist responsible for monitoring the excavations at the Libby Asbestos Site, contradicts testimony by Mr. Peronard. However, I find Mr. Hutchinson's testimony was not credible.

18. EPA documented the presence of layers of naturally-occurring asbestos four to ten feet below the surface of parts of the former Screening Plant. See A.R. Doc. No. 485941.

19. Processed, unexfoliated vermiculite was found at depths of over ten feet in an area of the Screening Plant north of Rainy Creek. A.R. Doc. No. 485941, at 2. The document reflects that EPA excavated this area "to prevent exposure to workers who in the near future would potentially be digging basements, footing trenches, water and septic lines." Id. at 3.

20. The mining of vermiculite removed rock, dirt, and vegetation from the top of Vermiculite Mountain, creating an extensive disturbed area at the Mine Site. Tr. at 359:9 to 360:22.

[*1155] 21. Materials eroding off the Mine Site flowed to Rainy Creek and then to the Kootenai River, upstream from the Screening Plant. Tr. at 354:5 to 356:3.

[8]** 22. Mining operations at the Mine Site have exposed substantial surface area that would otherwise have been covered with dirt, rock and vegetation. Tr. at 359:16-24.

23. When the Mine Site was being mined, rainfall washed material from the surface of the Mine Site to the Kootenai River. Tr. at 361:7 to 362:3.

24. The disturbed area at the Mine Site was caused by mining activity. Any asbestos that washed off disturbed areas at the Mine Site to the Kootenai River was not in its "unaltered form, or altered solely by naturally occurring processes or phenomena"

B. COSTS INCURRED BY THE UNITED STATES

25. The United States claims it has incurred costs of $ 54,527,081.11 through December 31, 2001, for response activities at or related to the Libby Asbestos Site. This figure does not include, prejudgment interest. Revised Agreed Fact 70.

1. Stipulated Costs

26. The parties have stipulated that EPA has adequately documented $ 1,214,289.97 in EPA payroll and travel costs; $ 1,372,000.00 in certain EPA indirect costs; 32; $ 2,382,127.89 in EPA contract costs; $ 26,927,611.95 in EPA interagency agreement costs, excluding ATSDR and Volpe Center/Aeolus, Inc. costs; $ 840,352.29 **[**9]** in EPA miscellaneous costs; $ 27,379.35 in Public Health Service travel costs; and $ 208,364.28 in Department of Justice costs.

27. The total amount for which the parties have stipulated to the adequacy of documentation is $ 32,972,125.73.

a. EPA Payroll and Travel Costs

28. The parties stipulate to the adequacy of documentation for $ 822,536.62 in EPA Region 8 payroll costs through December 31, 2001. Agreed Fact 72.

29. The parties stipulate to the adequacy of documentation for $ 251,440.77 in EPA Region 8 travel costs through December 31, 2001. Agreed Fact 74.

30. The parties stipulate to the adequacy of documentation for $ 95,336.17 in EPA headquarters payroll costs through December 31, 2001. Agreed Fact

73.

31. The parties stipulate to the adequacy of documentation for $ 44,976.41 in EPA headquarters travel costs through December 31, 2001. Agreed Fact 75.

32. The amounts in paragraphs 27 through 30 total $ 1,214,289.97.

b. EPA Indirect Costs

33. Defendants do not dispute $ 1,372,000 in EPA indirect costs incurred at or related to the Libby Asbestos Site through December 31, 2001. Revised Agreed Fact 71.

c. EPA Contract Costs

34. The parties stipulate **[**10]** to the adequacy of documentation for $ 2,212,437.33 in costs incurred under the Enforcement Support Services ("ESS") Contract No. 68-W9-9050 with Toeroek Associates Inc. for response activities at or related to the Libby Asbestos Site through December 31, 2001. Agreed Fact 80.

35. The parties stipulate to the adequacy of documentation for $ 145,266.57 in costs incurred under the Response Action Contract ("RACS") No. 68-C9-9223 with Lockheed Martin Services, Inc. for response activities at or related to the Libby Asbestos Site through December 31, 2001. Agreed Fact 81.

[*1156] 36. The parties stipulate to the adequacy of documentation for $ 9,296.94 in costs incurred under the Superfund Technical Assist Response Team Contract No. 68-W5-0031 with URS Operating Services, Inc. for response activities at or related to the Libby Asbestos Site through December 31, 2001. Agreed Fact 82.

37. The parties stipulate to the adequacy of documentation for $ 14,781.81 in costs incurred under the Technical Support and Site Evaluation Program Contract No. 68-WO-1010 with IT Corp. for response activities at or related to the Libby Asbestos Site through December 31, 2001. Agreed Fact 83.

38. The parties stipulate **[**11]** to the adequacy of documentation for. $ 345.24 in costs incurred under the Technical Support and Site Evaluation Program Contract No. 68-W9-8106 with Dyncorp I & ET, Inc. for response activities at or related to the Libby Asbestos Site through December 31, 2001. Agreed Fact 84.

39. The amounts in paragraphs 34 through 38 total $ 2,382,127.89.

d. EPA Interagency Agreement Costs (Excluding ATSDR)

40. EPA performed much of the investigatory and cleanup work at the Libby Asbestos Site through the use of Interagency Agreements with other federal agencies. Tr. at 40: 2-9, 41:21 to 42-10.

41. The parties stipulate that the United States Geological Survey ("USGS") incurred $ 123,217.05 in costs under Interagency Agreement No. DW14953782 for response activities at or related to the Libby Asbestos Site through December 31, 2001. Supplemental Agreed Fact 92. USGS assisted EPA on issues related to asbestos analysis and the mineralogy of the Libby vermiculite deposit. Tr. at 41:21 to 42:4.

42. In November 1999, the Volpe Center began working with EPA Region 8 to support its investigation at the Libby Asbestos Site. Tr. at 324:21 to 325:1. The Volpe Center conducted its activities at **[**12]** the Libby Asbestos Site through an interagency agreement with EPA. Tr. at 325:19, 326:3-5; Exhibit 1063. The Volpe Center's work at Libby included, among other things, removal of hazardous substances, investigation, community relations, and operating management information systems. Tr. at 325:2-9; 39:25 to 41:8.

43. John McGuiggin testified about activities performed and costs incurred by the Volpe Center at or related to the Libby Asbestos Site. Mr. McGuiggin is an environmental engineer and is the Libby Asbestos Site project manager for the Volpe Center. He has personal knowledge of the activities performed and costs incurred by the Volpe Center. Tr. 324:24 to 325:17.

44. The parties stipulate to the adequacy of documentation for $ 26,804,394.90 in Volpe Center costs under Interagency Agreement No. DW69953792 for response activities at or related to the Libby Asbestos Site through December 31, 2001. Revised Agreed Fact 86.

45. The parties stipulate that $ 3.86 million of the Volpe Center costs for response activities at or related to the Libby Asbestos Site incurred through December 31, 2001, were incurred at the Kootenai Bluffs and Flyway properties, currently owned by Defendant **[**13]** KDC. Supplemental Agreed Fact 91.

46. Total interagency agreement costs for response activities at or related to the Libby Asbestos Site incurred through December 31, 2001, for which the adequacy of documentation is undisputed are $ 26,927,611.95.

[*1157] e. EPA Miscellaneous Costs

47. The parties stipulate to the adequacy of documentation for EPA Miscellaneous Costs of $ 840,352.29 incurred through December 31, 2001, for response activities at or related to the Libby Asbestos Site. Agreed Fact 85.

f. Public Health Service Travel Costs

48. The parties stipulate to the adequacy of documentation for $ 27,379.35 in U.S. Department of Health and Human Services, Public Health Service ("PHS") travel costs for response activities at or related to the Libby Asbestos Site incurred through December 31, 2001. Agreed Fact 88.

g. Department of Justice Costs

49. The parties stipulate that the United States has incurred costs of $ 208,364.28 through December 31, 2001, for U.S. Department of Justice ("DOJ") employee payroll and indirect costs for enforcement activities related to the Libby Asbestos Site. Agreed Fact 87.

50. The parties stipulate that the DOJ costs are reasonable. **[**14]** Agreed Fact 87.

2. Disputed Costs

a. Agency For Toxic Substances and Disease Registry ("ATSDR") Costs

(1) Background

51. ATSDR is an agency of the United States Department of Health and Human Services and the sister agency of the Centers for Disease Control and Prevention. See *42 U.S.C. § 9604(i)(1)*.

52. Among other things, ATSDR is responsible for assessing public health issues related to the release of hazardous substances. Tr. at 98:15 to 99:5. See also *42 U.S.C. § 9604(i)*.

53. To further its responsibilities, ATSDR is authorized by CERCLA to conduct survey and screening programs to "determine relationships between exposure to toxic substances and illness." *42 U.S.C. § 9604(i)(1)(E)*.

54. Sharon Campolucci testified about ATSDR's involvement at the Libby Asbestos Site. She is the Deputy Director for the Division of Health Studies at ATSDR and was the project officer and field coordinator in Libby. She has personal knowledge of ATSDR's activities at the Libby Asbestos Site. Tr. at 94:21-13; 97:7-12; 102:6-20; 104:21 to 105:21.

(2) ATSDR's Site-Related Activities

55. **[**15]** In late 1999, EPA asked ATSDR to participate in the government's response to the release of asbestos in and around Libby, Montana. Tr. at 105:22-25; 42:5 to 43:2.

56. As part of this response, ATSDR prepared a comprehensive plan outlining the activities ATSDR intended to undertake at the Site. Tr. at 104:3-20.

57. Under this plan, ATSDR (i) conducted a Medical Testing Program; (ii) performed a Mortality Analysis; (iii) conducted a Pilot Study of Environmental Cases; (iv) conducted a CT Study; (v) provided health education; (vi) implemented a tracing project, a precursor to the Tremolite Asbestos Registry; and (vii) prepared a substance-specific health consultation on tremolite asbestos.

(a) Medical Testing Program

58. ATSDR's largest activity in Libby in terms of both time and money was its Medical Testing Program. See, e.g., Exhibit 1141, at 5891 (showing that ATSDR incurred more than $ 5,000,000.00 in connection with the Medical Testing Program).

[*1158] 59. ATSDR began planning for the Medical Testing Program soon after EPA provided information indicating that residents in the community had been exposed to asbestos and that associated health concerns had been documented by **[**16]** the local medical community. See Tr. at 168:19-25, 106:6-8, 167:23 to 168:18.

60. The Medical Testing Program involved testing residents and former residents of Libby to determine the extent of adverse health effects from exposures to asbestos. See Exhibit 1145, at 1860; Tr. at 106:1-5.

61. The Medical Testing Program was implemented in two phases. Tr. at 109:8-9. In the first phase, ATSDR, through its contractor National Opinion Research Center ("NORC"), conducted more than 12,000 telephone screening interviews. Tr. at 110:5-11. The purpose of the interviews was to determine eligibility, based on criteria developed by ATSDR, for medical testing. Tr. at 109:8 to 110:4.

62. In the second phase, ATSDR, through NORC and the Association of Occupational & Environmental Clinics ("AOEC"), performed medical testing on more than 7,000 eligible individuals. Tr. at 110:19 to 111:1, 123:5-6.

63. ATSDR conducted medical testing in a clinic it established in Libby. Tr. at 112:9 to 113:3. ATSDR also conducted testing in Elko, Nevada, to accommodate former Libby residents who had moved to a mining community there after the mine in Libby closed. Tr. at 121:22 to 122:10.

64. Between July 5, 2000, and **[**17]** November 2, 2000, the first year of the Medical Testing Program, ATSDR's Libby clinic was generally open seven days per week for 8 to 12 hours per day. During 2001, the clinic was open from July 29 through approximately September 7. Tr. at 121:10-21.

65. An initial step in the medical testing was an interview in which participants were asked to complete a consent form and to provide information on their medical and residential histories. Tr. at 114:1-20.

66. After the interview, participants were given a pulmonary function test, which measures lung capacity. A diminished lung capacity is a marker for asbestos-related lung abnormalities. See Tr. at 115:8-17.

67. Following the pulmonary function test, participants had three chest x-rays taken - one posterior anterior (front to back) and two obliques. Tr. at 117:14 to 118:1.

68. The results of the pulmonary function test were reviewed on site by a pulmonologist. Tr. at 116:23 to 117:6.

69. The chest x-rays were also read on site for urgent care needs by a radiologist. Tr. at 118:2-8. The results were then read off-site by at least two B-readers for asbestos-related lung abnormalities. Tr. at 118:9 to 119:3.

70. At the end of **[**18]** his or her appointment, each participant was given a summary of the tests that had been performed, a patient ID number, information about when the final results would be available, a phone number to call with any questions, and a fact sheet about asbestos. Tr. at 120:18 to 121:6.

71. Once available, the final test results were mailed to participants and their designated health care providers. Tr. at 121:7-9.

72. Aggregate results from the Medical Testing Program were reported in the ATSDR study entitled: Year 2000 Medical Testing of Individuals Potentially Exposed to Asbestiform Minerals Associated With Vermiculite in Libby, Montana: A Report To the Community. A.R. Doc. No. 487408.

[*1159] 73. The Medical Testing Program was a "health effects study." See Tr. at 170:1-5, 167:12-17; *42 C.F.R. § 90.2* (defining "health effects study" as "research, investigation, or study . . . to evaluate the health effects of exposure to hazardous substances at specific sites").

(b) Mortality Analysis

74. In addition to the Medical Testing Program, ATSDR conducted a mortality analysis as part of its health-related activities at the Site. Tr. at 149:13-15. The analysis involved **[**19]** a review and analysis of the death certificates of former Libby residents. Tr. at 149:18-22.

75. The purpose of the mortality analysis was to determine if there was a higher mortality rate from specific diseases in the Libby area. Tr. at 149:23-25.

76. Aggregate results from the mortality analysis were reported in the ATSDR study entitled: Health Consultation: Mortality from Asbestosis in Libby, Montana. Exhibit 1145 at 810-64.

77. The mortality analysis was a "health effects study." See Tr. at 170:6-10, 167:12-17; *42 C.F.R. § 90.2.*

(c) Pilot Study of Environmental Cases

78. In addition to the Medical Testing Program and mortality analysis, ATSDR performed a pilot study of

environmental cases ("Pilot Study") in connection with the Libby Asbestos Site. Tr. at 150:9-11.

79. As part of the Pilot Study, ATSDR, with the assistance of NORC, reviewed the medical records of Libby residents and former residents who had been diagnosed with an asbestos-related disease. Tr. at 150:9-21.

80. The main purpose of the Pilot Study was to determine whether residents of Libby were at risk of developing asbestos-related diseases solely based on having lived in **[**20]** Libby. A second purpose was to examine the clinical progression of asbestos-related diseases to better understand how the diseases progress. Tr. at 150:12-21.

81. The Pilot Study was a "health effects study." See Tr. at 170:11-13, 167:12-17; *42 C.F.R. § 90.2.*

(d) CT Study

82. ATSDR also conducted a Computed Tomography study ("CT Study") as part of its activities at the Libby Asbestos Site. Tr. at 151:24-25.

83. The CT Study involved taking approximately 325 CT scans of current and former residents of Libby. Tr. at 152:21 to 153:11.

84. The purpose of the CT Study was to determine whether CT scans were more effective than chest x-rays at detecting asbestos-related lung abnormalities. Tr. at 152:10-13.

85. The CT Study was a "health effects study." See Tr. at 170:16-17, 167:12-17; *42 C.F.R. § 90.2.*

(e) Health Education

86. At EPA's request, and as part of its own response, ATSDR provided health education as part of its response at the Libby Asbestos Site. See Tr. at 154:15-16; 45:8-24.

87. EPA provided ATSDR with $ 4,725,000 through a site-specific interagency agreement for the explicit purpose of (1) **[**21]** providing "medical testing for people in the community who have had past exposures to asbestos in order to identify people with asbestos-related conditions so that they can be referred for medical care" (*i.e.*, the Medical Testing Program) and (2) providing "a public health education program to assist local health care providers and residents in obtaining full and up-to-date **[*1160]** information on asbestos-related risks and diseases." Exhibit 1145 at 881-82

88. ATSDR's health education activities included conducting stress management workshops, holding smoking cessation classes, providing continuing medical education, and preparing fact sheets. Tr. at 154:17-21, 157:20-22.

89. ATSDR held six stress management workshops - five for counselors, such as social workers, nurses and clergy, and one for the community. Tr. at 155:2-7. These workshops were taught by an ATSDR staff psychiatrist, Tr. at 154:22-25, and were offered as part of ATSDR's effort to prepare the community for the anxiety and depression expected to follow the dissemination of information generated through the Medical Testing Program. Tr. at 155:18 to 156:1. The topics covered during the workshops included counseling on grieving **[**22]** and anxiety associated with asbestos-related diseases and, for family members, dealing with ongoing care for people who have asbestos-related diseases. Tr. at 155:10-17.

90. ATSDR held four smoking cessation classes. These classes were held to educate the community on the increased health risk those with asbestos-related disease face when they smoke. Tr. at 156:15 to 157:11.

91. As part of its health education efforts, ATSDR also provided continuing medical education. The continuing medical education was offered to physicians and health care providers in Libby and Kalispell over a two-day period. Tr. at 158:2-21; See also Exhibit 1145, at 1398-422. The purpose was to provide local physicians and health care providers with information about asbestos-related diseases, including diagnosis, to prepare them to treat those suffering from asbestos-related diseases in the Libby community. Tr. at 158:22 to 158:13.

92. ATSDR also prepared 10 to 12 fact sheets on a variety of asbestos-related topics affecting the Libby community. Tr. at 160:12-14. The fact sheets were part of ATSDR's effort to communicate the results of its response activities to the Libby community. Tr. at 159:14 **[**23]** to 160:11.

93. Health education facilitates community

understanding of and cooperation with EPA's cleanup activities. Tr. at 44:23 to 45:13. Health education is a prudent public health practice, an integral part of ATSDR's site-related activities, and an essential means for communicating the results of ATSDR's response activities to the Libby community. See e.g. Tr. at 170:20 to 171:5.

94. Though ATSDR's health education activities at Libby are neither "health assessments" nor "health effects studies," each is "necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment" and, therefore, they are part of the government's removal action at the Libby Asbestos Site. See *42 U.S.C. § 9601(23)* (defining "removal" to include "such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release [of a hazardous substance]"). See also *40 C.F.R. §§ 300.155and 300.415(n)* (concerning community relations); Tr. at 44:4 to 45:24; Exhibit 1145 at 881 (providing **[**24]** ATSDR with EPA funding explicitly for health education in Libby).

(f) Tracing Project/Tremolite Asbestos Registry

95. As part of its response in Libby, ATSDR initiated a tracing project. The purpose of the tracing project was to identify individuals who worked at W.R. Grace's vermiculite mine or vermiculite **[*1161]** processing facilities or lived with someone who had. Tr. at 161:8-25.

96. The tracing project was a precursor to the Tremolite Asbestos Registry. Tr. at 162:12-20.

97. The Tremolite Asbestos Registry represents ATSDR's effort to locate and follow individuals who worked at W.R. Grace's vermiculite mine or related facilities or lived with someone who had to determine the health effects of asbestos exposure over an extended period of time. Tr. at 163:12-21.

98. The tracing project was part of a "health effects study" - the Tremolite Asbestos Registry. See Tr. at 171:6-12, 167:12-17; *42 C.F.R. § 90.2* (defining "health effects study" to specifically include exposure and disease registries)

(g) Substance-specific Health Consultation on Tremolite Asbestos

99. In connection with ATSDR's response in Libby, ATSDR also prepared a site-specific health **[**25]** consultation on tremolite asbestos. Tr. at 164:25 to 165:2, 165:20 to 166:6.

100. The health consultation on tremolite asbestos contains ATSDR's knowledge on tremolite asbestos and was prepared in direct response to the human health threats posed by the Libby Asbestos Site and provided ATSDR with necessary background information for many of its health-related activities at the Site. Tr. at 165:5-19.

101. While the health consultation on tremolite asbestos is neither a "health assessment" nor a "health effects study," it was necessary for ATSDR to arm itself with information about tremolite asbestos so it could respond appropriately to the Libby Asbestos Site. The health consultation was "necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment" and, therefore, was part of the government's removal action. See *42 U.S.C. § 9601(23)*.

(3) Documentation of ATSDR Costs

102. ATSDR used two sources to pay costs incurred during its response activities at the Libby Asbestos Site: (1) its own general appropriations and (2) a site-specific interagency agreement with EPA. See Tr. at 139:24 to 140:3. See **[**26]** also Exhibit 1141 at 5889-91 (distinguishing between costs incurred under site-specific inter-agency agreement and those incurred from general appropriations)

103. ATSDR tracked its costs by using five categories: payroll, travel, extramural, indirect, and other. Tr. at 175:15-22.

104. ATSDR has summarized its Libby costs through December 31, 2001, in a cost summary. Exhibit 1141, at 5891. ATSDR has documented its Libby costs through December 31, 2001, in a cost recovery package. Exhibit 1145.

105. Betty Jones testified about the documentation of ATSDR's costs. Ms. Jones is a certified public accountant and is the Cost Recovery team leader for ATSDR. She oversees the cost recovery accounting process for ATSDR and has personal knowledge of ATSDR's overall accounting process and the specific accounting used for the Libby Asbestos Site. Tr. at 174:2-19. I find her

testimony credible and persuasive.

(a) Payroll Costs

106. ATSDR tracks its payroll costs using cost recovery time sheets. Tr. at 176:10-11; Exhibit 1135.

107. The time sheets are completed electronically and input directly into ATSDR's Cost Recovery System ("CRS") by each ATSDR employee doing site-specific **[*1162]** work. **[**27]** Tr. at 178:23-25, 179:17 to 181:1.

108. ATSDR's time sheets record the employee's name; the pay period; the pay period date; the activity codes describing the nature of the work performed; the site codes describing the site to which the work relates; the site name and State; and the hours worked. Tr. at 181:11-21; Exhibit 1135.

109. Once completed, the time sheets are signed and dated by both the employee and the employee's supervisor. The signatures confirm that the employee and his or her supervisor have reviewed the time sheet for accuracy and completeness. Tr. at 182:15-22.

110. The information on the time sheets is summarized on payroll summaries, including a Comprehensive Payroll Expense Report and a Payroll Expense Report.

111. The Comprehensive Payroll Expense Report is generated by CRS. It is prepared for a specific site and contains the names of each employee doing site-specific work, the fiscal year in which the work was done, the pay period, the activity code, the hours worked, and the corresponding payroll amount. See, e.g., Exhibit 1145, at 928-48; see also Tr. at 205:3-19.

112. The Payroll Expense Report summarizes the Comprehensive Payroll Expense Report **[**28]** and contains the name of each employee doing site-specific work, the fiscal year, the hours worked, and the total payroll amount by employee and fiscal year. See, e.g., Exhibit 1145, at 911-27.

113. The payroll summaries for the Libby Site, copies of all cost recovery time sheets supporting the payroll' summaries, and a summary of activity codes are included in ATSDR's cost recovery package. See. e.g., Exhibit 1145, at 911-1302; Tr. at 206:5-20.

(b) Travel Costs

114. ATSDR documents its travel costs using travel orders and travel vouchers.

115. The travel order authorizes an employee to travel. Tr. at 184:6-12. It contains the travel order number, the traveler's name, the traveler's social security number, the purpose of the trip, and an estimate of the travel costs. Exhibit 1134, at 8306-08.

116. ATSDR's cost recovery group reviews all travel orders to determine whether the purpose of the travel is site-specific. Tr. at 185:22 to 186:3.

117. ATSDR tracks site-specific travel by manually inputting the travel information into CRS, the same electronic system ATSDR uses to track its payroll costs. Tr. at 186:15-20.

118. The travel voucher is used for authorization **[**29]** and payment of travel costs. See Exhibit 1134. It is prepared after an employee completes his or her travel. The travel voucher includes documentation of specific travel costs, such as airline and hotel receipts, and is signed by the employee. Id.; Tr. at 184:1-5.

119. The costs reflected on a travel voucher are included in a cost recovery package only after they have actually been paid. Tr. at 186:21 to 187:4. Payment is verified through an interface between CRS and the financial management system. When the voucher is paid, the financial management system automatically downloads to CRS the amount paid, the treasury schedule number, and the date. Tr. at 187:5-11.

120. Once ATSDR's cost recovery group receives notification that a travel voucher has been paid, it compares the voucher with the employee's time sheet to verify that the purpose of the trip and the time sheet coincide. Tr. at 187:12-18.

[*1163] 121. If the voucher is consistent with the time sheet, the cost recovery group approves the travel voucher in CRS and the amount can be included in a cost recovery package. Tr. at 187:19 to 188:7.

122. Like payroll costs, ATSDR's travel costs are summarized in travel expense summaries **[**30]** for each site, including a Comprehensive Travel Expense Report and a Travel Expense Report.

123. The Comprehensive Travel Expense Report is generated by CRS for each site and contains the names of each employee traveling on site-related work; the fiscal year in which the travel was taken; the obligation document number ("ODN")/travel order number; voucher amount; ticket amount; total travel expense amount; and treasury schedule number confirming payment of the total travel expense amount. See, e.g., Exhibit 1145, at 1968-78. See also Tr. at 205:3-19.

124. The Travel Expense Report summarizes the Comprehensive Travel Expense Report and contains employees' names; ODN/travel order numbers; treasury schedule numbers; and amounts paid. See, e.g., Exhibit 1145, at 1964-67; Tr. at 207:5-13.

125. The travel expense summaries for the Libby Asbestos Site and copies of all travel orders and travel vouchers relating to those summaries are included in ATSDR's cost recovery package. See, e.g., Exhibit 1145 at 1964-3060. See also Tr. at 207:18-24.

(c) Extramural Costs/NORC and AOEC

126. ATSDR used both a task order contract and a cooperative agreement to accomplish **[**31]** its health-related activities in Libby.

127. For example, ATSDR used several task orders, numbered 13, 14, 15, and 16, under its contract with NORC to perform work relating to the Libby Site. Task Order 13 related to the Medical Testing Program; Task Order 14 related to the CT Study; Task Order 15 related to the Pilot Study of Environmental Cases; and Task Order 16 related to the tracing project/Tremolite Asbestos Registry. See Exhibit 1152.

128. ATSDR used its existing cooperative agreement with AOEC to secure its assistance with the Medical Testing Program. See Tr. at 110:24 to 111:1, 111:11 to 112:8.

129. ATSDR categorizes costs associated with both task order contracts and cooperative agreements as extramural costs. Tr. at 190:24 to 191:1.

130. Under both funding mechanisms, ATSDR obligates a specific amount of money for a given task. See, e.g., Exhibit 104 (seeking authorization for funding. NORC for first phase of Medical Testing Program); Exhibit 1136 (documenting that request for NORC funding for first phase of Medical Testing Program granted); Exhibit 1153 (documenting increase in NORC funding for Medical Testing Program); Exhibit 1154 (AOEC's application for **[**32]** funding); Exhibit 1133 (seeking authorization for funding AOEC for its participation in Medical Testing Program); Exhibit 1198 (documenting that request for AOEC funding granted). Once obligated, funding is transferred to an account maintained for the contractor/cooperative partner using a letter of credit. See Tr. at 137:17-25.

131. Upon transfer, funds are immediately available to the contractor or cooperative partner without further action on the part of ATSDR. See Tr. at 131:23 to 132:8.

132. Progress under both task order contracts and cooperative agreements is documented in progress reports. See, e.g., Exhibit 1132; Exhibit 1149.

[*1164] 133. With respect to its work in Libby, NORC submitted a monthly progress report to Sharon Campolucci, ATSDR's project officer and field coordinator for the Libby Site. See Exhibit 1132; Tr. at 132:9-17. Ms. Campolucci reviewed these reports to verify that they were consistent with her understanding of the work done in Libby. Tr. at 133:5-20.

134. In addition to the monthly progress reports, NORC submitted an invoice to Ms. Campolucci every month for each task. See Exhibit 1131; Tr. at 135:11 to 136:18. These invoices were reviewed **[**33]** by either Ms. Campolucci or her staff. Tr. at 136:16 to 137:16. Discrepancies were brought to NORC's attention and, as warranted, corrected. See id.

135. AOEC provided ATSDR with quarterly progress reports, summarizing AOEC's work at all sites, including the Libby Asbestos Site. See Exhibit 1149; Tr. at 145:24 to 146:4. Progress reports were reviewed by Ms. Campolucci or her staff to verify that they were consistent with her understanding of AOEC's work in Libby. Tr. at 145:24 to 147:5.

136. Extramural costs are not tracked in ATSDR's CRS. Tr. at 191:5-11.

137. Instead, when ATSDR is asked to prepare a cost recovery package for a site, it determines whether it has incurred extramural costs relating to that site. Tr. at 191:12 to 192:6.

138. Where there are extramural costs, ATSDR requests cost information and supporting documentation from the contractor and/or cooperative partner. Tr. at 192:7-13.

139. Upon receipt, ATSDR's cost recovery group conducts an overall review of the information and documentation. It checks for mathematical errors and missing documentation. Tr. at 193:6-19.

140. After it checks for mathematical errors and missing documentation, ATSDR's cost [**34] recovery group manually includes the extramural costs in the cost recovery package as a line item in the cost summary. See, e.g., Exhibit 1141, at 5891; Tr. at 192:7-13.

141. Cost information and supporting documentation relating to ATSDR's extramural costs, including authorization documents, see, e.g., Exhibit 1136; invoices, see, e.g., Exhibit 1131; progress reports see, e.g., Exhibit 1132, Exhibit 1145, at 5373-96; and expense summaries, see, e.g., Exhibit 1145, at 5370-72, 5396, 5398, are included in ATSDR's cost recovery package for the Libby Asbestos Site. See Tr. at 209:16-21; see also Exhibit 1145, at 1303-455.

(d) ATSDR Indirect Costs

142. ATSDR also incurs indirect costs. Tr. at 194:21-22. Indirect costs are commonly referred to as overhead. Examples include rent, utilities, information systems, and computer services. Tr. at 194:11-15.

143. ATSDR calculates its indirect costs by using an indirect cost rate. Tr. at 194:23-24.

144. ATSDR's indirect cost rate is calculated each fiscal year by Cotton and Company. Tr. at 194:25 to 195:7, 221:4-6, 222:2-5.

145. Once the indirect cost rate is finalized for a particular fiscal year, ATSDR's cost [**35] recovery group manually inputs the rate into CRS. Tr. at 197:1-3.

146. To determine its indirect costs for any particular site, ATSDR multiplies the total number of direct site hours by the applicable indirect cost rate. Tr. at 197:4-17. This calculation is automatically done by CRS and is documented on an indirect cost expense report. See Tr. at 208:24 to 209:4.

147. ATSDR's total indirect costs, through the pay period ending December [*1165] 29, 2001, associated with the Libby Asbestos Site were $ 4,581,885.00. See Exhibit 1141, at 5891.

148. The indirect cost expense report for the Libby Asbestos Site and copies of relevant pages from Cotton and Company's indirect cost rate report showing the final calculation of the indirect cost rate are included in ATSDR's cost recovery package. See Exhibit 1145, at 4626-27; Tr. at 208:24 to 209:4.

(e) "Other" Costs

149. "Other" costs are all costs that are not payroll, travel, extramural, or indirect. Tr. at 188:16-22.

150. The primary other cost associated with the Libby Asbestos Site is the administrative fee paid to the Centers for Disease Control and Prevention ("CDC"). The administrative fee covers administrative support [**36] services provided by CDC to ATSDR. See Exhibit 1145, at 4306-08.

151. "Other" costs are documented in two ways. Some are tracked in CRS; some are tracked by invoice. In either case, to be included in a cost recovery package, the cost recovery group must be aware of them. Tr. at 188:23 to 189:8.

152. For those costs that can be tracked in CRS, payment is verified through an interface between CRS and the financial management system. When the cost is paid, the financial management system automatically downloads the payment information to CRS. Tr. at 189:15-21.

153. Once ATSDR's cost recovery group receives notification that an "other" cost in CRS has been paid, through the automatic interface between CRS and the financial management system, the cost recovery group reviews the documentation supporting the cost to insure that it is complete, that the cost was site-specific, that it was authorized, and that it was paid. Tr. at 189:22 to 190:23.

154. If the supporting documentation is complete, and the cost is site-specific, authorized and paid, the cost recovery group manually approves the cost in CRS and the amount can be included in a cost recovery package. Tr. at 190:12-23.

[**37] 155. For those costs that cannot be tracked

in CRS, the cost recovery group keeps pertinent documentation, such as invoices, purchase orders, credit card bills and receipts, in a site-specific file. Tr. at 189:9-14. When a cost recovery package is prepared, these costs are manually included in the line item in the cost summary for "other" costs. See generally Exhibit 1141, at 5891; Tr. at 207:25 to 208:3.

156. Summary reports reflecting payment of "other" costs tracked in CRS; copies of invoices, purchase orders, credit card bills and receipts; financial records from CDC reflecting the amount of the administrative fee; and CDC's authority for charging ATSDR the administrative fee are included in ATSDR's cost recovery package for the Libby Asbestos Site. Tr. at 208:4-18.

(4) Summary of ATSDR Costs

157. ATSDR incurred $ 11,338,191.62 in costs relating to the Libby Asbestos Site through December 31, 2001. Exhibit 1141, at 5891; Tr. at 204:16-21.

158. Of ATSDR's total costs, $ 943,281.99 were for payroll costs; $ 209,410.96 were for travel costs; $ 278,582.60 were for "other" costs; $ 4,581,885.00 were for indirect costs; and $ 5,325,031.07 were for extramural costs - $ **[**38]** 4,044,748.00 to NORC and $ 1,280,283.07 to AOEC. See Exhibit 1141, at 5891.

159. The United States has proven through testimony and sufficient documentation that it is entitled by a preponderance of evidence to recovery of the full $ 11,338,191.62 of ATSDR's costs.

[*1166] b. Volpe Center/Aeolus, Inc. Costs

160. Defendants contend that costs EPA incurred through its inter-agency agreement with the Volpe Center related to a contract with Aeolus, Inc. ("Aeolus") should have been billed to a non-site specific account rather than to the Libby Asbestos Site project.

161. EPA incurred $ 266,538.10 in costs related to the Volpe Center's contract with Aeolus through December 31, 2001. Tr. at 516:9-11, 17-19; 334:7-13.

162. Defendants also contend that no work was performed under one Aeolus task order, and that one Aeolus progress report was dated after the work was performed. Tr. at 548:4-18. Defendants do not contest the adequacy of the documentation of Aeolus costs. Tr. at 548:19-24.

163. The Volpe Center contract with Aeolus required the company to perform six tasks and produce deliverables related to the tasks. The tasks were: 1) review relevant asbestos literature to allow the **[**39]** government to make more relevant assessments of the risks posed at the Libby Asbestos Site; 2) review of the Libby Asbestos Site risk documentation; 3) obtain, review, and organize data to update existing recommended risk factors and exposure indexes; 4) reevaluate the appropriateness of the current mesothelioma model being used to derive recommended risk factors and exposure indexes; 5) apply the "new" risk models to available exposure and mortality data sets; and 6) complete modifications and revisions to finalize the existing methodology. Tr. at 47:6 to 48:6; 344:22 to 345:13. See also Exhibit 1192, at 10197, 10199-202.

164. Aeolus produced a two-volume final report and risk assessment model under the contract with the Volpe Center. Tr. at 48:10 to 49:4. See also Exhibit 1186; Exhibit 1187. The two-volume report included everything that Aeolus had produced as deliverables under the contract, including the epidemiological reviews and the bibliography as well as the revised or proposed risk assessment model that could be used for assessing asbestos risk. See Exhibit 1186; Exhibit 1187.

165. EPA was satisfied with Aeolus work product and found it helpful to the work being **[**40]** done in Libby. Tr. at 49:18 to 50:17.

166. Aeolus provided the Volpe Center with progress reports that summarized the work that it did under the firm fixed-price contract with the agency. Tr. at 329:12-19.

167. Progress Report No. 2, which covered the period from February 6 to February 19, 2001, was dated June 28, 2002. Tr. at 330:11-19, 336:23 to 337:6. See also Exhibit 1183.

168. EPA relied on work produced by Aeolus in its work at the Libby Asbestos Site. Tr. at 51:15-19.

169. EPA included studies that Aeolus had identified in the Administrative Record for the Libby Asbestos Site and relied on them in its cleanup decisions; incorporated Aeolus' review of epidemiological studies in the sampling analysis plans it prepared for the Libby Asbestos Site; and used Aeolus' analysis of the type and toxicity of different types of asbestos fibers to help formulate its

sampling plans at the Libby Asbestos Site. Tr. at 46:15-19, 47:6 to 48:6, 50:2-17. EPA specifically used Aeolus' work related to sampling in Libby, and the narrative information he provided about the epidemiological studies and the nature and behavior of asbestos. Tr. at 51:9-14.

170. One of Aeolus' tasks was to reassess **[**41]** the asbestos risk assessment methodology that was being used at the time because EPA Region 8 determined that that methodology may have been insufficient to protect the Libby community. Tr. **[*1167]** at 345:16 to 346:20. See also Exhibit 1191, at 10187-88; Exhibit 1192, at 10198-99. Though EPA has not used the quantitative risk model that Aeolus developed for risk assessment calculations at the Libby Asbestos Site thus far, it may do so in the future. Tr. at 51:15-17, 51:25 to 52:15.

171. The United States has proven by testimony and sufficient documentation it is entitled to recovery of $ 266,538.10 in Aeolus costs that EPA incurred through its interagency agreement with the Volpe Center.

c. EPA Indirect Costs

172. The cost of cleanups' EPA performs under its CERCLA authority includes both direct and indirect costs. Tr. at 247:22 to 249:11.

173. Direct costs are costs incurred by an organization to produce a product or service. Tr. at 248:6-12. Examples of EPA's direct costs include the salary of EPA personnel for time spent directing cleanup activities at a site, the cost of travel to the site, and the cost of contractors performing work at the site. Tr. at 248:13-23.

174. Indirect **[**42]** costs are costs incurred by an organization that support the production of a product or service but which cannot be specifically identified with that product or service. Indirect costs are commonly called "overhead" costs. Examples of indirect costs include costs of rent, electricity, employee leave time, and the computer network. Tr. at 248:24 to 249:11.

175. EPA should account for the cost of its Superfund activities through both direct and indirect costs. Tr. at 553:9-11. Contracts, interagency agreements, and state cooperative agreements are part of EPA's activities within the Superfund program. Tr. at 553:12-15.

176. The Statement of Federal Financial Accounting Standards No. 4 ("Standard No. 4") is the generally accepted cost accounting principle applicable to the federal government. Tr. at 244:12-16; 551:19-24. See also Exhibit 1058, at 06356.

177. The EPA is required to follow Standard No. 4. Tr. at 244:20 to 245:2; 577:2-5; 577:18-23. Although other cost accounting standards exist, they do not apply to EPA's internal accounting. Tr. at 245:5-19.

178. Standard No. 4 does not require that EPA use any particular methodology to calculate its indirect costs, nor does it **[**43]** tell EPA how it must develop its methodology for calculating the indirect rate. Tr. at 551:25 to 552:6; 283:2-5.

179. Rather, the language of Standard No. 4 is intentionally broad to allow maximum flexibility for federal agencies in developing costing methodologies that best suit their agencies. Tr. at 283:6-15; 552:7-12. See also Exhibit 1058, at 06358.

180. The requirements of Standard No. 4 are: 1) cost accounting, or regularly reporting costs; 2) responsibility segments, or identifying organizations within EPA that produce products or services; 3) full costs, or identifying the full costs of outputs; 4) inter-entity costs, or costs incurred by other federal agencies that provide, goods or services to the EPA; and 5) costing methodology, or using appropriate costing methodologies to accumulate and assign costs to outputs. Tr. at 246:12 to 247:5. See also Exhibit 1058, at 06357-58; Exhibit 415, at 05940.

(1) EPA's Revised Indirect Cost Methodology

181. Before Fiscal Year 2000, EPA employed a methodology based upon EPA labor hours charged to Superfund sites for determining its indirect costs. Tr. at 264:21 to 265:2. That methodology did not **[*1168]** take into account the **[**44]** complexity and magnitude of all of the activities that take place at a Superfund site, as labor hours are only a small component of site-specific costs. Tr. at 276:13-17. See also Exhibit 64, at 05895-96 (Guidance on Exercising CERCLA Enforcement Discretion in Anticipation of Full Cost Accounting Consistent with "Statement of Federal Financial Accounting Standards No. 4" (hereinafter "EPA Guidance on Standard No. 4"), *65 Fed. Reg. 35,339 (June 7, 2000))*. EPA's pre-2000 methodology did not allow it to recover all of the Superfund program's indirect costs.

Tr. at 265:10-12. See also Exhibit 64, at 05896.

182. The General Accounting Office ("GAO"), the EPA Office of Inspector General ("OIG"), the Office of Management and Budget ("0MB"), and Congress repeatedly criticized EPA's previous methodology for failing to identify the full cost of Superfund site cleanups and, therefore, failing to allow for potential recovery of all indirect costs. Tr. at 265:3-14. See also Exhibit 64, at 05896; Exhibit 415 at 05941 (GAO Report).

183. In 2000, EPA revised its methodology to employ a "full cost" methodology for indirect costs, based on the guidance in Standard No. 4. Tr. **[**45]** at 267:8-10, 266:13-19. See also Exhibit 1058, at 06359; Exhibit 64, at 05896-97. A full cost methodology identifies all appropriate indirect cost's to a product. Tr. at 265:20-25.

184. The revised methodology allocates indirect costs to Superfund sites based on the total costs of cleaning up the sites. Tr. at 267:11-13. To compute its indirect cost rate, EPA identifies its total direct Superfund site expenditures by region and allocates indirect costs over that amount to produce a percentage. The allocation is the means to reflect the relationship of indirect costs to direct expenditures for the Superfund program. See Tr. at 267:14-18. To determine indirect costs attributable to an individual Superfund site, that percentage is then multiplied by total direct costs for the individual site. Tr. at 267:19-21. See also Exhibit 64, at 05895.

185. Under the revised methodology, there are four steps' to calculate EPA's indirect costs for a particular Superfund site: 1) identify the pool of indirect costs for Superfund sites within each EPA region; 2) identify the allocation base, or the total amount of site-specific direct costs 'incurred within each EPA region; 3) compute **[**46]** the indirect rate; and, 4) apply the indirect rate to the particular Superfund site in question. Tr. at 268:4-7, 269:13-15, 271:15-17, 272:16-21.

186. The indirect cost pool for the Superfund program includes indirect costs such as rent, electricity, training, management and supervision of employees, and the management and implementation of the Superfund program as a whole. Tr. at 268:4-13. EPA's direct costs and EPA's indirect costs associated with other programs besides Superfund, such as EPA's water program, are excluded from the indirect cost pool. Tr. at 268:14 to 269:1. There is a different indirect cost pool for each region within EPA. Tr. at 269:2-12.

187. The allocation base is the mechanism used to allocate the direct costs associated with the Superfund program to the program's output, or in this case, Superfund activity. Tr. at 269:16-18, 269:22 to 270:20. Under EPA's revised methodology, the allocation base is total site-specific costs. Tr. at 269:19-21.

188. Total site-specific costs is a reasonable basis for allocating, direct costs because it reflects the magnitude and complexity of all of the Superfund Program's activities at contaminated sites. Tr. at 270:25 to **[**47]** 271:11.

189. To compute the indirect rate, EPA takes the indirect cost pool and divides **[*1169]** it by the allocation base to produce a percentage. Tr. at 271:21 to 272:4. A separate rate for each fiscal year is generated for each regional office within EPA, and that rate' applies to all sites in that region. Tr. at 272:14-15.

190. To determine the amount of indirect costs charged to a particular Superfund site, EPA multiplies the indirect rate percentage by the total direct costs for that site. Tr. at 272:16-21.

(a) EPA's Revised Indirect Cost Methodology Satisfies Standard 4

191. EPA's revised indirect methodology complies with the five requirements of Standard No. 4, because the agency has 1) reported the costs of its Superfund activities on a regular basis; 2) identified organizations that produce major products or services; 3) identified the full costs of producing those products or services; 4) identified inter-entity costs, or costs from other federal organizations that provide products' or services to the EPA; and 5) provided a means of identifying all of the agency's costs so that they can be assigned to outputs. Tr. at 282:2-25, 283:16-19, 588:6-12; Exhibit 415, at 05943-49.

[48]** 192. EPA's revised methodology is an appropriate accounting measure of its indirect costs charged to Superfund sites, including the Libby Asbestos Site. Tr. at 293:12-19, 588:9-12.

(b) Defendants' Challenges to EPA's Revised Methodology Are Unavailing

193. Defendants generally challenge EPA's revised

methodology based on their contention that the revised methodology does not comply with generally accepted accounting principles. Tr. at 464:23 to 465:10, 472:3-12, 484:6-9, 485:7-10, 488:7-10, 488:22-24, 489:6-10. I find Defendants' arguments unavailing and, specifically, find that the testimony of Defendants' expert Dale R. Jensen is not credible.

i. There Is No One-Size-Fits-All Approach To Indirect Cost Methodologies

194. Standard No. 4 is broad to allow federal agencies maximum flexibility in developing costing methodologies that best suit their agencies. Exhibit 1058, at 06358. This is because different agencies have different objectives, and, therefore, their costing methodologies may vary. Tr. at 589:12 to 590:5.

195. No formal conclusions can be drawn from the fact that EPA and ATSDR use different methodologies to calculate indirect costs. Tr. at 589:12 to 590: **[**49]** 1.

ii. It Is Appropriate for EPA To Include Indirect Costs of Other Agencies and Contractors in Its Allocation Base

196. It is appropriate for EPA to include the indirect costs of those who have performed services for EPA, and their contractors or subcontractors, in the Superfund program's allocation base under the revised indirect cost methodology. Tr. at 573:21 to 575:20. All of the Superfund program's costs, including the indirect costs of those who have performed services for the Superfund program, are necessary to produce the cleanup of contaminated sites. Id. Consequently, these costs are appropriately included as part of the total cost of activity at the site. Id.

iii. EPA's Outputs Are Properly Defined

197. Standard No. 4 states that outputs should represent the products and services being provided by the government organization. Tr. at 262:8-13, 579:9-13. See also Exhibit 1058, at 06388-89.

[*1170] 198. The Superfund program's outputs are primarily the cleanup of contaminated sites. Tr. at 262:14-17. Management and oversight are part of cleaning up contaminated sites. Tr. at 262:23 to 263:11.

199. Accordingly, EPA's revised indirect cost methodology complies **[**50]** with Standard No. 4's requirement that the outputs of the Superfund program be properly defined. Tr. at 579:2-19, 580:7-14.

iv. EPA's Indirect Cost Pool Is Allocated Based on Benefits Received

200. Standard No. 4 states that for indirect costs, it is preferable that they be allocated to outputs on a cause-and-effect basis. Tr. at 580:15 to 582:14. See also Exhibit 1058, at 06407. Identifying the outputs of an organization will result in good allocation of indirect costs. Tr. at 263:12-20.

201. As discussed above, the outputs of EPA's Superfund program are primarily the cleanup of contaminated sites. Tr. at 262:14-17. Under the revised methodology, EPA uses total site-specific expenditures, or total direct costs, to represent the output of EPA's Superfund program. Tr. at 269:19-21.

202. Because labor hours are a small part of the total output of the Superfund program, allocating EPA's indirect cost pool over a base of labor hours would not reflect the benefits received because it does not best represent total activity of the Superfund program. Tr. at 582:25 to 583:9.

203. EPA's revised methodology for calculating indirect costs does not distort the allocation base because **[**51]** total site-specific expenditures best represent the total activity of the Superfund program, not labor hours. Tr. at 595:21 to 596:6.

204. Because EPA's indirect cost pool is allocated on a cause-and-effect basis, it complies with Standard No. 4. Tr. at 584:6-10.

v. EPA Measures the Full cost of Its Outputs

205. Standard No. 4 states that government entities should report the full costs of outputs. See Exhibit 1058, at 06388. As applied to the Superfund program, Standard No. 4 requires EPA to measure its full cost of cleaning up contaminated sites.

206. EPA's revised methodology for calculating indirect costs does not include the costs that third party potentially responsible parties ("PRPs") incur cleaning up contaminated sites. Tr. at 274:5-8, 584:16-24. Standard No. 4 requires that the EPA measure only the internal costs of its outputs, or, in the context of Superfund, only the costs that the agency incurs in cleaning up

contaminated sites. See Exhibit 1058, at 06388.

207. It would be difficult and impractical for the EPA to include PRP cleanup costs in measuring outputs. Tr. at 274:9-19. Even if the agency were able to obtain and track PRP costs, including them [**52] in the allocation base would not be a good measure of EPA's outputs because PRP costs go beyond that which the agency has incurred. Tr. at 585:13-24. Such a measure of outputs would be inconsistent with Standard No. 4. Id. This is true even though indirect costs will vary significantly under EPA's revised indirect cost methodology depending upon whether EPA or PRPs conduct a cleanup. Tr. at 279:15 to 281:1.

208. EPA's revised methodology for calculating indirect costs measures the full internal cost of the outputs of the Superfund program. Therefore, the methodology complies with Standard No. 4. Tr. at 585:25 to 586:3.

[*1171] vi. EPA's Indirect Cost Pool is Homogeneous

209. Standard No. 4 states that costs that have a similar cause-and-effect relationship to outputs can be grouped into cost pools. See Exhibit 1058, at 06407. In accounting terminology, this concept is known as "homogeneity." Id.

210. Homogeneity can be achieved if all of the activities in an indirect cost pool are similar or if the activities in an indirect cost pool are disparate, as long as their relationship to the output is similar. Exhibit 1658 at 06407; Tr. at 587:1-8.

211. For example, though [**53] program cost's such as finance, personnel, and legal may be considered disparate, they are homogeneous from an accounting perspective, if they have a similar cause-and-effect relationship to the outputs, or, here, the cleanup of contaminated sites. Tr. at 587:15-20.

212. The elements that make up EPA's indirect cost pool under the Superfund program have a similar relationship to outputs under the revised methodology. Tr. at 587:9-20. Therefore, EPA's indirect cost pool is homogeneous and complies with Standard No. 4. Tr. at 587:21 to 588:5.

(c) Defendants' Cost Expert Does Not Know What Methodology EPA Should Use

213. Defendants' accounting expert Dale Jensen does not know what methodology the EPA should use to recover its indirect costs. Tr. at 553:16-19.

(d) Independent Evaluators Have Approved EPA's Revised Indirect Cost Methodology

214. Before publishing its revised methodology for calculating indirect costs, EPA bought independent evaluations of the methodology from the accounting firm of KPMG and from the GAO. Tr. at 285:8-18. EPA sought these reviews because the previous methodology had been criticized for years, and the EPA wanted third party evaluations of [**54] the revised methodology before it was issued. Tr. at 286:5-15, 290:15-21.

i. The GAO Report

215. The GAO concluded that EPA's revised indirect methodology complies with each specific accounting standard set forth in Standard No. 4. Tr. at 288:19-25. See also Exhibit 415, at 05943-49.

216. The GAO noted that EPA's revised methodology is designed to provide an accurate accounting of the full costs of Superfund site response for recovery from responsible parties. Tr. at 286:16-19, 286:21 to 287:2. See also Exhibit 415, at 05938-39.

217. The GAO also concluded that EPA's use of an allocation base composed of total site-specific expenditures in its revised indirect methodology is appropriate. Tr. at 287:3-5; 287:24 to 288:1. See also Exhibit 415 at 05939.

218. The GAO found that compared to EPA's previous methodology, the revised methodology better reflects the true indirect costs associated with site cleanups. Tr. at 288:7-15. See also Exhibit 415, at 05951.

ii. KPMG Report

219. The accounting firm KPMG reviewed EPA's revised indirect methodology and concluded that it both complies with Standard No. 4 and provides a better process for estimating and allocating [**55] total Superfund indirect costs. Tr. at 291:1-18. See also Exhibit 416, at 05973-74, 05979.

220. KPMG also concluded that EPA's revised

indirect methodology was simpler, easier to understand, more thorough and more complete than the previous methodology. **[*1172]** Tr. at 291:1-18. See also Exhibit 416, at 05979.

(2) Applicable Indirect Cost Rate

221. To determine the total indirect costs charged to a specific Superfund site, EPA multiplies the indirect rate percentage by the total direct costs associated with the specific site.

222. EPA's indirect rate is determined annually. Tr. at 277:7-8. Indirect cost rates are based upon actual expenditures at Superfund site for a particular year. Tr. at 319:1-6. The actual indirect cost rate cannot be determined for any given year until all costs for that year have been incurred and the final rate is calculated. Tr. at 317:3-15. The process of finalizing an indirect rate includes performing a computation, reviewing that computation to ensure that the right amounts are included or excluded, and preparing a memorandum that announces the rate for a particular year. Tr. at 319:12 to 320:9.

223. EPA incurs indirect costs on an on-going basis **[**56]** during a fiscal year. Tr. at 318:11-12. EPA establishes a "provisional" indirect rate to identify indirect costs until the actual indirect rate for a particular fiscal year can be computed and finalized. Tr. at 277:9-15, 318:9-22, 319:9-11.

224. The provisional indirect rate for a fiscal year for which an actual indirect rate has not been finalized is the actual indirect rate for the most recent fiscal year for which such a rate has been finalized. Tr. at 317:18-23.

225. Use of provisional rates until actual rates are issued is standard practice by government agencies and in the private sector. Tr. at 277:16-18, 320:24 to 321:5.

226. The indirect rate for Fiscal Year 1999 is 35.53%. At the time of trial, EPA had not finalized actual indirect rates for Fiscal Years 2000 and 2001; as a result, the provisional rate for both fiscal years is the Fiscal Year 1999 indirect rate, or 35.53%. Tr. at 278:6-9, 278:15-23.

227. The United States has informed the defendants and the Court that the indirect rates for the two fiscal years were finalized shortly after trial, and that the actual rate for Fiscal Year 2000 is 38.84% and the actual rate for Fiscal Year 2001 is 34.28%. See United **[**57]** States' Notice of EPA Issuance of Actual Indirect Cost Rates for Fiscal Years 2000 and 2001, filed April 14, 2003, at 1.

228. Defendants object to using the actual rates for Fiscal Year 2000 and 2001 because they were not introduced at trial. The United States does not seek to use the actual rates, but proposes using the provisional rate. Because using the provisional rate will inure to Defendants' benefit, I will apply the provisional rate for Fiscal Years 2000 and 2001.

(3) EPA's Indirect Costs at the Libby Site

229. A cost recovery package that documents costs that EPA incurred at the Libby Asbestos Site through December 31, 2001, was generated from EPA's IFMS and SCORPIOS systems. Tr. at 255:13-25, 257:7-10, 257:15 to 258:6. See also Exhibit 1128, at 08170-71.

230. The Libby Asbestos Site Cost Recovery Package documents that $ 43,602,396.16 in direct and indirect costs were incurred at the Libby Asbestos Site through December 31, 2001. See Exhibit 1128, at 08171. However, some costs have been added and others deleted from the amount set forth in the Libby Asbestos Site Cost Recovery Package to reflect the results of negotiations between the parties. Tr. at 292: **[**58]** 7-16, 547:25 to 548:3. The total amount of EPA's direct costs incurred through December 31, 2001, that is sought in this case is $ 31,866,663.83.

[*1173] 231. EPA's total indirect costs associated with the Libby Asbestos Site through December 31, 2001, can be obtained by multiplying the provisional indirect cost rate of 35.53% by the amount of EPA's Libby Asbestos Site direct costs, or $ 31,866,663.83. The result is $ 11,322,225.66.

d. Mistake In Initial Cost Summary Package for Site

232. There was a mistake in the initial cost summary package for the Libby Asbestos Site: a portion of ATSDR's costs were included in EPA's cost summary package twice. Tr. at 259:6-12. This occurred because the EPA funded directly, through a site-specific inter-agency agreement, part of ATSDR's work conducted at the Libby Asbestos Site. Tr. at 260:13-22. It is rare that EPA enters into site-specific IAGs with ATSDR for work at Superfund sites. Tr. at 260:3-8, 260:23-24, 261:12-15.

233. The EPA identified the mistake related to the double-count of ATSDR's costs and notified the Court and Defendants before trial. Tr. at 547:2-4. See also United States' Motion To Partially Withdraw Motion For Partial [**59] Summary Judgment On Response Costs And On Defendants' Second Affirmative Defense As It Relates To ATSDR Costs (filed December 2, 2002).

234. The ATSDR costs presented at trial are correct. Tr. at 261:16-19. They do not come from EPA'S SCORPIOS system, but rather directly from ATSDR in the form of an ATSDR cost recovery package. Tr. at 547:14-24.

235. The EPA has taken steps to keep a similar mistake from happening in the future, including notifying regional Superfund accountants to be aware of site-specific IAGs with ATSDR and how those costs are tracked. Tr. at 261:20 to 262:3.

236. Defendants point to this double-counting error and other billing errors to claim they have rebutted the presumption of accurate accounting. However, all of the errors Defendant's rely on were corrected before trial.

237. Defendants were not able to point to any existing errors in EPA's account and, thus, have failed to rebut the presumption of accurate accounting.

238. I find by a preponderance of evidence that EPA has accurately accounted for $ 31,866,663.83 in direct costs related to the Libby Asbestos Site.

II. CONCLUSIONS OF LAW

A. CERCLA LIABILITY AND DEFENSES

1. Grace-Conn. [**60] and KDC Are Liable Parties Under CERCLA

239. Grace-Conn. is liable under CERCLA for the cleanup of asbestos at the Libby Asbestos Site properties. Those properties are the Mine Site, the former Screening Plant, the Flyway, the Bluffs, the former Export Plant, the Libby High School, the Libby Middle School, Plummer Elementary School, Kootenai Valley Christian School, Champion Haul Road, Rainy Creek Road, and the following residential or commercial properties in and near Libby, Montana: Beaulia, Belangie, Bowker, Brown (653 Flower Creek), Brown (346 Granite), Brownlee, Burshia, Cady, Calhoun, Cote, Dennis, Downey, Drury, Epperson, Fuhlendorf, Geer, Graham, Hebenstreit, Hilliard, Hoff, Jacabson, Jeresek, Jordon, Kootenai Angler, Long, McCulley, Mohr, Munro, Nixon, Nores, Parker (1421 Main), Parseau, Peterson, Phillips, Powers (2297 Kootenai River Rd.), Powers (2293 Kootenai River Rd.), Ray, Rice, Rodgers, Sanderson (123 Hamann), Sanderson (4241 Hwy 37), Sanderson (112 Oak), Schenck, Skramstad, Siefke, Smith, Spencer (500 Jay Effar), Spencer (229 Pinewood), Spencer Law Firm, [*1174] Struck; Stubbs, Temple, Visger, Westfall, Wilkes (461 Parmenter), Wilkes (600 Ave. B). *42 U.S.C. § 9607 (a).*

[**61] 240. KDC is liable under CERCLA for the cleanup of asbestos at the Libby Asbestos Site properties that KDC currently owns, namely the Mine Site, Kootenai Bluffs and Kootenai Flyway. *42 U.S.C. § 9607(a)(1).*

2. Neither Grace-Conn. nor KDC Are Entitled To CERCLA's Affirmative Defenses

241. CERCLA provides that there shall be no liability "for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by - (1) an act of God; (2) an act of war; (3) an act or omission of a third party . . .; or (4) any combination" thereof. *42 U.S.C. § 9607(b).* These are the only affirmative defenses CERCLA permits. See, e.g., *Town of Munster v. Sherwin-Williams Co., 27 F.3d 1268, 1270 (7th Cir. 1994)*; *California Dept. of Toxic Substances Control v. Alco Pacific, Inc., 217 F. Supp. 2d 1028, 1038-40 (C.D. Cal. 2002).*

242. The Parties stipulate that the releases or threatened releases of asbestos at the properties which form the Libby Asbestos Site were not caused solely by [**62] an act of war, or an act or omission of a third party. Revised Agreed Facts 52-53.

243. The presence of asbestos in Libby "is not a 'natural phenomenon of an exceptional, inevitable, and irresistible character' and, therefore, is not an appropriate Act of God defense." Order of December 19, 2002, at 22. While the Court's December 19, 2002, Order addressed only KDC's act of God defense, the same reasoning applies to Grace-Conn. Moreover, Grace-Conn. did not present its act of God defense at trial. Accordingly, Grace-Conn.'s act of God defense must fail.

3. Grace-Conn.'s Contention that EPA Violated CERCLA's Limitation on Responding To Naturally-Occurring Substances Fails

244. Subject to exceptions that do not apply here, the NCP provides that "a removal or remedial action . . . shall not be undertaken in response to a release: (1) Of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found." *40 C.F.R. § 300.400(b).* This limitation on response is derived from CERCLA itself. See *42 U.S.C. § 9604(a)(3)(A).*

245. **[**63]** Defendants contend that EPA responded to naturally-occurring asbestos when it excavated portions of the Parker parcel to a depth of over 12 feet, thereby violating the limitation on response found in CERCLA and the NCP. See Tr. at 5:11-18.

246. Defendants' argument is impermissible under the law-of-the-case doctrine for two independent reasons. First, the Court has already determined that EPA's response action was not inconsistent with the NCP in its ruling granting the United States' motion for partial summary judgment on Defendants' Third Affirmative Defenses. Order of December 19, 2002, at 9-14. A partial summary judgment ruling is law of the case and should not be changed in subsequent proceedings "without good reason." *Carr v. O'Leary, 167 F.3d 1124, 1126 (7th Cir. 1999).* Defendants' have not presented good reason to reconsider this finding.

247. Second, in opposing the United States' motions for partial summary judgment on liability, both Defendants contended that EPA's response action in Libby violated *42 U.S.C. § 9604(a)(3)(A).* The Court rejected this contention with respect to KDC, stating: the record before **[*1175]** the Court establishes **[**64]** that the EPA responded to asbestos and asbestos-contaminated vermiculite that was a by-product of vermiculite processing. This does not qualify as "a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena." *42 U.S.C. § 9604(a)(3)*([A]). Therefore KDC has failed to point to material facts that it is entitled to assert . . . [a] naturally-occurring substance defense. Order of December 19, 2002, at 22. The Court's conclusion as to KDC also applies to Grace-Conn., and is law of the case here. See *Carr, 167 F.3d at 1126.*

248. Even aside from the procedural arguments, Grace-Conn.'s naturally-occurring substance argument lacks. merit. Defendants have failed to show by a preponderance of the evidence that the response action involved a "naturally occurring substance in its unaltered form." In fact, the evidence presented at trial demonstrates that EPA's response actions in Libby were undertaken in response to releases and threats of releases associated with mined and processed vermiculite, not to a "naturally occurring substance in its unaltered form." Consequently, EPA's response **[**65]** action does not conflict with the limitation on responses set forth at *42 U.S.C. § 9604(a)(3)(A).*

249. Moreover, the evidence presented at trial demonstrates that Grace-Conn.'s own mining activities exposed asbestos to the elements. This increased the amount of asbestos in runoff that deposited on the Screening Plant property. This is not naturally-occurring asbestos. See *United States v. Iron Mountain Mines, Inc., 812 F. Supp. 1528, 1548 (E.D. Cal. 1992)* ("To the extent that mining may have exposed more ore to weather, it may have non-naturally increased the amount of [hazardous substances] released into the environment."). So long as EPA's response action was undertaken in response to releases and threats of releases associated with mined and processed vermiculite, the alleged incidental removal of some naturally occurring asbestos is not inconsistent with the NCP.

250. Grace-Conn.'s contention that EPA's excavation of soils to a depth of as much as 20 feet on a portion of the Parker property (once part of the Screening Plant) must have removed naturally-occurring asbestos is not compelling. The evidence presented at trial demonstrates **[**66]** that this area was most likely a borrow pit or depression that had been filled with processed vermiculite. Such material is not naturally occurring in its unaltered form. EPA's removal of this material at significant depth is not arbitrary and capricious, particularly in light of EPA's understanding that the Parker family intends to build a home in this area.

B. RECOVERABILITY OF COSTS

251. CERCLA authorizes the United States to recover from liable parties *"all* costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan." *42 U.S.C. § 9607(a)(4)(A)* (emphasis added). CERCLA also authorizes the United States to

recover "the costs of any health assessment or health effects study carried out under *section 9604(i)*." *42 U.S.C. § 9607(a)(4)(D)*.

1. Undisputed Costs

252. The Parties have stipulated to the adequacy of documentation for $ 32,972,125.73 in costs. Grace-Conn. is liable under CERCLA for each of the properties currently at issue, as discussed above. "Moreover, this Court has rejected Grace-Conn.'s contention that EPA's cleanup action **[**67]** was inconsistent with the NCP. See Order of December 19, 2002, at 14, 22. Accordingly, Grace-Conn. is liable for $ 32,972,125.73 in undisputed costs.

[*1176] 2. ATSDR's Costs are Recoverable.

a. ATSDR's Activities Are Health Effects Studies or Removal Actions

253. ATSDR incurred costs in conducting the following activities related to the Libby Asbestos Site: (i) the Medical Testing Program, (ii) the Mortality Analysis; (iii) the Pilot Study of Environmental Cases; (iv) the CT Study; (v) health education; (vi) the tracing project/Tremolite Asbestos Registry; and (vii) the substance-specific health consultation on tremolite asbestos.

254. Each of these activities was either a "health effects study," a "removal action," or both. Costs for both types of activities are recoverable under CERCLA. *42 U.S.C. § 9607(a)(4)(D); (a)(4)(A)*.

255. A "removal action" is defined in CERCLA as:

> the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary [to take] in the event of the threat of release of hazardous substances into, the environment, such actions as may be necessary to monitor, assess, and **[**68]** evaluate the release or threat of release of hazardous substances, the disposal of removed material, *or the taking of such other actions as may be necessary to prevent, minimize,* or *mitigate damage to the public health* or *welfare* or to the environment, which may otherwise result from a release or threat of release.

42 U.S.C. § 9601(23) (emphasis added). A removal action is a type of response action. *42 U.S.C. § 9601(25)*.

256. Though not specifically defined in CERCLA, ATSDR has promulgated regulations defining "health effects study." These regulations, and ATSDR's interpretation of them, must be accorded considerable weight. See *United States v. Mead Corp., 533 U.S. 218, 227, 150 L. Ed. 2d 292, 121 S. Ct. 2164 (2001)* (agency interpretation of a statutory provision that it is charged with implementing is entitled to deference); *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Forsgren, 309 F.3d 1181, 1183 (9th Cir. 2002)* (agency's interpretation of its own regulations is entitled to deference unless plainly erroneous, inconsistent with the **[**69]** regulation, or based on an impermissible construction of the governing statute).

257. "Health effects study" is defined as:

> research, investigation, or study performed by ATSDR or other parties pursuant to an agreement with ATSDR to evaluate the health effects of exposure to hazardous substances at specific sites. This term includes, but is not limited to, epidemiological studies, exposure and disease registries, and *health surveillance programs*. This term does, not include health assessments.

42 C.F.R. § 90.2 (emphasis added).

258. As part of the Medical Testing Program, ATSDR administered pulmonary function tests and chest x-rays to thousands of current and former Libby residents to determine whether they individually, and whether Libby residents generally, suffered adverse health effects from exposures to asbestos. The Medical Testing Program is a "health effects study," as it was an investigation or study "to evaluate the health effects of exposure to hazardous substances at particular sites." *42 C.F.R. § 90.2*.

259. Defendants argue that the Medical Testing Program was a health surveillance program. This **[**70]** distinction, however, is irrelevant, as a health surveillance program is by definition a health effects study. *42 C.F.R. § 90.2* (defining "health effects study" to specifically

include health surveillance programs).

260. Even if health surveillance programs did not fall under the definition [*1177] of health effects studies, the Medical Testing Program was an action "necessary to prevent, minimize, or mitigate damage to the public health and, therefore, the costs are recoverable under *42 U.S.C. § 9607(a)(4)(A)*. See *Hanford Downwinders Coalition, Inc. v. Dowdle, 71 F.3d 1469, 1475-80 (9th Cir. 1995)* (surveillance program a response action).

261. The United States is entitled to recover the costs of "health effects studies." *42 U.S.C. § 9607(a)(4)(D)*. Accordingly, the full costs of the Medical Testing Program are recoverable.

262. Similarly, the Mortality Analysis, Pilot Study of Environmental Cases, CT Study, and tracing project are each health effects studies. *42 U.S.C. § 9604(i)(4)*. The full costs of each of these activities are recoverable under CERCLA. *42 U.S.C. § 9607(a)(4)(D)* [**71] .

263. ATSDR's Libby-based health education activities and the substance-specific health consultation on tremolite asbestos were undertaken as part of the government's "removal action" at the Libby Asbestos Site. The full costs of these activities are recoverable as response costs under CERCLA. *42 U.S.C. § 9607(a)(4)(A)*.

b. ATSDR's Sequencing of Its Health-Related Activities Was Appropriate

264. Defendants contend that ATSDR cannot recover the costs of its health-related activities in Libby because they were improperly sequenced. Defendants' argument is apparently based on two CERCLA provisions. First, Defendants contend that of CERCLA requires ATSDR to conduct a health assessment before undertaking any other health-related activities. Second, Defendants contend that CERCLA prevents ATSDR from conducting a medical surveillance program without first conducting a health assessment, an epidemiological study or exposure registry. Defendants' arguments misconstrue both provisions of "CERCLA.

265. CERCLA requires ATSDR to perform a health assessment within a statutorily prescribed period of time, usually within one year of the date a site is proposed [**72] for listing on the National Priorities List ("NPL"). *42 U.S.C. § 9604(i)(6)(A)* CERCLA does not require that a health assessment be performed before other health-related studies can be conducted. Thus, CERCLA does not prohibit ATSDR from conducting health-related activities before NPL listing or before publication of the health assessment that must be concluded within one year of NPL listing.

266. Similarly, CERCLA requires ATSDR to initiate a health surveillance program when it determines, based on a health assessment, epidemiological study or exposure registry, that there is a significant increased risk of adverse health effects resulting from an exposure to hazardous substances. *42 U.S.C. § 9604(i)(9)*. The statute does not provide that a health surveillance program is authorized based only on information contained in a health assessment, epidemiological study or exposure registry. CERCLA allows ATSDR to conduct medical surveillance programs at its discretion in other circumstances. See, e.g., *42 U.S.C. § 9604(i)(1)(E)*. Accordingly, even assuming the Medical Testing Program is a health surveillance program, [**73] it is not required to be preceded by a health assessment, epidemiological study or exposure registry.

267. Defendants' interpretation also ignores language in ATSDR's annual appropriation in which Congress clearly demonstrates that a health assessment need not be done first:

> notwithstanding any other provision of law, in lieu of performing a health assessment under section 104(i)(6) of [*1178] CERCLA [*42 U.S.C. § 9604(i)(6)*], the Administrator of ATSDR may conduct other appropriate health studies, evaluations or activities, including, without limitation biomedical testing, clinical evaluations, medical monitoring, and referral to accredited health care providers.

Appropriations, 2000 - Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies, Pub. L. No. 106-74, 113 Stat. 1047. See also Departments of Veterans Affairs and Housing and Urban Development - Appropriations, Pub. L. No. 106-377, 114 Stat. 1441; Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002, Pub. L. No. 107-73, 115 Stat. 651. Accordingly, Congress' expression on the

sequencing of [**74] health activities in ATSDR's appropriations language contradicts Defendants' interpretation.

268. Defendants' sequencing arguments also run contrary to ATSDR's interpretation of CERCLA in its regulations. First, ATSDR's regulations expressly provide that the agency may conduct health effects studies before completing a health assessment:

> ATSDR may decide, in its discretion, based upon the results of a health assessment or other available information, to conduct a health effects study for a particular site or sites. Such a decision may, in appropriate circumstances, be made prior to the completion of a health assessment for a site or sites.

42 C.F.R. § 90.7(a) (emphasis added). Second, the preamble to ATSDR's regulations makes clear that ATSDR's response to public health threats is not confined to the inflexible, formalistic sequence advanced by Defendants:

> Two comments suggested that ATSDR adhere strictly to the sequence of health assessments and health effects studies set forth in *section 104(i) of CERCLA*. Among other things, *section 104(i)(6)* directs ATSDR to conduct health assessments at all sites on, or proposed for inclusion [**75] on, the NPL, as well as authorizes the Agency to conduct health assessments in response to requests from the public. This section specifies that one purpose of a health assessment is to determine the need for health effects studies, such as an epidemiological study, registry, or health surveillance program. *Section 104(i)(7)* furthermore states that on the basis of a health assessment, ATSDR may decide to conduct a pilot study to determine the desirability of conducting a full-scale epidemiological or other health effects study.
>
> ATSDR will generally follow the sequential approach outlined in *sections 104(i)(6), (7), (8)and (9)* of CERCLA (health assessment, and where appropriate, followed by a pilot study, epidemiological study, registry, and health surveillance program). However, ATSDR recognizes that instances arise where the public health is not served by a strict adherence to this sequential approach. For instance, circumstances at a particular site may necessitate the immediate commencement of a pilot study or other activity prior to the completion of a health assessment for the site. This approach is consistent with the language and intention of CERCLA. ATSDR does not interpret [**76] the sequential approach set forth in *section 104(i) of CERCLA* to constitute the exclusive manner in which ATSDR is to fulfill its public health responsibility. ATSDR generally will follow this sequential approach; however, it is necessary to retain flexibility in responding to emergency or other unique circumstances in an appropriate manner.

55 Fed. Reg. 5136, 5137 (Feb. 13, 1990) (preamble to 42 C.F.R. Part 90) (emphasis added).

[*1179] 269. ATSDR's interpretation of a statutory provision that it is charged with implementing is entitled to deference. See *Mead, 533 U.S. at 227*. Defendants have not established that ATSDR's interpretation is clearly erroneous or otherwise contrary to law.

270. ATSDR is authorized under *42 U.S.C. § 9604(i)(1)(E)* to conduct medical testing, such as that performed at the Libby Asbestos Site as part of the Medical Testing Program.

c. ATSDR's Costs are Adequately Documented

271. Defendants contend that the United States is not entitled to recover any of ATSDR's costs because they are not adequately documented. The United States has provided extensive documentation of the costs ATSDR has [**77] incurred. The documentation compares to that found sufficient to prove CERCLA response costs cases in the Ninth Circuit and elsewhere. This documentation establishes a prima facie case that the United States is entitled to its response costs. See *United States v. Hardage, 982 F.2d 1436, 1443 (10th Cir. 1992)*. The burden then shifts to Defendants to rebut the costs. See *id.* Defendants have not met this burden.

(1) Defendants Bear the Burden of Proving Any Alleged Inconsistency With the NCP

272. Once the United States establishes its *prima facie* case on CERCLA liability, the burden shifts to the defendant to prove the response action was inconsistent with the NCP. *United States v. Chapman, 146 F.3d 1166, 1170 (9th Cir. 1998)*; *Washington State Dep't of Transp. v. Washington Natural Gas Co., 59 F.3d 793, 800 (9th Cir. 1995)*. When a CERCLA defendant claims the United States cannot recover its costs because of an inconsistency with the NCP, the defendant must prove the inconsistency exists and the amount of additional costs that were incurred as a result of the inconsistency. See *United States v. Findett Corp., 220 F.3d 842, 849 (8th Cir. 2000)*; **[**78]** *United States v. Burlington N. R.R. Co., 200 F.3d 679, 695 (10th Cir. 1999)* (defendant must prove inconsistency with NCP led to "demonstrable excess costs"); *Chapman, 146 F.3d at 1170-71*; *California v. Neville Chem. Corp., 213 F. Supp. 2d 1134, 1138-41 (C.D. Cal. 2002)*. A CERCLA defendant cannot challenge the adequacy of the government's cost documentation by raising "vague challenges to the validity of those costs based on the government's evidence," but instead must offer specific evidence to counter the government's documentation of its direct costs. *United States v. R.W. Meyer, Inc., 889 F.2d 1497, 1508 (6th Cir. 1989)*.

(2) Courts Have Held a Broad Range of Cost Documents Sufficient to Establish a Prima Facie Case

273. The NCP contains a general admonition to complete and maintain documentation to support cost recovery actions:

> During all phases of response, the lead agency shall complete and maintain documentation to support all actions taken under the NCP and to form the basis for cost recovery. In general, documentation shall be sufficient to provide the source and circumstances of the release, **[**79]** the identity of responsible parties, the response action taken, accurate accounting of federal, state or private party costs incurred for response actions, and impacts and potential impacts to the public health and welfare and the environment.

40 C.F.R. § 300.160(a)(1) (1990) (emphasis added).

274. This provision does not establish prescriptive standards for the **[*1180]** content of cost documents. Generally, a cost is inconsistent with the NCP only if the response action itself was inconsistent with the NCP. See, e.g., *Hardage, 982 F.2d at 1443*; *United States v. Kramer, 913 F. Supp. 848, 862 (D.N.J. 1995)*. *40 C.F.R. § 300.160* does not impose any additional documentation requirements on the government, beyond what is sufficient to persuade the court that the costs have been proven by a preponderance of the evidence. Indeed, courts that have examined this provision of the NCP have recognized that it "does not contain any specific standards concerning the documentation of costs." *United States v. Chrysler Corp., 168 F. Supp. 2d 754, 769 (N.D. Ohio 2001)*; *United States v. Findett Corp., 75 F. Supp. 2d 982, 991 (E.D. Mo. 1999)*, **[**80]** aff'd, *220 F.3d 842 (8th Cir. 2000)*.

275. The NCP requires only that "in general" documentation be sufficient to provide an accurate accounting of costs incurred. Notably, the NCP does not define "accurate accounting" or otherwise elaborate on what is meant by "sufficient." *Neville, 213 F. Supp. 2d at 1138*; *Chrysler, 168 F. Supp. 2d at 769*; *Findett, 75 F. Supp. 2d at 991*.

276. In the absence of regulatory guidance on the meaning of "accurate accounting," courts have applied civil evidentiary standards to assess the adequacy of cost documentation supporting a CERCLA cost recovery claim, rather than imposing any additional burden. In Chapman, for example, the Ninth Circuit affirmed a grant of summary judgment for the United States in a CERCLA case. Among other things, the Court found that no genuine issue of material fact existed as to whether EPA had "adequately documented" the costs it had incurred. *Chapman, 146 F.3d at 1171*. The Court specifically referenced the "detailed cost summaries" the government had submitted, the "extensive documentation of costs in the form of time sheets and payroll **[**81]** documents" and "declarations from EPA staff, attorneys, accountants, and supervisors attesting to the work they performed and the time spent on the Chapman site." *Id.*

277. The same approach has been applied in other Circuits. In Findett, the Eighth Circuit upheld a grant of summary judgment on CERCLA response costs, finding "detailed cost summaries, supporting data, and other competent evidence" were sufficient to support the

government's cost claim. *Findett, 220 F.3d at 849.* Similarly, the Tenth Circuit has upheld a grant of summary judgment on CERCLA response costs where the costs were documented by affidavits of government employees responsible for maintaining cost data supported by "summaries of cost data." *Hardage, 982 F.2d at 1442-43.* See also *United States v. Chromalloy Am. Corp., 158 F.3d 345, 352 (5th Cir. 1998)* (concluding that "detailed cost summaries" provided an adequate basis to find EPA's oversight costs reasonable and necessary).

278. Numerous district courts have taken the same approach to assessing the adequacy of CERCLA cost documentation. See, e.g., *Neville, 213 F. Supp. 2d at 1138-41* **[**82]** (time sheets sufficient to document payroll costs; travel expense reports and related documentation sufficient to document travel costs; contractor invoices sufficient to document contract costs); *Chrysler, 168 F. Supp. 2d at 769, 774* (contractor vouchers/invoices, invoice approval forms, and Treasury schedules adequately document contractor costs); *United States v. Bell Petroleum Servs., Inc., 734 F. Supp. 771, 781 (W.D. Tex. 1990)*, rev'd in part, vacated in part on other grounds, *3 F.3d 889 (5th Cir. 1993)*; *United States v. Northernaire Plating Co., 685 F. Supp. 1410, 1415 (W.D. Mich. 1988)*, aff'd sub nom., *United States v. R.W. Meyer, Inc., 889 F.2d 1497 (6th Cir. 1989).*

[*1181] 279. Notably, none of the cases reviewed above required the presence of any particular document or type of document in their analysis of response cost documentation. They merely required that the documentation be "adequate" or "sufficient" to support the cost claim. The plaintiff in a CERCLA cost recovery action has a range of options for proving, up the amount of costs it has incurred. The nature of the documentation presented **[**83]** to support the cost claim will vary depending on the amount of response costs at issue, the type of documentation the plaintiff's accounting system maintains, and the extent and complexity of that documentation. Regardless of the option taken, the burden is on the CERCLA defendant to demonstrate that such documentation is inadequate once the *prima facie* case for the costs has been established. Defendants here have not done so.

280. Similarly, there is no specific standard regarding the amount of detail that must be included in cost documentation. Courts have rejected arguments that the lack of descriptive information on a time sheet or travel voucher regarding the underlying task the employee performed invalidates the documentation. See *Neville, 213 F. Supp. 2d at 1138-40*; *Bell Petroleum, 734 F. Supp. at 781* ("failure to provide descriptive documentation does not make the Government's accounting inaccurate[;] even if it did, disallowance of costs for that reason is too harsh a sanction for the omission, if any, involved").

(3) The United States' Evidence Satisfies the Preponderance of the Evidence Standard and Defendants Have Shown No Inconsistency [84] With the NCP Cost Documentation Provision**

281. At trial, the United States presented ATSDR's cost recovery package, which documents the costs ATSDR incurred conducting health-related activities in Libby. The documentation includes cost summaries, time sheets, contractor invoices, travel vouchers, progress reports and voluminous other information. See generally Exhibit 1145.

282. In addition, the United States elicited testimony from two senior ATSDR employees, the Deputy Director of the Division of Health Studies, who acted as project officer and field coordinator at the Libby Site, and the Cost Recovery Team Leader, who was responsible for preparing ATSDR's cost recovery package, to explain ATSDR's Libby activities, the agency's institutional procedures for approving and paying costs, and the preparation of the cost recovery package for the Libby Asbestos Site. The Court found these Witnesses to be very credible.

283. The documentary and testimonial evidence presented was sufficient to prove by a preponderance of evidence that the United States adequately documented its costs incurred in the response action at the Libby Asbestos Site. See, e.g., *Chapman, 146 F.3d at 1171*; **[**85]** *Findett, 220 F.3d at 849*; *Hardage, 982 F.2d at 1442-43.*

d. Defendants' Interpretation of CERCLA's - Documentation Provision Has Not Been Accepted by the Courts

284. Defendants contend, through their expert cost accountant Dale Jensen, that the NCP's cost documentation provision incorporates commonly accepted accounting standards and procedures applicable

to documenting costs. Tr. at 442:21 to 444:3. According to Mr. Jensen, the government must compile and maintain, a list of documents for its expenditures, including: 1) invoice summaries; 2) site-specific invoices which indicate costs by cost type or by activity; 3) invoice approval forms, or other **[*1182]** documentation of approval, signed by the Site's project manager or other responsible site-specific employee; 4) proof of payment of invoices; contracts, work assignments, or IAGs, authorizing costs to be incurred and describing the work to be performed; 5) monthly progress reports containing descriptions of tasks performed, types and amounts of costs incurred, and other summary information to show that costs were incurred in connection with the Site; 6) audit reports of costs incurred under contracts **[**86]** and IAGs; and, 7) all of the above items for significant subcontractor costs. Tr. at 520:21 to 523:4.

285. There is no suggestion in CERCLA or the NCP that "commonly accepted accounting standards" apply to the documentation of CERCLA costs as a precondition to cost recovery. Courts have consistently rejected arguments that general accounting standards are germane assessing the adequacy of cost documentation under the NCP.

286. In Findett, for example, the Eighth Circuit reviewed de novo the district court's ruling that the United States was entitled to summary judgment on its response costs in the amount of $ 3.2 million dollars. In Findett, Mr. Jensen contended that the government's CERCLA cost documentation was not sufficient to meet NCP requirements. The Eighth Circuit affirmed the lower court's rejection of Mr. Jensen's argument, stating:

> The EPA submitted thoroughly detailed cost summaries, supporting data, and other competent evidence to support its claim for recovery of response costs. Findett's expert Dale Jensen in his report suggested that additional documentation the EPA had not submitted was necessary to substantiate the EPA's response costs. We disagree. **[**87]** Either the missing documentation noted in Jensen's report was in fact provided by the EPA to Findett, or the detail sought (for example, progress reports from contractors, audit reports of contracts) was only peripherally related to whether the EPA actually incurred response costs. . . . Jensen's opinions regarding insufficient documentation do not create any genuine issue of material fact as to the costs the government seeks to recover from Findett.

220 F.3d at 849 (emphasis added). Similarly, in Hardage the Tenth Circuit rejected Mr. Jensen's cost documentation 'argument, stating that

> the expert witness affidavits at issue amount to no more than a denial that the government's documentation establishes a prima facie case that it is entitled to recover $ 5,441,201.25 in response costs . . . [and therefore] fail to establish a genuine issue for trial.

Hardage, 982 F.2d at 1444.

287. The District Court for the Eastern District of California also recently addressed Mr. Jensen's documentation arguments. The court, in reviewing $ 7,809,683.46 in response costs the United States had incurred at a CERCLA cleanup, was direct **[**88]** and harsh with regard to the value of Mr. Jensen's interpretation of the NCP's documentation requirements:

> The Railroads made a wholesale attack on EPA's cost and allocation methodology, ignoring well-established legal precedent that has validated EPA CERCLA cost documentation procedures and practices. The Railroads' cost recovery expert witness was neither credible nor persuasive. He attempted to apply general cost accounting principles in a manner that was not helpful and resulted in unnecessary expenditure of time.

United States v. Atchison, Topeka & Santa Fe Ry. Co., Consolidated Arvin Cases: 2002 U.S. Dist. LEXIS 26495, No. CV-F-92-5068 (OWW), No. CV-F-96-6226 (OWW), No. CV-F-96-6228 (OWW) (E.D. Cal. May 24, 2002) at 80. In **[*1183]** Atchison, as in the case at hand, Mr. Jensen advocated the use of general theories of cost accounting when assessing the adequacy of CERCLA cost documentation. The court rejected all of these arguments and ruled that the United States was entitled to summary judgment on its response costs. The court stated:

> The Railroads' accounting attack was premised on general theories of cost accounting, not environmental accounting as described in case law. The attacks **[**89]** ignored well established decisional precedent that validates EPA's CERCLA cost accounting procedures and protocols. The Railroads' accountant also ignored or refused to acknowledge the EPA's SCORES and CERCLA Superfund site accounting and cost documentation methods. The entirety of Railroads' claims on EPA's accounting methodology are rejected.

2002 U.S. Dist. LEXIS 26495, Id. at 152-53 (emphasis added).

288. Finally, Mr. Jensen's proposed documentation standard rejects any role for sworn testimony from government officials regarding work performed at a site, the time it took to accomplish this work, and contractor oversight, and related topics. See Tr. at 441:6-17. While no court has expressly addressed this aspect of his opinion, it is out of step with CERCLA case law. As noted above, several courts have considered and relied upon sworn statements by cleanup personnel in assessing the adequacy of cost documentation. See, e.g., *Chapman, 146 F.3d at 1171; Hardage, 982 F.2d at 1442-43; Findett, 75 F. Supp. 2d at 991.*

289. The Court views Mr. Jensen's testimony in this case similarly to how the courts noted above viewed his earlier testimony: **[**90]** it was not credible, nor was it persuasive.

(5) Defendants Do Not Contend That the United States Calculated ATSDR Costs Incorrectly

290. Defendants rely upon their contention that the ATSDR costs are insufficiently documented; they did not present evidence of any flaws in the calculation of ATSDR costs the United States seeks. To the extent Defendants allege errors in accounting, the errors were corrected before trial and do not affect the weight or credibility of the evidence presented to support the United States' calculation of its direct costs.

(6) Defendants' Remaining Arguments Regarding the Accuracy of ATSDR's Costs Are Unavailing

291. Defendants' suggestion that ATSDR costs may have been double counted and that the agency may have been overcharged by NORC are also unpersuasive.

292. Defendants attempt to draw an inference between a "double count" of some ATSDR costs in an early version of EPA's cost summary and the accuracy of the government's ATSDR cost claim. The "double count" to which Defendants referred was corrected by the government before trial, without prompting from Defendants, and occurred in EPA's, not ATSDR's, cost summary.

293. Defendants introduced **[**91]** an e-mail during the cross examination of Betty Jones, ATSDR's cost recovery team leader. The e-mail suggested that NORC had charged ATSDR excessive and/or fraudulent costs for work on other sites. In rebuttal, Sharon Campolucci, ATSDR's project officer and field coordinator for the Libby Site, testified that she had no reason to believe that NORC had ever overcharged or fraudulently billed ATSDR, nor that it had overcharged or fraudulently **[*1184]** billed ATSDR in connection with its work in Libby. Tr. at 596:19 to 598:6.

294. Defendants have not presented persuasive evidence that undermines the accuracy of the government's accounting of its cost's. Because they are both legally recoverable and adequately documented, the United States is entitled to recover the full $ 11,338,191.62 is costs ATSDR incurred through December 31, 2001.

3. The Volpe Center/Aeolus, Inc. Costs Are Recoverable

295. Defendants have also failed to show that the United States has not adequately documented $ 266,538.10 in Volpe Center costs relating to a contract between the Volpe Center and Aeolus.

296. Defendants make much of the fact that Aeolus' Progress Report No. 2, which covered the period from February **[**92]** 6 to February 19, 2001, was dated June 28, 2002. However, Defendants do not contend that the information contained in the progress report is incorrect. In fact, Mr. John McGuiggin, the Volpe Center's project manager for the Libby project, testified that the progress report accurately reflected the work that occurred in the time period, regardless of the date it was prepared. Tr. at 330:13-19, 336:23, 337:16-18, 338:6-13. There was no

testimony to the contrary.

297. Defendants' argument that Aeolus costs cannot be recovered because EPA has not to date used the quantitative risk assessment methodology that Aeolus developed as part of its contract with the Volpe Center is not convincing. EPA's decision to develop this methodology was based on its site-specific determination that the existing methodologies may not be sufficient to protect the Libby community. There was no testimony to the contrary. Further, EPA may use Aeolus' quantitative risk assessment methodology at the Libby Asbestos Site in the future. Finally, the fact that the quantitative risk assessment methodology may prove useful at other asbestos sites does not make it unrecoverable in this case. EPA's inclusion of Aeolus **[**93]** costs as a site-specific cost attributable to its Libby Asbestos Site cleanup is not unreasonable.

298. As Defendants have failed to carry their burden of demonstrating that all or some of the Volpe Center/Aeolus, Inc. costs were inadequately documented, the United States is entitled to recover $ 266,538.10, or the full amount of the disputed costs through December 31, 2001.

4. EPA's Indirect Costs Are Recoverable

299. The costs of administering cleanup programs and associated enforcement efforts, otherwise known as indirect costs, are real costs that are "part and parcel of all costs of" particular response actions, though they may not be directly charged to those sites. See *R.W. Meyer, 889 F.2d at 1503-05*. Indirect costs, like direct costs, are recoverable under CERCLA. See *42 U.S.C. § 9607(a)* ("all" response costs recoverable); *R.W. Meyer, 889 F.2d at 1503-05*; *United States v. American Cyanamid Co., 786 F. Supp. 152, 159 (D.R.I. 1992)*; *United States v. Hardage, 750 F. Supp. 1460, 1499-504 (W.D. Okla. 1990)*, aff'd, *982 F.2d 1436 (10th Cir. 1992)*. The United **[**94]** States may thus recover from Defendants EPA's indirect costs that are attributable to the Libby Asbestos Site.

300. Defendants contend that the United States is not entitled to recover the vast majority of EPA's indirect costs related to the Libby Asbestos' Site because EPA's revised methodology for calculating indirect, costs does not meet generally accepted accounting principles. This argument is without merit.

[*1185] 301. The United States has presented detailed testimony explaining EPA's revised indirect cost methodology and the methodology's compliance with Standard No. 4. The United States also has presented testimony and, documentation regarding the application of the revised indirect cost methodology to determine the amount of indirect costs attributable to EPA's Libby Asbestos Site cleanup, or $ 11,322,225.66.

302. This evidence establishes a prima facie case that the United States is entitled to these response costs. See *Hardage, 982 F.2d at 1443*. The burden then shifts to Defendants to rebut the costs. See *id.* Defendants have not met their burden.

303. Accordingly, the full amount of indirect costs the United States seeks in this case are attributable **[**95]** to the Libby Asbestos Site.

a. Provisional Indirect Rate for Fiscal Years 2000 and 2001 is 35.53%

304. Under EPA's revised indirect methodology, the total indirect costs attributable to a specific Superfund site may be determined by multiplying the indirect rate by the total direct costs for the specific site.

305. Because at the time of trial EPA had not finalized the actual indirect rates for fiscal years 2000 and 2001, the provisional rate for Fiscal Years 2000 and 2001 was the actual Fiscal Year 1999 indirect rate, or 35.53%.

306. EPA issued actual indirect rates for both years shortly after trial. The final indirect rate for Fiscal Year 2000 is 38.84% and the final indirect rate for Fiscal Year 2001 is 34.28%. Defendants contest, the application of rates that were finalized post-trial, and the United States does not contend that they should be applied here. Accordingly, the provisional indirect rates for Fiscal Years 2000 and 2001, rather than the final indirect rates for those years, will be applied in this case.

b. EPA's Use of a Provisional Indirect Rate Is Not Inappropriate

307. Defendants object to EPA's use of a provisional indirect rate. The actual indirect **[**96]** cost rate cannot be determined for any given year until all costs for that year have been incurred and the actual rate is calculated. EPA uses a provisional rate during the interim. Provisional indirect rates are commonly used in

government and the private sector to capture indirect costs before an actual indirect rate can be calculated. There was no testimony to the contrary. In the absence of an actual indirect rate, indirect costs calculated based on the provisional rate are recoverable. See *American Cyanamid, 786 F. Supp. at 159* (awarding indirect costs based on provisional indirect rate but providing for reimbursement if final indirect rate lowers indirect cost amount).

c. EPA's Indirect Methodology Complies With Standard 4

308. The Statement of Federal Financial Accounting Standards No. 4 ("Standard No 4") sets forth cost accounting principles for federal agencies in developing costing methodologies, including EPA's methodology for calculating indirect costs.

309. Standard No. 4 is the accounting standard applicable to EPA's cost accounting.

310. Standard No. 4 provides that its principles guiding federal agencies are "broad enough to allow maximum **[**97]** flexibility for agency managers to develop costing methods that are best suited to their operational environment." See Exhibit 1058, at 06358.

311. In 2000, EPA revised its methodology for determining indirect costs to be charged at Superfund sites. EPA's revised **[*1186]** indirect methodology complies with the five requirements of Standard No. 4 because it has 1) reported the costs of its activities (outputs) on a regular basis; 2) identified organizations that produce major products or services; 3) identified the full costs of producing those products or services; 4) identified inter-entity costs, or costs from other federal organizations that provide products or services to the EPA; and 5) provided a means of identifying all of the agency's costs so that they can be assigned to outputs.

312. Therefore, EPA's revised methodology is an appropriate accounting measure of EPA's indirect costs charged to Superfund sites, including the Libby Asbestos Site.

d. Similar Indirect Rates Have Been Approved in Other Cases

313. Defendants insinuate that EPA's indirect cost rate is simply too high to be acceptable. EPA's indirect rates are comparable to other indirect rates that courts have **[**98]** approved. In other contexts, courts have ruled that indirect costs equaling one-third of total direct costs are appropriate. *Oliver-Finnie Co. v. United States, 150 Ct. Cl. 189, 279 F.2d 498, 506-07 (Cl. Ct. 1960)* (indirect rate of 35.71% "fair and reasonable"); *D. Federico Co. v. New Bedford Redevelopment Auth., 723 F.2d 122, 132 (1st Cir. 1983)* (court includes a "40% mark up for indirect costs") 303.

e. Defendants' Challenges to EPA's Revised Methodology Are Unavailing

314. Defendants make a variety of challenges to EPA's revised methodology under Standard No. 4 and other generally accepted accounting principles. Specifically, Defendants challenge whether 1) different agencies can have different methodologies for calculating indirect costs; 2) it is appropriate for EPA to include indirect costs of other agencies and contractors in its allocation base; 3) EPA's outputs are properly defined; 4) EPA's indirect cost pool is allocated based on benefits received; 5) EPA measures the full costs of its outputs; and, 6) EPA's indirect cost pool is homogeneous.

315. The language of Standard No. 4 is broad to allow maximum flexibility for federal agencies **[**99]** in developing costing methodologies that best suit their agencies. As a result, different agencies can permissibly use different methodologies for establishing their indirect rates. The fact that EPA uses a different methodology than ATSDR to calculate its indirect costs is irrelevant.

316. It is appropriate for EPA to include in its allocation base the indirect costs of those who have performed services for the EPA, such as other agencies and contractors, because all of these costs are considered necessary to cleaning up contaminated sites, and they are included in the total direct cost of the activity at the site.

317. EPA's outputs under the Superfund program are properly defined as the cleanup of contaminated sites because this definition represents the whole of EPA's efforts under the Superfund program.

318. EPA's indirect cost pool is allocated based on a cause-and-effect relationship because allocating EPA's indirect cost pool over a base of total site-specific expenditures, or total direct costs, best represents the total activity of the Superfund program. The labor-hours approach that Defendants advocate does not represent the

total activity of the Superfund program.

[**100] 319. EPA's revised methodology measures the full cost of the Superfund program's outputs because the agency identifies its internal full cost of cleaning up contaminated sites. It would be neither appropriate nor practical for EPA to include [*1187] third party costs in its allocation base.

320. EPA's indirect cost pool is homogeneous because the elements that makeup EPA's indirect cost pool have a similar relationship to outputs under the revised methodology.

321. Merely alleging that the revised indirect cost pool is substantially larger than under the previous methodology is not sufficient to challenge the United States' documentation of these costs. The United States has explained in detail the methodology for calculating EPA's indirect costs at Superfund sites, including how it has determined its indirect cost pool and allocation base under the revised methodology.

f. Defendants' Cost Expert Does Not Know What Methodology EPA Should Use

322. Defendants' expert Dale Jensen stated at trial that he does not know what methodology the EPA should use to recover its indirect costs.

323. Defendants' expert has offered no viable alternative for calculating indirect costs in a way [**101] that meets the requirement's of Standard No. 4; instead, he advocates use of a prior methodology that was criticized repeatedly by the GAO, the EPA Office of Inspector General, the OMB, and Congress for failing to identify the full cost of Superfund site cleanups and, therefore, failing to allow for potential recovery of all indirect costs. Mr. Jensen's belated endorsement of EPA's previous indirect cost methodology is unpersuasive.

g. Indirect Costs of $ 11,322,225.66 Are Recoverable

324. CERCLA authorizes the EPA to recover "all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan." *42 U.S.C. § 9607(a)(4)(A)*. Recoverable costs include indirect costs. The United States has demonstrated that the revised indirect rate methodology fairly allocates the indirect costs associated with EPA's Superfund program to specific sites and that it complies with Standard No. 4, the relevant accounting standard. Accordingly, EPA may recover its indirect costs associated with the Libby Asbestos Site, applying the provisional indirect rate of 35.53% for fiscal years 2000 and 2001.

[**102] 325. Applying the provisional indirect cost rate of 35.53% to EPA's total site costs of $ 31,866,663.83, EPA is entitled to recover $ 11,322,225.66 for indirect costs incurred at the Libby Asbestos Site through December 31, 2001. Defendants have already conceded $ 1,372,000 in indirect costs. The United States also is entitled to recover the remainder - $ 9,950,225.66.

III. JUDGMENT

326. Pursuant to *42 U.S.C. § 9607(a)*, Grace-Conn. is liable for the United States' response costs and costs of health effects studies at the Libby Asbestos Site through December 31, 2001. These costs total $ 54,527,081.11, including undisputed costs of $ 32,972,125.73; ATSDR costs of $ 11,338,191.62; Volpe Center/Aeolus, Inc. costs of $ 266,538.10; and EPA indirect costs of $ 11,322,225.66 ($ 9,950,225.66 disputed indirect costs/ $ 1,372,000 undisputed indirect costs). Judgment is therefore entered jointly and severally against Defendant Grace-Conn. and in favor of the United States in the amount of $ 54,527,081.11.

327. Under *42 U.S.C. § 9607(a)*, KDC is liable for the United States' response costs at the Kootenai Flyway and Kootenai Bluffs portions [**103] of the Libby Asbestos Site through December 31, 2001. The parties stipulate that $ 3,860,000 of the Volpe Center costs were for response actions at the [*1188] Kootenai Flyway and Kootenai Bluffs. EPA's indirect costs related to this portion of the cleanup are $ 1,371,458 (35.53% x $ 3,860,000). Judgment is therefore entered jointly and severally against Defendant KDC and in favor of the United States in the amount of $ 5,231,458.

328. The United States is entitled to prejudgment interest that has accrued "from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned." *42 U.S.C. § 9607(a)(4)*. EPA sent Grace-Conn. a demand letter on May 23, 2000. The complaint in this action, filed March 30, 2001, constitutes written notification to KDC. The Court will delay ruling on the total amount of interest due

under this provision to give the parties an opportunity to agree on the amount of interest due based on the amounts awarded the United States identified above. If the parties cannot agree, and no later than 30 days after this opinion is issued, the parties shall supply the Court with affidavits calculating **[**104]** the amount of interest due under this provision. The affidavits shall separately state the amount of prejudgment interest due on or before April 2, 2001, and that due after April 2, 2001. Agreeing on the amount of interest owed under this agreement will not be taken as an admission that interest is legally owed.

329. The United States is entitled to a declaratory judgment on the liability of Grace-Conn. for future cleanup activities that may be conducted at the properties listed in FOF P1 and on the liability of KDC for future cleanup activities at the properties listed in FOF P2. See *42 U.S.C. § 9613(g)(2)*. This declaratory judgment does not extend to other properties in and near Libby that EPA may in the future determine to be contaminated, nor does it extend to issues related to the amount of costs incurred after December 31, 2001 or to the NCP consistency of any future response actions that EPA may undertake in the future. The Court understands that the United States will demand from Defendants, on a periodic basis, costs incurred at the Libby Asbestos Site after December 31, 2001. The Parties are strongly encouraged to resolve among themselves any **[**105]** disputes that may arise regarding Grace-Conn.'s liability for additional contaminated properties, the amount of future costs incurred, and/or the NCP consistency of any future response actions that EPA may select. The Parties should apply the principles contained in this opinion and the Court's prior rulings when attempting to resolve any disputes. To the extent the parties are unable to resolve any such disputes, this Court will exercise continuing jurisdiction over this case and hear such disputes at the request of either party.

The lawyers for all parties in this case are commended for their preparation, their presentations and their professionalism. Good lawyers aid the administration of justice in all cases, but in particular in difficult and complex cases.

The clerk is directed to enter judgment in favor of the United States and against Defendants in accordance with these Findings of Fact and Conclusions of Law.

IT IS SO ORDERED.

DATED this 26th day of August, 2003.

15

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. W.R. GRACE & CO.; KOOTENAI DEVELOPMENT, CORPORATION; W.R. GRACE & CO. CONN., Defendants-Appellants.

No. 03-35924

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

429 F.3d 1224; 2005 U.S. App. LEXIS 26155; 61 ERC (BNA) 1865; 35 ELR 20245

February 7, 2005, Argued and Submitted, Seattle, Washington
December 1, 2005, Filed

SUBSEQUENT HISTORY: Petition for certiorari filed at, 04/27/2006
US Supreme Court certiorari denied by *W.R. Grace & Co. v. United States, 2006 U.S. LEXIS 7502 (U.S., Oct. 10, 2006)*

PRIOR HISTORY: [**1] Appeal from the United States District Court for the District of Montana. D.C. No. CV-01-00072-DWM. Donald W. Molloy, District Judge, Presiding.
United States v. W. R. Grace & Co., 280 F. Supp. 2d 1149, 2003 U.S. Dist. LEXIS 15928 (D. Mont., 2003)

DISPOSITION: AFFIRMED.

COUNSEL: Christopher Landau and John C. O'Quinn, Kirkland & Ellis LLP, Washington, D.C.; Kenneth W. Lund, Linnea Brown and Katheryn Jarvis Coggon, Holme Roberts & Owen LLP, Denver, Colorado, for the defendants-appellants.

John T. Stahr, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C.; James Freeman, Environment and Natural Resources Division, U.S. Department of Justice, Denver, Colorado, for the plaintiff-appellee.

David L. Mulliken, Esq., Latham & Watkins, LLP, San Diego, California, for the amicus.

JUDGES: Before: Betty B. Fletcher, M. Margaret McKeown, and Carlos T. Bea, Circuit Judges. Opinion by Judge McKeown; Concurrence by Judge Bea.

OPINION BY: M. Margaret McKeown

OPINION

[*1226] McKEOWN, Circuit Judge:

Libby, Montana, sits sixty-five miles south of the Canadian border. The seemingly rustic and picturesque environment of this area masks a troubling history--the community has been plagued with asbestos-related contamination. In 1999, the Environmental Protection Agency ("EPA") was called in to **[**2]** address disturbing health reports due to asbestos-related contamination. We must decide whether, in responding to this threat, the EPA exceeded the bounds of its authority to conduct cleanup activities under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), *42 U.S.C. § 9601 et seq.* We hold that it did not.

Defendants W.R. Grace & Co., [1] Kootenai Development Corporation, and W.R. Grace & Co.-Conn. (collectively, "Grace") do not dispute that they are financially obligated under CERCLA to assist with the cleanup of asbestos originating from their former mining and processing operations near Libby. [2] Instead, Grace contests the EPA's characterization of the cleanup as a removal action rather than a remedial action under CERCLA. If the cleanup is a remedial action, which is often characterized as a permanent cleanup, then Grace argues that the EPA did not fulfill the regulatory requirements for remedial actions. For example, a remedial action requires certain analysis of the costs and effectiveness of the remediation and also requires inclusion on the National Priority List. *See 40 C.F.R. §§*

300.425(b)(1), 300.430(e)(7). [**3] In contrast, the regulatory requirements for removal actions, which provide the EPA with substantial flexibility to tailor prompt and effective responses to immediate threats to human health and the environment, are considerably relaxed.

1 Although the case caption has remained consistent, we note that the district court's order states that the parties stipulated to the dismissal of W.R. Grace. & Co., a Delaware corporation that was incorporated in 1998 and is the sole shareholder of W.R. Grace & Co.-Conn. *United States v. W.R. Grace & Co.-Conn., 280 F. Supp. 2d 1135, 1139 n.1 (D. Mont. 2002)* ("*Grace I*").

2 In February 2005, the United States unsealed a criminal indictment charging Grace and various of its employees with offenses relating to knowingly exposing miners and Libby residents to asbestos. *See* Charges Issued Over Asbestos at a Mine, N.Y. Times, Feb. 8, 2005, at A16. This pending indictment does not affect these proceedings.

Grace argues that the EPA circumvented the [**4] regulatory safeguards by conducting a remedial action under the guise of a removal, thereby giving the EPA free rein to conduct what Grace styles as "the *quintessential* remedial action" under the less-restrictive requirements applied to removals. Grace presents this as a legal question: Is the EPA's characterization of its activities in Libby as a removal action correct as a matter of law?

Grace further contends that even if the action is appropriately classified as a removal action, the district court erred in exempting the action from CERCLA's general 12-month, $ 2 million cap for removal actions and in granting the EPA over $ 54 million in reimbursement plus a declaratory judgment for future costs. Finally, Grace disputes the accounting methods used to calculate the EPA's indirect costs.

The situation confronting the EPA in Libby is truly extraordinary. This cleanup site is not a remote, abandoned mine. Rather, the population of Libby and nearby communities, which the EPA estimates at about 12,000, faces ongoing, pervasive exposure to asbestos particles being released through documented exposure pathways. We cannot escape the fact that [*1227] people are sick and dying as a result [**5] of this continuing exposure. Confronted with this information, the EPA determined on the basis of its professional judgment, and in accord with its administrative interpretation of the scope of removal actions, that the situation warranted an immediate, aggressive response to abate the public health threat.

Although we diverge from the district court's reasoning in some respects, we reach the same ultimate conclusion: The EPA's cleanup in Libby was a removal action that was exempt from the temporal and monetary cap. In light of the EPA's expertise in this area, we owe considerable deference, albeit not necessarily full *Chevron* deference, to its characterization of the cleanup activities as a removal action. *See Chevron U.S.A. Inc. v. NRDC, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984).* We therefore affirm the judgment of the district court.

BACKGROUND

The outcome of this case is controlled by our interpretation of key provisions of CERCLA, a comprehensive statutory scheme to respond to environmental threats, obtain compensation from those responsible for the polluting activities, and assign liability to responsible parties. *See* Pub. L. [**6] No. 96-510, 94 Stat. 2767 (1980). Before applying CERCLA to the case at hand, we begin with a brief review of this statute as well as the background on the hazards afflicting Libby.

I. CERCLA

A key component of CERCLA was the establishment of a trust fund, commonly known as "Superfund," for use when responding to the release or threat of release of hazardous substances into the environment. *See* CERCLA, Subtitle B--Establishment of Hazardous Substance Response Trust Fund § 221, 94 Stat. at 2801-02; *see also* Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986). Today, Superfund expenditures are directed by the provisions of CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan ("National Contingency Plan"), 40 C.F.R. pt. 300. [3]

3 The National Contingency Plan "specifies procedures for preparing and responding to contaminations and was promulgated by the [EPA] pursuant to CERCLA." *Cooper Indus., Inc. v. Aviall Servs., Inc., 543 U.S. 157, 125 S. Ct. 577, 580 n.2, 160 L. Ed. 2d 548 (2004); see also 42*

U.S.C. § 9605. Last revised in 1994, *see 59 Fed. Reg. 47,384 (Sept. 15, 1994)*, the National Contingency Plan has undergone several rounds of revisions since its initial publication.

[**7] CERCLA and the National Contingency Plan divide response actions into two broad categories: removal actions and remedial actions. *See 42 U.S.C. § 9601(25)*. Removal actions [4] are typically described **[*1228]** as time-sensitive responses to public health threats for which the EPA is granted considerable leeway in structuring the cleanup. *See, e.g., Minnesota v. Kalman W. Abrams Metals, Inc., 155 F.3d 1019, 1024 (8th Cir. 1998)* (describing "removal actions" as "those taken to counter imminent and substantial threats to public health and welfare"). Superfund-financed removal actions generally are required to "be terminated after $ 2 million has been obligated for the action or 12 months have elapsed from the date removal activities begin on-site." *40 C.F.R. § 300.415(b)(5)*. These limitations are not, however, inviolate. The EPA [5] may exceed this cap if it determines one of two exemptions applies:

> (i) There is an immediate risk to public health or welfare of the United States or the environment; continued response actions are immediately required to prevent, limit, or mitigate an emergency; and such assistance **[**8]** will not otherwise be provided on a timely basis; or
>
> (ii) Continued response action is otherwise appropriate and consistent with the remedial action to be taken.

40 C.F.R. § 300.415(b)(5); *see also 42 U.S.C. § 9604(c)(1)*.

4 Although "removal action" is not itself defined in CERCLA, "remove" and "removal" are defined. In light of the central importance of the definition to this case, it is worth citing the rather cumbersome definition in its entirety:

> The terms "remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary [sic] taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under *section 9604(b)* of this title, and any emergency assistance which may be provided under the Disaster Relief and Emergency Assistance Act.

42 U.S.C. § 9601(23).

[9]**

5 In Executive Orders 12,580 and 12,777, the President delegated most functions and responsibilities to the EPA that were vested in him by CERCLA. *See 40 C.F.R. § 300.100*.

Remedial actions, [6] on the other hand, are often described as permanent remedies to threats for which an urgent response is not warranted. *See, e.g., Pub. Serv. Co. of Colo. v. Gates Rubber Co., 175 F.3d 1177, 1182 (10th Cir. 1999)* ("In broad contrast, a remedial action seeks to effect a permanent remedy to the release of hazardous substances when there is no immediate threat to the public health.").

6 As with "removal," the definition of "remedial action" has a maze-like structure:

> The terms "remedy" or "remedial action" means those actions consistent with permanent remedy

taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

42 U.S.C. § 9601(24).

[10]** The distinction between removal and remedial actions is critical under CERCLA because "both types of actions have substantial requirements, but the requirements for remedial actions are much more detailed and onerous." *Morrison Enters. v. McShares, Inc., 302 F.3d 1127, 1136 (10th Cir. 2002).* For example, remedial actions are only eligible for Superfund financing **[*1229]** when the site is listed on the National Priorities List. [7] *See 40 C.F.R. § 300.425(b)(1).* Further, the EPA is required to consider costs when selecting remedial alternatives whereas "CERCLA contains no corresponding mandate for removal actions." *United States v. Hardage, 982 F.2d 1436, 1443 (10th Cir. 1992); see also 40 C.F.R. § 300.430* (listing requirements for a selection of remedy including consideration of effectiveness, permanence, and cost). Because CERCLA provides that responsible parties shall be liable for "all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan," this distinction is vital to those held liable. *42 U.S.C. § 9607(a)(4).*

7 The National Priorities List is "the list, compiled by EPA pursuant to CERCLA section 105, of uncontrolled hazardous substance releases in the United States that are priorities for long-term remedial evaluation and response." *40 C.F.R. § 300.5.*

[**11] II. HISTORY OF THE EPA'S CLEANUP ACTIVITIES IN LIBBY

The roots of this case stretch back nearly a century to the beginning of mining operations in the vicinity of Libby. It was not until the late 1990s, however, that the extent of the problem came to light fully, leading to the EPA's cleanup action.

A. ASBESTOS CONTAMINATION IN LIBBY

From the 1920s until 1990, Grace and its predecessors mined and processed vermiculite--a mineral containing a type of asbestos called tremolite--at a mine approximately seven miles northeast of Libby. *See Grace I at 1138-41* (describing factual background in an order granting the EPA's motion for summary judgment). Processed ore was trucked to screening plants and expansion/export plants from which the materials were distributed nationwide. Vermiculite was also available for

employees to take home for their personal use, and Grace donated vermiculite to the local schools.

Although Grace did not cease mining and processing operations in Libby until 1990, state and federal agencies conducted studies on the health effects of the mining operations as early as the 1940s. These efforts were, however, focused on workplace exposure rather [**12] than contamination in the greater Libby community. For example, in the 1940s and 1950s, the Montana State Board of Health issued several industrial hygiene studies to determine whether the mine's operations were detrimental to the employees' health. In 1992, the EPA issued a written determination on the applicability of the National Emissions Standards for Hazardous Air Pollutants to a road on the mine property. However, no CERCLA activities were performed in Libby prior to the EPA's commencement of an investigation in 1999 that led to the current cleanup.

B. THE EPA'S INVOLVEMENT IN LIBBY

After beginning its investigation in November 1999, the EPA issued a Sampling and Quality Assurance Project Plan in December, followed by a more comprehensive revised plan in January 2000. The plan "addressed questions and concerns raised by citizens of Libby regarding possible ongoing exposures to asbestos fibers as a result of historical mining, processing and exportation of asbestos-containing vermiculite." The EPA's immediate efforts were directed toward (1) obtaining information on airborne asbestos levels in order to judge whether a time-critical intervention was needed to protect public [**13] health, and (2) obtaining data on friable asbestos levels in potentially contaminated materials around Libby. The EPA stated that [*1230] "the first decision to be made is whether or not time-critical intervention is needed to protect public health."

In his testimony before the Senate's Environment and Public Works Committee in February 2000, the EPA's regional administrator attested that the initial investigation confirmed two things: (1) "a large number of current and historic cases of asbestos related diseases centered around Libby," including "33 incidents of apparently non-occupational exposures"; and (2) a "high likelihood that significant amounts of asbestos contaminated vermiculite still remain in and around Libby." Vermiculite from the mine's waste piles was "commonly used by local residents in their yards and gardens as a soil conditioner." It was also used to create running tracks and baseball fields for nearby schools. The residents were particularly concerned because children regularly played in and around piles of vermiculite. These findings compelled the EPA to undertake more expansive testing. To put it mildly, subsequent testing showed asbestos contamination to be pervasive.

[**14] Because asbestos is generally only harmful if inhaled or ingested, the mere presence of asbestos does not necessarily constitute an immediate threat. But the situation in Libby did not present this benign scenario. Instead, the EPA documented "complete human exposure pathways" through which asbestos particles were becoming airborne as a result of normal human activities, such as foot traffic and vacuuming, and natural forces, such as wind--especially during the dry summer months. This migration transformed the latent threat of undisturbed asbestos into a current hazard to anyone breathing the airborne particles. For example, residents described halting baseball games when large dust clouds swept over the field carrying particles from exposed piles of vermiculite. A study of Libby residents conducted in 2000 by the Agency for Toxic Substances and Disease Registry not only found that most participants reported multiple routes of exposure, but also that 18% of those x-rayed had abnormalities in the lining of their lungs--as compared with the expected rate of 0.2% to 2.3% for groups living in the United States who have no known asbestos exposures.

These findings led the EPA to set out [**15] the intended removal action in a series of three memoranda issued between May 2000 and May 2002, which progressively broadened the scope of the cleanup. The original action memorandum, dated May 23, 2000 ("First Action Memo"), covered a former vermiculite export plant and screening plant, the former of which was being used as a retail lumber mill and the latter as a combined commercial/residential property. [8] The First Action Memo authorized a time-critical removal action [9] to be completed by spring/summer 2001 with a total project ceiling of approximately $ 5.8 million for the two sites. The EPA determined that the action met the requirements [*1231] to exceed the $ 2 million, 12-month cap because the asbestos in the environment posed an immediate threat to the local population; a cleanup beyond the cap was required to prevent, limit, or mitigate an emergency because of the size of the cleanup and the short construction season; and assistance from other

government agencies was not anticipated on a timely basis.

8 Grace largely conducted the cleanup of the export plant in response to an EPA order dated May 23, 2000.

[**16]

9 The EPA describes the cleanup in Libby as a single removal action both in the action memoranda and its briefs to this court: "EPA authorized *a removal action* to remove asbestos-contaminated materials from hundreds of homes, businesses, yards, gardens, school athletic fields, driveways, and mining plant facilities." (emphasis added). Likewise, on appeal, Grace argues that the district court erred "by granting the United States summary judgment with respect to the validity of EPA's characterization of the Libby response action as a removal rather than a remedial action." Accordingly, we analyze the EPA's activities in Libby as a single response action rather than a patchwork of discrete smaller actions. *Cf. Colorado v. Sunoco, Inc., 337 F.3d 1233, 1241 (10th Cir. 2003)* (concluding that there can be but one "removal action" per site).

The EPA then broadened the scope of the cleanup in an action memorandum amendment, dated July 20, 2001 ("Second Action Memo"), which covered "newly identified risks" at six additional locations and requested increased funding for costs associated [**17] with Grace's reported denial of access to the screening plant. The six sites included two private residences, three local schools, and a public road running past the mine site. Among the EPA's foremost concerns were the high asbestos concentrations in the materials at these sites and the easily crumbled state of the exposed asbestos. For example, the EPA found nuggets of tremolite around the high school track that it described as "readily friable, releasing copious amounts of fibers upon degradation." The EPA measured asbestos concentrations of 2% by polarized light microscopy ("PLM") at a pile of vermiculite at one residence, and concentrations up to 1.5% in material scraped off equipment at the other residence. [10] Samples taken from materials visible outside the elementary school indicated that the area contained asbestos at levels between 3% to 8% by PLM, and testing at the road showed asbestos concentrations up to 5%. As with the First Action Memo, the EPA determined that the situation warranted an exemption from the cap and, consequently, authorized a total site removal ceiling of approximately $ 20.1 million with an estimated completion date for most of the work by winter 2001/02. [**18]

10 To put these numbers into perspective, in the First Action Memo, the EPA explained how asbestos concentrations in soil translate into risks to the public health:

> Currently EPA has not established, under any of its regulatory programs, an asbestos level in soil below which an exposure does not pose a risk. The 1 cut-off level for regulation under the Toxic Substances Control Act abatement program was established on the basis of analytical capability at the time, and was not established based on the level of risk represented. To the contrary, at Superfund sites in California EPA Region IX found in certain settings that concentrations of asbestos less than 1 posed unacceptable inhalation risks when subject to disturbance by traffic.

Significantly, the asbestos was in a friable state.

The EPA expanded the removal action again in an action memorandum amendment, dated May 2, 2002 ("Third Action Memo"), which brought a number of homes and businesses in Libby within the ambit of the removal action. [**19] The EPA again determined that an exemption from the statutory cap was warranted. In addition, although Libby was not added to the National Priorities List until October 2002, *see 67 Fed. Reg. 65,315 (Oct. 24, 2002)*, the EPA proposed that the site be added in February 2002. The Third Action Memo also explained that the removal action was consistent with a planned future remedial action. [11] The EPA estimated that the proposed work would take two to three construction seasons, and it raised the total project ceiling to approximately $ 55.6 million. The EPA continued removal activities consistent with its various Action Memos. [12]

11 The EPA proposed that the Libby site be added to the National Priorities List in February 2002 so that a remedial response action could be conducted. In October 2002, the site was officially added to the List. *See 67 Fed. Reg. 65,315 (Oct. 24, 2002).*

12 According to the EPA's CERCLIS database, the EPA currently is in the study and remedy selection phase and a final remedy has not been selected for the Libby site. *See* http://cfpub1.epa.gov/supercpad/cursites/csitinfo.cfm?id=0801900 (last visited July 26, 2005).

[20] [*1232] C. COST-RECOVERY ACTION AGAINST GRACE**

The EPA filed suit against Grace in March 2001 seeking recovery of all response costs incurred by the government and a declaration that Grace would be liable for future costs. *See 42 U.S.C. §§ 9607, 9613(g)(2).* In December 2002, the district court granted the EPA summary judgment on the liability issue but determined that there were material issues of fact regarding costs associated with certain properties. *Grace I, 280 F. Supp. 2d at 1148.*

After a three-day bench trial, the district court issued an order awarding the EPA the full $ 54.53 million in reimbursement requested, including $ 11.32 million in indirect costs, and granting a declaratory judgment that Grace would be liable for future cleanup costs. *United States v. W.R. Grace & Co., 280 F. Supp. 2d 1149 (D. Mont. 2003)* ("*Grace II*"). This appeal followed.

ANALYSIS

The EPA's ability to recover the costs of its cleanup in Libby hinges on whether its response is properly characterized as a removal action, as argued by the EPA and found by the district court, or a remedial action, as argued by Grace. [13] The tangled **[**21]** language of CERCLA hardly lends itself to clear-cut distinctions between the two types of actions. Nonetheless, certain overarching attributes emerge with the time-sensitivity of the threat and the significance of the public health threat as key factors underlying removal actions. In Libby, the EPA determined that there was a serious threat to public health that required a time-sensitive response, and it acted on this information.

13 Under CERCLA's burden-shifting procedures, once the EPA establishes its prima facie case for response costs, the burden shifts to Grace to prove that the response was inconsistent with the National Contingency Plan. *See United States v. Chapman, 146 F.3d 1166, 1169 (9th Cir. 1998).* Specifically, CERCLA provides that responsible parties shall be liable for "all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan." *42 U.S.C. § 9607(a)(4).* Because the National Contingency Plan prescribes heightened requirements for a remedial action, a threshold inquiry is whether the action was a removal or remedial action. The EPA does not dispute that the cleanup did not meet the National Contingency Plan's procedural requirements for a remedial action.

[22]** We emphasize at the outset that the EPA's response action in Libby is no mere run-of-the-mill CERCLA cleanup. As the EPA itself recognizes, the Libby cleanup is a unique removal action of a size and cost not previously seen. But the situation in Libby was, and remains today, truly extraordinary.

I. REMOVAL OR REMEDIAL ACTION: STRUCTURE OF THE TWO-STEP INQUIRY AND APPLICATION TO THE CLEANUP IN LIBBY

The district court concluded, based on an arbitrary and capricious standard of review, that "[the EPA's] decision to conduct a removal action rather than a remedial action is consistent with the [National Contingency Plan] and cannot be second-guessed by this Court." *Grace I, 280 F. Supp. 2d at 1143.* We take a slightly different tack. CERCLA provides that the selection of response actions shall be upheld "unless arbitrary and capricious or otherwise not in accordance with the law." *42 U.S.C. § 9613(j)(2).* We agree that it **[*1233]** was not arbitrary and capricious for the EPA "to approve a time-critical removal action." *Id. at 1144.* However, the statutory scheme compels us to take the inquiry one step further. *See Martinez-Villareal v. Lewis, 80 F.3d 1301, 1305 (9th Cir. 1996)* **[**23]** ("We may affirm on any ground supported by the record even if it differs from the rationale of the district court.").

Under CERCLA, once the response action is selected--in this case as a removal based on "an imminent and substantial danger to the public health"--then the EPA is authorized to take necessary actions consistent

with the National Contingency Plan. *See 42 U.S.C. § 9604(a)(1)*. Regulations implementing the Plan provide that "if the [EPA] determines that a removal action is appropriate, actions shall, as appropriate, begin as soon as possible to abate, prevent, minimize, stabilize, mitigate, or eliminate the threat to public health or welfare of the United States or the environment." *40 C.F.R. § 300.415(b)(3)*. Thus, even if the EPA's *selection* of a removal action was proper, the question remains whether the actions *actually taken* by the EPA to combat the threat are properly categorized as such.

We agree with Grace that this second step of our inquiry is a question of law: Does the EPA's response action in Libby fall within the statutory limits of a removal action? Grace's challenge is built on the premise **[**24]** that the EPA termed its cleanup in Libby a removal action as a subterfuge when the response was, in substance, a remedial action. [14] To resolve this question, we must explore the statutory confines of removal actions under CERCLA and, within this legal structure, ask to what extent we should defer to the EPA's interpretation based on the agency's expertise.

14 Grace attributes the timing and scope of the EPA's cleanup to intense media attention regarding conditions in Libby. We have previously rejected an "ulterior motive" analysis in a challenge to whether CERCLA response costs incurred by a private landowner were necessary: "The issue is not why the landowner decided to undertake the cleanup, but whether it was necessary. To hold otherwise would result in a disincentive for cleanup." *Carson Harbor Vill., Ltd. v. Unocal Corp., 270 F.3d 863, 871-72 (9th Cir. 2001)* (en banc) (citation omitted). This logic applies with equal force when the EPA is a party. We therefore do not inquire into the EPA's subjective motives behind the cleanup, but rather ask if the objective evidence supports the response.

[**25] A. DECISION TO CONDUCT A REMOVAL ACTION IN LIBBY

The EPA's initial decision to conduct a removal action must be upheld unless Grace can demonstrate on the administrative record that the decision was arbitrary and capricious or otherwise not in accordance with law. *42 U.S.C. § 9613(j)(2)*. Grace has not met this burden.

The National Contingency Plan requires the EPA to consider a series of factors [15] **[*1234]** to determine that it was appropriate to initiate a removal action. *Cf. Chapman, 146 F.3d at 1171-73* (holding that the EPA did not act arbitrarily or capriciously in ordering a removal action after considering the *§ 300.415(b)(2)* factors). The EPA did so and its findings are extensively documented.

15 *40 C.F.R. § 300.415(b)(2)* provides that "the following factors shall be considered in determining the appropriateness of a removal action . . . :"

> (i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;
>
> (ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;
>
> (iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;
>
> (iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;
>
> (v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;
>
> (vi) Threat of fire or explosion;
>
> (vii) The availability of other appropriate federal or state response mechanisms to respond to the release; and
>
> (viii) Other situations or factors that may pose threats to public health or welfare of the United States or the environment.

[**26] The First Action Memo discusses five of the eight factors [16] in concluding that the conditions in Libby presented an imminent and substantial threat to human health and the environment that met the regulatory criteria. Chief among the factors was that complete exposure pathways existed through which people were being exposed to asbestos. The First Action Memo details specific threats, including that "there are over 3000 three gallon buckets of unexpanded Libby vermiculite" being used at a mushroom farm at the former screening plant, and that surface soils contained visible vermiculite that could readily migrate.

16 Specifically, the memo invokes the first, third, fourth, fifth, and seventh factors listed in *40 C.F.R. § 300.415(b)(2).*

The magnitude of the current and potential impact on public health resulting from the widespread use of vermiculite by Libby residents led the EPA in its Second Action Memo to invoke the catch-all eighth factor--"other situations or factors that may [**27] pose threats to public health or welfare of the United States or the environment," *40 C.F.R. § 300.415(b)(2)(viii)*:

> The sheer magnitude of the medical impact in Libby dictates the need for an expedient and thorough response. Unfortunately, because of the latencies of asbestos related diseases there is no easy way to directly correlate exposure to amphibole asbestos today to the direct development of an asbestos related disease. The only way to determine this for certain is to observe an individual for 10 to 40 years after exposure to see if they become sick. However, waiting for this type of certainty is unconscionable. CERCLA was designed and enacted to prevent illness and death resulting from exposure to hazardous substances, not wait for its occurrence to prove a threat.

Finally, the Third Action Memo cites several factors in support of the EPA's decision to expand the removal action and asserts that "the significant medical impact of asbestos exposure in Libby dictates the need for an expedient and thorough response." In light of the EPA's carefully documented reasoning in the three Action Memos, we agree with the district court that the [**28] EPA's decision to approve a removal action was not arbitrary and capricious. *See 42 U.S.C. § 9613(j)(2).* This threshold decision does not, however, end our inquiry. We must consider how to classify the EPA's action.

B. CHARACTERIZATION OF THE EPA'S RESPONSE ACTION

The question remains whether the steps actually taken by the EPA to combat the threat are properly characterized as a removal action. Whether the EPA's cleanup activity was a removal action--or, on the other hand, a remedial action in removal action's clothing--is a question of statutory interpretation. "Congress provided definitions for 'removal' and 'remedial action,' and the classification of the activity is determined as a matter of law." *Geraghty & Miller, Inc. v. Conoco Inc., 234 F.3d 917, 925-26 (5th Cir. 2000)* (footnotes omitted); *see also Sunoco, 337 F.3d at 1242* ("Nothing in *[42 U.S.C.] § 9613(j)(2)* refers to the EPA's characterization of a particular action [as a removal or remedial action]."). The decision to select a removal or remedial action is therefore distinct from the [*1235] question whether the action carried out was, in fact, the action [**29] selected. It is to this crucial inquiry that we now turn.

The statutory interpretation of "removal" is a legal issue that we review as a matter of law. *See Carson Harbor Vill., 270 F.3d at 870.* But in addressing the statute, the parties disagree as to the level of deference, if any, that we should grant the EPA's formulation of the term "removal." Resolving this question requires that we consider the Supreme Court's recent refinement of the traditional agency-deference analysis under *Chevron. See 467 U.S. at 842-45*; *United States v. Mead Corp., 533 U.S. 218, 226-27, 121 S. Ct. 2164, 150 L. Ed. 2d 292 (2001)* (*Chevron* applies "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority.").

Following *Mead*, the continuum of agency deference has been fraught with ambiguity. *Compare Barnhart v. Walton, 535 U.S 212, 221, 122 S. Ct. 1265, 152 L. Ed. 2d 330 (2002)* (applying *Chevron* deference even though the EPA reached its interpretation through means less formal than "notice and comment" [**30] rulemaking) *with Mead, 533 U.S. at 226-27* (agency's tariff classification

had "no claim to judicial deference under *Chevron*, there being no indication that Congress intended such a ruling to carry the force of law"). Our decisions understandably have been conflicted as to whether *Chevron* deference only applies upon formal rulemaking and whether lesser deference applies in other situations. *See, e.g., Cal. Dep't of Soc. Servs. v. Thompson, 321 F.3d 835, 847-48 (9th Cir. 2003)* (discussing how *Mead* and *Walton* have "further obscured the already murky administrative law surrounding *Chevron*"); *Davis v. United States EPA, 348 F.3d 772, 779 n.5 (9th Cir. 2003)* ("The mere fact that the EPA engaged in informal agency adjudication . . . does not vitiate the *Chevron* deference owed to the agency's interpretation . . . ."). As Justice Scalia presciently noted in his dissent in *Mead*, "We will be sorting out the consequences of the *Mead* doctrine, which has today replaced the *Chevron* doctrine, for years to come." *533 U.S. at 239* (Scalia, J., dissenting).

The Supreme Court's most recent pronouncement **[**31]** in *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs., 162 L. Ed. 2d 820, 125 S. Ct. 2688 (2005)*, calls into question whether *Mead* in fact "replaced" *Chevron* as Justice Scalia contends. Perhaps because *Brand X* involved formal rulemaking, *see id. at 2699*, the Court did not clarify whether there is a "deference distinction" between *Chevron* and *Mead*. Nonetheless, in *Brand X* the majority's language explaining *Chevron* is quite broad and does not come with a proviso that the *Chevron* deference is limited to agency interpretations expressed through formal rulemaking. *See id.* ("In *Chevron*, this Court held that ambiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion."); *id. at 2700* ("*Chevron's* premise is that it is for agencies, not courts, to fill statutory gaps.").

The interplay between *Chevron* and *Mead* is highlighted in Justice Breyer's concurrence, in which he writes that "the existence of a formal rulemaking proceeding is neither a necessary nor a sufficient condition for according *Chevron* **[**32]** deference to an agency's interpretation of a statute." *Id. at 2712* (Breyer, J., concurring). This explanation stands in contrast to Justice Scalia's dissents in *Brand X* and *Mead. See id. at 2713-21*; *Mead, 533 U.S. at 239-61*. Echoing his **[*1236]** dissent in *Mead*, Justice Scalia proffers in his *Brand X* dissent that "*Mead* drastically limited the categories of agency action that would qualify for deference under *Chevron*." *125 S. Ct. at 2718* (Scalia, J., dissenting). Rather than clarifying what these categories are, Justice Scalia advances that, in *Brand X*, the Court "continues the administrative-law improvisation project it began four years ago in [*Mead*]." *Id.*

Because the discussion in *Brand X* leaves some doubt as to the degree of formality of the underlying agency interpretation that is required for *Chevron* deference, we look to the post-*Mead* Supreme Court decision that most closely resembles the circumstances we face here. The Court explained last year in *Alaska Department of Environmental Conservation v. EPA, 540 U.S. 461, 487-88, 124 S. Ct. 983, 157 L. Ed. 2d 967 (2004)*, that the EPA's interpretation of a statute in internal **[**33]** guidance memoranda warrants respect but does not qualify for *Chevron* deference. Although the Court cited *Mead* in rejecting *Chevron* deference, it accorded "respect" to the "EPA's reading of the relevant statutory provisions." *Id. at 488*. Accordingly, at a minimum, we impose a modified deference standard affording respect to the EPA's informal interpretations here. But either under modified deference or full *Chevron* deference, the result would be the same: The EPA's cleanup activities in Libby are properly categorized as a removal action.

Despite the EPA's insistence that arbitrary and capricious review applies to all aspects of our inquiry, the statute does not support this reading. CERCLA requires that we uphold the EPA's "decision in selecting the response action" unless arbitrary and capricious or otherwise not in accordance with the law. *42 U.S.C. § 9613(j)(2)*. Here we address not the EPA's selection of its remedy, but rather whether the actions taken fall within the statutory definition of a removal. Thus, we consider whether the statutory construction that the EPA advances in this litigation is correct as a matter of law. **[**34]** The degree of deference granted to the EPA's interpretation of a statute is considered in light of *Chevron* and its progeny. *See Alaska Dep't of Envtl. Conservation, 540 U.S. at 487-88*. In contrast, an agency's actions exercised under its statutory authority are generally subject to arbitrary and capricious review. *See id. at 496-97* (applying arbitrary and capricious review to the EPA's taken actions under the Clean Air Act); *see also 5 U.S.C. § 706(2)* (applying arbitrary and capricious review to agency conclusions and findings).

With the Supreme Court's recent agency-deference

cases as a backdrop, we begin with *Chevron*'s first step and ask "whether Congress has directly spoken to the precise question at issue," *Chevron, 467 U.S. at 842*, i.e., whether a response action such as the one carried out in Libby is a removal or remedial action. [17] If Congress has "unambiguously expressed [its] intent," then our inquiry ends there, for that intent must be given effect as law. *Id. at 842-43*. If, however, **[*1237]** the statute is ambiguous, then we look to the EPA's interpretation of the statute. Even **[**35]** if full-blown *Chevron* deference is not due because of the informal nature of the interpretation, we will still accord a modified level of respect because "*Chevron* did nothing to eliminate *Skidmore*'s [[18]] holding that an agency's interpretation may merit some deference whatever its form." *Mead, 533 U.S. at 234*; *see also Wilderness Soc'y v. United States Fish & Wildlife Serv., 353 F.3d 1051, 1059-62 (9th Cir. 2003)* (en banc), *amended by 360 F.3d 1374 (2004)* (applying this analytical framework to review of an agency's interpretation). Put simply, even if EPA manuals, policy statements, and other pronouncements "are beyond the *Chevron* pale," *Mead, 533 U.S. at 234*, they are not beyond the reach of our deference.

17 Although we have touched on the interplay between removal and remedial actions under CERCLA in prior decisions, the specific contexts in which those cases arose render them of limited use to our decision here. *See California v. Neville Chem. Co., 358 F.3d 661, 667, 670 (9th Cir. 2004)* (concluding that for the purposes of "the onset of the limitations period for recovery of remedial action costs under CERCLA," no action can be "remedial" until adoption of a final remedial action plan); *Hanford Downwinders Coalition, Inc. v. Dowdle, 71 F.3d 1469, 1475, 1477 n.10 (9th Cir. 1995)* (holding that a government health assessment was a "removal or remedial action entitled to the protection of [*42 U.S.C.] § 9613(h)*" without the need to clarify the distinction between the two types of actions).

[36]**

18 The Court explained in *Skidmore v. Swift & Co.* that "the weight [accorded to an administrative] judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *323 U.S. 134, 140, 65 S. Ct. 161, 89 L. Ed. 124 (1944)*; *see also Sunoco, 337 F.3d at 1243* (concluding that the EPA's characterization of a response action deserves *Skidmore* deference).

As elaborated below, the statutory definition of "removal" is vague and, consequently, the EPA's construction of this statutory term warrants our deference. In light of this deference and the well-documented record of the scope of cleanup activity, we hold that the EPA's action in Libby is properly characterized as a removal action. In so holding, we recognize that the emphasis on time-sensitivity both in the EPA's selection of a removal action and in our decision whether the action carried out actually was a removal action threatens to collapse **[**37]** the two issues into a single "immediacy" inquiry. Our review of the EPA's decision to conduct a removal action is limited to whether the EPA considered the eight factors under *40 C.F.R. § 300.415(b)(2)*. In contrast, although immediacy is a paramount consideration when evaluating whether the action indeed was a removal, this second phase of our inquiry is not bound by those eight factors. For example, we also consider, among other things, the interplay between a removal and remedial action conducted at a single site and whether the action comports with the examples in *40 C.F.R. § 300.415(e)*.

Grace contests the denomination of the action as a removal by cherry-picking discrete cleanup activities which, standing alone, might fall within the ambit of a remedial action. We refrain from slicing and dicing the EPA's single, cohesive removal action into a myriad of fractured parts. Such atomization would undermine the EPA's scientific and administrative expertise by requiring us to second-guess whether, for example, the excavation of soil at the local elementary school was a remedial action because 1000 cubic yards of soil was removed **[**38]** when perhaps removal of less soil or less drastic measures could have been employed to counteract the immediate threat. Instead, we take a more comprehensive view of the administrative record in concluding that the EPA's response was a removal action.

1. STATUTORY INTERPRETATION: REMOVAL AND REMEDIAL ACTIONS

The first step under *Chevron* requires a straightforward exercise in statutory interpretation: "If a

court, employing traditional tools of statutory interpretation, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect." **[*1238]** *Chevron, 467 U.S. at 843 n.9.*

We begin with the statutory definitions because "when a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning." *Stenberg v. Carhart, 530 U.S. 914, 942, 120 S. Ct. 2597, 147 L. Ed. 2d 743 (2000).* It has become de rigueur to criticize CERCLA as a hastily passed statute that is far from a paragon of legislative clarity. *See, e.g., Exxon Corp. v. Hunt, 475 U.S. 355, 363, 106 S. Ct. 1103, 89 L. Ed. 2d 364 (1986)* (commenting that a provision in CERCLA "is **[**39]** not a model of legislative draftsmanship"); *Carson Harbor Vill., 270 F.3d at 883* ("Clearly, neither a logician nor a grammarian will find comfort in the world of CERCLA."). The definitions of removal and remedial action exemplify this muddled language. *See 42 U.S.C. § 9601(23)* (defining "removal"); *id. § 9601(24)* (defining "remedial action"); *id. § 9601(25)* (defining "response"); *see also supra* notes 4, 6 (quoting definitions).

The definition of "removal" is written in sweeping terms. It begins with the general statement that "removal" means "the cleanup or removal of released hazardous substances from the environment." *42 U.S.C. § 9601(23).* The definition goes on to describe three categories of events that trigger removal: (1) "such actions as may be necessary [sic] taken in the event of the threat of release of hazardous substances into the environment"; (2) "such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances"; and a third catch-all category, (3) "such other actions as may be necessary to prevent, minimize, or mitigate damage **[**40]** to the public health or welfare or to the environment, which may otherwise result from a release or threat of release." *Id.*

Finally, the definition lists a number of specific activities that fall within the definition of "removal"--"alternative water supplies," "temporary evacuation and housing," and "emergency assistance." Although at first glance this half of the definition appears to provide concrete guidance by listing identifiable activities such as "security fencing," this part too is left vague by the opening caveat that the term "removal" "includes, in addition, without being limited to, security fencing . . . ." *Id.* Consequently, "these examples serve only as a guide to what activities may appropriately be classified as 'removal action.'" *Hanford Downwinders Coalition, 71 F.3d at 1478 n.13.*

The definition of "remedial action" is similarly broad, but can be distinguished from "removal" because it refers to "permanent" remedies and its list of specific actions is, in large part, distinct from the list included under "removal." (For example, "removal" is focused on temporary and emergency activities.) To begin, the definition states that a "remedial **[**41]** action" is an action "consistent with permanent remedy taken instead of or in addition to removal actions." *42 U.S.C. § 9601(24).* Although the section begins with this clear language, it threatens to collapse into the definition of "removal" because it includes those actions "taken instead of or in addition to removal actions" and is triggered "in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment." *Id.* Thus, the triggering factors begin to sound virtually similar to the triggering factors for a "removal" action. In fact, two of the triggering factors for "removal" are almost identical to the factors for "remedy": **[*1239]**

Removal -- 42 U.S.C. § 9601(23)	Remedy -- 42 U.S.C. § 9601(24)
"such actions as may be necessary	"those actions consistent with
[sic] taken in the event of the	permanent remedy taken in the event
threat of release of hazardous	of a release or threatened release of
substances into the environment"	hazardous substances into the
	environment"
"such other actions as may be	"those actions consistent with

Removal -- 42 U.S.C. § 9601(23)	Remedy -- 42 U.S.C. § 9601(24)
necessary to prevent, minimize, or	permanent remedy taken to prevent or
mitigate damage to the public health	minimize the release of hazardous
or welfare or to the environment,	substances so that they do not
which may otherwise result from a	migrate to cause substantial danger
release or threat of release"	to present or future public health or
	welfare or the environment"

[**42] The definition concludes with three lists of specific examples classified as a remedy, such as "segregation of reactive wastes." The first list details various locations of the release. As with the term "removal," the definition for the first list diminishes the examples' guidance with the qualifying language that the term "includes, but is not limited to," the listed examples. *Id.* The second list spells out when permanent relocation of residents, businesses, and community facilities is appropriate. Finally, the third list is a list of actions included within "remedy," ranging from offsite storage to disposition of hazardous substances.

Adding to the confusion is the overlap between the two definitions. *See Neville Chem. Co., 358 F.3d at 667* (noting listing of "provision of alternative water supplies" under both "remedial action" and "removal"); *Geraghty & Miller, 234 F.3d at 927* (noting overlap). Attempting to untie the Gordian knot of these definitions solely based on their plain meanings is thus unavailing.[19]

19 Other courts have similarly been unable to extract answers from the statute's plain meaning:

> Those courts which have attempted to unravel CERCLA's definitions have found no solace in either the "plain meaning" of the statute or the reams of legislative history. Instead, in an attempt to glean legislative intent, courts seem to resort to a sort of "Purkinje phenomenon," hoping that if they stare at CERCLA long enough, it will burn a coherent afterimage on the brain.

CP Holdings, Inc. v. Goldberg-Zoino & Assocs., Inc., 769 F. Supp. 432, 435 (D.N.H. 1991) (footnote omitted) (referring to "an optical illusion named for Johannes E. Purkinje (1787-1869), whereby the eye retains an afterimage of an object in a different color from the original").

[**43] In interpreting "removal" and "remedial," we next follow the Supreme Court's guidance in taking a comprehensive, holistic view of CERCLA because it is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133, 120 S. Ct. 1291, 146 L. Ed. 2d 121 (2000)* (quoting *Davis v. Mich. Dep't of Treasury, 489 U.S. 803, 809, 109 S. Ct. 1500, 103 L. Ed. 2d 891 (1989)).*

CERCLA makes clear that the EPA has the tools of both removal and remedial actions at its fingertips when there is a release or threatened release of a hazardous substance. Specifically, the EPA is authorized "to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time . . ., or take any other response measure consistent with the national contingency plan which the [EPA] deems necessary to protect the public health or welfare or the environment." *42 U.S.C. § 9604(a)(1).* The statute as a whole, however, does little to clarify how to categorize a given [**44] response action except to suggest that remedial actions may be "long term." *See, e.g., id. § 9604(a)(2)* (indicating that any removal action should contribute to the efficient performance of any "long term" remedial actions without further elaboration).

[*1240] Nor does the purpose of the statute provide definitive guidance, though it points towards a liberal reading of "removal" in order to effectuate CERCLA's

underlying purpose of "protecting and preserving public health and the environment by facilitating the expeditious and efficient cleanup of hazardous waste sites." *Carson Harbor Vill., 270 F.3d at 880* (quoting *Pritikin v. Dept of Energy, 254 F.3d 791, 794-95 (9th Cir. 2001)* (internal quotation marks and citation omitted)); *see also, e.g., Sierra Club v. Seaboard Farms, Inc., 387 F.3d 1167, 1172 (10th Cir. 2004)* (advocating that CERCLA be interpreted liberally so as to accomplish its remedial goals). Specifically, because a removal action can be initiated promptly after notification of a threat, a liberal reading provides the EPA with greater flexibility to use this tool for the protection of the public health.

Last, we **[**45]** turn to CERCLA's legislative history for guidance. *See BedRoc Ltd. v. United States, 541 U.S. 176, 187 n.8, 124 S. Ct. 1587, 158 L. Ed. 2d 338 (2004)* (noting "longstanding precedents that permit resort to legislative history only when necessary to interpret ambiguous statutory text"). *But see Johnson v. United States, 529 U.S. 694, 723, 120 S. Ct. 1795, 146 L. Ed. 2d 727 (2000)* (Scalia, J., dissenting) (criticizing majority's reliance on legislative history because "our obligation is to go as far in achieving the general congressional purpose as the text of the statute fairly prescribes--and no further").

Unfortunately, legislative history is particularly unhelpful because of the haphazard passage of CERCLA with many of the more lucid descriptions of the statute falling under the oxymoronic category of post-enactment "history." *See, e.g.*, 126 Cong. Rec. S16,428 (daily ed. Dec. 12, 1980), *reprinted in* 1 The Environmental Law Institute, Superfund: A Legislative History 87 (Helen Cohn Needham & Mark Menefee eds., 1982) (hereinafter "Superfund History") (post-passage "clarification" by Sen. Stafford that "the purpose of [CERCLA] and the response plan is to protect the public **[**46]** health and welfare in its broadest sense"); *see also* Alfred R. Light, CERCLA Law and Procedure 12-18 (1991) (describing the "unusual back-room congressional compromise process" behind CERCLA); 1 Superfund History, *supra*, at xiii ("The emergence of this last-minute compromise hampers the ability of researchers to draw definitive conclusions from the otherwise extensive legislative history of CERCLA."). Considering that no committee or conference reports address the version of CERCLA that ultimately became law, it is apt to describe the search for legislative history as "somewhat of a snark hunt." *Carson Harbor Vill., 270 F.3d at 885.*

Without the benefit of a definitive committee report or other deliberate congressional documents describing the genesis of the final bill, we are hesitant to rely on legislative history for guidance, especially in regard to the nuanced inquiry as to which side an action falls on the removal/remedial line. *See United States v. Adams, 343 F.3d 1024, 1032 n.8 (9th Cir. 2003)* (warning that subsequent legislative history is a "hazardous basis for inferring the intent of an earlier Congress") (quoting *United States v. McCoy, 323 F.3d 1114, 1121 (9th Cir. 2003))*. **[**47]**

What we can take away from the legislative history is the drafters' overarching concern that aggressive action be taken to protect the public health. *See, e.g.*, 126 Cong. Rec. S14,714 (daily ed. Nov. 19, 1980), *reprinted in* 1 Superfund History, *supra*, at 90 (statement of Sen. Mitchell) ("The Surgeon General of the United States has stated that toxic wastes may be the most serious threat to public health in our country in the next decade. So it is in this spirit of urgency that I cosponsor **[*1241]** this substitute [bill] today."); S. Rep. No. 96-848, at 2 (1980) (stating in report for unadopted draft of CERCLA that "the potential impact of toxic chemicals on the general public and environment through unsound hazardous disposal sites and other releases of chemicals is tremendous"); *see also 55 Fed. Reg. 8666, 8725 (Mar. 8, 1990)* (statement in comments to 1990 amendments to the National Contingency Plan that "*Section 121 of CERCLA* makes clear, and the legislative history confirms, that the overarching mandate of the Superfund program is to protect human health and the environment from the current and potential threats posed by uncontrolled hazardous waste sites. **[**48]** "). Such statements encourage us to construe "removal" liberally to effectuate CERCLA's remedial purpose, but they do not illuminate the removal/remedial distinction. *Cf. Seaboard Farms, 387 F.3d at 1172* ("[CERCLA] must be interpreted liberally so as to accomplish its remedial goals."); *Kelley v. E.I. DuPont de Nemours & Co., 17 F.3d 836, 843 (6th Cir. 1994)* ("We conclude that Congress intended that the term 'removal action' be given a broad interpretation.").

In sum, we are unable to discern Congress's clear intent through the normal tools of statutory interpretation. The meanings of "removal" and "remedial action" under CERCLA are inescapably vague.

2. DEFERENCE TO THE EPA'S

CHARACTERIZATION

Having concluded that Congress did not draw a clear line between removal and remedial actions, we turn to the second step under *Chevron* and ask whether, in view of the deference owed to the EPA, the Libby cleanup was a removal action as a matter of law. As noted earlier, the level of deference we accord to a given agency interpretation is directed by its form.

The administrative posture of CERCLA presents two types of agency interpretations. One [**49] is the National Contingency Plan, which carries the force of law. [20] The second relates to informal agency interpretations, which at a minimum receive respect and, depending on the interplay of *Mead* and *Brand X*, may even deserve *Chevron* deference. Whichever of these applies, we reach the same result: We hold that the EPA has rationally construed CERCLA and that construction deserves our respect. *Cf. Alaska Dep't of Envtl. Conservation, 540 U.S. at 485-88* (EPA "rationally construed" Clean Air Act in internal guidance memoranda, which construction deserved "respect and approbation" but not *Chevron* deference). As interpreted by the EPA, the removal/remedial distinction boils down to whether the exigencies of the situation were such that the EPA did not have time to undertake the procedural steps required for a remedial action, and, in responding to such a time-sensitive threat, the EPA sought to minimize and stabilize imminent harms to human health and the environment. The EPA did so here.

20 *40 C.F.R. § 300.2* explains that the President delegated to the EPA "the responsibility for the amendment of the [National Contingency Plan]." *See also id.* ("The [National Contingency Plan] is applicable to response actions taken pursuant to the authorities under CERCLA . . . ."); *Vigil v. Leavitt, 381 F.3d 826, 834 (9th Cir. 2004)* ("Congress has given EPA general rulemaking authority, which, when exercised, requires our deference in accordance with *Chevron*.") (citation omitted).

[**50] The definitions of "removal" and "remedial action" in the EPA-promulgated National Contingency Plan merely parrot CERCLA's definitions, aside from a few minor revisions for the National Contingency [*1242] Plan context. *See, e.g., 40 C.F.R. § 300.5* (replacing "EPA" for "the President" in definition of "remedial action" and noting that, for the purpose of the National Contingency Plan, "remedial" and "removal" include enforcement activities related thereto). Because these definitions do nothing to interpret the definitions in CERCLA, they are unhelpful to our inquiry.

That being said, other parts of the National Contingency Plan offer some guidance. For instance, *40 C.F.R. § 300.415(e)* sets forth examples of activities that are "as a general rule," appropriate as part of a removal action, but notes that the list "is not exhaustive and is not intended to prevent the lead agency from taking any other actions deemed necessary under CERCLA." *See also 42 U.S.C. § 9601(23)* (providing that the scope of removals is not limited to the examples in the statutory definition). The examples include, among others, fences [**51] or other site control precautions; capping of contaminated soils to reduce migration; excavation, consolidation, or removal of highly contaminated soils; and removal and treatment of hazardous materials where it will reduce the likelihood of human exposure. *40 C.F.R. § 300.415(e).* The bulk of activities carried out in Libby easily fall within the scope of the listed examples. For instance, the EPA removed hazardous soil from the screening plant, restricted access to contaminated roads, installed a temporary cover on a school's ice skating rink, excavated and backfilled contaminated soil, and removed exposed piles of vermiculite.

Although "immediacy" is not used in the definition of "removal" either in CERCLA or the National Contingency Plan, the examples in *40 C.F.R. § 300.415(e)* imply a level of urgency in addressing the threat both by expressly using the word "immediately," *see id. § 300.415(e)(9)* (providing alternative water supply "where necessary immediately to reduce exposure to contaminated household water"), and by describing looming threats against which prompt action is needed, *see, e.g., id. § 300.415(e)(4)* [**52] (capping contaminated soils "where needed to reduce migration of hazardous substances . . . into soil, ground or surface water, or air"). Not surprisingly, the criteria used to determine whether the selection of a removal action is appropriate are similarly infused with this sense of immediacy. *See, e.g., id. § 300.415(b)(2)(iv)* (factors include whether there are hazardous substances in soils "largely at or near the surface, that may migrate").

The need for immediate action permeates the EPA's activities in Libby. The toxicologist's May 17, 2000, report that was attached to the First Action Memo

concludes that "airborne fiber concentrations in the residential area of Libby exceeded the present occupational Permissible Expo-sure Level (PEL) of 0.1 fiber/cubic centimeter established by OSHA 1994 (MRI, 1982)." [21] These levels translated into an immediate public health threat because, as documented in the health consultation by the Agency for Toxic Substances and Disease Registry, complete exposure pathways were present around Libby. For example, EPA investigations found deteriorating bags of vermiculite at the former screening plant, as well as vermiculite tailings at the surface **[**53]** of a walking path next to the Libby High School track. And the dilapidated condition of houses was such that "in some Libby homes, vermiculite insulation is literally falling out into the living space from gaps around light fixtures and electrical switches." That these particles were present in people's homes and schools is especially troubling because, in contrast to standards set by OSHA for workers who are exposed to particles during an eight-hour workday, home and school contamination could result in exposure for twenty-four hours per day. In short, the carcinogenic fibers were widespread and, contrary to Grace's assertions, were not contained such that they would not be inhaled. As ominously observed by the EPA, "Of course once airborne, the fibers will migrate whichever way the wind blows."

21 The Permissible Exposure Level is for eight hours, not twenty-four. Although Grace argues that the EPA's toxicologist's report is incorrect, it does not cite to the report of any other experts who concluded otherwise. Nor does Grace cite to any provisions of OSHA that require a different protocol for the taking of samples which the EPA's expert did not follow.

[54]** The sequence of activities in Libby further comports with the EPA's description in the National Contingency Plan of the preferred development of response actions. The National Contingency Plan provides that the agency should orderly transition **[*1243]** from a removal to a remedial action if it "determines that the removal action will not fully address the threat posed by the release." *40 C.F.R. § 300.415(g).* This progression is evidenced by the three Action Memos for Libby, which began by calling for a removal action but later paved the way for a remedial action. [22] Indeed, the First Action Memo notes that the proposed removal action "should compliment and contribute to the overall success of any remedial actions in the future." The Third Action Memo further states, "Continued response actions are appropriate and consistent with the remedial actions to be taken." Thus, the EPA conducted its removal action in Libby not in lieu of a remedial action, but rather as a prelude to a comprehensive remedial action.

22 We note, however, that there need not be a linear progression from a removal to a remedial action. For example, "removal actions may be conducted in response to a time-critical situation at a remedial response site." *53 Fed. Reg. 51,394, 51,405 (Dec. 21, 1988)* (comment in the EPA's proposed revisions to the National Contingency Plan).

[55]** Looking beyond the National Contingency Plan, the EPA's characterization of response actions in documents that do not have the heft of regulations still carry weight because "cogent 'administrative interpretations . . . not [the] products of formal rulemaking . . . nevertheless warrant respect.'" *Alaska Dep't of Envtl. Conservation, 540 U.S. at 488* (quoting *Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 385, 123 S. Ct. 1017, 154 L. Ed. 2d 972 (2003)* (alterations in original)); *see also FTC v. Garvey, 383 F.3d 891, 903 (9th Cir. 2004)* (where *Chevron* deference does not apply, "[an agency's] pronouncement's persuasiveness may nevertheless entitle it to respect"). The need for agency expertise is particularly acute when we are faced with a complex regulatory regime, such as CERCLA. In this situation, we recognize that the "well-reasoned views of an expert administrator rest on a body of experience and informed judgment to which courts and litigants may properly resort for guidance." *Alaska Dep't of Envtl. Conservation, 540 U.S. at 487* (internal citations and quotation marks omitted).

[56]** Most notably, the EPA issued a memo in 2000 to guide project managers during the decisionmaking process of selecting between remedial and removal actions. *See* Stephen Luftig, Director, Office of Emergency and Remedial Response, Use of Non-Time-Critical Removal Authority in Superfund Response Actions (Feb. 14, 2000), *available at* http://www.epa.gov/superfund/resources/remedy/pdf/memofeb2000-s.pdf (last visited July 26, 2005) (hereinafter "Removal Memo"). Amplifying the National Contingency Plan's focus on the immediacy of the threat, the Removal Memo

emphasizes "time sensitivity," i.e., "the need to take relatively prompt action," as a key characteristic of removal actions: "Even expensive and complex response actions may be removal action candidates if they are relatively time-sensitive." Removal Memo, *supra*, at 3-4 ("For example, dredging large quantities of contaminated sediment could be conducted using removal authority where such action was the appropriate course for abating or controlling a time-sensitive threat."). [23] An **[*1244]** EPA report published in 2000 describing the removal program reiterates that "the critical element in all cases is time--prompt action is crucial. **[**57]** " Office of Emergency and Remedial Response, EPA, EPA 540-K-00-002, The Emergency Response and Removal Program 3 (2000), *available at* http://www.epa.gov/superfund/resources/emer_res.htm (last visited July 26, 2005) (hereinafter "Removal Program Report").

23 The three Action Memos all categorize the action in Libby as "Time Critical." The EPA may also choose to conduct "non-time-critical" removal actions "when the lead Agency determines, based on the site evaluation, that a removal action is appropriate, and a planning period of at least six months is available before on-site activities must begin." Office of Emergency and Remedial Response, EPA, Conducting Non-Time-Critical Removal Actions Under CERCLA, EPA/540/F-94/009, at 1(Dec. 1993), *available at* http://www.epa.gov/superfund/resources/remedy/pdf/540f94009.pdf (last visited July 26, 2005). This subset of removal actions is subject to more stringent procedural requirements.

Courts have also stressed the immediacy of a threat in deciding whether **[**58]** a cleanup is a removal action. *See, e.g., City of Wichita v. Trs. of APCO Oil Corp. Liquidating Trust, 306 F. Supp. 2d 1040, 1077-78 (D. Kan. 2003)* (city's cleanup was "remedial in nature" under CERCLA where "the court has heard no evidence that the contamination at the Site posed a threat to human health or the environment which required an immediate response"); *Carson Harbor Vill., Ltd. v. Unocal Corp., 287 F. Supp. 2d 1118, 1157 (C.D. Cal. 2003)* (finding action was remedial where "there is no evidence in the record that the materials posed the type of threat to human health and welfare that required immediate action"); *Hatco Corp. v. W.R. Grace & Co.-Conn., 849 F. Supp. 931, 963 (D.N.J. 1994)* (in finding response was a removal, placing "significant weight upon the fact that the release of [the hazardous substance] was not only imminent, but actually occurring").

While stressing time sensitivity, the Removal Memo downplays the importance that some courts have placed on duration, i.e., "how long the response action will take to build or implement," because "removal actions are most often of short duration, but they certainly **[**59]** can be long-running responses, too, thereby undercutting the probative value of duration . . . in deciding whether an action is removal rather than remedial in nature." Removal Memo, *supra*, at 3 n.2. *But see Sherwin-Williams Co. v. City of Hamtramck, 840 F. Supp. 470, 475-76 (E.D. Mich. 1993)* ("The extended and protracted nature of the cleanup indicate that the City has engaged in a remedial action."). Accordingly, the action in Libby is not disqualified from being a removal action just because it took several years. *Cf. Vill. of Milford v. K-H Holding Corp., 390 F.3d 926, 934 (6th Cir. 2004)* (explaining that the court has "never held" that the short-term nature of an action is required for finding costs recoverable as removal costs). The length of the cleanup in Libby is especially understandable given that harsh winters truncated the construction season and that the sheer magnitude of the initial cleanup far exceeded the normal situation faced by the EPA. *Cf. Sunoco, 337 F.3d at 1244* (concluding that action was a removal in part because it was finished in about 14 months, "a relatively short time frame in the context of a clean-up **[**60]** lasting more than a decade in a harsh environment" (internal quotation marks omitted)).

Likewise, the Removal Memo describes courts' reliance on the "permanence" of the response as "sometimes misleading": "As a practical matter, removal actions are often permanent solutions such as can be the case in a typical soil or drum removal." Removal Memo, *supra*, at 3 n.3; *cf. Geraghty & Miller, 234 F.3d at 927* ("Even if the replacements for these wells are integral to the long-term remediation of the site, that does not mean that their initial placement cannot be categorized as removal."). This observation seems logical, as we do not want to tie the EPA's hands or compel it to adopt short-term remedies for fear that any more permanent solutions automatically will be dubbed "remedial actions." Nor would it make economic or practical sense to impose a requirement **[*1245]** that removal actions must be only temporary in nature. The Removal Memo

instead uses the term "comprehensiveness" to distinguish between the use of removal authority to conduct interim or partial response actions that are focused on immediate risk reduction as compared with a final or "comprehensive" response at **[**61]** the site. Removal Memo, *supra*, at 3 n.3. The Libby cleanup exhibits this two-tier approach of an interim removal action that the EPA transforms into a comprehensive remedial action. *Cf. Geraghty & Miller, 234 F.3d at 926* (noting that "removal actions generally are immediate or interim responses").

These informal interpretations combined with the descriptions in the National Contingency Plan provide a persuasive interpretation that removal actions encompass interim, partial time-sensitive responses taken to counter serious threats to public health. As the EPA explained in the Second Action Memo, "CERCLA was designed and enacted to prevent illness and death resulting from exposure to hazardous substances, not wait for its occurrence to prove a threat."

Grace attempts to add another layer of complexity to our analysis by challenging various scientific and other methodology judgments made by the EPA as part of the cleanup. Once we determine that a response action on the whole is, by nature, classified as a removal action under the law, we will not delve further to second-guess the underlying data absent a showing of specific evidence that the EPA's conclusions were **[**62]** not warranted. *See Balt. Gas and Elec. Co. v. Natural Res. Def. Council, 462 U.S. 87, 103, 103 S. Ct. 2246, 76 L. Ed. 2d 437 (1983).* ("When examining this kind of scientific determination, as opposed to simple findings of fact, a reviewing court must generally be at its most deferential."). Although Grace argues in its briefs that the EPA's data and conclusions were wrong, it did not present evidence to support its claim that the EPA's selection of a removal action was arbitrary and capricious, *see 42 U.S.C. § 9613(j)(2)*, or that its characterization of the action as a removal action did not comport with the statutory definition, *see 42 U.S.C. § 9601(23)*. Of course, the EPA does not have free rein to ignore accepted scientific principle or to adopt findings that are wholly at odds with the record evidence. *See Great Basin Mine Watch v. United States EPA, 401 F.3d 1094, 1098 (9th Cir. 2005)* (court will overturn a final agency action if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so **[**63]** implausible that it could not be ascribed to a difference in view or the product of agency expertise") (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983))*. But such is not the case here. Nor can it be said that the EPA's conclusions are arbitrary and capricious. *See Envtl. Def. Ctr., Inc. v. EPA, 344 F.3d 832, 858 n.36 (9th Cir. 2003)* (an agency decision is arbitrary and capricious if there is no rational connection between the decision and the facts in the record).

The disputes between Grace and the EPA regarding testing methodology and data analysis are exceedingly complex. The administrative record includes, for instance, the EPA's response to Grace's contention that the EPA "inappropriately calculated PCMEs [phase contrast microscopy equivalents] if those findings are going to be compared to the OSHA PEL [Occupational Safety & Health Administration permissible exposure limits]." We are not scientists, nor do we intend to play armchair EPA administrator. But we are judges and it is our role to evaluate the record evidence against the standard **[*1246]** of review. We defer to the EPA's reasoned **[**64]** judgment. *See Sunoco, 337 F.3d at 1243* ("[*Skidmore*] deference seems particularly appropriate where an action reasonably can be classified as both 'removal' and 'remedial' under CERCLA's complex definitional provisions.").

The EPA's scientific basis for finding an immediate threat to the public health is thoroughly documented over thousands of pages. In addition to the detailed evaluation of the threat in the three Action Memos, the administrative record includes, for example, comprehensive reports by both the EPA's regional toxicologist and senior toxicologist explaining the imminent and substantial endangerment to public health in Libby, extensive responses by the EPA to Grace's comments on the cleanup, and lengthy findings by the Agency for Toxic Substances and Disease Registry on medical testing conducted on Libby residents. In particular, the Agency's February 22, 2001, report documents findings from its study conducted from July through November 2000 in which 1,078 people participated. Of those participants, the findings can be summarized as follows:[24]

Type of Possible Exposure	Percentage who had a pleural abnormality on the chest radiograph that could be seen by at least two certified specialists
Grace Workers and secondary contractors	37%
Other work-related contacts with vermiculite	18%
Household contacts with Grace Workers	20%
Vermiculite insulation in home	14%
Some recreational contact with vermiculite	16%
No apparent exposure, but lives in or around Libby	14%

[**65] In comparison, the report recites the following statistics:

> Studies of differing groups within the United States believed to have no substantive work-related asbestos exposures have found the prevalence of pleural abnormalities ranging from 0.02% among blue-collar workers in North Carolina [Castellan 1985], to 0.9% among loggers in Washington and Oregon [Stilbolt 1991], to 1.8% among New Jersey residents [Anderson 1979], and 2.3% among patients at Veterans Administration hospitals in New Jersey [Miller JA 1996].

24 According to the report, "Asbestos exposure is associated with several changes in the pleura (lining of the lungs and internal chest wall). . . . They indicate past exposure to asbestos, and can often be detected in chest radiographs (CXW), also known as X-rays." The report goes on to explain that "the presence of any of these pleural abnormalities on chest radiograph, associated with asbestos exposure, indicates increased risk for mesothelioma and lung cancer."

Further, [**66] in response to the EPA's request that the Agency for Toxic Substances and Disease Registry comment on whether the proposed removal action was appropriate to protect the public health, the Agency concluded in a May 17, 2000, report that "Asbestos contamination is present at the screening plant and export plant at levels that pose a public health hazard. The time critical removal action proposed by EPA is warranted to protect the public health."

Beyond the findings that prompted the EPA to undertake the removal action, the administrative record also documents the concrete steps taken to combat this threat, such as removing vermiculite tailings from under and around running tracks at local schools, covering and demarcating major contaminated areas at residential properties, and cleaning the interiors of infected homes.

In sum, given the sweeping language in the definition of "removal," the significant deference due to the EPA's interpretation of this language, and the scope of the interim cleanup, we hold that the EPA's [*1247] cleanup in Libby falls within the bounds of a removal action. The EPA "has rationally construed the Act's text and [the] EPA's construction warrants our respect and [**67] approbation." *Alaska Dep't of Envtl. Conservation, 540 U.S. at 485*. This holding comports with CER-CLA's fundamental goal of protecting the public health. *See, e.g., Hanford Downwinders Coalition, 71 F.3d at 1481* ("This circuit has joined others in recognizing that protection of the public health was one

of the remedial goals of CERCLA."). Considering the chaotic history behind CERCLA's passage, we are particularly sensitive not to adopt a reading that would undermine its remedial purpose. *See Clark v. Uebersee Finanz-Korporation, 332 U.S. 480, 488, 68 S. Ct. 174, 92 L. Ed. 88 (1947)* (advising that courts should not adopt an interpretation of statutory language that would "run counter to the policy of the Act and be disruptive of its purpose . . . [when] dealing with hasty legislation which Congress did not stop to perfect as an integrated whole").

In so holding, we recognize that Congress created a bifurcated scheme of removal and remedial actions and, accordingly, there must be outer limits to removal actions. But the EPA did not exceed these limits in this case. Nor need we delineate the outer parameters. We simply conclude that the EPA's **[**68]** characterization of the cleanup in Libby as a removal action is amply supported by the administrative record and easily withstands scrutiny under the modified level of interpretive deference afforded by *Mead* and *Alaska Department of Environmental Conservation*. Although deference to the EPA's interpretation is significant, it is not blind. Courts must, as a matter of law, ultimately determine that the EPA's characterization of a given response action accords with CERCLA, as we so determine here.

Crucial to our determination is the documented evidence that, absent immediate attention, the airborne toxic particles would continue to pose a substantial threat to public health. To combat this widespread, looming threat, the EPA had no choice but to undertake an aggressive removal action of an expansive scope. The removal activities easily fall within the statutory definition of removal. Notably, the definitions for removal and remedial actions consciously include some overlap. Because of the nature of the contaminant, some of the measures taken by the EPA as part of the removal action might also effect a permanent solution for a particular location (e.g., removing exposed piles **[**69]** of vermiculite). But by no means did the removal action fully eliminate the public health threat or amount to a full-blown remediation. According to the EPA's CERCLIS database, the EPA is continuing work to ensure that potential or actual human exposures are under control. *See* http://cfpub1.epa.gov/supercpad/cursites/csitinfo.cfm?id=0801944 (last visited July 26, 2005). Although Libby's problems appear far from solved, the EPA is making progress. As envisioned by CERCLA, the EPA plans to effect a comprehensive resolution to the asbestos contamination through the pending remedial action.

II. EXEMPTIONS FROM THE $ 2 MILLION, 12-MONTH STATUTORY CAP APPLICABLE TO REMOVAL ACTIONS

Having determined that the action is properly characterized as a removal action, the inquiry turns to whether the EPA can recover costs in excess of the $ 2 million, 12-month statutory cap on removal actions. *See 40 C.F.R. § 300.415(b)(5)*. The district court found persuasive the EPA's explanations in the Action Memos of the immediate risk to public health. *Grace I, 280 F. Supp. 2d at 1144*. We agree **[*1248]** and hold that, considering the widespread and pervasive asbestos contamination **[**70]** and the potential for further migration of asbestos fibers as documented in the Action Memos, the EPA's decision to exceed the statutory cap was not arbitrary and capricious.

We begin with the language of *42 U.S.C. § 9604(c)(1)*:

> Unless (A) [the EPA] finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, . . . obligations from the Fund . . . . shall not continue after $ 2,000,000 has been obligated for response actions or 12 months has elapsed from the date of initial response to a release or threatened release of hazardous substances.

See also 40 C.F.R. § 300.415(b)(5) (limiting actions to $ 2 million and 12 months "unless the lead agency determines that" one of the exemptions applies). Despite Grace's assertion that the decision to exceed the cap is not subject to arbitrary and capricious review, the fact that the statute allows the EPA to invoke the exemptions when it "finds" certain conditions counsels **[**71]** otherwise. *See 5 U.S.C. § 706(2)* (courts should set aside agency conclusions and findings where "arbitrary, capricious, an abuse of discretion, or otherwise not in

accordance with law"). The EPA's determinations in this case that there was an emergency, that the risk to public health was immediate, and that the assistance would not otherwise be forthcoming are inherently fact-based.

In the First Action Memo, the EPA determined that the removal action met the three statutory elements required to exceed the cap. *See § 9604(c)(1)(A)*. Namely, (1) the asbestos in the environment posed an immediate threat to the local population; (2) a cleanup beyond the cap was required to prevent, limit, or mitigate an emergency [25] because of the size of the cleanup and the short construction season; and (3) assistance from other government agencies was not anticipated on a timely basis. The Second Action Memo reiterated this reliance on the "emergency exemption," explaining that "at all the locations discussed in this Action Memorandum if Removal Actions are not initiated or continued then people will be exposed to unsafe levels of amphibole asbestos." In light of the **[**72]** EPA's documentation of complete exposure pathways and the resulting continuing threat to public health, we hold that the EPA "articulated a rational connection between the facts found and the conclusions made." *Envtl. Def. Ctr., 344 F.3d at 858 n.36.*

25 The term "emergency" is not defined in CERLCA or the National Contingency Plan, and the EPA has interpreted it to include a range of time-sensitive threats:

> Not all actions begin under what are commonly thought of as "emergency" conditions. Though events such as tire fires, train derailments, and chemical explosions require immediate action, other less dramatic threats to public health are addressed under EPA's Emergency Response and Removal Program. Such threats include the discovery of leaking drums or tanks at an abandoned factory or complaints of tainted drinking water near a landfill. Regardless of the circumstances, quick and efficient cleanup of hazardous material eliminates risks to people and the environment and minimizes the stigma contamination can bring to properties and communities.

Removal Program Report, *supra*, at 3.

[73]** Turning to the Third Action Memo, the EPA continued its reliance on the emergency exemption, once again citing the statutory factors and explaining that a continued removal action was necessary to prevent exposure to unsafe levels of asbestos. **[*1249]** In addition, the EPA relied on the "consistency exemption," which allows for a continued removal action over the cap when it is "otherwise appropriate and consistent with the remedial action to be taken." *42 U.S.C. § 9604(c)(1)(C)*; *see also 40 C.F.R. § 300.415(b)(5)(ii)* (corresponding provision). At the time the Third Action Memo was released, the EPA had proposed Libby to the National Priorities List but it had not yet been listed. Thus, as envisioned in the Action Memos, the removal action in Libby was not an exhaustive cleanup effort. Rather, the EPA has segued into the remedial phase and, in the interim, found that "continued response actions are appropriate and consistent with the remedial actions to be taken."

On a practical level, the need to exceed the cap is not surprising given the urgency, magnitude, and long-standing nature of the problem. First, the tremendous scope of the **[**74]** removal in Libby made the $ 2 million ceiling unworkable. An entire town needed to be cleaned up, not just a mobile home park, *Carson Harbor Vill., 270 F.3d at 867*, or a "five-acre parcel of land," *Chapman, 146 F.3d at 1168*. In contrast to these localized threats, the EPA explained in its response to comments received from Grace in December 2001 that it still had more than 2000 properties to sample around Libby.

The 12-month limit was also impractical given both the scale of the effort and the meteorological reality of the harsh conditions, which result in a short construction season and thus necessitate several years to complete cleanup activities that might be completed considerably faster in a more temperate climate. The severe winters and hot summers are further problematic in that they exacerbate the spread of asbestos particles through wind and erosion. Cleansing the site of these widespread particles requires such labor-intensive acts as bulk removal of contaminated materials followed by thorough cleaning and vacuuming of the houses.

Given these daunting realities and the EPA's careful documentation of its reasons for invoking the emergency [**75] and consistency exemptions, we hold that the EPA's decision to exceed the statutory cap was based on the relevant factors, there has been no clear error of judgment, and the decision was not arbitrary and capricious. *See Marsh v. Or. Nat'l Res. Council, 490 U.S. 360, 378, 109 S. Ct. 1851, 104 L. Ed. 2d 377 (1989)*; *Envtl. Def. Ctr., 344 F.3d at 858 n.36*. Therefore, the EPA is entitled to recover the full costs of its removal action in Libby as found by the district court.

III. INDIRECT COSTS CALCULATION

Finally, Grace complains that the methodology used to calculate indirect costs of $ 11,322,226 overstated the EPA's costs attributable to the Libby response action. *See Grace II, 280 F. Supp. 2d at 1173, 1187* (calculating indirect costs). Grace disputes the use of total site-specific costs as the basis for calculating indirect costs, arguing that because the EPA delegated substantial authority to the U.S. Department of Transportation, the EPA's overhead was substantially lower than it would have been had the EPA administered the entire project directly.

After review of the district court's extensive findings on the indirect costs methodology [**76] and its application to this particular case, *see id. at 1167-73*, we conclude that the district court did not err in its award of indirect costs. *See W. Props. Serv. Corp. v. Shell Oil Co., 358 F.3d 678, 685 (9th Cir. 2004)* ("The district court's findings of fact can be reversed only if clearly erroneous, and not merely because [*1250] we might have found otherwise on the same evidence.").

CERCLA authorizes the EPA to recover "all costs of removal or remedial action . . . [that are] not inconsistent with the national contingency plan." *42 U.S.C. § 9607(a)(4)(A)*. "All costs" include indirect costs such as administrative and other overhead costs incurred in managing the greater Superfund program. *See, e.g., United States v. Dico, 266 F.3d 864, 878 (8th Cir. 2001)* (concluding that "oversight and indirect costs are recoverable in remedial actions under CERCLA"). In order to capture these costs from disparate CERCLA response actions, "Allocating indirect costs that cannot be directly accounted for as costs of a specific project is a well-established accounting practice." *Kennecott Utah Copper Corp. v. United States DOI, 319 U.S. App. D.C. 128, 88 F.3d 1191, 1224 (D.C. Cir. 1996)*. [**77]

Grace maintains that the EPA should have used the "labor hour" approach that the EPA abandoned in 2000. Under the labor hour method, the indirect costs attributable to each site were calculated based on the number of hours that EPA personnel charged to a site during a fiscal year. *Cf. United States v. R.W. Meyer, Inc., 889 F.2d 1497, 1503-04 (6th Cir. 1989)* (calculating indirect costs using labor hours method). In contrast, the new "full cost" methodology allocates indirect costs based on the total site-specific expenditures incurred for a particular site.

The EPA explains that the labor hours method was rejected because it did not identify the full costs of Superfund site cleanups, and the revised methodology is a better process for estimating and allocating the total Superfund overhead costs. The revised methodology is also supported by reports from the General Accounting Office and the accounting firm KPMG, which found that the full cost approach complies with the federal government's costs accounting standards. *See Grace II, 280 F. Supp. 2d at 1171-72*; *see also* Guidance on Exercising CERCLA Enforcement Discretion in Anticipation of Full Cost [**78] Accounting Consistent With the "Statement of Federal Financial Accounting Standards No. 4," *65 Fed. Reg. 35, 339 (EPA June 2, 2000)*.

In awarding the EPA $ 11.32 million in indirect costs, the district court found that the "EPA's revised methodology is an appropriate accounting measure of its indirect costs charged to Superfund sites, including the Libby Asbestos Site." *Grace II, 280 F. Supp. 2d at 1169*. The district court reached this conclusion after a three-day trial and detailed findings. Grace characterizes this conclusion as a legal error meriting de novo review. We disagree. The district court's approach comports with the statute; the court's findings on the methodology and its application to this case are supported by the record, *id. at 1167-73*, and we will not overturn them except for clear error. *See W. Props. Serv. Corp., 358 F.3d at 685*. Besides, we do not think it is in anyone's interest to have appellate courts step into the accountants' shoes and determine the accuracy of accounting calculations de novo. Grace's arguments do not rise to the level of demonstrating that the district court's findings were clearly [**79] erroneous. We are particularly hesitant to second-guess the district court's judgment on this issue where the court specifically found that Grace's accounting expert was "not credible." *Grace II, 280 F.*

Supp. 2d at 1169, 1171 ("[Grace's] accounting expert . . . does not know what methodology the EPA should use to recover its indirect costs.").

CONCLUSION

We AFFIRM the district court's order granting the EPA summary judgment on the liability issue. We also AFFIRM the **[*1251]** district court's order awarding the EPA $ 54,527,081.11 in costs and a declaratory judgment on the liability of Grace for future costs.

AFFIRMED.

CONCUR BY: Carlos T. Bea

CONCUR

BEA, Circuit Judge, concurring:

I concur in the result that the majority reaches. The EPA's activities in Libby, Montana, when taken as a whole, are properly classified as a removal action in response to the immediate threat posed by the large quantities of friable asbestos found in Libby. *See, e.g.*, Majority Opinion at p.15576 *ante* (noting that EPA toxicologist reported that Libby residents were being exposed to airborne asbestos in excess of OSHA's permissible occupational exposure level). Accordingly, I **[**80]** would uphold the EPA's classification of its Libby response action under *Mead* as opposed to *Chevron* deference. *See United States v. Mead Corp., 533 U.S. 218, 234-35, 121 S. Ct. 2164, 150 L. Ed. 2d 292 (2001).*

Under CERCLA, the EPA can recover "all costs of removal or remedial action . . . not inconsistent with the national contingency plan." *42 U.S.C. § 9607(a)(4)(A).* The regulations set forth the national contingency plan standards governing the EPA's selection of a response action. *See 40 C.F.R. § 300.415.* In conducting judicial review, this court "shall uphold the President's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with the law." *42 U.S.C. § 9613(j)(2).*

The national contingency plan regulations governing removal action also provide that "in determining the appropriate extent of action to be taken in response to a given release, the lead agency shall first review the removal site evaluation, any information produced through a remedial site evaluation . . . and the current **[**81]** site conditions, to determine if removal action is appropriate." *40 C.F.R. § 300.415(a)(1).* Thus, the regulations govern not only the EPA's selection of a response action, but also its determination of the extent of a response action. *Id.* at 300.415(a)(1). I would also review this latter determination under the arbitrary and capricious standard stated in *42 U.S.C. § 9613(j)(2).*

For example, the EPA's decision to excavate the vermiculite tailings buried beneath the Libby Middle School track warrants scrutiny. According to a letter from the superintendent of Libby's schools, the EPA had concluded that "since the asbestos . . . detected is all at depth and, in some cases, covered by the track," "there is not currently a risk of exposure." Were this the only finding in the record, I would be hard pressed to see any rational connection between this finding and the decision to include the Middle School track in the EPA's removal action.

However, the record contains additional findings that supply a rational reason for removing the track. Specifically, the EPA found that "there was some amount of the [asbestos-containing] **[**82]** material readily exposed in high traffic areas" and a risk of exposure to workers performing routine maintenance on the track. Soil samples from the Middle School track also show a 2-8% asbestos concentration at a depth of between 2 and 24 inches in the soil surrounding the track. ER 388. Thus, after a careful review of the record, I would conclude the EPA has made a reasoned decision in including the Libby Middle School in its removal action and would allow recovery of costs incurred there.

Thus, while I concur in the result of the majority's decision, I write separately to emphasize that this court should stand ready to review separately the EPA's actions at different locations at a removal **[*1252]** site under the "arbitrary and capricious" standard stated in *42 U.S.C. § 9613(j)(2).*

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

MANAGERIAL COST ACCOUNTING CONCEPTS AND STANDARDS FOR THE FEDERAL GOVERNMENT

STATEMENT OF FEDERAL FINANCIAL ACCOUNTING STANDARDS
NUMBER 4

JULY 31, 1995

THE FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

The Federal Accounting Standards Advisory Board (FASAB or "the Board" was established in October 1990 by the Secretary of the Treasury, the Director of the Office of Management and Budget (OMB), and the Comptroller General. The nine-member Board was created to consider and recommend accounting principles for the federal government.

The Board communicates its recommendations by publishing recommended accounting standards after considering the financial and budgetary information needs of congressional oversight groups, executive agencies, and other users of federal financial information. The Board also considers comments from the public on its proposed recommendations, which are published for comment as "exposure drafts." The Board's sponsors then decide whether to adopt the recommendations. If they do, the standard is published by OMB and GAO and then becomes effective.

The following documents related to the establishment and mission of the Board are available from the FASAB:

- "Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and the Office of Management and Budget, on Federal Government Accounting Standards and a Federal Accounting Standards Advisory Board"
- "Mission Statement: Federal Accounting Standards Advisory Board"

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Executive Summary

1. The managerial cost accounting concepts and standards contained in this statement are aimed at providing reliable and timely information on the full cost of federal programs, their activities, and outputs. The cost information can be used by the Congress and federal executives in making decisions about allocating federal resources, authorizing and modifying programs, and evaluating program performance. The cost information can also be used by program managers in making managerial decisions to improve operating economy and efficiency.

2. The concepts of managerial cost accounting contained in this statement describe the relationship among cost accounting, financial reporting, and budgeting. The five standards set forth the fundamental elements of managerial cost accounting: (1) accumulating and reporting costs of activities on a regular basis for management information purposes, (2) establishing responsibility segments to match costs with outputs, (3) determining full costs of government goods and services, (4) recognizing the costs of goods and services provided among federal entities, and (5) using appropriate costing methodologies to accumulate and assign costs to outputs.

3. These standards are based on sound cost accounting concepts and are broad enough to allow maximum flexibility for agency managers to develop costing methods that are best suited to their operational environment. Also, the managerial cost accounting standards and practices will evolve and improve as agencies gain experience in using them. The following is a summary of the concepts and standards contained in this statement:

Managerial Cost Accounting Concepts

4. Managerial cost accounting should be a fundamental part of the financial management system and, to the extent practicable, should be integrated with other parts of the system. Managerial costing should use a

basis of accounting, recognition, and measurement appropriate for the intended purpose. Cost information developed for different purposes should be drawn from a common data source, and output reports should be reconcilable to each other.

Managerial Cost Accounting Standards

Requirement for cost accounting

5. Each reporting entity should accumulate and report the costs of its activities on a regular basis for management information purposes. Costs may be accumulated either through the use of cost accounting systems or through the use of cost finding techniques.

Responsibility segments

6. Management of each reporting entity should define and establish responsibility segments. Managerial cost accounting should be performed to measure and report the costs of each segment's outputs. Special cost studies, if necessary, should be performed to determine the costs of outputs.

Full cost

7. Reporting entities should report the full costs of outputs in general purpose financial reports. The full cost of an output produced by a responsibility segment is the sum of (1) the costs of resources consumed by the segment that directly or indirectly contribute to the output, and (2) the costs of identifiable supporting services provided by other responsibility segments within the reporting entity, and by other reporting entities.

Inter-entity costs

8. Each entity's full cost should incorporate the full cost of goods and services that it receives from other entities. The entity providing the goods or

services has the responsibility to provide the receiving entity with information on the full cost of such goods or services either through billing or other advice.

9. Recognition of inter-entity costs that are not fully reimbursed is limited to material items that (1) are significant to the receiving entity, (2) form an integral or necessary part of the receiving entity's output, and (3) can be identified or matched to the receiving entity with reasonable precision. Broad and general support services provided by an entity to all or most other entities generally should not be recognized unless such services form a vital and integral part of the operations or output of the receiving entity.

Costing methodology

10. Costs of resources consumed by responsibility segments should be accumulated by type of resource. Outputs produced by responsibility segments should be accumulated and, if practicable, measured in units. The full costs of resources that directly or indirectly contribute to the production of outputs should be assigned to outputs through costing methodologies or cost finding techniques that are most appropriate to the segment's operating environment and should be followed consistently.

11. The cost assignments should be performed using the following methods listed in the order of preference: (a) directly tracing costs wherever feasible and economically practicable, (b) assigning costs on a cause-and-effect basis, or (c) allocating costs on a reasonable and consistent basis.

12. These accounting standards need not be applied to items that are qualitatively and quantitatively immaterial. The Board recommends that the managerial accounting standards of this Statement become effective for fiscal periods beginning after September 30, 1996. Earlier implementation is encouraged.

Introduction

Background

13. Reliable information on the costs of federal programs and activities is crucial for effective management of government operations. In Statement of Federal Financial Accounting Concepts (SFFAC) No. 1, Objectives of Federal Financial Reporting, issued in 1993, it is stated that the objectives of federal financial reporting are to provide useful information to assist internal and external users in assessing the budget integrity, operating performance, stewardship, and systems and control of the federal government.[1]

14. Managerial cost accounting is especially important for fulfilling the objective of assessing operating performance. In relation to that objective, it is stated in SFFAC No. 1 that federal financial reporting should provide information that helps users to determine:

- Costs of specific programs and activities and the composition of, and changes in, those costs;
- Efforts and accomplishments associated with federal programs and their changes over time and in relation to costs; and

[1] Statement of Federal Financial Accounting Concepts No. 1, Objectives of Federal Financial Reporting (September 2, 1993), pars. 110 and 111, pages 34-35.

- Efficiency and effectiveness of the government's management of its assets and liabilities.[2]

15. It is further stated in SFFAC No. 1 that "The topics of costs and performance measurement are related because it is by associating cost with activities or cost objectives that accounting can make much of its contribution to reporting on performance."[3] "Cost" is the monetary value of resources used or sacrificed or liabilities incurred to achieve an objective, such as to acquire or produce a good or to perform an activity or service. Costs incurred may benefit current and future periods. In financial accounting and reporting, the costs that apply to an entity's operations for the current accounting period are recognized as expenses of that period.

16. The Chief Financial Officers Act of 1990 includes among the functions of chief financial officers "the development and reporting of cost information" and "the systematic measurement of performance."[4] In July 1993, Congress passed the Government Performance and Results Act (GPRA) which mandates performance measurement by federal agencies.[5] In September 1993, in his report to the President on the National Performance Review (NPR), Vice President Al Gore recommended an action which required the Federal Accounting Standards Advisory Board to issue a set of cost accounting standards for all federal activities.[6] Those standards will provide a method for identifying the unit cost of all government activities.

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[2] Ibid., pars. 126-130, pages 39-40.

[3] Ibid., par. 192, page 63.

[4] 104 Stat. 2938 (See particularly 31 U.S.C. sec 902).

[5] 107 Stat. 285 (See particularly, 31 U.S.C. sections 1101, 1105, 1115, 1116-1119, 9703, 9704).

[6] Vice President Al Gore, Creating A Government That Works Better & Costs Less, Accompanying Report of the National Performance Review (September 1993), p. 59.

17. In early 1994, the Federal Accounting Standards Advisory Board (the Board) convened an advisory group to help develop standards for managerial cost accounting in the federal government. The group included members from government, business, and academe. Their views and proposals have been considered by the Board, and their work contributed greatly in developing this document.

Users of Federal Cost Information

18. The cost of government is a concern to the public as well as to the federal government itself. Most government service efforts and accomplishments cannot be measured in financial terms alone. Unlike private business, there is no "bottom line" or profit index to help measure public sector performance. However, government service efforts and accomplishments can be evaluated using both financial and non-financial measures, and "cost" is an important financial measure for government programs. Internal and external federal information users identified below will find these standards helpful in assessing operating performance, stewardship, systems, and control of the federal government.

19. *Government managers* are the primary users of cost information. They are responsible for carrying out program objectives with resources entrusted to them. Reliable and timely cost information helps them ensure that resources are spent to achieve expected results and outputs, and alerts them to waste and inefficiency.

20. *Congress and federal executives*, including the President, make policy decisions on program priorities and allocate resources among programs. These officials need cost information to compare alternative courses of action and to make program authorization decisions by assessing costs and benefits. They also need cost information to evaluate program performance.

21. *Citizens*, including news media and interest groups, are concerned with the costs and results of federal programs that affect their interests. They need program cost information to judge whether resources are allocated to programs rationally and if the programs operate efficiently and effectively.

Objectives

22. The managerial cost accounting concepts and standards presented here are intended for all the user groups identified above. These standards are aimed at achieving three general objectives:

- Provide program managers[7] with relevant and reliable information relating costs to outputs and activities. Based on this information, program managers can respond to inquiries about the costs of the activities they manage. The cost information will assist them in improving operational economy and efficiency;

- Provide relevant and reliable cost information to assist the Congress and executives in making decisions about allocating federal resources, authorizing and modifying programs, and evaluating program performance; and

- Ensure consistency between costs reported in general purpose financial reports and costs reported to program managers. This includes standardizing terminology for managerial cost accounting to improve communication among federal organizations and users of cost information.

[7] Statement of Federal Financial Accounting Concepts No.1, Objectives of Financial Reporting, defined "Program managers" as individuals who manage federal programs, and stated that "Their concerns include operating plans, program operations, and budget execution." SFFAC No. 1, par. 85, page 29.

Scope of Standards

23. This statement contains managerial cost concepts and five standards for the federal government. The five standards address the following topics:

(1) Requirement for cost accounting,
(2) Responsibility segments,
(3) Full cost,
(4) Inter-entity costs, and
(5) Costing methodology.

The essence of each standard is briefly stated in a box followed by detailed explanations. **However, both the words in the boxes and the entire text of explanations constitute the requirements of the standards.**

24. These standards are based on sound cost accounting concepts and allow sufficient flexibility for agencies to develop managerial cost accounting practices that are suited to their specific operating environments. Also, it is expected that cost accounting standards and practices will evolve and improve as agencies gain experience in using them.

25. Other Statements of Federal Financial Accounting Standards (SFFAS) address recognition and measurement of assets and liabilities. For additional guidance, readers should consult: SFFAS No. 1, Accounting for Selected Assets and Liabilities; SFFAS No. 2, Accounting for Direct Loans and Loan Guarantees; and SFFAS No. 3, Accounting for Inventory and Related Property. The Board is working on and will soon complete other recognition and measurement projects

related to revenues, liabilities, property, plant, and equipment, and other elements of financial statements.[8]

Terminology

26. Managerial cost accounting information, to be useful, must rely on consistent and uniform terminology for concepts, practices, and techniques. Consistent and uniform use of terminology can help avoid confusion and mis-communication among organizations and individuals.

27. As a start toward developing consistent managerial cost accounting terminology within the federal government, this statement includes a glossary of basic cost accounting terms.

Materiality

28. Except as otherwise noted, the accounting and reporting provisions of these accounting standards need not be applied to items that are qualitatively and quantitatively immaterial.

29. The determination of whether an item is material depends on the degree to which omitting information about the item makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission.

[8] See FASAB Exposure Drafts, Accounting for Liabilities of the Federal Government (November 7, 1994); Accounting for Property, Plant, and Equipment (February 28, 1995); and Revenue and Other Financing Sources (Pending).

Effective Date

30. The Board recommends that the accounting standards of this Statement become effective for fiscal periods beginning after September 30, 1996. Earlier implementation is encouraged.

Purposes of Using Cost Information

31. There are many different purposes for which cost information may be used by the federal government. The focus of this statement is on cost information needed to improve federal financial management and managerial decision making.

32. In managing federal government programs, cost information is essential in the following five areas: (1) budgeting and cost control, (2) performance measurement, (3) determining reimbursements and setting fees and prices, (4) program evaluations, and (5) making economic choice decisions. Each of these uses is discussed below.

Budgeting and Cost Control

33. Information on the costs of program activities can be used as a basis to estimate future costs in preparing and reviewing budgets. Once budgets are approved and executed, cost information serves as a feedback to budgets. Using cost information, federal managers can control and reduce costs, and find and avoid waste. For example, with appropriate cost information, federal managers can:

- Compare costs with known or assumed benefits of activities, identify value-added and non-value-added activities, and make decisions to reduce resources devoted to activities that are not cost-effective;

- Compare and determine reasons for variances between actual and budgeted costs of an activity or a product;

- Compare cost changes over time and identify their causes;
- Identify and reduce excess capacity costs; and
- Compare costs of similar activities and find causes for cost differences, if any.

Performance Measurement

34. Measuring performance is a means of improving program efficiency, effectiveness, and program results. One of the stated purposes of the GPRA of 1993 is to ". . .improve the confidence of the American people in the capability of the federal government, by systematically holding federal agencies accountable for achieving program results."

35. Measuring costs is an integral part of measuring performance in terms of efficiency and cost-effectiveness. Efficiency is measured by relating outputs to inputs. It is often expressed by the cost per unit of output. While effectiveness in itself is measured by the outcome or the degree to which a predetermined objective is met, it is commonly combined with cost information to show "cost-effectiveness." Thus, the service efforts and accomplishments of a government entity can be evaluated with the following measures:

(1) Measures of service efforts which include the costs of resources used to provide the services and non-financial measures;

(2) Measures of accomplishments which are outputs (the quantity of services provided) and outcomes (the results of those services); and

(3) Measures that relate efforts to accomplishments, Such as cost per unit of output or cost-effectiveness.

36. Thus, as stated previously, performance measurement requires both financial and non-financial measures. Cost is a necessary element for performance measurement, but is not the only element.

Determining Reimbursements and Setting Fees And Prices

37. Cost information is an important basis in setting fees and reimbursements. Pricing and costing, however, are two different concepts. Setting prices is a policy matter, sometimes governed by statutory provisions and regulations, and other times by managerial or public policies. Thus, the price of a good or service does not necessarily equal the cost of the good or the service determined under a particular set of principles. Nevertheless, cost is an important consideration in setting government prices. With certain exceptions, OMB requires:[9]

- With respect to goods and services that the government provides in its sovereign capacity to a particular group of individuals as a special benefit, user charges should be sufficient to recover the full cost of those goods and services; and

- With respect to goods and services that the government provides under business-like conditions, user charges for those goods and services need not be limited to the recovery of full cost and may yield a net revenue.

[9] OMB Circular A-25, User Charges (Revised July 8, 1993).

38. Also, cost information is important in calculating reimbursements for products and services provided by one government agency to another. Even if fees or reimbursements do not recover the full costs due to policy or economic constraints, management needs to be aware of the difference between cost and price. With this information, program managers can properly inform the public, the Congress, and federal executives about the costs of providing the goods or services.

Program Evaluations

39. Costs of federal resources required by programs are an important factor in making policy decisions related to program authorization, modification, and discontinuation. These decisions are usually subject to policy constraints, and often require the consideration of social and economic costs and benefits affecting different sectors of the economy and society. Nevertheless, the costs of federal resources required are an important factor. Information on program costs can be used as a basis for cost-benefit considerations.

Economic Choice Decisions

40. Often, agencies and programs face decisions involving choices among alternative actions, such as whether to do a project in-house or contract it out; to accept or reject a proposal; or to continue or drop a product or service. Making these decisions requires cost comparisons among available alternatives.

Managerial Cost Accounting Concepts

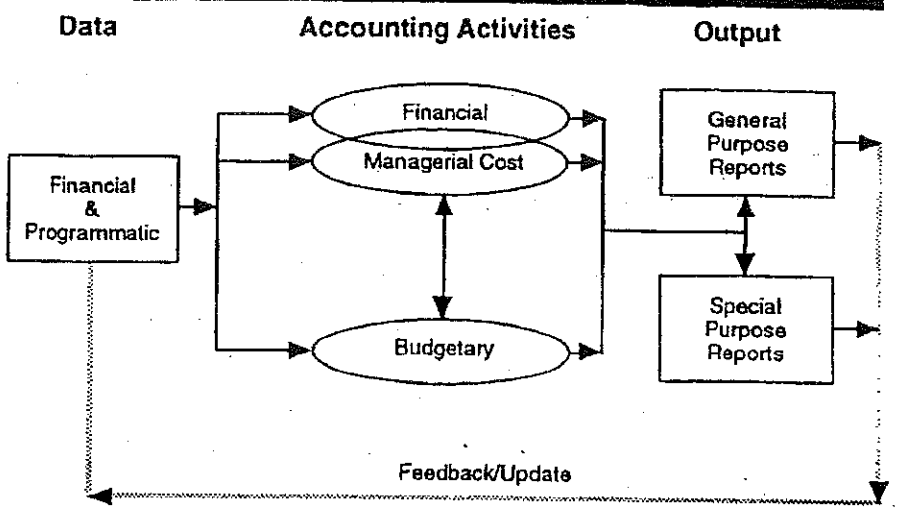
Managerial cost accounting should be a fundamental part of the financial management system and, to the extent practicable, should be integrated with other parts of the system. Managerial costing should use a basis of accounting, recognition, and measurement appropriate for the intended purpose. Cost information developed for different purposes should be drawn from a common data source, and output reports should be reconcilable to each other.

41. Managerial cost accounting should be an essential element of proper financial planning, control, and evaluation for any organization or activity that uses resources having monetary value. Managerial cost accounting is a basic part of the financial management system in that it supports and provides data to the budgetary and financial accounting functions and, by itself, provides useful information for both internal and external users.

Role of Managerial Cost Accounting in Financial Management

42. Managerial cost accounting is the process of accumulating, measuring, analyzing, interpreting, and reporting cost information useful to both internal and external groups concerned with the way in which the organization uses, accounts for, safeguards, and controls its resources to meet its objectives. Managerial cost accounting, therefore, is the servant of both budgetary and financial accounting and reporting because it assists those systems in providing information. Also, it provides useful information directly to management. These relationships are shown in Figure 1.

Figure 1: Financial Management Information Framework



Common Data Source

43. The information flow within a financial management system begins with a basic information pool or common data source. This data source consists of all financial and programmatic information used by the budgetary, cost, and financial accounting processes. It includes all financial and much non-financial data, such as environmental data, that are necessary for budgeting and financial reporting.[10] The common data source also includes evaluation and decision information developed as a result of prior reporting and feedback. Other types of data may be included based upon perceived needs and purposes related to the ultimate users of the information.

[10] The makeup of core data and environmental data is discussed in Statement of Federal Financial Accounting Concepts No. 1, Objectives of Federal Financial Reporting, Chapter 7, and, therefore, a detailed discussion is not provided here.

44. The common data source may include many different kinds of data. It is far more than the information about financial transactions found in the standard general ledger, although that is a significant part of the data source. Few organizations or entities maintain all these data in any one system or location. Furthermore, the use of the term "data source" is not meant to imply the use of computerized systems for source information. Instead, the term is used in a broad way to include many sources of information.

45. Managerial cost accounting, financial accounting, and budgetary accounting draw information as needed from the common data source. The data obtained by each of these is processed to attain specific objectives by reporting useful information.

Relationship to Financial Accounting

46. As shown in Figure 1 by their overlap, managerial cost accounting and financial accounting are closely related or integrated. To some degree, this is due to the historical development of cost accounting as a method for more detailed scorekeeping with the requirement to provide inventory values for external financial reporting purposes.[11] In part, it is because cost information generally originates with transactions recorded for financial accounting purposes.

47. While inventory valuation is still part of the fundamental relationship, managerial cost accounting serves financial accounting in several other ways. Fundamentally, managerial cost accounting should assist financial accounting in determining the results of operations during a fiscal period by providing relevant data that are accumulated to produce operating expenses. These data include the allocation of capitalized costs to periods of time or units of usage.

[11] Coulthurst, Nigel and John Piper, "The State of Cost and Management Accounting," Management Accounting, April 1986.

48. Traditionally, managerial cost accounting information pertaining to financial accounting has involved costs of past transactions and the assignment of transaction value to fiscal periods and outputs. These purposes and uses are closely aligned with the financial accounting activity and traditional external financial reporting. This past cost aspect has been acknowledged in Objectives of Federal Financial Reporting which states that "financial accounting is largely concerned with assigning the value of past transactions to appropriate time periods."[12]

Relationship to Budgetary Accounting

49. Managerial cost accounting should also provide budgetary accounting with cost information. However, the two are not as closely aligned as is the case with financial accounting (see Figure 1). Mostly, this is because costs are usually recorded, accumulated, and allocated by managerial cost accounting on an accrual basis of accounting which is different from the obligation or cash basis generally used in budgetary accounting.

50. Still, managerial cost accounting does provide cost information to budgetary accounting for use in preparing yearly and long-term budgets for required materials, supplies, equipment, human resources, and other resources needed to produce different levels of outputs. Managerial cost accounting also helps in making many budgetary decisions such as those concerning future capital expenditures and purchase/lease alternatives.

51. It is important to note that the Board's authority does not extend to recommending budgetary standards or budgetary concepts,

[12] Statement of Federal Financial Accounting Concepts No.1, Objectives of Federal Financial Reporting, par. 168, page 55.

and that is not the purpose of this statement.[13] However, the Board is committed to providing relevant and reliable cost accounting information that supports budget planning, formulation, and execution.

Cost Information for Management Purposes

52. Managerial cost accounting produces information directly for management use, sometimes employing data produced by the budgetary and financial accounting processes. Cost information is used for many different purposes which can be generally classified into five types: performance measurement; cost reduction and control; determination of reimbursements and fee or price setting; program authorization, modification, and discontinuation decisions; and decisions to contract out work or make other changes in the methods of production.

53. To meet these needs, managerial cost accounting should use basic cost data and non-financial or programmatic data. For example, it tracks units of output produced and input used including the amount of labor in terms of employees or employee-hours. Sometimes, information from cost analysis is used to compare actual to predetermined or anticipated costs. An organization may use cost estimates, cost studies, and cost finding techniques.

54. While managerial cost accounting is concerned not only with past costs and future costs, one of its most important features is the use of present costs to assist management. This current cost aspect of managerial cost accounting is referred to in the Objectives of Federal Financial Reporting where is states that "accounting data may be further assigned, allocated, or associated with units of activity or production, segments of organizations, etc., *within the same time period.* These kinds of *intraperiod* allocations are developed most extensively in

[13] Memorandum of Understanding establishing the FASAB, October 10, 1990.

the branch of accounting called cost accounting. Neither the FASB nor the GASB has devoted much attention to this branch of accounting, but the FASAB, because of its unique mission, will need to do so."[14] Managerial cost accounting information pertaining to present costs is most often used for controlling and reducing those costs, controlling work processes, and measuring current performance.

Reporting Relationships

55. Proper financial management requires that the three accounting processes work closely together to provide useful reporting to both internal and external users. The internal-external dual focus of federal reporting has been established in the Objectives of Federal Financial Reporting. It states that "The FASAB and its sponsors believe that any description of federal financial reporting objectives should consider the needs of both internal and external users and the decisions they make." In addition, it says that "the FASAB...considers the information needs of both internal and external users. In part, this is because the distinction between internal and external users is in many ways less significant for the federal government than for other entities." It goes on to classify the users of financial information into four major groups: program managers, executives, the Congress, and citizens.[15] These categories include both internal and external users.

56. Federal financial reporting encompasses general and special purpose reports to meet the needs of the four user groups. Information produced by managerial cost accounting appears in or

[14] Statement of Federal Financial Accounting Concepts No. 1, Objectives of Federal Financial Reporting, par. 174, page 56.

[15] Ibid., pars. 23, 25, page 9; and par. 75, page 26.

influences both types of reports.[16] As discussed above, managerial cost accounting should provide information for use by both financial accounting and budgetary accounting. That information is used by those processes in producing both general purpose and special purpose reports.

57. Managerial cost accounting also results in reports of its own. Most often these are special purpose reports designed for internal users, typically program and line managers. However, they may be for groups generally considered external users.

58. One of the most important aspects of reporting in which managerial cost accounting plays a large role is that of performance reporting. Measuring and reporting actual performance against established goals is essential to assess governmental accountability. Cost information is necessary in establishing strategic goals, measuring service efforts and accomplishments, and relating efforts to accomplishments. The importance of cost information in relation to performance measurement and performance reporting has been recognized in the Objectives of Federal Financial Reporting, which said "One reason for performing cost accounting is to assist in performance measurement" and it also stated that "The topics of cost and performance measurement are related because it is by associating cost with activities or 'cost objectives' that accounting can make much of its contribution to reporting on performance."[17]

[16] The types of general purpose and special purpose reports are discussed in Statement of Federal Financial Accounting Concepts No.1, Objectives of Federal Financial Reporting, Chapter 7.

[17] Ibid., par. 174, page 56; and par. 192, page 63.

Basis of Accounting and Recognition/Measurement Methods

59. Costs may be measured, analyzed, and reported in many ways. A particular cost measurement has meaning only when considering its purpose. The measurement of costs can vary depending upon the circumstances and purpose for which the measurement is to be used. In Objectives of Federal Financial Reporting, it is stated that "the Board's own focus is on developing generally accepted accounting standards for reporting on the financial operations, financial position, and financial condition of the federal government and its component entities and other useful financial information. This implies a variety of measures of costs and other information that complements the information available in the budget [emphasis added]."[18]

60. In addition, it is stated that "In defining the proper measurement, assignment, and allocation of cost for a given purpose, selecting the appropriate accounting method and whether to use full costing should be carefully considered."[19] Further, it added that "The accrual basis of accounting generally provides a better matching of costs to the production of goods and services, but its use and application for any given purpose must be carefully evaluated."[20]

61. Therefore, managerial cost accounting should provide cost information using a basis of accounting and recognition/measurement standards that are appropriate for the intended use of the information. When managerial cost accounting is used to supply information for use by financial accounting and financial reporting, that information should be consistent with the basis of accounting and

[18] Ibid., par. 191, page 62.

[19] Ibid., par. 196, page 64.

[20] Ibid., par. 197, page 64.

recognition/measurement standards required by federal accounting principles. Traditionally this has meant the use of accrual accounting and historical cost measurement, particularly in general purpose reports.

62. When managerial cost accounting is used to supply information for the preparation and review of budgets, cost data should be consistent with the basis of accounting and recognition/measurement used in financial reporting, but may be adjusted to meet the budgetary information needs.

63. Special purpose cost studies and analyses are sometimes performed for decision making. In those studies and analyses, management may need to develop cost data beyond those currently reported in general purpose financial reports. For example, in making planning decisions, management may develop replacement costs and capital costs. However, the basis and methods used should be appropriate for the circumstances and consistent with the intended purposes.

Reconciliation of Information

64. Different bases of accounting will produce different costs for the same item, activity, or entity. This can confuse users of cost information. Therefore, reports that use different accounting bases or different recognition and measurement methods should be reconcilable, and should fully explain those bases and methods. Regardless of the type of report in which it is presented, cost information should ultimately be traceable back to the original common data source.

65. To be reconcilable, the amount of the differences in the information reported should be ascertainable and the reasons for the differences should be explainable. In some situations, informational

differences may be clearly understandable without further explanation. However, other cases may require a narrative statement concerning the differences. In complicated situations, a schedule or table may be required to fully explain the differences.

66. Financial reporting has long recognized the necessity for reconciliation between information reported on different accounting bases. Reconciliations have been required in federal financial reports to show and explain significant differences between budget reports and financial statements prepared in accordance with generally accepted accounting principles.

Managerial Cost Accounting Standards

REQUIREMENT FOR COST ACCOUNTING

Each reporting entity[21] should accumulate and report the cost of its activities on a regular basis for management information purposes. Costs may be accumulated either through the use of cost accounting systems or through the use of cost finding techniques.

67. Cost information is essential to effective financial management and should play an important role in federal financial reporting. Managerial cost accounting processes are the means of providing cost information in an efficient and reliable manner on a continuing basis.

Need for Consistent Cost Accounting on a Regular Basis

68. To perform managerial cost accounting on a "regular basis" means that entities should establish procedures to accumulate and report costs continuously, routinely, and consistently for management information purposes. Consistent and regular cost accounting is needed to meet the second objective of federal financial reporting which states information should be provided to help the user determine the costs of providing specific programs and activities and the composition of, and changes in those costs. That objective also requires the reporting of performance information of federal programs and the changes over time in that performance in relation to the costs.

[21] The term "reporting entity" as used in this document conveys the same meaning as defined in FASAB Statement of Recommended Accounting Concepts No.2, Entity and Display (May 1995).

69. The requirement for managerial cost accounting on a regular and consistent basis supports recent legislative actions. The CFO Act of 1990 states that agency CFOs shall provide for the development and reporting of cost information and the periodic measurement of performance. In addition, the GPRA of 1993 requires each agency, for each program, to establish performance indicators and measure or assess relevant outputs, service levels, and outcomes of each program as a basis for comparing actual results with established goals. The nature of these legislative mandates requires reporting entities to develop and report cost information on a consistent and regular basis.

70. The managerial cost accounting processes consist of collecting data from the common data source, processing that data, and reporting cost and output information in general purpose and special purpose reports. Appropriate procedures and practices should also be established to enable the collection, measurement, accumulation, analysis, interpretation, and communication of cost information. This can be accomplished through the use of a cost accounting system or the use of cost finding techniques and other cost studies and analyses. A cost accounting "system" is an organized grouping of methods and activities designed to consistently produce reliable cost information.

Basic Cost Accounting Processes

71. Regardless of whether a reporting entity uses a cost accounting system or cost finding techniques, the methods and procedures followed should be designed to perform at least a certain minimum level of cost accounting and provide a basic amount of cost information necessary to accomplish the many objectives associated with planning, decision making, control, and reporting. The more important of these minimum criteria for cost accounting are associated with the standards in the remainder of this statement. Others are also important.

- Responsibility Segments - Cost information should be collected by responsibility segments which have been identified by management and outputs should be defined for each responsibility segment.[22]

- Full Costing - Each reporting entity should measure the full cost of outputs so that total operational costs and total unit costs of outputs can be determined. "Full cost" includes the cost of goods or services provided by other entities when the applicable criteria are met.[23]

- Costing Methodology - The costing methodology used (e.g., activity-based costing, job order costing, standard costing, etc.) should be appropriate for management's needs and the operating environment.[24]

- Performance Measurement - Cost accounting should provide information needed to determine and report service efforts and accomplishments and information necessary to meet the requirements of the GPRA or interface with a system that provides such information. This includes the quantity of inputs and outputs and other non-financial information needed in the measurement of performance.

- Reporting Frequency - Cost information should be reported in a timely manner and on a regular basis consistent with the needs of management and the requirements of both budgetary and financial reporting.

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[22] See standard in this statement concerning responsibility segments.

[23] See standard concerning full costs and standard concerning inter-entity costing.

[24] See standard concerning costing methodology.

- Standard General Ledger - Managerial cost accounting should be integrated with general financial accounting. Both depend on the standard general ledger for basic financial transaction data.

- Precision of Information - Cost information supplied to internal and external users should be reliable and useful in making evaluations or decisions. At the same time, unnecessary precision and refinement of data should be avoided.

- Special Situations - The managerial cost accounting processes should be designed to accommodate any of management's special cost information needs that may arise due to unusual or special situations or circumstances. If such cost information is needed on a regular basis, appropriate procedures to provide it should be developed.

- Documentation - All managerial cost accounting activities, processes, and procedures should be documented by a manual, handbook, or guidebook of applicable accounting operations. This reference should outline the applicable activities, provide instructions for procedures and practices to be followed, list the cost accounts and subsidiary accounts related to the standard general ledger, and contain examples of forms and other documents used.

Complexity of Cost Accounting Processes

72. While each entity's managerial cost accounting should meet the basics discussed above, this standard does not specify the degree of complexity or sophistication of any managerial cost accounting process. Each reporting entity should determine the appropriate detail for its cost accounting processes and procedures based on several factors. These include the:

- nature of the entity's operations;
- precision desired and needed in cost information;
- practicality of data collection and processing;
- availability of electronic data handling facilities;
- cost of installing, operating, and maintaining the cost accounting processes; and
- any specific information needs of management.

73. Some entities may find that they can purchase basic "off-the-shelf" cost accounting programs, systems, or processes, or adapt those of other federal agencies. All entities should consider using similar or compatible cost accounting processes throughout their component units to facilitate comparison and consolidation of cost information.

Cost Findings, Studies, and Analyses

74. A cost accounting system is a continuous and systematic cost accounting process which may be designed to accumulate and assign costs to a variety of objects routinely or as desired by the management. Such a system may be best for some reporting entities.

75. Some entities may not need a sophisticated system to perform detailed cost accumulation and assignment. They need to accumulate and report costs regularly as required by this standard, but they may determine and analyze costs through special cost studies and analyses. Also, some entities may use a combination of a system supplemented by cost studies.

76. Cost information may be developed and savings achieved in some cases by the use of special cost studies or cost analyses to develop information helpful in certain decision making situations. In addition, cost finding techniques may be used to determine the cost of products or services. Cost finding is a method for determining the cost of producing goods or services using appropriate procedures. Cost finding techniques may also be useful for computing costs in cases where the information is not needed on a recurring basis.

RESPONSIBILITY SEGMENTS

Management of each reporting entity should define and establish responsibility segments. Managerial cost accounting should be performed to measure and report the costs of each segment's outputs. Special cost studies, if necessary, should also be performed to determine the costs of outputs.

77. The standard states that the management of each reporting entity should define and establish responsibility segments. This section explains the concept of responsibility segment, purposes of segmentation, and how responsibility segments can be structured.

Defining Responsibility Segments

78. A responsibility segment is a component of a reporting entity[25] that is responsible for carrying out a mission, conducting a major line of activity, or producing one or a group of related products or services. In addition, responsibility segments usually possess the following characteristics:

(1) Their managers report to the entity's top management directly;

(2) Their resources and results of operations can be clearly distinguished from those of other segments of the entity.[26]

[25] The term "reporting entity" referred to in this document conveys the same meaning as defined in FASAB Statement of Recommended Accounting Concepts No. 2 Entity and Display (May 1995).

[26] These two characteristics make responsibility segments, as the term is used in this document, differ from cost centers. A cost center can be at any level of an organization and may not report to the top management directly. As will be explained later, a responsibility segment can contain cost centers in itself.

79. A responsibility segment is a unit for which managerial cost accounting is performed. Entities may use a centralized accounting system or segment-based systems to provide cost information for each segment. For each segment, managerial cost accounting should:

(1) Define and accumulate outputs, and if feasible, quantify each type of output in units;

(2) Accumulate costs and quantitative units of resources consumed in producing the outputs; and

(3) Assign costs to outputs, and calculate the cost per unit of each type of output.

80. Some reporting entities may have only one responsibility segment, if they perform one single mission or one type of service. Other reporting entities may have several responsibility segments. Also, a sub-organization of the federal government may be a reporting entity in itself and, at the same time, it may also be a responsibility segment of a higher level reporting entity to which it belongs. The Forest Service, for example, may be a reporting entity because it may meet the reporting entity criteria. As such, it may establish responsibility segments for itself. At the same time, the Forest Service may be regarded as a responsibility segment of the Department of Agriculture, of which it is a component.

81. However, for a given reporting entity, its management should establish one or more responsibility segments to perform managerial cost accounting functions.

Purposes of Segmentation

82. A basic purpose of dividing an entity into segments is to determine and report the costs of services and products that each

segment produces and delivers. Many federal departments and agencies manage programs that produce a variety of goods and services. Accounting for entity-wide revenues and expenses in aggregate would serve financial reporting for the entity, but would not serve costing purposes. In order to determine the cost of each type of service or product, it is necessary to divide an entity into segments such that each segment is responsible for certain types of services or products. Each segment can then be used as a vehicle for accumulating costs incurred by the segment to match with its outputs. Each segment can use a cost methodology that is best suited to its operations.

83. Another important purpose of segmentation is to facilitate cost control and management. Cost information provided for each segment helps managers to examine costs of specific resources consumed and activities performed in each segment. Managers can analyze cost variances in both dollars and the units of resources consumed against budgets or standards. Since each segment performs a particular pattern of processes and activities to produce its output, managers can analyze those processes and activities to compare their costs with the value they contribute to the output.

84. For entities that consist of components engaging in diverse lines of activities, it is desirable to provide financial reports that display information for significant components individually and of the entity in its entirety.[27] Some entities may find costs accumulated by segments useful in support of financial reporting by components.

85. For internal management, segmentation could also facilitate performance measurement. Since each segment is responsible for a mission, or a line of activity to produce a certain type of output,

[27] This point is discussed in FASAB Statement of Recommended Accounting Concepts No. 2, Entity and Display, pars. 75-76, pages 25-26.

performance goals can be set for each segment based on its specific tasks and operating patterns. Information on costs, outputs, and outcomes related to each segment can be used to measure its performance against the goals. The results of the segment performance measurement could also support external reporting on performance measures for the entire reporting entity or its major programs.

Structuring Responsibility Segments

86. Reporting entity management should define and structure its responsibility segments. The designation of responsibility segments should be based on the following factors: (a) the entity's organization structure, (b) its lines of responsibilities and missions, (c) its outputs (goods or services it delivers), and (d) budget accounts and funding authorities. However, the predominant factor is the reporting entity's organization structure and its existing responsibility components, such as bureaus, administrations, offices, and divisions within a department.

87. The U.S. General Services Administration, for example, provides five distinct services: (1) managing public buildings, (2) distributing supplies, (3) providing travel and transportation services, (4) managing information resources (including communication and data processing services), and (5) disposal of real properties. Each of those service areas could be designated as a responsibility segment. The Department of Veterans Affairs (VA), among its other services, provides health care to veterans, pays veterans' compensation and pension benefits, and provides home loans and home loan guarantees to veterans. Each of these program areas could constitute a responsibility segment.

88. Since responsibility segments are major parts of an entity, some segments may carry more than one program. Some programs may be jointly managed by two or more segments. Thus, each segment must

accumulate costs for each type of output produced for various programs. To accomplish this, a network of cost centers can be established within a segment to accumulate costs. Managers of each cost center will be provided with information to control and manage costs within their area of responsibility. Depending on operational patterns and cost methods, cost centers can be structured along different dimensions, such as organizational units, operating processes, and activities.

FULL COST

Reporting entities should report the full costs of outputs in general purpose financial reports. The full cost of an output produced by a responsibility segment is the sum of (1) the costs of resources consumed by the segment that directly or indirectly contribute to the output, and (2) the costs of identifiable supporting services provided by other responsibility segments within the reporting entity, and by other reporting entities.

89. This standard states that reporting entities should measure and report the full costs of their outputs in general purpose financial reports. "Outputs" means products and services generated from the consumption of resources. The full cost of a responsibility segment's output is the total amount of resources used to produce the output. This includes direct and indirect costs that contribute to the output, regardless of funding sources. It also includes costs of supporting services provided by other responsibility segments or entities. The standard does not require full cost reporting in federal entities' internal reports or special purpose cost studies. Entity management can decide on a case-by-case basis whether full cost is appropriate and should be used for internal reporting and special purpose cost studies.

Direct Costs

90. Direct costs are costs that can be specifically identified with an output. All direct costs should be included in the full cost of outputs. Typical direct costs in the production of an output include:

(a) Salaries and other benefits for employees who work directly on the output;

(b) Materials and supplies used in the work;

(c) Various costs associated with office space, equipment, facilities, and utilities that are used exclusively to produce the output; and

(d) Costs of goods or services received from other segments or entities that are used to produce the output (See discussions and explanations in the next section on "Inter-Entity Costs").

Indirect Costs

91. Indirect costs are costs of resources that are jointly or commonly used to produce two or more types of outputs but are not specifically identifiable with any of the outputs. Typical examples of indirect costs include costs of general administrative services, general research and technical support, security, rent, employee health and recreation facilities, and operating and maintenance costs for buildings, equipment, and utilities. There are two levels of indirect costs:

(a) Indirect costs incurred within a responsibility segment. These indirect costs should be assigned to outputs on a cause-and-effect basis, if such an assignment is economically feasible, or through reasonable allocations. (See discussions on cost assignments in the "Costing Methodology" section.)

(b) Costs of support services that a responsibility segment receives from other segments or entities. The support costs should be first directly traced or assigned to various segments that receive the support services. They should then be assigned to outputs.

92. A reporting entity and its responsibility segments may incur general management and administrative support costs that cannot be traced, assigned, or allocated to segments and their outputs. These unassigned costs are part of the organization costs, and they should be

reported on the entity's financial statements (such as the Statement of Net Costs) as costs not assigned to programs.[28]

Certain Cost Elements

93. Costs of Employees' Benefits

Employee benefits include:

(a) Health and life insurance benefits for current employees covered in part by the government's contribution to health and life insurance premiums;

(b) Pension benefits for employees, their survivors, and dependents, covered by defined pension plans such as Civil Service Retirement System (CSRS), Federal Employees Retirement Plan (FERS), and Military Retirement System (MRS);

(c) Health and life insurance benefits for retired employees, their survivors and dependents, covered in part by the government's contribution to health and life insurance premiums, and referred to as "other retirement benefits" (ORB) in this document;

(d) Other postemployment benefits (OPEB) for terminated and inactive employees, which include severance payments, training and counseling, continued health care, and unemployment and workers compensation.

94. Most of the employee benefit programs are covered by trust funds administered by the Office of Personnel Management (OPM) and the Department of Defense (DoD). Contributions to the trust

[28] A similar explanation is provided in FASAB Statement of Recommended Accounting Concepts No. 2, Entity and Display, par. 95, page 33.

funds come from three sources: current and retired employees, employing agencies, and direct appropriations. The management expenses of the trust funds are paid with the funds' receipts.

95. Federal financial accounting standards require that the employing entity accrue the costs to the federal government of providing pension and ORB benefits to employees and recognize the costs as an expense when the benefits are earned.[29] The employing entity should recognize those expenses regardless of whether the benefits are funded by the reporting entity or by direct appropriations to the trust funds. This principle should also be applied to health and life insurance benefits for current employees and comparable benefits for military personnel. The costs of employee benefits incurred by responsibility segments should be directly traced or assigned to outputs.

96. OPEB costs include severance payments, counseling and training, health care, and workers compensation benefits paid to former or inactive employees. OPEB costs are often incurred as a result of such events as reductions in force or on-the-job injuries of employees. Federal financial accounting standards require that OPEB costs be reported as an expense for the period during which a future outflow or other sacrifice of resources is probable and measurable on the basis of events occurring on or before the accounting date.[30]

97. Since the recognition of OPEB costs is linked to the occurrence of an OPEB event rather then the production of output, in many instances, assigning OPEB costs recognized for a period to output of that period would distort the cost of output. In special

[29] FASAB Exposure Draft, Accounting for Liabilities of the Federal Government (November 7, 1994), pars. 62-99, pages 26-46.

[30] Ibid., pars. 100-102, page 47.

purpose cost studies or cost findings, management may distribute OPEB costs over a number of years in the past to determine the costs of the outputs that the OPEB recipients helped to produce.

Costs of Public Assistance and Social Insurance Programs

98. Major costs of welfare, insurance, and grant programs are the costs of resources transferred from the federal government to individuals and state and local governments. Some of them are referred to as "transfer payments." The following are some typical public assistance and insurance programs:

- Grants, such as aid to state and local governments;
- Subsidies, such as agricultural commodity price support and stabilization programs;
- Credit and insurance costs, such as the Family Education Loan Program and Savings Association Insurance;
- Welfare payments such as Aid to Families with Dependent Children (AFDC); and,
- Social insurance, such as the Old Age, Survivors, and Disability Insurance Program.

99. The full cost of such a program includes: (a) the costs of federal resources that have been or will be transferred to individuals and state/local governments, and (b) the costs of operating the programs. These two types of costs should be recognized on a basis of accounting that is prescribed within the Federal Financial Accounting Standards. These two types of costs should be separately identified so that each can be used for different analytic purposes.

100. The costs resulting from transfer payments are determined by the level of grants, subsidies, entitlement benefits, credit subsidies, or loss payments made under insurance and guarantee agreements. They are also determined by the number of eligible persons who receive the transfer payments. The program cost of AFDC, for example, depends on the average payment per family, the number of eligible families, and the federal government's share in the payments (some payments are made by state and local governments). Information on this type of cost is useful for making policy decisions about levels of subsidies or benefits, eligibility of recipients, and how transfer payments are made. This cost information is also useful for measuring the cost-effectiveness of a transfer payment program.

101. Program operating costs, on the other hand, are costs of managing the program and delivering the payments. They include the costs of personnel, supplies, equipment, and offices. The costs are related to such activities as screening benefit recipients for eligibility, keeping their accounts, making payments and collections, answering inquiries, etc. Information on this type of cost is useful in measuring the efficiency of program operations.

Costs related to Property, Plant and Equipment

102. **Depreciation expense.** General property, plant, and equipment are used in the production of goods and services. Their consumption is recognized as depreciation expense. The depreciation expense incurred by responsibility segments should be included in the full costs of the goods and services that the segments produce.

103. **Recognizing property acquisition costs as expenses.** The costs of acquiring or constructing federal mission and heritage property, plant, and equipment may be charged to expenses at the time the

acquisition costs are incurred.[31] Since the recognition of these expenses is linked to property acquisition rather than production of goods and services, those expenses should not be included in the full costs of goods and services. However, they are part of the costs of the entity or the program that makes the property acquisitions.

Non-production costs

104. A responsibility segment may incur and recognize costs that are linked to events other than the production of goods and services. Two examples of these non-production costs were discussed earlier: (1) OPEB costs that are recognized as expenses when an OPEB event occurs, and (2) certain property acquisition costs that are recognized as expenses at the time of acquisition. Other non-production costs include reorganization costs, and nonrecurring cleanup costs resulting from facility abandonments that are not accrued. Since these costs are recognized for a period in which a particular event occurs, assigning these costs to goods and service produced in that period would distort the production costs. In special purpose cost studies, management may have reasons to determine historical output costs by distributing some of these costs to outputs over a number of past periods. Such distribution may be appropriate when: (a) experience shows that the costs are recurring in a regular pattern, **and** (b) a nexus can be established between the costs and the production of outputs that may have benefited from those costs.

[31] In FASAB Exposure Draft, Accounting for Property, Plant, and Equipment, the Board proposed that the costs of acquiring or constructing "federal mission" and "heritage" property, plant, and equipment be recognized as expenses when the costs are incurred. See the ED, pars. 98-117, pages 29-34.

INTER-ENTITY COSTS

Each entity's full cost should incorporate the full cost of goods and services that it receives from other entities. The entity providing the goods or services has the responsibility to provide the receiving entity with information on the full cost of such goods or services either through billing or other advice.

Recognition of inter-entity costs that are not fully reimbursed is limited to material items that (1) are significant to the receiving entity, (2) form an integral or necessary part of the receiving entity's output, and (3) can be identified or matched to the receiving entity with reasonable precision. Broad and general support services provided by an entity to all or most other entities should not be recognized unless such services form a vital and integral part of the operations or output of the receiving entity.

105. As stated in the preceding standard, to fully account for the costs of the goods and services they produce, reporting entities should include the cost of goods and services received from other entities. Knowledge of these costs is helpful to top level management in controlling and assessing the operating environment. It is also helpful to other users in evaluating overall program costs and performance and in making decisions about resource allocations and changes in programs.

Inter-Entity Activities

106. Within the federal government, some reporting entities rely on other federal entities to help them achieve their missions. Often this involves support services, but may include the provision of goods. Sometimes these arrangements may be stipulated by law, but others are established by mutual agreement of the entities involved. Such relationships can be classified into two types depending upon funding methods.

- Provision of goods or services with reimbursement -- In this situation, one entity agrees to provide goods or services to another with reimbursement at an agreed-upon price. The reimbursement price may or may not be enough to recover full costs. Usually the agreement is voluntarily established through an inter-agency agreement. Revolving funds can also be included in this group, because they are usually established to recover costs through sale of their outputs to other government entities. They are usually meant to be self-sustaining through their sales, without receiving additional appropriations. However, they do not always charge enough to cover full costs.

- Provision of goods or services without reimbursement -- One entity provides goods or services to another entity free of charge. The agreement may be voluntary, legally mandated, or inherently established in the mission of the providing entity.

107. Recently, consideration has been given to expanding the concept of inter-entity support within the federal government. Under this concept, entities could sell their outputs on a competitive basis. Entities would have the authority to purchase goods or services from any federal or private provider. This is seen as a way to improve government efficiency through competition since inefficient government providers would be forced to improve or stop providing these goods or services. This could result in consolidating support services in fewer governmental entities. Underlying this concept is the requirement that all costs be recognized in developing the price at which goods and services would be sold to other entities.

Accounting and Implementation Guidance

108. If an entity provides goods or services to another entity, regardless of whether full reimbursement is received, the providing entity should continue to recognize in its accounting records the full cost of those goods or services. The full costs of the goods or services provided should also be reported to the receiving entity by the providing entity.

109. The receiving entity should recognize in its accounting records the full cost of the goods or services it receives as an expense or, if appropriate, as an asset (such as work-in-process inventory). The information on costs of non-reimbursed or under-reimbursed goods or services should be available from the providing entity. However, if such cost information is not provided, or is partially provided, a reasonable estimate may be used by the receiving entity. The estimate should be of the cost of the goods or services received (the estimate may be based on the market value of the goods or services received if an estimate of the cost cannot be made). To the extent that reimbursement is less than full cost, the receiving entity should recognize the difference in its accounting records as a financing source.[32] Inter-entity expenses/assets and financing sources would be eliminated for any consolidated financial statements covering both entities.

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[32] See Statement of Recommended Federal Accounting Concepts No. 2, Entity and Display, par. 65, page 21. See also, FASAB Exposure Draft, Accounting for Liabilities of the Federal Government, pars. 62-99, pages 26-46, which addresses accounting for pensions and other retirement benefits (ORB). The payment of pension and ORB costs for an entity by another entity has often been likened to providing goods and services. In the case of pensions, employees of the reporting entity provide services to that entity and part of the salary-related cost is paid by a different entity. The pension administering entity does not provide goods or services to the reporting entity (other than normal pension administration services), but rather pays their costs directly. The difference is subtle but important. However, the accounting is similar. This document is consistent with the section of the liabilities exposure draft dealing with accounting for pensions and other retirement benefits.

110. Implementation of this standard on inter-entity costing should be accomplished in a practical and consistent manner by the various federal entities. Therefore, the Office of Management and Budget, with assistance from the FASAB staff, should identify the specific inter-entity costs for entities to begin recognizing. OMB should then issue guidance identifying these costs. These particular inter-entity costs should be specified in accordance with this standard including the recognition criteria presented below. The OMB should consider information and advice from Treasury, GAO, and other agencies in developing the implementation guidance. It is anticipated that the largest and most important inter-entity costs will be identified first. As entities gain experience in the application of the standard, recognition of other inter-entity costs may be specified in future guidance or required by future standards.

Recognition Criteria

111. Ideally, all inter-entity costs should be recognized. This is especially important when those costs constitute inputs to government goods or services provided to non-federal entities for a fee or user charge. The fees and user charges should recover the full costs of those goods and services.[33] Thus, the cost of inter-entity goods or services needs to be recognized by the receiving entity in order to determine fees or user charges for goods and services sold outside the federal government. Such recognition, however, should be made in accordance with the implementation guidance issued by OMB as discussed above.

112. However, the situation is often different with goods or services transferred within the federal government that do not involve eventual sales to entities outside the federal government. The federal government in its entirety is an economic entity. Therefore, it is

[33] OMB Circular A-25 addresses user charges by federal entities.

reasonable to expect some flow of goods or services between reporting entities as those entities assist each other in fulfilling their missions and operating objectives. There are some cases in which the cost of non-reimbursed or under-reimbursed goods or services received from other entities need not be recognized as part of the cost of the receiving entity. The following general criteria are provided to help in determining the types of inter-entity costs that should or should not be recognized.

- Materiality -- As with other accounting standards, the provisions of this standard need not be applied to immaterial items. However, in the context of deciding which inter-entity transactions are to be recognized, materiality, as used here, is directed to the individual inter-entity transaction rather than to all inter-entity transactions as a whole. **Under this concept, a much more limited recognition is intended than would be achieved by reference to the general materiality concept.**

  In this context, then, materiality should be considered in terms of the importance of the inter-entity transaction to the receiving entity. The importance of the transactions, and thereby their recognition, should be judged in light of the following factors:

  * Significance to the entity -- The cost of the good or service is large enough that management should be aware of the cost when making decisions.

  * Directness of relationship to the entity's operations -- The good or service provided is an integral part of and necessary to the output produced by the entity.

  * Identifiability -- The cost of the good or service provided to the entity can be matched to the entity with reasonable precision.

The determination of whether the cost is material requires the exercise of considerable judgment, based on the specific facts and circumstances of each transaction.

- Broad, general support -- Some entities provide broad, general support to many, if not all, reporting entities in the federal government. Most often this type of support involves the establishment of policies and/or the provision of general guidance. The costs of such broad services should not be recognized as an expense (or asset) by the receiving entities when there is no reimbursement of costs. Thus the standard does not apply when support is of a general nature provided to all or most entities of the federal government.

  An example of this situation can be found in the Office of Management and Budget which establishes policy and provides general guidance to all parts of the executive branch of government. The costs of OMB should not be spread over all reporting entities because the services provided are (1) general and broad in scope, (2) provided to almost all reporting entities in the executive branch, and (3) not specifically or directly tied to the receiving entity's outputs.

  On the other hand, some services provided, under certain circumstances, should still be recognized even though they may be considered broad and general in nature if such services are integral to the operations of the receiving entity. Such services include check writing by the Department of Treasury or legal activities performed by the Department of Justice. For example, when the issuance of checks is integral to the operations of an entity (e.g., the Internal Revenue Service and the Social Security Administration), the receiving entity should include the full cost of issuing checks in the full cost of its outputs. However, if the

issuance of checks is insignificant and incidental to the operations of an entity, the entity should not normally recognize that cost.

113. The decision as to whether the cost of non-reimbursed or under-reimbursed goods and services should be recognized requires the use of judgement. None of the criteria listed above are, by themselves, fully or exclusively determinative. They should be considered in combination. Ultimately, inclusion or exclusion of the cost should be decided based on the specific facts and circumstances of each case, with consideration of the degree to which inclusion or exclusion would change or influence the actions and decisions of a reasonable person relying on the information provided.

Accounting Example

114. The following tables provide an example of the accounting entries to be made when the receiving entity (Agency R) recognizes an expense for services received from a providing entity (Agency P) on a non-reimbursable basis. In the example, the full costs of these services to Agency P are $100,000.

115. Agency R recognizes an "Expense of services provided by Agency P" equal to the full cost of the services received. It also recognizes a financing source, "Services provided by Agency P," equal to the amount not reimbursed, which in this case is the full $100,000. Agency P recognizes an "Expense of services provided to Agency R" equal to the full cost of the services provided with a credit to "Appropriations used."

Table 1: Agency R's Accounting Entries *

	Debit	Credit
Expense of services provided by Agency P:	$100,000	
Services provided by Agency P:		$100,000

* This example shows the cost recognized as an expense. However, as discussed in the text, it may be an asset.

Table 2: Agency P's Accounting Entries

	Debit	Credit
Expense of services provided to Agency R:	$100,000	
Appropriated capital	$100,000	
Fund balance with Treasury		$100,000
Appropriated capital used		$100,000

COSTING METHODOLOGY

Costs of resources consumed by responsibility segments should be accumulated by type of resource. Outputs produced by responsibility segments should be accumulated and, if practicable, measured in units. The full costs of resources that directly or indirectly contribute to the production of outputs should be assigned to outputs through costing methodologies or cost finding techniques that are most appropriate to the segment's operating environment and should be followed consistently.

The cost assignments should be performed by the following methods listed in the order of preference: (a) directly tracing costs wherever feasible and economically practicable, (b) assigning costs on a cause-and-effect basis, or (c) allocating costs on a reasonable and consistent basis.

116. This standard addresses two aspects of costing: cost accumulation and cost assignment. Each of them is explained and discussed below.

Cost Accumulation

117. Cost accumulation is the process of collecting cost data in an organized way. The standard requires that costs be accumulated by responsibility segments. The accumulation is for costs incurred within each responsibility segment, and does not involve the assignment or allocation of costs incurred by other supporting segments, which will be discussed in the latter part of this section.

118. In the section of this document relating to "Responsibility segments," it was explained that: "A responsibility segment is a component of a reporting entity, that is responsible for carrying out a mission, conducting a major line of activity, or producing one or a group of related products or services." The accumulation of costs by responsibility segments does not mean that each responsibility segment

must have its own accounting system. The reporting entity may have a centralized accounting system, but the system should be capable of identifying costs with responsibility segments.

119. This standard also requires that the accumulated costs be classified by type of resource, such as costs of employees, materials, capital, utilities, rent, etc. When appropriate and cost effective, information on quantitative units related to various cost categories should be maintained. For example, staff-days may be reported for staff salaries and benefits, and gallons of gasoline consumed for gasoline costs. The quantitative units are useful for cost assignments, and are indispensable for measuring efficiency in using resources.

Cost Assignment

120. The term "cost assignment" refers to the process that identifies accumulated costs with reporting periods and cost objects. The assignment of costs to time periods is to recognize costs either as expenses or assets for each reporting period. It is governed by accounting standards on recognition of assets and expenses, and will not be addressed in this document. This section addresses cost assignment to cost objects. The word "assignment" used in this document includes various methods of attributing costs, such as direct tracing, cause-and-effect basis, and cost allocations.

121. The term "cost object" refers to an activity or item whose cost is to be measured.[34] In a broad sense, a cost object can be an organizational division, program, activity, task, product, service, or customer. However, the purpose of cost accounting by a responsibility segment is to measure the costs of its outputs. Thus, the final cost objects of a responsibility segment are its outputs: the services or products that the segment produces and delivers, the missions or tasks

[34] Some literature, the CASB pronouncements for example, use the term "cost objective" for the same meaning.

that the segment performs, or the customers or markets that the responsibility segment serves. There may be intermediate cost objects that are used in the course of the cost assignment process.

122. Some responsibility segments of an entity may provide supporting services or deliver intermediate products to other segments within the same entity. The costs of the supporting services and intermediate products should be assigned to the segments that receive the services and products. This is referred to as the intra-entity cost assignments. Also, in accordance with the inter-entity cost standard discussed in the preceding section, an entity should recognize inter-entity costs for goods and services received from other federal entities. The inter-entity costs should also be assigned to the responsibility segments that use the inter-entity services and products.

123. Thus, with respect to each responsibility segment, the costs that are to be assigned to outputs include: (a) direct and indirect costs incurred within the responsibility segment, (b) costs of other responsibility segments that are assigned to the segment, and (c) inter-entity costs recognized by the receiving entity and assigned to the segment. If a responsibility segment produces one kind of output only, costs of resources used to produce the output are assigned to the output.

124. This standard is intended to establish a principle, rather than a methodology, for cost assignment. Also cost assignments may be performed in cost findings and studies or may be performed within a system on a regular basis. In principle, costs should be assigned to outputs in one of the methods listed below in the order of preference:

(a) Directly tracing costs wherever economically feasible;

(b) Assigning costs on a cause-and-effect basis; and

(c) Allocating costs on a reasonable and consistent basis.

125. These principles apply to all levels of cost assignments including: (1) assigning inter-entity costs to segments, (2) assigning the costs of support services and intermediate products among segments of an entity (the intra-entity cost assignments), and (3) assigning direct and indirect costs to outputs.

Directly tracing costs to outputs

126. Direct tracing applies to resources that are directly used in the production of an output. Examples of such resources include materials that are used in the production, employees who directly worked on the output, facilities and equipment used exclusively in the production of the output, and goods or services received from other entities that are directly used in the production of the output.

127. The method of direct cost tracing usually relies on the observation, counting, and/or recording of the consumption of resource units, such as staff hours or days that are spent on a project or assignment, or gallons of fuel consumed in a transport mission. Direct tracing also applies to specific resources that are dedicated to particular outputs.

128. Direct cost tracing often minimizes distortion and ensures accuracy in cost assignments. However, it can be a relatively costly process. It should be applied only to items that account for a substantial portion of the cost of an output and only when it is economically feasible. For example, it is usually unnecessary to trace the cost of office supplies (pens, papers, computer disks, etc.) to various activities or outputs. The cost of so doing usually outweighs the benefit of the increased accuracy in assigning the resources.

Assigning costs on a cause-and-effect basis

129. For the costs that are not directly traced to outputs, it is preferable that they be assigned to them on a cause-and-effect basis. As mentioned earlier, the ultimate cost objects of a responsibility segment are its outputs. For costs that are not traced to the ultimate objects (outputs), intermediate objects can be established as links between resource costs and outputs. The links reflect a cause-and-effect relationship between resource costs and outputs. Costs that have a similar cause-and-effect relationship to outputs can be grouped into cost pools. (This similar relationship is referred to in some literature as the "cost pool homogeneity concept.")

130. Activities or work elements that contribute to or support the production of outputs are commonly used as intermediate objects. This is based on the premise that on one hand, outputs require the performance of certain activities, and on the other hand the activities cause costs. Thus, an activity is considered a linkage between the cause and the effect. (See also, discussions on Activity-Based Costing later in this section.) In its policy statement, the Cost Accounting Standards Board expressed a similar view:

> "The preferred presentation of the relationship between the pooled cost and the benefiting cost objectives is a measure of the activity (input) of the function or functions represented by the pool of cost. This relationship can be measured in circumstances where there is direct and definitive relationship between the function or functions and the benefiting cost objectives."[35]

131. For example, a computer technology department provides technical support to other departments of an organization. The costs

[35] Cost Accounting Standards Board, Restatement of Objectives, Policies and Concepts, par. 2915.

of the department may be assigned to other departments on a cause-and-effect basis through two steps. In the first step, the costs are assigned to the activities of the department, such as hardware installation and maintenance, software design and installation, or programming adjustments. In the second step, the costs of these activities are further assigned to other departments based on their consumption of the technical services.

132. Sometimes, an intermediate product, rather than an activity, can be used as a link between the costs and outputs. For example, a hospital laboratory's costs can first be assigned to various medical tests it runs. The costs of the tests can then be assigned to the operating units of the hospital that ordered the tests.

Allocating costs

133. Sometimes, it might not be economically feasible to directly trace or assign costs on a cause-and-effect basis. These may include general management and support costs, depreciation, rent, maintenance, security, and utilities associated with facilities that are commonly used by various segments.

134. These supporting costs can be allocated to segments and outputs on a prorated basis. The cost allocations may involve two steps. The first step allocates the costs of support services to segments, and the second step allocates those costs to the outputs of each segment. The cost allocations are usually based on a relevant common denominator such as the number of employees, square footage of office space, or the amount of direct costs incurred in segments.

135. Suppose the total cost of a personnel department for a fiscal year is $500,000, and it is allocated to two segments based on the number of employees of the two segments: segment A has 300

employees, and segment B has 200 employees. On the prorated basis, segment A should be allocated 60 percent, or $300,000 of the personnel cost, and segment B should be allocated 40 percent, or $200,000 of the personnel department cost. The allocation is shown below:

Table 3: The Allocation of the Personnel Dept. Costs

Segment	Employees	Percent	Allocated amount
A	300	60	$300,000
B	200	40	$200,000
Total	500	100	$500,000

136. For cost allocation purposes, indirect costs may be grouped into pools, and each pool is subject to one allocation base. Costs grouped into one pool should have similar characteristics. The allocation base should be used consistently to allow cost comparison from one period to another.

137. Cost allocation is a relatively simple method of assigning indirect costs to cost objects. Users of the cost information should be aware that distortions in product costing often result from arbitrary cost allocations. In most cases, there is little correlation between an indirect cost and the allocation base, and the allocation is arbitrary. To assist cost analyses and cost findings, cost accounting should segregate costs that are traced or assigned to outputs from costs that are allocated to outputs.

Assigning common costs

138. Facility and personnel resources may be shared by two or more activities either at the same time or in different times during a fiscal year. For example, a military aircraft maintained for war readiness may be used in peacetime to transport cargo. As another example, a plant may be used to process two or more products.

139. The cost assignment principles discussed in this section should apply to assigning costs to activities or outputs that share the use of resources. Costs that can be traced to each of the activities (or outputs) should be assigned to them directly. These include direct operating costs of each of the activities. For the military aircraft used in peacetime to transport cargo, for example, the costs of fuel and supplies, additional personnel who worked on the cargo, and other costs incidental to the transportation should be directly assigned to the transportation services.

140. To determine the full cost of each of the activities or outputs that share resources, indirect common costs should be assigned to those activities. The term "common costs" refers to the costs of maintaining and operating facilities and other resources that cannot be directly traced to any one of the activities or outputs that share the resources.[36] Common costs should be assigned to activities either on a cause-and-effect basis, if feasible, or through reasonable allocations.

141. Sometimes management may find it useful to designate primary and secondary activities that share resources. Primary activity is the primary purpose or mission for which the resources are made available. Secondary activities are those activities that are performed only if they will not interfere with the primary activity. Management

[36] This definition is adapted from Statement No. 1 on Management Accounting: Management Accounting Glossary, published by the National Association of Accountants (Montvale, New Jersey: 1991), page 15.

can then determine two types of costs: (1) the costs that are necessary for the primary activity and are unavoidable even without the secondary activities, and (2) the costs that are caused by the secondary activities and are incremental to the costs of the primary activity. This type of cost information can be produced through cost findings, and may help management in making resource allocation and capacity utilization decisions.

Cost-benefit considerations

142. Throughout the discussions of this section, it is stated that a cost accumulation and assignment method would be used when it is economically feasible. A method is economically feasible if the benefits resulting from implementing the method outweigh its costs. It is not advantageous to use a costing method if it requires a large amount of resources and yet produces information of little value to users.

143. As a general rule, directly tracing costs and assigning costs on a cause-and-effect basis are more expensive than cost allocations, because they require detailed analyses and record-keeping for costs and activities. However, they are preferable because they produce more reliable cost information than cost allocations.

Selecting a Costing Methodology

144. This standard does not require the use of a particular type of costing system or costing methodology. Federal entities are engaged in a broad range of diverse operations. A costing system appropriate for one type of operation may not be appropriate for other operations. At many federal agencies, cost accounting practices are either relatively new or experimental. It is too early to tell which cost systems are best for specific types of operations. As experience and research in cost

accounting progress, reporting entities and responsibility segments may find a preferred costing methodology for their operations.

145. Agency and program management is in the best position to select a type of costing system that would meet its needs. In making the selection, management should evaluate alternative costing methods and select those that provide the best results under its operating environment.

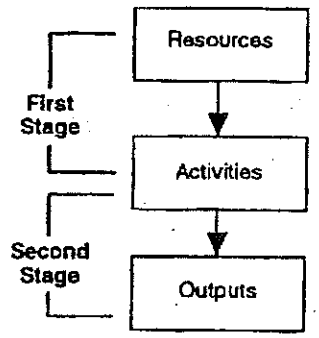
146. The standard requires that a costing methodology, once adopted, be used consistently. Consistent use provides cost information that can be compared from year to year. However, this requirement does not preclude necessary improvements and refinements to the system or methodology, so long as the effect of any change is documented and explained. On the contrary, improvements are encouraged.

147. Several costing methodologies have been successful in the private sector and in some government entities. Four are briefly described below for agency consideration. It should be noted in particular that activity-based costing has gained broad acceptance by manufacturing and service industries as an effective managerial tool. Federal entities are encouraged to study its potential within their own operations. In the following paragraphs, activity-based costing will be introduced with other well known costing methodologies, namely job order costing and process costing. Standard costing is also mentioned as an important cost management tool. It is important to note that those costing methodologies are not mutually exclusive. Both activity-based costing and standard costing can be applied to job order or process costing systems.

Activity-based costing (ABC)

148. ABC focuses on the activities of a production cycle, based on the premises that (a) an output requires activities to produce, and (b) activities consume resources. ABC systems use cost drivers to assign costs through activities to outputs. The ABC cost assignment is a two-stage procedure. The first stage assigns the costs of resources to activities and the second stage assigns activity costs to outputs. The procedure is illustrated in the following figure.[37]

Figure 2: The Activity-Based Two Stage Costing Procedure



149. Implementing an ABC system requires four major steps: (1) identify activities performed in a responsibility segment to produce outputs, (2) assign or map resources to the activities, (3) identify

[37] The figure and the accompanying discussions are based on Robin Cooper, Robert S. Kaplan, Lawrence S. Maisel, Eileen Morrissey, and Ronald M. Oehm, Implementing Activity-Based Cost Management (Montvale, NJ: Institute of Management Accountants, 1992), pages 9-13.

outputs for which the activities are performed, and (4) assign activity costs to the outputs. Each of the steps is briefly explained below.

(1) Identify activities. This step requires an in-depth analysis of the operating processes of each responsibility segment. Each process may consist of one or more activities required by outputs. Activities may be classified into unit-level, batch-level, product sustaining, and facility sustaining activities.[38] Management may combine related small activities into larger activities to avoid excessive costing efforts.

(2) Assign resource costs to activities. This step assigns resource costs to the activities identified in step 1. The resource costs include direct and indirect costs usually recorded in general ledger accounts. Depending on feasibility and cost-benefit considerations, resource costs may be assigned to activities in three ways: (a) direct tracing; (b) estimation based on surveys, interviews, or statistical sampling; or (c) allocations.

(3) Identify outputs. This step identifies all of the outputs for which activities are performed and resources are consumed by a responsibility segment. The outputs can be products, services, or customers (persons or entities to whom a federal agency is required to provide goods or services). Omitting any output would result in overcharging costs to other outputs.

(4) Assign activity costs to outputs. In this step, activity costs are assigned to outputs using activity drivers. Activity drivers assign activity costs to outputs based on individual outputs' consumption or demand for activities. For example, a driver may be the number of times an activity is performed in producing a specific type of

[38] Cooper, Kaplan, et al. page 20.

output (the transaction driver), or the length of time an activity is performed (the duration driver).

150. ABC can be used in conjunction with job order costing or process costing. For example, making direct loans to the public involves a series of processes, such as loan origination, credit review for individual applicants, preparing loan documents, valuation of collateral, making loan disbursements, computing fees and periodic payments, keeping records, and making collections. These are the "first category" activities that directly affect individual loans. ABC can be applied to this category of activities.

151. The direct loan operations also involve "second category" activities, such as those performed by loan officers to review and assess a portfolio of loans and make policy changes that affect an entire portfolio. If ABC is not used, the costs of the loan officers may be allocated to direct loans based on the number of loans disbursed, or based on the staff hours spent on processing all the loans. However, such an allocation tends to be arbitrary, because some loans require more of their time than others. Under ABC, the costs of loan officers would first be assigned to their portfolio review and workout activities that they perform, then the activity costs would be assigned to the groups of loans for which the activities are performed.

152. A major advantage of using ABC is that it avoids or minimizes distortions in product costing that result from arbitrary allocations of indirect costs. By tracing costs through activities, ABC provides more accurate service or product costs. Experience in the private sector shows that by providing accurate cost measures, ABC has helped improve product costing, strategic pricing, and profit planning.

153. Also important is that ABC encourages management to evaluate the efficiency and cost-effectiveness of activities. Some ABC systems rank activities by the degree to which they add value to the

organization or its outputs. Managers use such value rankings to focus their cost reduction programs. ABC encourages management to identify and examine (a) what activities are really needed (value-added activities) in order to accomplish a mission, deliver a service, or meet customer demand, (b) how activities can be modified to achieve cost savings or product improvements, and (c) what activities do not actually add value to services or products (non-value-added activities). ABC integrates with cycle time analysis and value-added analysis.

Job order costing

154. Job order costing is a costing methodology that accumulates and assigns costs to discrete jobs. The word "jobs" refers to products, projects, assignments, or a group of similar outputs.

155. Each job has a number or code to accumulate costs. Resources spent are identified with the job code. Costs are traced to individual jobs to the extent economically feasible. Costs that cannot be directly traced are assigned to jobs either on a cause-and-effect basis or allocation basis.

156. Job order costing is appropriate for responsibility segments that produce special order products, or perform projects and assignments that differ in duration, complexity, or input requirements. Typical situations in the federal government in which job order costing would be appropriate are legal cases, audit assignments, research projects, and repair work for ships, aircraft, or vehicles.

Process costing

157. Process costing is a method that accumulates costs by individual processing divisions (organization divisions that perform production processes). These processing divisions are involved in a continuous production flow, with each division contributing towards

the completion of the end products. The output of a processing division either becomes the input of the next processing division or becomes a part of the end product.

158. Each division accumulates costs, assigns the costs to its outputs, and calculates the unit cost of its output. For each period, divisions prepare a cost and production report, showing the costs, the completed units, and the work-in-process volume. When a certain number of completed units are transferred from a division to the next division, the costs of those units are also transferred and are eventually incorporated into the costs of the end product. Thus, the cost flow follows the physical flow of the production. The unit cost of the end product is the sum of the unit costs of all the divisions.

159. Process costing is appropriate for production of goods or services with the following characteristics: (a) the production involves a regular pattern of process, (b) its output consists of homogeneous units, and (c) all units are produced through the same process procedures. In the private sector, process costing is used by such industries as flour mills, steel foundries, oil refineries, and chemical processing plants. In government, it may be used by some activities that involve repetitive process procedures to deliver a large volume of similar goods or services. An example would be making entitlement benefit payments, which involves a series of consecutive processes for reviewing applications to establish their eligibility, computing the amount of benefits, and issuing checks.

Standard costing

160. Standard costs are carefully predetermined or expected costs that can be applied to activities, services, or products on a per unit basis. Horngren describes standard costing as follows:

"A set of standards outlines how a task should be accomplished in nonfinancial terms (minutes, board feet) and how much it should cost. As work is being done, actual costs incurred are compared with standard costs for various tasks or activities to reveal variances. This feedback helps discover better ways of adhering to standards, of altering standards, and of accomplishing objectives."[39]

161. Many organizations frequently review and update the standards to assure that they encourage improvements in efficiency and are within an attainable range.

162. Standard costing helps managers to formulate budgets, control costs, and measure performance. It can be used in conjunction with job order costing, process costing, and activity-based costing. It can be applied to specific outputs or activities, and it can also be applied to a responsibility segment in aggregate by comparing total actual costs with total standard costs based on outputs produced within a certain time period. Typical situations in the federal government in which standard costing would be appropriate are operations that produce services or products on a consistently repetitive basis. Agencies are encouraged to use standard costing in those situations.

[39] Horngren, Charles T. and George Foster, Cost Accounting, A Managerial Emphasis, 7th ed. (Prentice Hall, Englewood Cliffs: New Jersey, 1991), page 222.

Basis for Conclusions

The Nature of Concepts and Standards

163. The difference between accounting concepts and standards is significant. Statements of concepts are more general than statements of standards. Standards are intended to be specific guidance and authoritative in nature. Concepts generally do not contain specific recommendations that would, when issued by the Board's sponsors, become authoritative requirements for federal agencies. Concepts, instead, provide general guidance both to the Board and others. They are also intended to help preparers and users of financial information better understand federal accounting and financial reporting. While the differences can be easily stated, in reality the line between concepts and standards is often broad and presents many gray areas for interpretation.

164. When the Board began the project on managerial cost accounting, it anticipated the issuance of a recommended Statement of Concepts. Given the meager use of cost accounting within many federal agencies, a Statement of Concepts would provide both the Board and preparers of federal financial reports with overall guidance in the area and an indication of the future direction the Board might take in developing standards. However, as the Board and staff began working on the project, it became clear that action was needed to recommend standards for the development of cost information.

165. Cost accounting standards were needed because users of financial information, especially taxpayers and members of Congress, began putting more emphasis on the cost of government programs, products, and activities. The efforts to reduce government spending,

control the deficit, and improve government functions necessitated information about the true costs of government. In addition, passage of the CFO Act and the GPRA required agencies to provide cost information as a part of improving their financial management and reporting. Furthermore, the NPR issued a recommendation that the Board move rapidly to recommend cost accounting standards.

166. The Board established the Cost Accounting Task Force to provide advise and guidance on the cost accounting project. On the task force were many individuals knowledgeable about cost accounting in the private sector as well as the limited federal cost accounting activities. The task force also recommended the establishment of cost accounting standards.

167. The Board issued the exposure draft as a recommended statement of standards. The Board knew, however, that since cost accounting is relatively new in the federal environment, the final statement necessarily would contain some conceptual material. Although the exposure draft did not present any direct questions concerning whether parts of the draft should be viewed as concepts, the issue did arise in public hearings held in November 1994, and January 1995. In addition, a few respondents who mailed in their comments addressed the point.

168. Most of those commenting on the issue stated that they viewed the exposure draft as being somewhat conceptual in nature. Many of those thought that this was appropriate and supported the document and the conceptual material it presented. A few respondents were concerned about the ability to audit some of the standards because of the conceptual nature of the document. Several suggested that the final statement be segregated into concepts and standards and both be issued in one statement.

169. The Board decided that some parts of the final statement would contain information that should be presented as concepts while other parts would be better presented as standards. Therefore, the final statement should be a "hybrid" issuance containing both concepts and standards. The title of the document was changed to "Managerial Cost Accounting Concepts and Standards for the Federal Government." (The Board decided that the material presented in the exposure draft as the first standard that addressed the relationship among managerial cost accounting, financial reporting, and budgeting should be presented as concepts. The other materials were more in the nature of standards.)

Relationship Among Cost Accounting, Financial Reporting, and Budgeting

170. The Board considers it important for financial preparers and users of financial reports to understand the relationship of cost accounting to the more traditional areas of general financial accounting, financial reporting, and budgeting. It views cost accounting as a basic and integral part of an entity's financial management system. Therefore, the Board included a standard on this relationship within the exposure draft.

171. The standard addressed the role of managerial cost accounting in financial management and explained how it provides cost information relevant to budgeting, financial reporting, management control, and many decision making processes. The standard discussed the use of a common data source for cost accounting, financial accounting, and budgeting. It explained how the costs may be determined using different bases of accounting and different recognition and measurement methods depending upon the intended use of the information. It also emphasized the need for reconciliation of cost data which may be presented differently in various financial

reports. The standard stated that all cost information, regardless of how presented, should be traceable back to the original common data source.

172. Most exposure draft respondents who provided comments on this standard stated that the level of detail presented was about right given the desire of the Board to address cost accounting at a high level. Most respondents agreed with the need to draw cost accounting data from a common data source that is also the source of financial and budgetary data. Some respondents were concerned that the use of the term "data source" was too closely allied with automated or computerized operations and that the term may be misinterpreted. The Board, however, believes that the term is adequately explained. In fact, the exposure draft clearly stated that this term was not meant to imply the use of computerized systems for source information.

173. Data reconciliation for reports containing cost information developed on different bases of accounting or using different recognition or measurement methods received overwhelming support from respondents to the exposure draft. They said that the ability to reconcile differing cost information is necessary to ensure data integrity, avoid confusion on the part of financial statement users, and support stewardship responsibilities.

174. Many who commented on whether the exposure draft should be viewed as a statement of concepts or a statement of standards implied that this particular standard on relationships of cost accounting to other financial management functions was basically conceptual in nature. The Board agreed and concluded that this section is more in the nature of an explanation of how cost accounting provides useful information and how it fits in with the overall financial management system as opposed to a standard which places a requirement on an entity. The Board decided that this material would be better presented in the final statement as recommended concepts.

Requirement for Cost Accounting

175. The cost accounting task force recommended that a standard be included in the exposure draft requiring each reporting entity to establish cost accounting systems and procedures for its activities. They believed this was necessary to ensure the generation of required cost information.

176. The Board agreed to include the standard in the exposure draft. The standard defined "system" in a broad way as simply an organized grouping of methods and activities designed to consistently produce reliable cost information. The explanations and discussions section of the exposure draft contained information on several factors that would help managers decide how complex and sophisticated their cost accounting system should be. It noted that the system could be constrained by the (1) nature of the entity's operations, (2) precision needed in cost information, (3) practicality of data collection and processing, (4) availability of electronic data handling, (5) expected cost of the system itself, and (6) any specific management information needs.

177. The exposure draft also listed ten minimum criteria that should be met by all managerial cost accounting systems. Four of these were related directly to the other standards in the exposure draft (responsibility segments, full costing, costing methodology, and unused capacity costs). The six remaining criteria were concerned with ensuring that the cost data produced was reliable, consistent, and useful. These criteria were (1) ensuring the ability to assist in measurement of performance, (2) reporting information on a timely and consistent basis, (3) integrating cost accounting with the standard general ledger, (4) determining a reasonable and useful level of data precision, (5) accommodating special information needs of management, and (6) documenting the system through a manual or

handbook. The standard also allowed for the use of cost finding techniques and special cost studies or analyses.

178. A large number of respondents to the exposure draft supported the requirement for cost accounting systems. They stated that such a requirement is necessary to ensure that appropriate cost data are recorded. They also said that having a requirement for cost systems will help agencies to more easily meet the requirements of the CFO Act and the GPRA. Some qualified their support by stating that the standard should allow an exemption for small entities since establishment of a full cost accounting system may not be cost-beneficial to them. The Board decided that such an exemption would be inappropriate since the standards should apply to all federal activities. Furthermore, it should be far easier for small entities to perform managerial cost accounting in most cases.

179. Those who were negative toward the standard provided several reasons. Several expressed concern about whether accounting standard-setting bodies should require or determine how accounting data are produced. They noted that other accounting standard-setting organizations have stated only what information is required and how that information is displayed in financial statements, not how the information is developed.

180. The Board believes that it should not be constrained by what other standard-setters do. Other standard-setters so far have concerned themselves mainly with entities' external reporting. This is understandable because their mission is to assure that the financial position and results of operations are presented in a fair, reliable, and consistent manner to financial statement users who are external to the reporting entity.

181. FASAB is different in that it has determined that some of the users of federal government financial reports are internal to the

government. Given the nature and size of the federal government, internal users often do not have the same type of access to cost information that may be available in commercial enterprises. In addition, the Board views cost accounting information as vital to both internal and external users. The Board has previously determined in its Objectives of Financial Reporting that cost information should be reported to meet the needs of Congress, federal executives, and others.

182. Some respondents to the exposure draft were concerned that the requirement for a cost accounting system, along with the system criteria, would not allow management enough flexibility. They seemed to consider the requirement for a system to mean that cost accounting activities had to be automated with computers and that software had to be developed and employed in a "full-blown" system, as one put it. They believe that such an elaborate system may not be needed in some cases where informal procedures or methods would suffice.

183. The Board does not intend to prescribe an elaborate managerial cost accounting system for every federal organization. It believed that the standard proposed in the ED was sufficiently broad to allow managerial flexibility in the system design. However, the Board does recognize that the term "system" may connotate to some a requirement for computerization and sophisticated methodologies.

184. Others stated that establishing the requirement for cost systems should be the responsibility of OMB or JFMIP. Some of the respondents were concerned about the degree to which the standard may overlap with JFMIP's responsibility to set requirements for cost accounting systems. The NPR recommends setting requirements for cost accounting systems as a responsibility of JFMIP, while asking the Board to provide the cost accounting standards.[40]

[40] Office of the Vice President, Improving Financial Management, Accompanying Report of the National Performance Review (September 1993), page 24.

185. The Board proposed the requirement for systems to ensure that cost information is produced and reported in a reliable and consistent manner, and emphasized that this was the intent. The point is not whether the information is produced through the use of a system or through other techniques. The Board believes that, in many cases, cost accounting systems will be established as a natural consequence of requiring cost information. Many government agencies are very large and complex organizations, and it is unrealistic to think that they can develop cost data without relying on a system to do so. Other small agencies or reporting entities may not need a system to develop cost data in a regular, consistent, and reliable manner.

186. The Board, therefore, changed the standard to emphasize producing cost accounting information in a reliable and consistent manner. This can be done through the use of cost accounting systems or cost finding techniques. In either case, the main intent of the original standard is preserved. In addition, the concerns expressed over whether the Board or some other organization should establish the requirement for cost "systems" are solved.

Responsibility Segments

187. As stated in the ED, a responsibility segment is a component of a reporting entity that is responsible for carrying out a mission, conducting a major line of activity, or producing one or a group of related products or services.

188. The proposal for using responsibility segments in the ED was based on the view that most federal departments and agencies are engaged in more than one line of activity, or producing more than one type of service or product. Furthermore, the activities that an agency performs may differ from each other significantly in required resources and operations. The ED used the Department of Veterans Affairs (VA) as an example. Among its activities, VA administers hospitals

and nursing homes to provide health care to veterans, and it also administers direct home loan and loan guarantee programs. These lines of activities are significantly different in operation patterns. The Board believes that for entities that are engaged in diverse activities, identifying responsibility segments is necessary for identifying resources consumed by a distinct line of activity with the outputs of that activity.

189. A majority of respondents supported the requirement for responsibility segments and agreed with the advantages of the requirement. They expressed the view that segmentation provides a basic framework to trace and assign costs to outputs. They also believed that segmentation provides management with the flexibility of choosing a costing methodology that is best suited for a line of activity. The respondents also stated that information generated by responsibility segments can be used to measure performance and to assess accountability.

190. Several respondents, however, presented arguments against using responsibility segments. One such argument was that responsibility segments would constitute an unnecessary layer that conflicts with financial reporting and budgeting systems. The Board disagrees with this view. A responsibility segment is not, and should not be, an additional layer to the organization and the budget structure. It is an accounting mechanism to capture data generated in operations by various components of an organization in its existing structure. Organization and budget structures can be changed for better management but not for the sake of accounting. Accounting may influence but cannot dictate such changes.

191. The Board believes that accounting by segment will help provide information useful to program managers and other users of financial reports. Entity-wide financial reports provide information on the overall financial position and operating results of an entity in aggregate. Such reports, although useful for many purposes, are not

sufficient for cost management. A fundamental undertaking of managerial cost accounting is to match costs with activities and outputs. The purpose of segmentation is to segregate entity-wide data by major lines of activities and their outputs. Information related to each segment should tell managers and other users of financial reports about the segment's specific outputs, the activities performed, and resources consumed to produce the outputs.

192. Furthermore, segment-based reporting need not be in conflict with entity-wide financial reporting. They can use a common source of data, such as accounting data collected by the standard general ledger or the budget execution reports. To perform segment-based accounting and reporting, the general accounting or budget execution data can be traced and assigned to segments. The Statement of Federal Financial Accounting Concepts No. 2, Entity and Display, discusses a reporting approach similar to the segment-based accounting and reporting:

> "With some organizations, and even suborganizations, the activities of one or more programs or other components are as important to the readers of financial statements as are activities of the entity as a whole. This would be particularly true for a department composed of many bureaus, administrations, agencies, services, etc., and particularly if their programs are dissimilar. In those instances, consideration should be given to the preferability of reporting the assets, liabilities, revenues, expenses, etc., of both the significant components individually and of the entity in its entirety."[41]

193. Another argument against requiring responsibility segments was that the requirement is overly prescriptive and would constrain agency management from selecting among various cost collection methods.

[41] FASAB Statement of Recommended Accounting Concepts 2, Entity and Display, par. 75, page 25.

The Board believes the standard gives management adequate flexibility in structuring cost accounting. As the standard states, it is for the management of each entity to decide how segments should be defined, and how similar products and services can be grouped into one segment.

194. Furthermore, segments are the largest components of an entity. Management has the flexibility to use any cost collection method within each segment. Within a segment, management may define sub-units, functions, projects, business processes, activities, or a combination of them as cost centers to accumulate costs. The costs accumulated at lower levels can then be aggregated to the segment level.

195. In fact, a segment may contain multiple levels of responsibility or cost centers. For example, if veterans health care is defined as one of the DVA's responsibility segments, this segment may define its hospitals, clinics, and nursing homes as responsibility centers. Each hospital, clinic, and nursing home may further define their functional units, activities, or business processes as cost centers.

196. Some respondents correctly pointed out that requiring broad responsibility segments, rather than prescribing traditional cost centers, provides opportunity for entities to use activity-based costing or any other costing methods that they may find appropriate.

197. Several respondents who supported the use of responsibility segments interpreted the wording of the proposed standard as requiring that each segment perform managerial cost accounting. They pointed out that for some entities, it is more effective and economical to perform centralized managerial cost accounting. Such centralized accounting is capable of accumulating costs by segments and assigning costs among them. The respondents requested that the wording be revised to provide this flexibility.

198. The Board agrees with this request. The Board believes that entity management should have the discretion to decide whether managerial cost accounting is performed at the entity or segment level, so long as the segment cost information is provided to managers and other users. Thus, the standard recommended in this statement does not require that responsibility segments perform managerial cost accounting.

Full Cost

199. As stated in the ED, the full cost of an output produced by a responsibility segment is the sum of direct and indirect costs that contribute to the output, including the costs of supporting services provided by other segments and entities.

200. The outputs of a responsibility segment are considered as cost objects.[42] However, in most circumstances, the full costs of intermediate objects, such as activities, processes, projects, programs, or organization units, must also be measured in order to derive the full costs of their outputs. (See ED Par. 173) The full cost information related to outputs as well as those intermediate objects are useful in measuring efficiency and cost-effectiveness.

Usefulness of full cost information

201. **Program evaluation and authorization.** Most respondents supported the full cost standard. They recognized that it is particularly important to determine and report the full cost of a program. Information on full costs of programs can be used in program evaluations. Such evaluations typically relate the full costs of programs to their outputs and outcomes. Decision-makers in the Congress and the federal government at all levels as well as the public should be

[42] "Cost object" is defined as an activity, output, or item whose cost is to be measured. In a broad sense, a cost object can be an organizational division, a function, task, product, service, or a customer. See Glossary.

provided with information on the full costs of programs and their outputs. The full cost information, when used with information on program outputs and outcomes, can aid the Congress and federal executives in making decisions on program authorization and modifications.

202. **Cost awareness.** Most respondents also agreed that the standard has the advantage of promoting cost awareness. Entity and segment managers should be aware of the costs that are incurred or assigned to their operations. Without the awareness, managing and controlling costs are impossible. The full cost information has not been available and will not likely to be without an accounting standard requiring it.

203. **Setting fees and prices for government goods and services.** Many respondents agreed that full cost should be considered as a primary basis for setting fees and reimbursements for government goods and services. As pointed out in the ED, it is a federal policy that, with certain exceptions, user charges (prices or fees) should be sufficient to recover the full cost of goods, services, and resources provided by the federal government as sovereign.[43] The policy further states that when the government sells goods and services under business-like conditions rather than in a sovereign capacity, user charges should be based on market prices and may yield a net revenue in excess of the full cost. The objectives of the policy are to: (1) ensure that government goods and services are provided on a self-sustaining basis, (2) promote efficient allocation of national resources, and (3) allow fair competition with comparable goods and services provided by the private sector.

204. To implement the policy, full cost information is necessary. Only with reliable full cost information can management ensure that

[43] OMB Circular No. A-25, User Charges.

user charges fully recover the costs.[44] Even in some exceptional cases in which user charges are exempted or restricted by law, agencies that provide the goods and services would nevertheless need the full cost information to assess the extent to which costs are not recovered.

205. **Making cost comparisons.** Respondents agreed that the full cost of outputs provides a valid basis for cost comparisons. One of them emphasized the importance of calculating the unit cost of output on the full cost basis. The Board agrees with his view. If an output can be measured in units, its unit cost should be calculated on the full cost basis.

206. The unit cost of a service or product, calculated on a full cost basis, can be compared with a similar service or product produced by other entities either in the federal government or in the private sector. The comparison would not be valid if it is not conducted on a full cost basis.

207. One of the available cost management tools is trend analysis. In trend analysis, unit costs of a service or product over a number of consecutive periods are examined to find a trend of increases or decreases. This analysis can be valid only when the unit costs of all periods are measured on a consistent basis, such as the full cost basis. When the full cost basis is used, the analyst can further examine the components of the unit cost, such as direct labor and material costs, overhead costs, and costs of services received from other segments or entities. Through examining the various components of the full unit

[44] The standard of determining full cost discussed in this document, however, should not be construed as a standard for setting fees, prices, and reimbursements. Federal entities should comply with laws and regulations related to pricing policies in general and for specific types of goods and services. Those laws and regulations (including OMB Circular A-25) may prescribe costing requirements other than the full cost standard discussed in this document. Full cost defined by this standard can serve as a point of reference for managerial decisions. However, it is not intended to supersede any costing concept that management is required or permitted by law to use in pricing goods and services.

cost, program managers can pinpoint specific areas that contributed to cost increases or decreases.

208. If activity-based costing is used, the cost components would be associated with activities. The trend analysis for activity-based cost components can provide information related to the efficiency of the activities. Managers can also analyze the extent that the individual activities add value to program outputs and objectives.

Limitations of Full Cost Information

209. Several respondents cautioned the Board against "uncritical advocacy" of full costs. They pointed out that full cost is not relevant to all decision-making situations. They explained that some decisions require other cost concepts such as variable, differential, or incremental costs. Thus, some of them said that the Board should not singularly emphasize full cost.

210. The Board is aware of the notion that different cost concepts should be used for different purposes so that the use of a cost concept is relevant to a particular decision-making purpose. For this reason, the Board discussed the limitations and usefulness of full cost in the ED at length. (See ED pars 133 through 146.) Quoting from Anthony and Young, the ED pointed out that full costs are not appropriate for alternative choice decisions such as the decision to (1) add or drop a product or service, (2) perform work in-house or contract out for it, and (3) accept or reject a special request. For these decisions, the appropriate information is differential costs.[45]

211. However, the full cost standard is an accounting standard, rather than a cost analysis or decision-making standard. It requires

[45] Robert N. Anthony and David W. Young, Management Control in Nonprofit Organizations, 5th ed. (Burr Ridge, Illinois: Richard D. Irwin Co., 1994) page 235.

that full cost information be compiled and reported through cost accounting. In no way does it limit cost analysts and decision-makers to the use of full cost alone in all situations. The Board believes that when the full cost information, instead of any portion of it, is made available, analysts and decision-makers will have a comprehensive data source to develop the cost concepts that they need in their analyses.

212. Some respondents pointed out that full cost requires a complex process of cost assignments and allocations. The Board believes that the assignment of indirect costs is a necessary procedure to obtain full cost. It can be performed through an appropriate costing methodology. As discussed in the costing methodology section of the ED, some modern costing methodologies are available to make rational and reliable cost assignments. However, the Board must caution that the full cost information, like any other accounting information, can only be as good as how it is prepared. For example, it can be unreliable or inaccurate, if arbitrary or irrational cost allocations are used excessively. Thus, the Board recommended a costing methodology standard. Program managers should critically review costing methodologies and techniques used to derive the cost information.

Inclusion or Exclusion of Certain Costs

213. A number of respondents were opposed to the inclusion of accrued employee benefit costs and costs of services provided by other entities that are not reimbursed. (The subject of inter-entity costs will be discussed in the next section.) They argued that these costs are not funded with their budgetary resources and are beyond their control. A large portion of employee benefit costs, including accrued retirement benefit costs, are funded through appropriations to trust funds managed by OPM and DoD. The Board believes that as a principle, full cost should include the costs of all resources applied to a program, activity, and its outputs, regardless of funding sources. For financial

reporting, the Board has stated its position that the full costs of employee pension and other retirement benefits determined on an actuarial basis, including the amounts that are funded to the trust funds directly, should be recognized as an expense in the employer entity's financial reports.[46] The Board does not find a good rationale to depart from this principle in managerial costing.

214. The ED states that some costs should be recognized as a period expense rather than the costs of goods and services (output costs). Examples include the costs of "other post employment benefits" (OPEB), reorganization costs, and acquisition costs of Federal "mission" and "heritage" property, plant, and equipment which are recognized as expenses at the time of acquisition.[47] These costs will be recognized as expenses for the period in which the related events take place, and are referred to as "period expenses." The ED explained that since these expenses do not contribute to the outputs of the period in which they are incurred, they should not be included in the output costs.

215. The OPEB costs, for example, may be recognized as expenses for a period in which a reduction in force or an employee injury takes place.[48] It is not appropriate to attribute the entire OPEB costs to the output costs of that period. Several respondents expressed the view that OPEB costs should be included in full cost. There is no doubt that OPEB costs, as well as other period expenses, are part of the full cost of an entity or a program. They may also be part of the full costs of outputs over many years in which the employees

[46] FASAB Exposure Draft, Accounting for Liabilities of the Federal Government (Nov. 1994), pars. 80-99, pages 32-46.

[47] "Federal mission PP&E" and "heritage assets" are explained in FASAB Exposure Draft, Accounting for Property, Plant, and Equipment (February 28, 1995), pars. 98-115, pages 29-33.

[48] FASAB Exposure Draft, Accounting for Liabilities of the Federal Government (Nov. 7, 1994), pars. 100-102, pages 47-48.

contributed to the production of the outputs. However, they are not the production costs for the period during which they are incurred. Thus, the Board concluded that in cost studies, management may distribute some of the period expenses, such as OPEB costs, to outputs over a number of past periods if (a) experience shows that the OPEB costs are recurring in a regular pattern , and (b) a nexus can be established between the OPEB costs and the outputs produced in those past periods. The Board finds no reason to change this position.

216. Some respondents contended that full cost should include unused capacity costs. As will be explained in a later section on unused capacity costs, the Board has decided not to recommend a standard on measuring unused capacity costs. Thus, to assure valid cost comparisons, full costs should not exclude unused capacity costs.

Controllable and Uncontrollable Costs

217. Some respondents believed that the managers of a responsibility segment should be held accountable only for costs that they can control, and their performance should not be evaluated for costs beyond their control. They found that the full cost reporting would obscure the distinction between controllable and uncontrollable costs. For performance measurement or other purposes, some entities may want to make a distinction between controllable and uncontrollable costs with respect to an individual responsibility segment or a cost center. The full cost information need not interfere with this distinction. This standard does not require the use of full cost for internal reports. If some entities choose full cost for internal reporting, the internal reports can provide a distinction between controllable and uncontrollable costs with respect to individual segments.

218. Ultimately, most costs are controllable at a certain level of the entity. If some of them are not controllable at a lower level of the

organization, they may very well be controllable at a higher level. Each segment should concern itself with the costs that are assigned to it on a cause-and-effect basis. These costs are often incurred because of a segment's demand and use of services from other segments or entities. Although the service-receiving segment has no control over the efficiency in producing the service, it can influence the costs by changing the demand for the service. For an entity's top management, full cost reporting provides it with an overview of how the entity's various costs, including the general and administrative costs, are incurred and assigned to the entity's segments. The full cost reporting also makes the entity's top management aware of the costs of services that it receives from other entities. The management can closely review those costs and determine whether actions are needed to control them.

Centralized Accounting

219. The proposed standard in the ED states that "Responsibility segments should be capable of measuring the full costs of their outputs." Several respondents stated that the full costs of segments, programs, and their outputs can be more effectively measured by entities through centralized accounting, rather than by individual segments. They further stated that it would not be cost-beneficial for segments to measure and report the full costs of their activities and outputs on a regular basis (such as monthly basis). The Board agrees that many entities may find it more economical and effective to measure full costs through centralized accounting. Moreover, the Board believes that it should be for entity management to decide as to how frequently the full cost information should be made available in its internal reports. Thus, the wording of the standard has been changed. The full cost requirement is now limited to external reporting via general purpose financial reports.

Costs of Outcomes

220. A respondent suggested that in addition to the full cost of outputs, the standard should also require reporting the full cost of program outcomes. As discussed in the ED, the Board believes that performance measurement of a program requires three major elements: the full cost of the program, its outputs, and its outcomes. (See ED pars 37 and 38) The full cost of a program and its outputs, once measured according to this standard can be related to the outcome of the program to measure its cost effectiveness.

221. This standard does not require a direct measurement of the cost of outcomes because in most instances, program outcomes need to be measured with methodologies beyond those discussed in this document. GPRA defined "outcome measure" as an "assessment of the results of a program activity compared to its intended purpose."[49] Many programs' policy objectives and intended results are socio-economic or scientific in nature, or involve national defense. The assessment of the program results require expert knowledge in those areas. Thus, unlike costs and outputs, outcomes are not always measured in quantitative or monetary terms.

222. Moreover, unlike costs and outputs that are measured for each accounting and reporting period, such as a quarter or a year, outcome measurement may be long-term in nature. For example, the Senate Report on GPRA states that "Outcome measurement cannot be done until a program or project reaches a point of maturity (usually at least several years of full operation for programs continuing indefinitely) or at completion." Although all programs cost money, some of them may produce positive results, while others may produce no results or negative results.

[49] The Government Performance and Results Act of 1993, PL 103-62, sec 4.

223. Because of the complexities in measuring outcomes, the costing principles and methodologies discussed in this document cannot be used to measure the cost of outcomes. The Board believes that the full cost of a program and its outcome should be measured independently, using methodologies appropriate to costs and to outcomes. Once each of them is measured, they can then be related to review the cost-effectiveness of the program.

Inter-Entity Costs

224. It is not unusual in the federal government for one agency to provide goods or services to another agency. Sometimes this may be required by law, and often it is a very efficient method of conducting business for the agencies involved and for the government as a whole. In many cases, the agency receiving such goods or services will reimburse the providing agency in accordance with some agreed-upon price. Often, however, there is no charge, or there is a charge that is not sufficient to cover the providing agency's full cost. When such "free" or lower-than-cost items are used in the production of the receiving agency's outputs, the result can be an understatement of the full cost of final outputs by the receiving agency.

Survey of Non-Reimbursed Costs

225. The Board recognized that these non-reimbursed or under-reimbursed goods and services could distort the determination of a reporting entity's full cost of outputs, but it was uncertain of the extent to which this occurs. To identify examples of non-reimbursed inter-entity costs, the Board conducted a limited survey of federal agencies. Of the 22 agencies responding to the survey request, 13 indicated that they provide some type of service or good that is not reimbursed. These covered a wide range of activities, but most of the costs involved were for salaries and salary-related benefits of those employees performing the work. In most cases, the costs were funded through

direct appropriations to the providing agencies; however, those agencies could not specifically identify the total amounts involved. Several provided estimates, which ranged from $360 thousand dollars per year to about $180 million per year. Several examples of non-reimbursed inter-entity activities identified in the survey are listed below by providing entity:

- Department of Agriculture -- Provides market data, pesticide data, food specification information, water supply forecasts, and other agricultural information. Thirty-six federal agencies regularly receive all or some of this information.

- Department of Commerce -- Provides accounting and grant administration services, computer access and reports, and consultation services to several agencies.

- Department of State -- Provides space and facilities for other agencies in its buildings in the U.S. and overseas.

- General Services Administration -- In some cases, it provides policy and regulatory development services, property management services, and contract award and administration to other agencies without reimbursement.

- National Science Foundation -- Administers a research grant program on engineering and computer science for the Department of Defense.

226. The Board noted that the survey was restricted to non-reimbursed costs between different agencies. As such, the results did not necessarily represent all of the kinds and amounts of transactions and costs between different reporting entities. The survey was also limited to those non-reimbursed costs which the agencies could easily identify in order to respond quickly to the questionnaire.

Nevertheless, there were indications that some non-reimbursed costs may be significant in amount.

Usefulness of Recognition

227. Some respondents to the exposure draft stated that recognition of inter-entity[50] costs would have limited usefulness for managers since they cannot control the cost of items provided by other agencies. In some circumstances, they cannot control the amounts of inter-entity goods or services that must be used in the production of their outputs.

228. The Board realizes that recognition of non-reimbursed or under-reimbursed inter-entity costs will not always have the same degree of usefulness for all levels of management. However, as stated in the standard on full costs, to fully account for the costs of the goods and services they produce, reporting entities will need to include the cost of goods and services received from other entities. Cost reduction and control, performance evaluation, and process improvement depend on knowledge of the full costs of producing outputs, including production costs incurred by other federal entities. These costs are most important for use by the entity's top-level management (and to a lesser degree by line managers) in controlling and assessing the operating environment and in making decisions about how best to acquire those goods and services. Knowledge of full cost, including the extent of inter-entity costs, is also important to external users, especially the Congress and taxpayers, in making decisions concerning various programs and allocating resources throughout the government.

[50] Full cost, as discussed in the full cost standard, contemplates both intra-entity costs and inter-entity costs applicable to a responsibility segment. This standard elaborates on inter-entity costs. Intra-entity costing is accomplished through the costing methodology selected for use within the reporting entity since these costs are passed among responsibility segments.

229. In addition, the Board believes that, without the recognition of non-reimbursed and under-reimbursed inter-entity costs, the receiving entity has little incentive to control the use of these resources. While they may appear to be "free" to the receiving entity, the costs are absorbed somewhere in the government. If the receiving entity were charged for these costs, top-level management would then have more incentive to economize and control the use of these resources as well as make better decisions concerning how and where to acquire them. This would help reduce overall costs to the taxpayer and provide the other benefits associated with full-costing by responsibility segment.

230. The recognition of all inter-entity costs is also important when an entity produces goods or services that are sold outside of the federal government. For the entity to recover the government's full cost on the sale, knowledge of the total cost, including costs incurred by other federal entities, is vital to the establishment of an appropriate price.

The Use of Estimates

231. The standard places the responsibility on the providing entity to supply the receiving entity with information on the full costs of non-reimbursed or under-reimbursed inter-entity goods and services. This is appropriate since only the providing entity is likely to have such information. Implementation of the standard on full costing should make this requirement fairly easy for the providing entity to fulfill. If, for some reason, the providing entity cannot or does not supply the cost information, the receiving entity has no way to recognize the costs other than through estimation.

232. The Board anticipated this possibility, and requires the receiving entity to use an estimate of the cost of those goods and services if the actual cost information is not provided. The estimate must be reasonable and should be aimed at determining realistic costs

incurred by the providing entity. However, if such a cost estimate cannot be made, the receiving entity may base the estimate on the market value of the goods or services.

233. Some respondents to the exposure draft stated that the use of estimates would be too problematic and unreliable and that the receiving entity would not have enough information to make the estimate. Some were concerned that the use of estimates would cause arguments between reporting entities over the cost. Others were concerned that some entities do not have experienced personnel to make such estimates. A few were concerned about the audit implications of using an estimate.

234. Some respondents expressed concern over the possible use of market values in making the estimate. Some of these respondents stated that government-type goods and services are not often produced outside government and, therefore, such market values may not exist. Others stated that market value does not always bear a direct relationship to true cost or that market values change too rapidly to be of any use.

235. The Board realizes the problems associated with the use of estimates. However, implementation of the other managerial cost accounting standards in this statement by the providing entities should considerably lessen the need for receiving entities to make estimates of inter-entity costs. The Board also believes that, if the inter-entity costs meet the recognition criteria established by the standard, and cost information is not received, then use of a reasonable estimate of cost is preferable to no recognition at all.

236. Estimates are often used in accounting and financial reporting. The recognition of cost based on estimation is not new and can be reliable so long as the estimate is reasonable and based on a rational and systematic method. The Board also realizes that the use of

estimation necessarily implies the use of professional judgement. This does not negate the value of the estimate to users of the financial information and should not present a problem in relation to audit requirements.

237. The Board realizes that market values may not always be available for many kinds of inter-entity goods and services. Nevertheless, if such values are available, they can be a good basis for estimating cost if no other basis can be established. Although market values may not be directly related to costs of production and they may fluctuate, they may also be viewed as a fairly reliable guide to the costs an entity might have to incur to obtain inter-entity goods and services from a non-governmental source. As with the determination of all estimates, use of market values as an estimation basis requires the use of judgement and professional care.

238. The Board also realizes that there may be some implementation problems such as disagreements with providing entities over an estimated cost or with the lack of trained personnel to make estimates. These problems are of a practical nature and can be resolved by management. In that regard, they are not unlike other problems faced when implementing any new or changed accounting standard such as making changes to systems and methods and training personnel on the new requirements. Both providing and receiving entities should work closely with each other to resolve any costing problems just as they would to solve any non-accounting related situations.

Recognition Criteria

239. It is clear to the Board that the recognition of each and every non-reimbursed or under-reimbursed inter-entity cost is not possible. The federal government is a very large and complex entity and it is normal to expect some flow of goods and services between its activities

as a natural and reasonable method of completing missions and objectives. The Board decided that only certain non-reimbursed or under-reimbursed inter-entity costs should be addressed. The standard, therefore, includes criteria for recognition which will limit the application of the standard to only those items deemed most significant and important.

240. The criteria address the materiality of the non-reimbursed inter-entity cost, whether it is a part of broad and general support for all entities, and whether it is needed to help determine a price to non-governmental entities. The materiality criterion considers materiality in the context of the importance of the item to the receiving entity. Under this criterion, whether an item of inter-entity cost is recognized depends upon three points. The first of these is significance to the receiving entity, i.e. whether the item is important enough that management should be aware of its cost in decision making circumstances. The second is the degree to which the goods or services are an integral and necessary part of the receiving entity's output. The third is the degree to which the good or service can be matched to the specific receiving entity with reasonable precision.

241. The criterion of broad and general support recognizes that some entities provide support to all or most other federal entities, generally as a matter of their mission. The costs of broad and general services should not be recognized by the receiving entity when no reimbursement has been made. However, if the service is an integral and necessary part of the receiving entity's operations and outputs, those costs should be recognized.

242. The criteria also recognize that there are certain cases in which inter-entity costs need to be recognized because there could be an effect upon a resulting price to a non-governmental entity. If a federal entity sells outputs to a non-federal entity, it is usually required to recover the full cost of those goods or services. While cost is not the

sole determinant of final price, knowledge of the actual full cost of production to the government as a whole is necessary to ensure that the price is appropriately established at a level that will recover all costs.

243. Most of the respondents to the exposure draft agreed with the recognition criteria. However, a few were concerned about how the criteria might be interpreted and whether the standards were too general in nature. The Board realizes that considerable judgement is required to apply these criteria and notes that the specific facts and circumstances in each case must be considered. This concern, along with other implementation concerns, led the Board to make certain decisions about implementation discussed below under "Implementation Issues."

Consolidation

244. The standard requires that, when non-reimbursed or under-reimbursed inter-entity costs are recognized, the receiving entity should recognize the full costs of the goods or services received as an expense (or asset) and, to the extent that reimbursement is less than full cost, the difference is to be recognized as a financing source. At the same time, of course, the providing entity would continue to recognize the full costs of goods and services provided, and any off-setting reimbursements, in its accounting records. Several respondents to the exposure draft were concerned about the possibility of "double-counting" of costs and others raised concerns about the ability to eliminate these transactions in consolidations.

245. Both the providing entity and the receiving entity are separate reporting entities. Each should recognize in its accounting records and financial reports the true costs of operations and any revenues received. The providing entity incurs a cost in providing the goods or services even though they are sent to another entity. It may also

receive a partial payment or reimbursement. These transactions and events should be reflected in its accounting. The receiving entity, as a separate reporting entity, should also recognize its total cost of production. The full cost of non-reimbursed or under-reimbursed goods or services ultimately contributing to its outputs should be reflected in the costs of production. To the extent that reimbursement is not made for those costs, the receiving entity is utilizing a separate source of financing, namely the providing entity. Again, this fact is reflected in the accounting. The result is that costs recognized but not actually paid are off-set by the imputed financing source. While the entity's financial position is not affected, the real costs of production are reflected.

246. The only possibility for "double-counting" of costs occurs when consolidated financial reports are prepared for a reporting entity that includes both the providing entity and the receiving entity. In preparing such statements, the standard calls for elimination of the inter-entity transactions. In effect, this is no different from the elimination of transactions for which full reimbursement has been made. The only additional transaction to be eliminated is the recognition of the imputed financing source by the receiving entity. The recognition of costs by both the providing entity and the receiving entity and any actual reimbursements would be eliminated anyway if payment for the inter-entity costs were made.

247. The Board realizes that identification and tracking of transactions that must be eliminated for consolidated reports can become complex and difficult. However, this is a practical implementation problem that management should be able to overcome through the use of transaction coding or some other identification method. It likely will require changes in methods and systems currently in use and may require additional training of personnel. The Board has decided upon a method to ease implementation problems as discussed below.

Implementation Issues

248. As discussed above, the Board realizes that there may be problems in implementing the standard on inter-entity costing. Recognition of non-reimbursed or under-reimbursed inter-entity costs is a new concept to federal entities and involves a new way of thinking about costs. There is concern that application of the standard may be inconsistent among federal entities. In addition, there could be problems, particularly at first, in developing estimates of costs; in revising accounting systems and procedures to accommodate these requirements; and in training personnel to accomplish the task. Furthermore, the Board recognizes the concern that some have about the elimination of inter-entity cost transactions for consolidated reporting since the accounting procedures may be complicated.

249. As a result of these problems and concerns, the Board has expressed the need to take a measured, step-by-step, practical approach to implementation of this standard. Therefore, the Board has decided that, in implementing the standard, it recommends that OMB, with assistance from the FASAB staff, should identify the specific inter-entity costs for entities to begin recognizing and OMB should then issue guidance identifying those costs. OMB should consider the requirements of the standard including the recognition criteria in developing the guidance and it should also consider suggestions and information provided by Treasury, GAO, and other agencies. The Board anticipates the largest and most important inter-entity costs will be identified first, followed by others as entities gain experience in the application of the standard. This approach is seen as a practical way to ensure uniformity in the application and implementation of the standard and to provide time and experience in overcoming any other practical problems which may arise. Also, the Board may recommend specific inter-entity costs for recognition in possible future recommended standards.

Costing Methodology

250. The ED discussed cost accumulation and assignment principles. The ED states that costs should be accumulated by responsibility segments, and the accumulated costs should be classified by type of resource such as costs of employees, material, capital, utilities, rent, etc. The ED states that "The accumulation of costs by responsibility segments does not mean that each responsibility segment must have its own accounting system. The reporting entity may have a centralized accounting system, but the system should be capable of identifying costs with responsibility segments." (See ED par. 170)

251. The ED discussed three cost assignment principles: (a) directly tracing costs wherever feasible and economically practical, (b) assigning costs on a cause-and-effect basis, or (c) allocating costs on a reasonable and consistent basis. These principles apply to costs of services provided by a segment to other segments, as well as assigning costs to ultimate outputs of a segment.

252. The ED then provided brief descriptions of available costing methodologies: activity-base costing (ABC), job order costing, process costing, and standard costing. The ED pointed out that these costing methodologies are not mutually exclusive. For example, standard costing can be used within ABC. ABC and standard costing combined can then be used with either job order costing or process costing.

253. Most respondents believed that the requirement for cost accumulation by responsibility segment is appropriate. Some of them stated that costs are accumulated at levels lower than segments such as cost centers, processes, or activities within a segment. Such accumulation is consistent with the standard so long as the costs will be aggregated at the segment level. Some of the respondents stated that the requirement is currently feasible because their systems are designed to accumulate expenses by segments and by resource types.

Others, however, stated that they must upgrade their general accounting systems in order to meet the standard requirement.

254. All the respondents agreed with the cost assignment principles. One respondent, while supporting the principles, stated that the principles should be explicitly ranked by preference. The Board intended to express an preference among the principles. It stated in the proposed standard that direct cost tracing should be used "wherever it is feasible and economically practical." The Board further stated in the ED that "for the costs that are not directly traced to outputs, it is preferable that they be assigned to them on a cause-and-effect basis." (See ED par. 182) However, for cost-benefit considerations, assigning costs by allocations cannot be avoided. The Board emphasized that cost allocations should be performed on a rational basis. It also cautioned that allocations can be arbitrary and thus may result in distortions. (See ED par. 190) To make the intent of preference more explicit, the Board has added words to the standard to indicate that the principles are listed by preference.

255. All the respondents approved the descriptions of available costing methodologies. Some of them stated that the materials included are clear and provide adequate guidance. The respondents agreed with the Board's position that because federal activities are highly diverse, it is not practical to require a particular costing method for a particular type of activity at this time. However, it is appropriate to require that each entity select a costing methodology that is best suited to its operations and use that methodology consistently.

256. The Board encouraged government entities to study the potential use of ABC in their operations (ED par. 200). This was well received by the respondents. Eighteen respondents supported ABC. Most of them said that ABC can be effective when combined with any of the other costing methodologies. Seven respondents from federal agencies stated that they believed ABC is appropriate for their

activities and were considering using it. In addition, two respondents stated that the use of standard costing should also be encouraged. The Board continues to believe that as federal agencies are going through stages in the development of their managerial costing, more sophisticated and refined costing methods, such as ABC and standard costing, should be considered and used to minimize arbitrary cost allocations and to improve full cost information.

257. The Board considered whether the costing methodology section should be recommended as a concept or a standard. It concluded that it should be a standard. The Board believes that cost accumulation and assignment principles contained in this section are definitive and should be followed by federal entities. Only by adhering to the principles and by continuous refinement of costing methodologies, can reliable full cost information be achieved.

Unused Capacity Costs

258. The ED proposed a standard, which, if adopted, would have required that entities measure the cost of unused operating capacity and report it as a separate expense. For this purpose, some entities, such as DoD, must separate operating capacity from "readiness capacities" which are reserved for war and emergency mobilization rather than normal operations. The operating capacity can be measured in terms of "practical capacity" which is the maximum units of output that the available capacity can produce taking the normal stoppage and interruptions into consideration. Unused capacity is the excess of practical capacity over actual outputs.

259. A number of respondents appreciated the importance of the proposed requirement. They stated that capacity cost information would be very useful in improving the cost and capacity management of federal agencies. Several respondents from the private sector urged that the proposal be adopted immediately.

260. Most respondents from federal agencies, however, stated that capacity measurements involve very complex issues and are not feasible to implement at this time. If the proposed requirement were adopted, agencies would encounter two major types of difficulties. First, they lack guidance on defining and measuring various types of capacity. For example, respondents from DoD stated that it is difficult to develop criteria that can be used to differentiate defense operating capacity costs from mobilization capacity costs. Civilian agencies engaging in administrative, policy making, and regulatory activities also indicated difficulties in defining their practical capacities. Second, respondents of many agencies stated that they do not have the accounting capability to provide reliable capacity measures. Without such capability, unused capacity costs could be improperly estimated and the resulting information could be misleading.

261. Many respondents were also opposed to the proposed standard on the basis of cost-benefit considerations. They estimated that accounting for capacity costs would require substantial time and efforts to implement. This would require the use of their limited accounting personnel and equipment. Respondents from some agencies do not perceive that they have an over-capacity problem. Thus, it is very uncertain whether capacity accounting results, if produced, could be used to improve their operations.

262. After considering the responses to the ED, the Board is convinced that it is premature to recommend capacity accounting either as a standard or as a concept. The Board is aware that federal agencies have limited personnel and other resources for accounting. They must devote those limited resources to improving general financial reporting and to establishing the more fundamental elements of managerial cost accounting. Thus, it would not be cost beneficial to implement capacity costing at this time.

263. Managing capacity costs is a part of cost management. Although this document does not recommend a standard for measuring capacity costs, the full cost information required by the full cost standard will help management in identifying capacity utilization problems. Some respondents stated that the capacity accounting concepts would be useful to capital intensive, industrial-type activities and activities that deliver repetitive services that are measurable in units. The Board is aware that there are on-going research efforts on the subject in the private accounting communities. Thus, the Board may reconsider capacity accounting in the future.

Effective Date

264. The Board holds the view that managerial cost accounting has been needed across the federal government for a long time. Since the standards are quite general and address only the highest levels of cost accounting, the Board felt that they should be implemented quickly. The earlier managerial cost accounting is started, the earlier the benefits will be seen in managing and controlling federal programs and activities. The Board also believes that an effective date far into the future would not serve to quickly change the government's tendency to neglect cost accounting. Therefore, in the exposure draft, the effective date was set for fiscal periods beginning after September 30, 1995 (i.e., beginning in fiscal year 1996).

265. A majority of respondents to the exposure draft commented that this date was too early and said that they foresee problems with implementation at September 30, 1995. Many reasons were given for a delay in implementation. Chief among these were (1) difficulty in obtaining funding to make necessary changes in financial systems before September 30, 1995, (2) a lack of trained accounting personnel and equipment, and (3) a need for time to develop or modify appropriate cost accounting methodologies and systems and develop management awareness and support. Respondents suggested

implementation dates ranging from one to five years after the fiscal year 1996 date given in the exposure draft.

266. The Board recognized the validity of the concerns of many respondents over funding, training, and development of costing activities. However, it also recognized that federal agencies must be able to develop cost information very soon to meet the requirements of the GPRA. It also noted that reporting entities do not have to possess sophisticated cost accounting systems to meet the requirements in these standards. Federal agencies can take a gradual approach to the development of cost systems, if necessary, while developing basic cost information through other means in the short term.

267. Nevertheless, the Board agreed that the implementation date in the exposure draft may be a problem for many federal agencies since cost accounting is relatively new to most of them and the recommended implementation date is very near. The Board decided, therefore, to delay the implementation date by one additional year and make the standards effective for periods beginning after September 30, 1996, with earlier implementation encouraged.

Glossary

268. Early on in the development of the managerial cost accounting project, the task force determined that many problems can result in cost accounting from the use of similar terms to mean different things. It concluded that the use of consistent cost accounting terminology is necessary to avoid confusion and mis-communication. Therefore, it recommended that the Board attach a glossary to the exposure draft which would define many of the cost accounting terms used.

269. The Board agreed with this recommendation. It also decided that the establishment of uniform cost accounting terminology within the federal government is so important that the glossary should contain

not only definitions for terms used in the statement, but also definitions for other important cost accounting terms even if those terms are not used directly in the text of the statement. This glossary would serve as the beginning of a uniform and consistent cost accounting terminology for use within the federal government.

270. Comments were received from only one respondent to the exposure draft concerning the glossary. That respondent did not suggest changing any of the definitions provided in the glossary, but only suggested some additions. The Board decided that the glossary is sufficient for the time being and should be retained in the final statement as an appendix. However, it also decided that it may issue additions to the glossary at a later date as more federal agencies gain experience in the development of cost information, and as the need for additional standard definitions becomes apparent.

Glossary

Activity - The actual work task or step performed in producing and delivering products and services. An aggregation of actions performed within an organization that is useful for purposes of activity-based costing.

Activity Analysis - The identification and description of activities in an organization. Activity analysis involves determining what activities are done within a department, how many people perform the activities, how much time they spend performing the activities, what resources are required to perform the activities, what operational data best reflect the performance of the activities, and what customer value the activity has for the organization. Activity analysis is accomplished with interviews, questionnaires, observation, and review of physical records of work. It is the foundation for agency process value analysis, which is key to overall review of program delivery.

Activity-Based Costing - A cost accounting method that measures the cost and performance of process related activities and cost objects. It assigns cost to cost objects, such as products or customers, based on their use of activities. It recognizes the causal relationship of cost drivers to activities.

Actual Cost - An amount determined on the basis of cost incurred including standard cost properly adjusted for applicable variance.

Avoidable Cost - A cost associated with an activity that would not be incurred if the activity were not performed.

Common Cost - The cost of resources employed jointly in the production of two or more outputs and the cost cannot be directly traced to any one of those outputs.

Common Data Source - All of the financial and programmatic information available for the budgetary, cost, and financial accounting processes. It includes all financial and much non-financial

data, such as environmental data, that are necessary for budgeting and financial reporting as well as evaluation and decision information developed as a result of prior reporting and feedback.

Controllable Cost - A cost that can be influenced by the action of the responsible manager. The term always refers to a specified manager since all costs are controllable by someone.

Cost - The monetary value of resources used or sacrificed or liabilities incurred to achieve an objective, such as to acquire or produce a good or to perform an activity or service.

Cost Accounting Practice - Any disclosed or established accounting method or technique which is used for measurement of cost, assignment of cost to accounting periods, and assignment of cost to cost objects.

Cost Allocation - A method of assigning costs to activities, outputs, or other cost objects. The allocation base used to assign a cost to objects is not necessarily the cause of the cost. For example, assigning the cost of power to machine activities by machine hours is an allocation because machine hours are an indirect measure of power consumption.

Cost Assignment - A process that identifies costs with activities, outputs, or other cost objects. In a broad sense, costs can be assigned to processes, activities, organizational divisions, products, and services. There are three methods of cost assignment: (a) directly tracing costs wherever economically feasible, (b) cause-and-effect, and (c) allocating costs on a reasonable and consistent basis.

Cost Driver - Any factor that causes a change in the cost of an activity or output. For example, the quality of parts received by an activity, or the degree of complexity of tax returns to be reviewed by the IRS.

Cost Finding - Cost finding techniques produce cost data by analytical or sampling methods. Cost finding techniques are appropriate for certain kinds of costs, such as indirect costs, items with costs below set thresholds within programs, or for some programs in their entirety. Cost finding techniques support the overall managerial cost accounting process and can represent non-recurring analysis of specific costs.

APPENDIX B: Glossary

Cost Object (also referred to as Cost Objective) - An activity, output, or item whose cost is to be measured. In a broad sense, a cost object can be an organizational division, a function, task, product, service, or a customer.

Differential Cost - The cost difference expected if one course of action is adopted instead of others.

Direct Cost - The cost of resources directly consumed by an activity. Direct costs are assigned to activities by direct tracing of units of resources consumed by individual activities. A cost that is specifically identified with a single cost object.

Estimated Cost - The process of projecting a future result in terms of cost, based on information available at the time. Estimated costs, rather than actual costs, are sometimes the basis for credits to work-in-process accounts and debits to finished goods inventory.

Expense - Outflow or other using up of resources or incurring liabilities (or a combination of both), the benefits from which apply to an entity's operations for the current accounting period, but do not extend to future periods.

Fixed Cost - A cost that does not vary in the short term with the volume of activity. Fixed cost information is useful for cost savings by adjusting existing capacity, or by eliminating idle facilities. Also called Non-Variable Cost or Constant Cost.

Full-Absorption Costing - A method of costing that assigns (absorbs) all labor, material, and service/manufacturing facilities and support costs to products or other cost objects. The costs assigned include those that do and do not vary with the level of activity performed.

Full Cost - The sum of all costs required by a cost object including the costs of activities performed by other entities regardless of funding sources.

Incremental Cost - The increase or decrease in total costs that would result from a decision to increase or decrease output level, to add a service or task, or to change any portion of operations. This information helps in making decisions such as to contract work out, undertake a project, or increase, decrease, modify, or eliminate an activity or product.

Indirect Cost - A cost that cannot be identified specifically with or traced to a given cost object in an economically feasible way.

Inter-Entity - A term meaning between or among different federal reporting entities. It commonly refers to activities or costs between two or more agencies, departments, or bureaus.

Job Order Costing - A method of cost accounting that accumulates costs for individual jobs or lots. A job may be a service or manufactured item, such as the repair of equipment or the treatment of a patient in a hospital.

Managerial Cost Accounting System - The organization and procedures, whether automated or not, and whether part of the general ledger or stand-alone, that accumulates and reports consistent and reliable cost information and performance data from various agency feeder systems. The accumulated and reported data enable management and other interested parties to measure and make decisions about the agency's/segment's ability to improve operations, safeguard assets, control its resources, and determine if mission objectives are being met.

Opportunity Cost - The value of the alternatives foregone by adopting a particular strategy or employing resources in a specific manner. Also called Alternative Cost or Economic Cost.

Outcome - The results of a program activity compared to its intended purposes. Program results may be evaluated in terms of service or product quantity and quality, customer satisfaction, and effectiveness.

Outputs - Any product or service generated from the consumption of resources. It can include information or paper work generated by the completion of the tasks of an activity.

Performance Measurement - A means of evaluating efficiency, effectiveness, and results. A balanced performance measurement scorecard includes financial and nonfinancial measures focusing on quality, cycle time, and cost. Performance measurement should include program accomplishments in terms of outputs (quantity of products or services provided, e.g., how many items efficiently produced?) and outcomes (results of providing outputs, e.g., are outputs effectively meeting intended agency mission objectives?). See Statement of Federal Financial Accounting Concepts No. 1, Objectives of Federal Financial Reporting, page 65.

APPENDIX B: Glossary

Process - The organized method of converting inputs (people, equipment, methods, materials, and environment), to outputs (products or services). The natural aggregation of work activities and tasks performed for program delivery.

Process Costing - A method of cost accounting that first collects costs by processes and then allocates the total costs of each process equally to each unit of output flowing through it during an accounting period.

Process Value Analysis - Tools and techniques for studying processes through customer value analysis. Its objective is to identify opportunities for lasting improvement in the performance of an organization. It provides an in-depth review of work activities and tasks, through activity analysis, which aggregate to form processes for agency program delivery. In addition to activity-based costing, quality and cycle time factors are studied for a complete analysis of performance measurement. Each activity within the process is analyzed, including whether or not the activity adds value for the customer.

Product - Any discrete, traceable, or measurable good or service provided to a customer. Often goods are referred to as tangible products, and services are referred to as intangible products. A good or service is the product of a process resulting from the consumption of resources.

Responsibility Center - An organizational unit headed by a manager or a group of managers who are responsible for its activities. Responsibility centers can be measured as revenue centers (accountable for revenue/sales only), cost centers (accountable for costs/expenses only), profit centers (accountable for revenues and costs), or investment centers (accountable for investments, revenues, and costs).

Responsibility Segment - A significant organizational, operational, functional, or process component which has the following characteristics: (a) its manager reports to the entity's top management; (b) it is responsible for carrying out a mission, performing a line of activities or services, or producing one or a group of products; and (c) for financial reporting and cost management purposes, its resources and results of operations can be clearly distinguished, physically and operationally, from those of other segments of the entity.

Service - An intangible product or task rendered directly to a customer.

Standard Costing - A costing method that attaches costs to cost objects based on reasonable estimates or cost studies and by means of budgeted rates rather than according to actual costs incurred. The anticipated cost of producing a unit of output. A predetermined cost to be assigned to products produced. Standard cost implies a norm, or what costs should be. Standard costing may be based on either absorption or direct costing principles, and may apply either to all or some cost elements.

Support Costs - Costs of activities not directly associated with production. Typical examples are the costs of automation support, communications, postage, process engineering, and purchasing.

Traceability - The ability to assign a cost directly to a specific activity or cost object by identifying or observing specific resources consumed by the activity or cost object.

Uncontrollable Cost - The cost over which a responsible manager has no influence.

Unit Cost - The cost of a selected unit of a good or service. Examples include dollar cost per ton, machine hour, labor hour, or department hour.

Value-Added Activity - An activity that is judged to contribute to customer value or satisfy an organizational need. The attribute "value-added" reflects a belief that the activity cannot be eliminated without reducing the quantity, responsiveness, or quality of output required by a customer or organization. Value-added activities should physically change the product or service in a manner that meets customer expectations.

Variable Cost - A cost that varies with changes in the level of an activity, when other factors are held constant. The cost of material handling to an activity, for example, varies according to the number of material deliveries and pickups to and from that activity.

Variance - The amount, rate, extent, or degree of change, or the divergence from a desired characteristic or state.

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FUNDS APPROPRIATED TO THE PRESIDENT

FEDERAL DRUG CONTROL PROGRAMS

SPECIAL FORFEITURE FUND

(INCLUDING TRANSFER OF FUNDS)

For activities authorized by Public Law 100–690, as amended, $112,900,000, of which $42,000,000 shall be transferred to the United States Customs Service for the conversion of one P–3AEW aircraft for the air interdiction program; of which $10,000,000 shall be available for transfer to other Federal agencies for methamphetamine reduction efforts; and of which $60,900,000 shall be available to the Director of the Office of National Drug Control Policy for enhancing other drug control activities, including transfer to other Federal agencies: *Provided*, That of the amount provided, $112,900,000 is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended to become available only upon receipt by the Congress of a supplemental request from the President requesting such designation.

Federal Financial Management Improvement Act of 1996.
31 USC 3512 note.

TITLE VIII—FEDERAL FINANCIAL MANAGEMENT IMPROVEMENT

SEC. 801. SHORT TITLE

This title may be cited as the "Federal Financial Management Improvement Act of 1996."

31 USC 3512 note.

SEC. 802. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) Much effort has been devoted to strengthening Federal internal accounting controls in the past. Although progress has been made in recent years, Federal accounting standards have not been uniformly implemented in financial management systems for agencies.

(2) Federal financial management continues to be seriously deficient, and Federal financial management and fiscal practices have failed to—

(A) identify costs fully;

(B) reflect the total liabilities of congressional actions; and

(C) accurately report the financial condition of the Federal Government.

(3) Current Federal accounting practices do not accurately report financial results of the Federal Government or the full costs of programs and activities. The continued use of these practices undermines the Government's ability to provide credible and reliable financial data and encourages already widespread Government waste, and will not assist in achieving a balanced budget.

(4) Waste and inefficiency in the Federal Government undermine the confidence of the American people in the government and reduce the federal Government's ability to address vital public needs adequately.

(5) To rebuild the accountability and credibility of the Federal Government, and restore public confidence in the Federal

Government, agencies must incorporate accounting standards and reporting objectives established for the Federal Government into their financial management systems so that all the assets and liabilities, revenues, and expenditures or expenses, and the full costs of programs and activities of the Federal Government can be consistently and accurately recorded, monitored, and uniformly reported throughout the Federal Government.

(6) Since its establishment in October 1990, the Federal Accounting Standards Advisory Board (hereinafter referred to as the "FASAB") has made substantial progress toward developing and recommending a comprehensive set of accounting concepts and standards for the Federal Government. When the accounting concepts and standards developed by FASAB are incorporated into Federal financial management systems, agencies will be able to provide cost and financial information that will assist the Congress and financial managers to evaluate the cost and performance of Federal programs and activities, and will therefore provide important information that has been lacking, but is needed for improved decision making by financial managers and the Congress.

(7) The development of financial management systems with the capacity to support these standards and concepts will, over the long term, improve Federal financial management.

(b) PURPOSE—The purposes of this Act are to—

(1) provide for consistency of accounting by an agency from one fiscal year to the next, and uniform accounting standards throughout the Federal Government;

(2) require Federal financial management systems to support full disclosure of Federal financial data, including the full costs of Federal programs and activities, to the citizens, the Congress, the President, and agency management, so that programs and activities can be considered based on their full costs and merits;

(3) increase the accountability and credibility of federal financial management;

(4) improve performance, productivity and efficiency of Federal Government financial management;

(5) establish financial management systems to support controlling the cost of Federal Government;

(6) build upon and complement the Chief Financial Officers Act of 1990 (Public Law 101–576; 104 Stat 2838), the Government Performance and Results Act of 1993 (Public Law 103–62 107 Stat. 285) and the Government Management Reform Act of 1994 (Public Law 103–356; 108 Stat. 3410); and

(7) increase the capability of agencies to monitor execution of the budget by more readily permitting reports that compare spending of resources to results of activities.

SEC. 803. IMPLEMENTATION OF FEDERAL FINANCIAL MANAGEMENT IMPROVEMENTS.

31 USC 3512 note.

(a) IN GENERAL.—Each agency shall implement and maintain financial management systems that comply substantially with Federal financial management systems requirements, applicable Federal accounting standards, and the United States Government Standard General Ledger at the transaction level.

(b) AUDIT COMPLIANCE FINDING.—

(1) IN GENERAL.—Each audit required by section 3521(e) of title 31, United States Code, shall report whether the agency financial management systems comply with the requirements of subsection (a).

(2) CONTENT OF REPORTS.—When the person performing the audit required by section 3521(e) of title 31, United States Code, reports that the agency financial management systems do not comply with the requirements of subsection (a), the person performing the audit shall include in the report on the audit—

(A) the entity or organization responsible for the financial management systems that have been found not to comply with the requirements of subsection (a);

(B) all facts pertaining to the failure to comply with the requirements of subsection (a), including—

(i) the nature and extent of the noncompliance including areas in which there is substantial but not full compliance;

(ii) the primary reason or cause of the noncompliance;

(iii) the entity or organization responsible for the non-compliance; and

(iv) any relevant comments from any responsible officer or employee; and

(C) a statement with respect to the recommended remedial actions and the time frames to implement such actions.

(c) COMPLIANCE IMPLEMENTATION.—

(1) DETERMINATION.—No later than the date described under paragraph (2), the Head of an agency shall determine whether the financial management systems of the agency comply with the requirements of subsection (a). Such determination shall be based on—

(A) a review of the report on the applicable agency-wide audited financial statement;

(B) any other information the Head of the agency considers relevant and appropriate.

(2) DATE OF DETERMINATION.—The determination under paragraph (1) shall be made no later than 120 days after the earlier of—

(A) the date of the receipt of an agency-wide audited financial statement; or

(B) the last day of the fiscal year following the year covered by such statement.

(3) REMEDIATION PLAN.—

(A) If the Head of an agency determines that the agency's financial management systems do not comply with the requirements of subsection (a), the head of the agency, in consultation with the Director, shall establish a remediation plan that shall include resources, remedies, and intermediate target dates necessary to bring the agency's financial management systems into substantial compliance.

(B) If the determination of the head of the agency differs from the audit compliance findings required in subsection (b), the Director shall review such determinations and provide a report on the findings to the appropriate committees of the Congress.

(4) TIME PERIOD FOR COMPLIANCE.—A remediation plan shall bring the agency's financial management systems into substantial compliance no later than 3 years after the date a determination is made under paragraph (1), unless the agency, with concurrence of the Director—

(A) determines that the agency's financial management systems cannot comply with the requirements of subsection (a) within 3 years;

(B) specifies the most feasible date for bringing the agency's financial management systems into compliance with the requirements of subsection (a); and

(C) designates an official of the agency who shall be responsible for bringing the agency's financial management systems into compliance with the requirements of subsection (a) by the date specified under subparagraph (B).

SEC. 804. REPORTING REQUIREMENTS.

31 USC 3512 note.

(a) REPORTS BY THE DIRECTOR.—No later than March 31 of each year, the Director shall submit a report to the Congress regarding implementation of this Act. The Director may include the report in the financial management status report and the 5-year financial management plan submitted under section 3512(a)(1) of title 31, United States Code.

(b) REPORTS BY THE INSPECTOR GENERAL—Each Inspector General who prepares a report under section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) shall report to Congress instances and reasons when an agency has not met the intermediate target dates established in the remediation plan required under section 3(c). Specifically the report shall include—

(1) the entity or organization responsible for the non-compliance;

(2) the facts pertaining to the failure to comply with the requirements of subsection (a), including the nature and extent of the non-compliance, the primary reason or cause for the failure to comply, and any extenuating circumstances; and

(3) a statement of the remedial actions needed to comply.

(c) REPORTS BY THE COMPTROLLER GENERAL.—No later than October 1, 1997, and October 1, of each year thereafter, the Comptroller General of the United States shall report to the appropriate committees of the Congress concerning—

(1) compliance with the requirements of section 3(a) of this Act, including whether the financial statements of the Federal Government have been prepared in accordance with applicable accounting standards; and

(2) the adequacy of applicable accounting standards for the Federal Government.

SEC. 805. CONFORMING AMENDMENTS.

31 USC 3512 note.

(a) AUDITS BY AGENCIES.—Section 3521(f)(1) of title 31, United States Code, is amended in the first sentence by inserting "and the Controller of the Office of Federal Financial Management" before the period.

(b) FINANCIAL MANAGEMENT STATUS REPORT.—Section 3512(a)(2) of title 31, United States Code, is amended by—

(1) in subparagraph (D) by striking "and' after the semicolon;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following:

"(E) a listing of agencies whose financial management systems do not comply substantially with the requirements of Section 3(a) the Federal Financial Management Improvement Act of 1996, and a summary statement of the efforts underway to remedy the noncompliance; and"

5 USC app.

(c) INSPECTOR GENERAL ACT OF 1978.—Section 5(a) of the Inspector General Act of 1978 is amended—

(1) in paragraph (11) by striking "and" after the semicolon;

(2) in paragraph (12) by striking the period and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(13) the information described under section 05(b) of the Federal Financial Management Improvement Act of 1996."

31 USC 3512 note.

SEC. 806. DEFINITIONS.

For purposes of this title:

(1) AGENCY.—The term "agency" means a department or agency of the United States Government as defined in section 901(b) of title 31, United States Code.

(2) DIRECTOR.—The term "Director" means the Director of the Office of Management and Budget.

(3) FEDERAL ACCOUNTING STANDARDS.—The term "Federal accounting standards" means applicable accounting principles, standards, and requirements consistent with section 902(a)(3)(A) of title 31, United States Code.

(4) FINANCIAL MANAGEMENT SYSTEMS.—The term "financial management systems" includes the financial systems and the financial portions of mixed systems necessary to support financial management, including automated and manual processes, procedures, controls, data, hardware, software, and support personnel dedicated to the operation and maintenance of system functions.

(5) FINANCIAL SYSTEM.—The term "financial system" includes an information system, comprised of one or more applications, that is used for—

(A) collecting, processing, maintaining, transmitting, or reporting data about financial events;

(B) supporting financial planning or budgeting activities;

(C) accumulating and reporting costs information; or

(D) supporting the preparation of financial statements.

(6) MIXED SYSTEM.—The term "mixed system' means an information system that supports both financial and nonfinancial functions of the Federal Government or components thereof.

31 USC 3512 note.

SEC. 807. EFFECTIVE DATE.

This title shall take effect for the fiscal year ending September 30, 1997.

SEC. 808. REVISION OF SHORT TITLES.—

(a) Section 4001 of Public Law 104–106 (110 Stat. 642; 41 U.S.C. 251 note) is amended to read as follows:

"SEC. 4001. SHORT TITLE.

"This division and division E may be cited as the 'Clinger-Cohen Act of 1996'.".

(b) Section 5001 of Public Law 104–106 (110 Stat. 679; 40 U.S.C. 1401 note) is amended to read as follows:

"SEC. 5001. SHORT TITLE.

"This division and division D may be cited as the 'Clinger-Cohen Act of 1996'.".

(c) Any reference in any law, regulation, document, record, or other paper of the United States to the Federal Acquisition Reform Act of 1996 or to the Information Technology Management Reform Act of 1996 shall be considered to be a reference to the Clinger-Cohen Act of 1996.

This Act may be cited as the "Treasury, Postal Service, and General Government Appropriations Act, 1997".

TITLE II—ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION

Economic Growth and Regulatory Paperwork Reduction Act of 1996.
12 USC 226 note.

SEC. 2001. SHORT TITLE; TABLE OF CONTENTS; DEFINITIONS

(a) SHORT TITLE.—This title may be cited as the "Economic Growth and Regulatory Paperwork Reduction Act of 1996".

(b) TABLE OF CONTENTS.—The table of contents for this title is as follows:

TITLE II—ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION

Sec. 2001. Short title; table of contents; definitions

Subtitle A—Streamlining the Home Mortgage Lending Process

Sec. 2101. Simplification and unification of disclosures required under RESPA and TILA for mortgage transactions.

Sec. 2102. General exemption authority for loans.

Sec. 2103. Reductions in Real Estate Settlement Procedures Act of 1974 regulatory burdens.

Sec. 2104. Waiver for certain borrowers.

Sec. 2105. Alternative disclosures for adjustable rate mortgages.

Sec. 2106. Restitution for violations of the Truth in Lending Act.

Sec. 2107. Limitation on liability under the Truth in Lending Act.

Subtitle B—Streamlining Government Regulation

CHAPTER 1—ELIMINATING UNNECESSARY REGULATORY REQUIREMENTS AND PROCEDURES

Sec. 2201. Elimination of redundant approval requirement for Oakar transactions.

Sec. 2202. Elimination of duplicative requirements imposed upon bank holding companies.

Sec. 2203. Elimination of the per branch capital requirement for national banks and State member banks.

Sec. 2204. Elimination of branch application requirements for automatic teller machines.

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comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 26, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–13847 Filed 6–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6708–8]

Guidance on Exercising CERCLA Enforcement Discretion in Anticipation of Full Cost Accounting Consistent With the "Statement of Federal Financial Accounting Standards No. 4"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Office of Enforcement and Compliance Assurance, Office of Site Remediation Enforcement is providing guidance to its regional components on the exercise of enforcement discretion, from May 30, 2000 through October 2, 2000, in anticipation of EPA's implementation of full cost accounting.

Attachments 1 and 2 were prepared by the Office of the Chief Financial Officer. They describe the reasons for full cost accounting and the methodology being used to implement full cost accounting.

EFFECTIVE DATE: May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Chad Littleton, Office of Enforcement and Compliance Assurance, Office of Site Remediation Enforcement, U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460 (MC 2273A); e-mail: littleton.chad@epa.gov; phone: (202) 564–6064.

SUPPLEMENTARY INFORMATION:

Memorandum

Subject: Guidance on Exercising CERCLA Enforcement Discretion In Anticipation of Full Cost Accounting Consistent with the *Statement of Federal Financial Accounting Standards No. 4*

From: Steven A. Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance

To:
Regional Administrators, Regions I–X
Deputy Regional Administrators, Regions I–X
Regional Counsel, Regions I–X
Superfund Division Directors, Regions I–X

This memorandum provides guidance to EPA personnel on how to exercise enforcement discretion as it relates to upcoming changes in EPA's indirect cost accounting methodology.

A. Upcoming Revisions to Indirect Cost Accounting

EPA's Office of the Chief Financial Officer (OCFO) recently announced that it is revising the Agency's methodology for allocating indirect costs to Superfund sites. These steps will bring Superfund into compliance with cost accounting standards issued by the Federal Accounting Standards Advisory Board (FASAB) on July 31, 1995, (*Statement of Federal Financial Accounting Standards No. 4 (SFFAS No. 4)*).[1] The principal goal of those standards is to make it possible for Federal agencies to determine and report the true costs of their programs and activities. The Federal Financial Management Improvement Act of 1996 (Title VIII, Public Law 104–208)[2] requires all Federal agencies to develop and use cost accounting methodologies that are consistent with the SFFAS No. 4 and other applicable standards.[3]

A copy of the OCFO memorandum announcing and describing EPA's implementation of an accounting methodology complying with the SFFAS No. 4 is attached for your reference (Attachment 1). That memorandum describes important background events and EPA's approach to implementing the revised methodology, defines many important accounting terms as they apply to EPA, lists preliminary estimated regional indirect rates based on the revised methodology, and states that OCFO will calculate actual indirect costs rates using the revised methodology (hereinafter "revised rates" or "revised indirect rates") for all fiscal years after 1989. The OCFO expects the revised rates to be completed and issued by October 2, 2000, at which time EPA will begin using the revised rates.

B. The Revised Rates and Superfund Site Costs

As described more fully in the attached OCFO memorandum, direct costs are costs an organization incurs when it produces a specific result. Most of the other costs of running the organization are indirect costs. EPA's current indirect cost accounting methodology allocates to Superfund sites only about one-third of the indirect costs that are incurred by EPA and properly allocable to sites. SFFAS No. 4 requires "full cost accounting," which means that Superfund indirect costs must be allocated to sites. For that reason, implementing an indirect cost methodology based on SFFAS No. 4 will increase the aggregate amount of indirect costs allocated to sites.

The effect of applying the revised rates will vary from site to site because the SFFAS-compliant methodology and the current methodology use different techniques for allocating indirect costs to individual sites. The SFFAS-compliant methodology allocates

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[1] Available as *SFFAS 4* at www.financenet.gov/financenet/fed/fasab/concepts.htm.

[2] Available from the 104th Congress catalog at www.access.gpo.gov/nara/publaw/104publ.html.

[3] "(5) To rebuild the accountability and credibility of the Federal Government, and restore public confidence in the Federal Government, agencies must incorporate accounting standards and reporting objectives established for the Federal Government into their financial management systems so that all the assets and liabilities, revenues, and expenditures or expenses, and the full costs of programs and activities of the Federal Government can be consistently and accurately recorded, monitored, and uniformly reported throughout the Federal Government.

(6) Since its establishment in October 1990, the Federal Accounting Standards Advisory Board (hereinafter referred to as the "FASAB") has made substantial progress toward developing and recommending a comprehensive set of accounting concepts and standards for the Federal Government. When the accounting concepts and standards developed by FASAB are incorporated into Federal financial management systems, agencies will be able to provide cost and financial information that will assist the Congress and financial managers to evaluate the cost and performance of Federal programs and activities, and will therefore provide important information that has been lacking, but is needed for improved decision making by financial managers and the Congress." (*Public Law 104–208*, 110 STAT 3009–389–390).

"Each agency shall implement and maintain financial management systems that comply substantially with Federal financial management systems requirements, applicable Federal accounting standards, and the United States Government Standard General Ledger at the transaction level." (*Id.*)

indirect costs in proportion to direct costs, whereas the current methodology uses the number of Superfund staff hours charged to a site. As a result, sites with large direct Federal expenditures compared to the number of Superfund staff hours will generally see the largest indirect cost increases, and few if any decreases. Sites with smaller Federal expenditures compared to the number of Superfund staff hours, such as sites cleaned up by potentially responsible parties (PRPs) where EPA's costs are largely for oversight performed by EPA staff, will generally see smaller indirect cost increases, and are also more likely to see decreases.

C. Enforcement Discretion as It Relates to the Revised Indirect Rates

As noted above, the OCFO expects the revised rates to be available on October 2, 2000, and will begin using them as soon as they are issued. In general this means that after October 2, 2000, site costs, including oversight costs, will be calculated using the revised rates. The following sections address areas of particular enforcement interest and describe how the Agency intends to exercise its enforcement discretion in individual cases to provide a fair and efficient transition to the revised accounting methodology.

1. Concluded Matters

EPA has previously settled or litigated numerous claims for past response costs. The costs EPA sought in those cases included indirect costs based on the current rates. EPA recognizes the importance of repose and finality in those cases and therefore the Agency has no plans to re-open any concluded matters to apply the revised rates to claims for past costs that were presented and resolved in those matters. This includes consent decrees, litigated judgments and administrative orders on consent. It also includes ceilings established in settlements and judgments for oversight or other response costs that the Agency can bill to PRPs under those existing settlements or judgments.

2. Oversight Billings

The Agency has no plans to recompute oversight bills that were prepared and sent to PRPs before the revised rates are issued.

3. Claims in Litigation Prior to October 2, 2000

When EPA issues the revised indirect rates there will be a number of cost recovery cases pending in Federal courts. The past costs EPA is seeking in those cases will have been calculated using the current indirect rates. There may be special circumstances in those cases, especially if the litigation is at an advanced stage, that cause the case team to decide not to seek to amend the claim by applying the revised indirect rates. An example might be certain cases in which costs have already been presented to the court and the parties are awaiting the court's decision. These decisions will be made by the EPA/Department of Justice (DOJ) case team on a case-by-case basis. This approach is intended to be consistent with prior practice (*See*, Policy on Recovering Indirect Costs in CERCLA Section 107 Cost Recovery Actions, OSWER Directive 9832.5, June 27, 1986) (superseded by this guidance).

4. Interim Settlement Policy in Anticipation of the Revised Rates

This memorandum gives advance notice of the revised rates. One purpose of the advance notice is to provide PRPs who have unresolved cost recovery liabilities an opportunity to settle with the United States at the current rates. For sites where the revised rates would result in higher indirect costs, it may be advantageous for the PRPs to settle with the United States under the current rates. Therefore, until the revised rates are issued, which the OCFO expects to occur on October 2, 2000, the Agency will entertain settlement offers resolving the claims of the United States for CERCLA response costs based on the current indirect rates.

Generally, the Agency will consider a settlement offer based on site costs computed using the current indirect cost rates, if: (1) The offer is made prior to October 1, 2000; (2) the Agency determines, in its sole discretion, that there is sufficient information available on which to base a settlement decision; and (3) it appears to the Agency that the offer is likely to lead to an executed final settlement by March 30, 2001. For cases in litigation or that have been referred to DOJ, the DOJ/EPA case teams will determine the appropriate response to any settlement offer. For all other matters, regional case teams will determine the appropriate response to any settlement offer. Case teams may set alternative milestone dates for any individual PRP or site, if appropriate, based on PRP-specific or site-specific circumstances after consultation with the Regional Support Division (RSD) in the Office of Site Remediation Enforcement (OSRE).

After such an offer has been received, if settlement negotiations are unproductive or it becomes evident that the applicable milestone dates have not been met, or are not likely to be met, the Agency may, at its sole discretion, withdraw the opportunity to enter a settlement based on the current rates.

D. Proving Indirect Costs

Implementing the SFFAS accounting methodology will not alter the burden of proof that the Agency must meet when seeking recovery of indirect costs. EPA will continue to provide evidence acceptable in a court of law to prove that the indirect costs sought are allocable to the site that is the subject of the enforcement action.

E. National Consistency/Coordination

Except for the specific transition related adjustments noted above, existing policy and guidance applicable to considering or accepting settlement offers is unchanged. Implementing the revised indirect rates will not affect the discretion of the Agency or DOJ to settle or compromise cost recovery claims, including those cases where costs are based on the revised rates. Litigation risk, equitable considerations, and other factors that are considered in determining whether to settle or compromise claims may still be taken into account. As always, EPA will exercise its discretion to ensure that any resulting settlements are fair, reasonable, and consistent with CERCLA.

When EPA begins using the revised rates, we expect that the Agency will face questions about matters associated with the transition to the revised rates. EPA has a substantial interest in promoting a nationally consistent approach during this transition period. Therefore, I have asked the RSD to monitor EPA's implementation of the revised indirect rates. I also ask each regional office to designate a point of contact to assist RSD in our effort to quickly resolve key questions about EPA's use of the revised rates, and to promote national consistency among the regional offices. Please send the name and telephone number of your workgroup member to Maria Cintron-Silva, RSD, no later than three weeks after the date of this memorandum. Workgroup contacts will be expected to provide information regarding each of the offers received and their dispositions. For questions about this memorandum and OECA's implementation of the revised rates, please contact Chad Littleton, in the Office of Site Remediation Enforcement, at 202–564–6064.

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program. The government's full cost at a Superfund site consists of the direct costs incurred for site-specific activities and the proportionate share of all the costs that provide indirect support to the site.

In 1985, EPA, with the assistance of the accounting firm Ernst & Whinney, developed an indirect rate methodology for determining the government's cost of site-specific activities under CERCLA. The indirect rates developed were conservative. As a result of the conservative methodology, a substantial portion of the indirect cost pool was not allocated to individual Superfund sites, even though site-specific activities are the direct output that the indirect costs support. As a result, the General Accounting Office (GAO), the EPA Office of Inspector General (OIG), OMB and Congress have repeatedly criticized the methodology for failing to identify the full cost of Superfund site clean-ups and therefore failing to allow potential recovery of all indirect costs. The OIG considered this method of recovering less than full overhead costs as a Federal Manager Financial Integrity Act (FMFIA) "material weakness" and suggested the Agency identify it as such.

EPA has revised the Superfund indirect cost methodology to enable the Agency to report the full cost of the program in compliance with SFFAS No. 4 and with other federal mandates requiring the reporting of cost information. During the preparation of the revised methodology, EPA sought separate independent reviews of the methodology by both GAO and the national accounting firm KPMG. KPMG found the revised methodology in compliance with SFFAS No. 4, as well as "easier to understand, more thorough and more complete than the previous methodology." GAO reviewed the revised methodology and found "that the design of EPA's proposed Superfund indirect cost methodology complies with cost accounting standards for federal government" as well as the requirements of SFFAS No. 4.

Approach

EPA's approach to developing a full cost indirect cost methodology for Superfund is based on the guidance provided by SFFAS No. 4. In addition, certain other factors are also taken into account. These include the nature and classification of Agency costs, private sector cost accounting practices and the cost/benefit of obtaining the data necessary to compute indirect cost rates. Indirect cost rates will be developed for each region and each Fiscal Year beginning with FY 1990. We are beginning with FY 1990 because active Superfund sites have costs incurred in prior years generally no earlier than FY 1990, with limited exceptions. Thus, computing full cost indirect rates back to FY 1990 will allow Superfund managers to determine the full cost of site-specific activities for nearly all active sites, while going back before FY 1990 would be of primarily historic interest. Therefore, we consider it most cost effective to compute rates no further back than 1990; if managers need indirect cost information for years prior to 1990, the rates computed using the current methodology may be used for those earlier years. Use of the revised indirect cost rates will provide Superfund managers, other EPA management and Congress with the full cost of Superfund site-specific activities.

The current Superfund indirect cost methodology uses indirect rates which are expressed as a rate per hour of labor effort. This rate is computed using a base consisting of all labor hours (including both site and non-site labor), but is applied to only site labor hours. This results in an under-allocation of indirect costs. This approach, although acceptable from an accounting standpoint, is conservative in its allocation of indirect costs to individual sites and led to the criticisms noted above. The principal conceptual change the Agency will make as it moves to full cost accounting in compliance with SFFAS No. 4 with respect to Superfund site-specific activities, is to ensure that indirect costs that support site clean-up are fully allocated to site charges. In order to do so, EPA will allocate the appropriate indirect cost pool using total direct site costs as an allocation base. This will result in indirect cost rates expressed as a percentage of total direct site costs rather than a dollar rate per hour as is the current method. The change in the allocation base is the most important difference between the full cost accounting methodology and the prior methodology, with only minor changes to the indirect cost pool (further described below). The indirect cost pool identified for calculation of the new indirect cost rate will reflect only those costs which are appropriately allocable to and support the Superfund site-specific activities.

In determining the indirect costs associated with the Superfund program, certain costs funded from non-Superfund appropriations are included as indirect costs because they provide services that benefit the Superfund program and are necessary to reflect full cost. SFFAS No. 4 states that one of the components of full cost is the "cost of support services provided by other responsibility segments * * * and by other reporting entities." We include other appropriations because our approach determines the allocability of indirect costs according to the organizational unit that provides the support services regardless of which appropriation has been charged with the costs. We begin with the total costs of organizational units and then allocate these costs to all units receiving support services.

Not all appropriations, however, are included as indirect costs. For example, charges under the Oil Spill appropriation are not included. Oil Spill disbursements support only the Oil Spill program and should not be allocated to other programs. State and Tribal Assistance Grants appropriations are also excluded. These are grants to states, local and tribal governments which fund a variety of environmental programs and infrastructure projects pertaining to water quality initiatives. Funding under the Science and Technology appropriation is excluded. These funds support research and development initiatives. The treatment of research and development costs is discussed under the section on direct costs. The programs funded by the appropriations listed above are considered to be separate from Superfund and have their own outputs. These appropriations do not include any indirect costs that are allocable to the Superfund program.

As explained below under Exclusions from the Pool, costs associated with certain organizational units are also removed from the indirect cost pool depending on their relationship to the Superfund program.

The concept of full cost, according to the Standard, also requires that inter-entity costs or the costs of services received from other entities be recognized. Costs of employee benefits funded by the Office of Personnel Management (OPM) are considered inter-entity costs and will be included as indirect costs. Because methodologies to estimate the costs of services received from federal agencies other than OPM are still under development, these costs are not included in the indirect cost pool at this time.

The methodology for determining indirect costs allocable to Superfund site-specific activities is patterned after private sector models that group costs according to levels of organization and benefit. Indirect costs are classified hierarchically. At the highest level are Agency-wide costs, *i.e.*, national costs which benefit all organizations. Examples of these are facilities management, budget functions, human resource management, and OPM inter-

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Attachments

Dated: May 26, 2000.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

Memorandum

Subject: Accounting for Indirect Costs Associated with Superfund Site-Specific Activities

From: Joseph Dillon, Acting Comptroller (2731)

To: Senior Resource Officials

This Policy Announcement provides the policies and procedures for implementing Statement of Federal Financial Accounting Standards (SFFAS) No. 4, Managerial Cost Accounting Standards for the Federal Government, for the Superfund Site Cleanup Program by providing a revised indirect cost methodology. This methodology along with existing policies and procedures regarding direct costs results in accounting for the "full costs" of actions taken at or in connection with Superfund Sites.

Background

The Office of Management and Budget (OMB) issued SFFAS No. 4 on July 31, 1995, with an effective date of October 1, 1997. SFFAS No. 4 requires federal agencies to determine the full cost of their outputs (programs). The full cost of programs includes both those costs specifically identifiable with each particular program, or direct costs, and those costs which collectively support the many programs, or indirect costs.

Since 1985, EPA has been identifying the indirect costs associated with Superfund site-specific activities for all fiscal years after 1982. However, the indirect cost methodology developed at that time was conservative and did not result in allocating all indirect costs to sites. As a result, the General Accounting Office, the EPA Office of Inspector General, OMB and Congress have repeatedly criticized EPA's methodology. The Office of the Chief Financial Officer (OCFO) has developed an indirect cost methodology to compute indirect cost rates for Superfund site-specific activities in accordance with SFFAS No. 4. By incorporating the resulting indirect cost rates into their analyses, Superfund Managers will be able to compute the full cost of their program.

Policy and Procedures

The OCFO has developed a Superfund indirect cost methodology based upon full cost accounting concepts. Using that new methodology, OCFO is presently calculating and will issue indirect cost rates based upon the full cost accounting methodology ("revised rates"). The OCFO will issue revised rates for each Fiscal Year, by Region beginning with FY 1990. The revised rates will be issued after the date of this Policy Announcement and are expected to be completed and issued by October 2, 2000. Once the revised rates are issued, Superfund managers should use the revised rates to determine the full cost of Superfund site specific activities. In the meantime, EPA Superfund program managers may use the preliminary, estimated indirect cost rates identified in Attachment 1 as the basis for estimating the full cost of Superfund site-specific activities.

Beginning with FY 2001, the Agency will no longer compute nor issue, as provisional or final, indirect cost rates based upon the earlier Ernst & Whinney methodology.

A brief description of the full cost methodology is as follows: EPA's annual costs are analyzed to determine whether the costs represent general Agency or Regional support activities, program support activities, or program direct costs. Those general Agency support activities and the Superfund program support activities are included in calculations that allocate these costs to programs and produce a Superfund indirect cost pool for each region. Each Region's indirect cost pool, including appropriate Regional support costs, is divided by the Region's direct costs incurred for site-specific activities to determine the Region's indirect cost rate for the fiscal year, which is expressed as a percentage of direct site costs. The Region's indirect cost rate is multiplied against the direct costs incurred for a particular Superfund site to determine the amount of indirect costs that will be allocated to that site. By adding the direct site costs and the indirect costs allocated to a particular site, or group of sites, the total cost for that site or group of sites is determined.

For a more detailed description of the Superfund Indirect Cost Rate Methodology, please refer to Attachment 1.

Effective Date

OCFO expects to complete and issue the new Superfund Full Indirect Cost Rates by October 2, 2000, at which time they will be effective for all accounting purposes.

Additional Information

If you need further information on this Policy Announcement, please contact Charles Young of the Program and Cost Accounting Branch, Financial Management Division at (202) 564–4914.

Attachment 2

Superfund Full Cost Indirect Cost Rate Methodology

Background

OMB, the Secretary of the Treasury and the Comptroller General established the Federal Accounting Standards Advisory Board (FASAB) in October 1990 to set Federal Government Accounting Standards. In September 1993, the Vice President in his report on the National Performance Review recommended an action which required the FASAB to issue a set of cost accounting standards for all federal agencies. FASAB issued the Statement of Federal Financial Accounting Standards (SFFAS) No. 4, Managerial Cost Accounting Concepts and Standards for the Federal Government on July 31, 1995, which became effective for EPA on October 1, 1997. Title VIII of the Federal Financial Management Improvement Act of 1996 (Title VIII, Public Law 104–208) requires federal agencies to comply with the Federal Financial Accounting Standards and emphasizes that agencies' systems must report the total costs of programs and activities. EPA will comply with this requirement for all the Agency's programs, based on specific needs of each program and applicable accounting requirements. The methodology described in this Policy Announcement applies to EPA's Superfund site-specific activities as set forth below.

SFFAS No. 4 sets forth five fundamental elements of managerial cost accounting to provide information on the cost of federal programs. One of those elements is to determine the full cost of government goods and services. According to the Standard, full cost includes both direct and indirect costs. Direct costs are defined as "costs that can be specifically identified with an output." Indirect costs are costs that are common to multiple outputs but cannot be specifically identified with any particular output. In the context of the Superfund program, direct costs include those that are directly incurred by the United States for site-specific activities performed at or in connection with a particular site or a particular group of sites. Site-specific activities include the assessment, investigation and clean-up of a site, ancillary site-associated activities, and related enforcement actions. Indirect costs are those that support the Superfund program as a whole and cannot be identified to any one site or other "output" of the

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entity costs. The next level incorporates regional costs which benefit each of the Agency's ten regions. These are general costs which are essentially counterparts of national costs but benefit regions only. Examples include the costs of regional administration, support, and policy and planning functions. Superfund program management costs comprise the next two levels. These are the support costs incurred at both headquarters and regions to implement Superfund site-specific activities. Costs from each of these four levels form the basis of the indirect cost pool. The final product—separate indirect cost rates for each of EPA's ten regions—will be expressed as a percentage of direct (site-specific) costs for each region.

Direct Costs

In determining the direct costs of the Superfund program, we use SFFAS No. 4's definition of direct costs. However, the direct costs of the Superfund program as a whole, are not necessarily synonymous with the direct costs of Superfund site-specific activities. Superfund site-specific activity is one component of the Superfund program.

Site-Specific Costs

The major component of Superfund direct costs is the costs of site-specific activities, *i.e.* the cost of all activities that go toward the assessment, investigation and actual clean up of a site, related enforcement actions, and other site-associated activities. Examples include, but are not limited to, the costs of salaries and benefits of employees who work directly at the site or provide other site-related effort, contractor costs of removal or remedial activities, and analytical work performed for the site.

Certain other Superfund-related costs are also considered direct costs, although they may or may not be associated with site-specific activities. These costs are described in the next several paragraphs.

ZZ Costs

"ZZ" costs are expenses incurred for site work before a site is established as a Superfund site and assigned a site-specific identifier. If a site-specific identifier is established, the ZZ costs incurred in connection with the site are reclassified to that site-specific identifier. If reclassified, they become part of direct site-specific costs, but for purposes of the indirect rate calculation, ZZ costs are classified as direct costs even if not reclassified.

R&D Costs

Research and Development (R&D) costs are treated as direct costs. All costs incurred within the Office of Research and Development, a separate and distinct organizational unit within the Agency, are excluded from the indirect cost pool. Research and Development costs are considered to be directly incurred for production of R&D outputs. Superfund-related research and development costs are mainly related to the Superfund Innovative Technology (SITE) program. This program evaluates the application of emerging remediation technologies.

NIEHS Costs

Costs associated with the National Institute of Environmental Health Sciences (NIEHS) interagency agreement (IAG) are treated as direct costs. This indirect cost methodology is designed to determine the indirect costs that support Superfund site-specific activities. Therefore NIEHS costs are excluded in their entirety from the indirect cost pool.

OSWER Immediate Office Program Area Costs

Costs associated with certain offices within the Office of Solid Waste and Emergency Response (OSWER) Immediate Office are treated as direct costs. Although these costs are related to the Superfund program and are direct costs of the functions they perform, they are not allocable to Superfund site-specific activities and so are not included in the indirect cost pool for site-specific response costs. For example, the Chemical Emergency Preparedness and Prevention Office (CEPPO), which reports directly to the OSWER Assistant Administrator, implements Agency-wide chemical emergency preparedness and prevention programs. The costs connected with Federal Facilities activities, whether within OSWER or OECA, as well as the costs of activities associated with Brownfields and the Emergency Planning and Community Right-to-know Act, are also considered direct and thus excluded from the indirect cost pool.

Indirect Cost Pool

The indirect cost pool consists of all costs classified as indirect for all appropriations that fund administrative, management and support functions. The pool includes Superfund non-site-specific costs that provide support to Superfund site-specific activities and the other direct Superfund activities. The indirect cost pool includes the non-site portion of: Personnel compensation and benefits, travel, rent, communications, utilities, contracted services, materials and supplies costs. Depreciation and inter-entity costs are also included. The major organizational units contributing costs to the indirect cost pool are described below.

EPA headquarters organizations providing services on an Agency-wide or national basis include the Office of the Administrator, the Office of Administration and Resources Management (human resources, procurement, facilities), the Office of the Chief Financial Officer (Comptroller, budget, finance), the Office of Information Resources Management, the Office of Policy, Planning and Evaluation, the Office of the Inspector General and the Office of General Counsel. The ten EPA regional offices have corporate structures similar in function to those of headquarters. Each region has a regional administrator's office and offices providing general regional support services such as personnel, finance, policy and information management. Costs for these organizations comprise regional indirect costs.

Management and support costs associated with carrying out the Superfund program are another component of the indirect cost pool. These costs are incurred at both headquarters and the regions. At the headquarters level, these are the program management and support costs incurred by the Office of Solid Waste and Emergency Response (OSWER) and by the Office of Enforcement and Compliance Assurance (OECA). At the regional level, Superfund program management costs incurred by regional program divisions in support of Superfund site-specific activities are included in the indirect cost pool. Any of the offices noted above may also have Superfund site-specific charges. Those site-specific charges are subtracted from the total cost of the organization during the indirect cost computation.

The Superfund indirect cost pool, that is, the pool of indirect costs which is ultimately allocable to Superfund sites, will consist of proportionate amounts of Agency-wide, regional and program-related costs. In other words, the Superfund indirect cost pool will be comprised of only the portion of Agency-wide, regional and program-related costs which supports Superfund sites, with the remaining costs supporting all other Agency programs.

Exclusions From the Pool

Superfund non-site specific contractor costs, such as program management, that are distributed through the annual allocation process are excluded from the

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indirect cost pool. Annual allocation is the process by which response action contractor non-site support costs are allocated to sites on which the contractor worked. The site-allocable portion of these contracts is removed from the pool because it is allocated to individual sites under a separate process and is treated as a portion of direct site-specific costs incurred by EPA.

Costs of organizational units that provide no direct or indirect support to Superfund are excluded. Examples include the Office of International Activities and certain organizations within the Office of the Administrator, such as the Science Advisory Board and the Office of Administrative Law Judges.

Indirect Cost Base

To properly distribute costs, the indirect cost base must reflect the services provided to each organizational recipient and finally, to the Superfund sites themselves. There are several intermediate allocations of costs, as described below, which use appropriate allocation bases. The choice of allocation base depends on the type of cost to be allocated.

Agency-wide or national indirect costs, also referred to as general and administrative (G&A) costs, are allocated using one of two allocation bases. Facilities, human resources and OPM inter-entity costs are allocated to all EPA organizations based on personnel compensation and benefits (PC&B) costs. The rationale for using PC&B costs as the allocation statistic is that these indirect costs are purely workforce-related and would not otherwise be incurred. Costs associated with other organizations providing Agency-wide benefits, such as procurement, budget, finance, information management, policy, planning, general counsel and inspector general, are distributed across the entire Agency based on total Agency costs. Depreciation will be allocated to all EPA organizations using appropriate cost accounting principles. We are in the process of gathering these costs and determining the appropriate allocation base. Depreciation costs will be incorporated into the rates as soon as possible.

The next level of indirect costs is regional costs which provide general and administrative support similar to that provided at the Agency-wide level. Regional G&A cost pools, including each region's share of national G&A, personnel and facilities costs, depreciation and inter-entity costs are distributed across the entire region based on total regional costs. This is similar to the distribution of Agency-wide support costs across total Agency costs.

Headquarters program management and support costs incurred by OSWER and OECA must be allocated to program areas within each office of an EPA Assistant Administrator and to the regions. Program areas are designated by sub-organization or by funding vehicle such as interagency agreements which fund a particular type of activity. The allocation of headquarters program management and support costs is based on the total costs associated with each program area and region. The headquarters allocation base includes administrative and program costs from appropriations other than Superfund and Superfund site-specific and non-site-specific costs. The regional allocation base consists of regional site charges made within each office of an EPA Assistant Administrator.

The final Superfund indirect cost pool is allocated using Superfund site charges. These site charges include both headquarters and regional site charges, ZZ charges, site charges made under the Department of Justice (DOJ), Corps of Engineers, Bureau of Reclamation, *etc.*, interagency agreements and the Superfund response contract program management costs that are allocated to sites in a separate process. EPA charges arising from mixed funding settlements are direct site costs and are also included in the indirect cost base. The charges for the Agency for Toxic Substances and Disease Registry (ATSDR) are not included in the indirect cost base because their funding mechanism—a "transfer allocation"—does not result in a charge to EPA's accounting system. Again, instead of a rate per hour as in the current methodology, the indirect cost rate will be expressed as a percentage of direct (site) costs.

Computation of Indirect Cost Rates

Data used for the indirect cost computations are obtained from the Agency's Integrated Financial Management System.

The indirect cost pool supporting Superfund site-specific activities in each region for a given fiscal year consists of proportionate shares of the following: program management and support costs incurred by relevant units of EPA headquarters (including their share of nationwide G&A); the region's G&A; and the region's non-site Superfund costs.

The computation of the indirect cost rates consists of nine steps. A detailed document more fully describing the accounting methodology employed will be released with the calculated rates by region by fiscal year. That document will contain a detailed description of each of the nine steps. Briefly, steps 1 and 2 compute the nationwide G&A rate and step 3 computes the regional G&A rates. Steps 4 through 9 perform various allocations and refinements of costs ensuring that the regional Superfund cost pools, which are summarized in step 9, reflect only costs by region associated with Superfund site-specific activities.

Estimated Indirect Rates by Region

As noted above, the revised indirect cost rate methodology will for the first time provide information on the full costs of the outputs of Superfund site-specific activities. The process of computing rates using the full cost methodology is ongoing. As noted above, the revised rates by region by fiscal year will not be issued for several months. In the meantime, we are providing an approximation of the rates that can be used as a means to estimate the full cost of Superfund site-specific activities. These rates are based on the average of preliminary computed rates for fiscal years 1994, 1997 and 1998. It should be noted that rates for any given region may vary considerably from year to year; therefore, the final calculated rates may differ from the estimated average rates listed below.

Estimated Rates*

(*Subject to Change*)

Region 1—30.0%
Region 2—30.8%
Region 3—43.6%
Region 4—48.1%
Region 5—41.6%
Region 6—29.0%
Region 7—54.4%
Region 8—35.1%
Region 9—40.9%
Region 10—38.6%

* Based on the average of preliminary rates for Fiscal Years 1994, 1997 and 1998.

The overall effect of implementing the full cost accounting methodology for Superfund indirect costs will be to increase the aggregate amount of indirect costs allocated to site-specific activities. As compared to indirect costs allocated using the current methodology, the indirect costs allocated to individual sites may increase or decrease, depending on a number of factors, and will not be known with certainty until all the rates are computed. The estimated rates provided above, however, may be used to predict generally the amount of indirect costs to be allocated to a particular site using the full cost accounting methodology.

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To apply these rates to an individual site, identify the total direct site-specific costs of that site (including any DOJ costs but excluding any ATSDR costs) and multiply that total by the appropriate region's indirect cost rate. If you have total site costs including indirect costs using the current labor hours-based rates, total direct site-specific costs consists of the total site costs minus the previously-assessed indirect costs. Adding the direct site-specific costs and the indirect costs calculated under the new methodology will result in the full cost of that site.

[FR Doc. 00–13845 Filed 6–1–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 25, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0927.

Expiration Date: 05/31/2003.

Title: Auditor's Annual Independence and Objectivity Certification.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 7 respondents; 10 hours per response (avg). 70 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Annually.

Description: The Responsible Accounting Officer Letter (RAO) 28, released December 1, 1999 requires that carriers' independent auditors disclose in writing all relationships between the auditor and its related entities and the carrier and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence; confirm in writing in its professional judgment it is independent of the carrier; and discuss the auditor's independence. The information will be used to determine whether the auditors are performing their audits independently and unbiased of the carrier they audit. Obligation to respond: Mandatory.

OMB Control No.: 3060–0514.

Expiration Date: 05/31/2003.

Title: Section 43.21(b)—Holding Company Annual Report.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 20 respondents; 1 hour per response (avg.); 20 total annual burden hours.

Estimated Annul Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Description: The SEC 10K Form is needed from holding companies of communications common carriers to provide the Commission with the data required to fulfill its regulatory responsibilities and by the public in analyzing the industry. Selected information is compiled and published in the Commission's annual common carrier statistical publication. Obligation to respond: Mandatory.

OMB Control No.: 3060–0894.

Expiration Date: 05/31/2003.

Title: Certification Letter Accounting for Receipt of Federal Support, CC Docket Nos. 96–45 and 96–262.

Form No.: N/A.

Respondents: State, Local or Tribal Government.

Estimated Annual Burden: 51 respondents; 3 hours per response (avg.); 153 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Annually.

Description: The Commission requires states to certify that carriers within the state had accounted for its receipt of federal support in its rates or otherwise used the support pursuant with Section 254(e). A state may file a supplemental certification for carriers not subject to the state's annual certification. This information will be used to show that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area. Further, the collection of information will be used to certify that the carriers have accounted for its receipt of federal support in its rates or otherwise used the support for the provision, maintenance, and upgrading of facilities and services for which the support is intended in accordance with section 254(e). Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0755.

Expiration Date: 05/31/2003.

Title: 47 CFR Sections 59.1–59.4—Infrastructure Sharing.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 75 respondents; 31 hours per response (avg.); 2325 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third party disclosure.

Description: In CC Docket No. 96–237, the Commission implemented the infrastructure sharing provisions of the Communications Act of 1934, as amended. Section 259 requires incumbent LECs to file any arrangements showing the conditions under which they share infrastructure. See also 47 CFR Section 59.2. (No. of respondents: 75; hours per response: 15; total annual burden: 375 hours). Section 259 also requires incumbent LECs to provide information on deployments of new services and equipment to qualifying carriers. See also 47 CFR Section 59.3 (No. of respondents: 75; hours per response: 24 hours; total annual burden: 1800 hours). The Commission requires incumbent LECs to provide 60-day notices prior to terminating section 259 agreements. See 47 CFR Section 59.2. (No. of respondents: 75; hours per response: 2 hours; total annual burden: 150 hours). The information collected under the requirement that incumbent LECs file any tariffs, contracts or other arrangements for infrastructure sharing would be made available for public inspection. The information collected under the requirement that incumbent LECs provide timely information on planned deployments of new services and equipment would be provided to third parties. The information collected under the requirement that providing incumbent LECs furnish sixty days notice prior to termination of a section 259 sharing agreement would be provided to third parties to protect customers from sudden changes in services. Obligation to respond: Mandatory.

OMB Control No.: 3060–0933.

Expiration Date: 11/30/2000.

Title: Community Broadband Deployment Database Reporting Form.

Form No.: FCC Form 460.

Respondents: Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Estimated Annual Burden: 30 respondents; .25 hours per response (avg.); 7 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA Plaintiff. v. BFI WASTE SYSTEMS OF NORTH AMERICA, INC., BORDEN CHEMICAL, INC., AS SUCCESSOR IN INTEREST TO IB DISTRIBUTORS, INC. EXXON MOBILE CORPORATION, GIDDINGS & LEWIS MACHINE TOOLS, LLC, AS SUCCESSOR IN INTEREST TO BASIC ELECTRONICS MFG. CORP., H. B. FULLER COMPANY, HONEYWELL, INC., JENSEN DISPOSAL SERVICE, INC., MAIL-WELL ENVELOPE CO., MORTON INTERNATIONAL, INC., MUNDELEIN DISPOSAL SERVICE, INC., VILLAGE OF WAUCONDA, ILLINOIS, WASTE MANAGEMENT OF ILLINOIS, INC., WAUCONDA SAND & GRAVEL CO., and WEBER FOREIGN MANUFACTURING, INC., f/k/a INK SPECIALTIES COMPANY, INC. Defendants.	)	CIVIL ACTION NO. 07 C 4499

DECLARATION OF LINDA M. HAILE

I, Linda M. Haile, under penalty of perjury, do declare in accordance with 28 U.S.C. § 1746:

1. I am employed as a Lead Accountant in the Program Accounting and Analysis Section of the Comptroller Branch of the United States Environmental Protection Agency (EPA),

Region 5. My duties include analyzing Superfund financial information and cost data for external and internal use, overseeing the Superfund oversight billing process, and performing quality assurance reviews to ensure site cost reports are accurate. I have had duties related to the Superfund Cost Recovery effort since 1998.

2. I have reviewed the Itemized Cost Summary (ICS) that shows costs incurred and paid by EPA in connection with the Wauconda Sand and Gravel Superfund Site located Wauconda, Illinois (the Site) from May 1, 2005 through February 27, 2009.[1] The ICS was sent to Peter Kelly as part of a bill on September 3, 2009.

3. During my review, I compared the preparer's working file and SCORPIOS and checked to make sure there were no differences. I reviewed a sampling of invoices to make sure those invoices correctly applied to this Site and ICS. I reviewed the DOJ report. I also checked that the Region 5 indirect rates were applied to the correct fiscal year where invoices were paid.

4. The ICS shows direct costs incurred and paid by EPA in connection with the Site, including payroll, travel, contractor costs, and United States Department of Justice (DOJ) costs. The ICS also shows indirect costs that are attributable to the Site. The ICS shows indirect costs on DOJ's Site-specific direct costs.

5. Indirect costs are costs that are necessary to operate the Superfund program, but which are not directly related to specific sites. Indirect costs are computed as a percentage of all region-wide site-specific direct costs, in accordance with EPA indirect cost methodology procedures determined by EPA Headquarters.

6. The procedures used for compiling cost documentation and calculating ICSs are performed according to EPA guidance, policy, and practice for CERCLA cases, including EPA's indirect cost methodology and EPA's guidance published at 65 Fed. Reg. 35339 (June 2, 2000).

7. EPA maintains records on which ICSs are based. These records are voluminous

[1] A now-retired EPA employee named Margarita Garcia prepared the ICS. I was her team leader.

and include, among other things, employees' time sheets, travel vouchers, and contractor invoices. These records are coded so that costs attributable to a specific Superfund site can be identified. (The identification number for the Site is 0581.) Also, the records are reviewed and approved by EPA supervisory personnel for consistency with EPA rules and policies prior to payment of the costs.

8. As costs are incurred for a Superfund site, they are entered into software called the Integrated Financial Management System (IFMS), EPA's accounting software. Another software program called Superfund Cost Recovery Package Imaging and On-Line System (SCORPIOS) is used by EPA to extract payment information from IFMS. SCORPIOS organizes site-specific costs into categories such as EPA payroll, travel, and other federal agency costs associated with response actions. SCORPIOS downloads information from IFMS and generates summaries of costs that EPA has incurred and paid. SCORPIOS automatically applies the Region 5 indirect cost rate for the respective fiscal year to, among other things, DOJ's site-specific direct costs, and that amount is identified in the ICS.

9. I have reviewed the ICS for the period May 1, 2005 through February 27, 2009, and I conclude that the ICS was prepared according to EPA guidance, policy, and practice for CERCLA cases, including EPA's indirect cost methodology and EPA's guidance published at 65 Fed. Reg. 35339 (June 2, 2000).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Linda M. Haile

Linda M. Haile

Executed this 13th day of August, 2010.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 27 2010

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Peter Kelly, Esq.
Vedder Price P.C.
220 North LaSalle Street
Chicago, Illinois 60601

Re. Final Decision on Formal Dispute Resolution
Wauconda Sand & Gravel Superfund Site, Wauconda, Illinois

Dear Mr. Kelly:

This letter represents the final decision of the Director of the United States Environmental Protection Agency (U.S. EPA) Region 5, Superfund Division, resolving the formal dispute raised on July 22, 2010 by certain Settling Defendants[1] to the Consent Decree in United States v. BFI Waste Systems of North America, Inc., et al., Case No. 07 C 4499 (N.D. IL). After reviewing the Settling Defendants' Statement of Position (SOP), U.S. EPA's SOP, and the Settling Defendants' Reply to U.S. EPA's SOP, I conclude that the procedures of Paragraph 67 of the Consent Decree govern this dispute and that the Settling Defendants have not demonstrated that U.S. EPA improperly applied its indirect cost rate to the United States Department of Justice's (U.S. DOJ) indirect costs. Settling Defendants are to submit payment of the amount in dispute, plus interest, pursuant to Paragraph 54 of the Consent Decree.

Background

On February 6, 2009 the Consent Decree for Case No. 07 C 4499 was entered by the United States District Court for the Northern District of Illinois. (U.S. EPA SOP, Exhibit 1). On September 3, 2009, U.S. EPA issued a bill to the Settling Defendants for reimbursement of costs incurred by U.S. EPA for response activities incurred at the Site from May 1, 2005 through February 27, 2009. (U.S. EPA SOP, Exhibit 2). The total amount billed was $1,972,788.45. *Id.* The Settling Defendants claimed the bill was unreasonable and requested that U.S. EPA accept a reduced sum. (U.S. EPA SOP, Exhibit 4). U.S. EPA responded that the bill was properly calculated and that there was no basis to accept a reduced sum. (U.S. EPA SOP, Exhibit 5). Further discussions failed to bridge the gap between the parties. (U.S. EPA SOP, Exhibits 6, 7). The Settling Defendants submitted a Notice of Dispute on June 2, 2010. (U.S. EPA SOP, Exhibit 8). The Settling Defendants dispute $163,531.43 of U.S. EPA's indirect costs. *Id.* The

[1] BFI Waste Systems of North America, Inc.; Borden Chemical, Inc.; Exxon Mobil Corporation; Giddings & Lewis Machine Tools, LLC; H.B. Fuller Company; Honeywell, Inc.; Mail-Well Envelope Co.; Morton International, Inc.; Waste Management of Illinois Inc.; and Weber Foreign Manufacturing, Inc.

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Settling Defendants deposited that amount, plus interest[2], into an interest bearing account. (U.S. EPA SOP, Exhibit 9). The dispute was not resolved during informal dispute resolution. (U.S. EPA SOP, p. 2). The Settling Defendants invoked formal dispute resolution pursuant to Paragraph 65 of the Consent Decree on July 22, 2010, in what was titled "Statement of Position, U.S. v. BFI, et al., No. 07 C 4499." The Settling Defendants allege U.S. EPA made an accounting error in applying its indirect cost rate to U.S. DOJ's indirect costs. (Settling Defendants SOP, p. 4).

The following is a discussion and determination of the disputed issue.

Dispute Resolution Procedure

There are two ways to proceed through formal dispute resolution as provided by the Consent Decree. Formal disputes may proceed either by Paragraph 66 or 67. Paragraph 65(a) of the Consent Decree requires that the Settling Defendants in their SOP specify their position as to whether formal dispute resolution should proceed under Paragraph 66 or 67 of the Consent Decree. Paragraph 65(b) of the Consent Decree requires U.S. EPA in its SOP to do the same. Both parties agree that the dispute should proceed pursuant to Paragraph 67. (Settling Defendants SOP, p. 6; U.S. EPA SOP, p. 2). Barring disagreement between the parties, I conclude that the dispute shall proceed pursuant to Paragraph 67 of the Consent Decree.

Settling Defendants' Arguments

The "crux" of the Settling Defendants' challenge "is that the United States in the form of EPA is calculating its oversight costs by applying its indirect factor on United States indirect costs from DOJ." (Settling Defendants SOP, p. 4). The Settling Defendants argue that this is "overreaching," contrary to EPA accounting policy, and contrary to Congressional policy against recovery of windfalls as a result of the Superfund process. (Settling Defendants SOP, p. 4). The Settling Defendants argue that the size of the indirect cost markup is so large as to be fundamentally wrong. (Settling Defendants Reply, p. 1). The Settling Defendants also argue that they should not pay almost $2,000,000 based on a policy rather than a regulation having had the benefit of notice, public comment and an opportunity for judicial review. (Settling Defendants SOP, p. 6).

The Disputed Charges were Calculated Correctly and in Accordance with U.S. EPA's Indirect Costs Methodology

The Settling Defendants are not entirely correct in stating that U.S. EPA calculated and billed the Settling Defendants for oversight costs. According to the September 3, 2009 cover letter signed by Richard D. Hackley, U.S. EPA was billing for the "recovery of response costs" for the period of May 1, 2005 through February 27, 2009. (U.S. EPA SOP, Exhibit 2). The Consent Decree at Paragraph 4 does not define "oversight costs" or "response costs," but does

[2] The Settling Defendants requested an extension of time to pay the bill, which U.S. EPA granted. (U.S. EPA SOP, p. 2). Interest on the bill accrued pursuant to Paragraph 55 of the Consent Decree despite the extension of time to pay. (U.S. EPA SOP, p. 3).

define Future Oversight Costs, Future Response Costs, and Interim Response Costs. According to Paragraph 4 of the Consent Decree, Future Oversight Costs are a subset of Future Response Costs. Interim Response Costs are included in the definition of Future Response Costs. Both Future Response Costs and Interim Response Costs include direct and indirect costs. Interim Response Costs are for those response costs incurred from May 1, 2005 through entry of the Consent Decree, including costs incurred but paid after the date of entry. Future Response Costs are for those costs incurred following the date of entry of the Consent Decree. U.S. EPA billed the Settling Defendants for Future Response Costs (direct and indirect), not just Future Oversight Costs, and U.S. EPA billed the Settling Defendants for costs incurred and/or paid during a time period agreed upon by the Parties to the Consent Decree.

Pursuant to Paragraph 53 of the Consent Decree, the Settling Defendants are to reimburse all Future Response Costs not inconsistent with the National Contingency Plan, unless for example, pursuant to Paragraph 54 of the Consent Decree the Settling Defendants contest payment after determining the United States has made an accounting error. The Settling Defendants have raised just such an argument as to certain indirect costs in the September 3, 2009 bill.[3] (Settling Defendants SOP, p. 4).

U.S. EPA has adequately cited the authority supporting its use of its full cost indirect cost methodology and its 2000 guidance to calculate indirect costs in the September 3, 2009 bill. (U.S. EPA SOP, pp. 5-6). The Federal Financial Management Improvement Act of 1996, Title VIII, Pub. L. No. 104-208, 110 Stat. 309 (1996), requires the federal government to comply with published Federal Accounting Standards in its activities. (U.S. EPA SOP, p. 5, Exhibit 17). U.S. EPA developed its full cost indirect cost methodology following the Statement of Federal Financial Accounting Standards No. 4 (Standard No. 4) issued by the Office of Management and Budget on July 31, 1995. (U.S. EPA SOP, p. 5, Exhibit 16). U.S. EPA announced in the Federal Register in 2000 that it planned to bring its cost accounting under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, into compliance with Standard No. 4. (U.S. EPA SOP, Exhibit 18.) Standard No. 4 allows maximum flexibility for federal agencies in developing cost methodologies that best suit their agencies. (U.S. EPA SOP, p. 5, Exhibit 16). Standard No. 4 has five basic requirements: cost accounting, responsibility segments, full costs, inter-entity costs, and costing methodology. *Id.* The manner in which U.S. EPA calculates its indirect costs, including the costs it pays to other federal agencies under CERCLA, was litigated and upheld in United States v. W.R. Grace & Co.-Conn., 280 F. Supp. 2d 1149 (D. Mont. 2003), *aff'd* United States v. W.R. Grace & Co., 429 F.3d 1224 (9th Cir. 2005). (U.S. EPA SOP, p. 5, Exhibits 14, 15). The Court determined that U.S. EPA's revised indirect methodology complies with the five requirements of Standard No. 4. W.R. Grace, 280 F. Supp. 2d at 1185-86. Additionally, the indirect cost methodology was reviewed by the international accounting firm of KPMG and by the General Accounting Office (GAO). (U.S. EPA SOP, Exhibit 13 at ¶ 17). Both KPMG and the GAO concluded that EPA's indirect cost methodology is in compliance with Standard No. 4. *Id.*

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[3] The Settling Defendants devote part of their SOP to a discussion of U.S. EPA and U.S. EPA contractor oversight at the Wauconda Sand & Gravel Site. (Settling Defendant SOP, pp. 1-4). However, only the alleged accounting error as to certain indirect costs is in dispute. I therefore limit my decision to that which is in dispute.

U.S. EPA employs a full cost methodology for calculating indirect costs. (U.S. EPA SOP, p. 6, Exhibits 13 at ¶ 16, 18 at p. 35,341). As Christopher Osborne, a U.S. EPA Financial Manager, explained in his declaration, U.S. DOJ charges U.S. EPA for its total costs incurred in connection with a Superfund site, including both direct and indirect costs, consistent with U.S. EPA's indirect cost methodology. (U.S. EPA SOP, Exhibit 13 at ¶ 22). Since U.S. DOJ costs are charged to particular sites, U.S. EPA considers U.S. DOJ costs to be site specific and thus direct costs. *Id.* U.S. DOJ's costs charged to the particular sites are composed of U.S. DOJ's direct costs and indirect costs. *Id.* As with all direct costs, the U.S. DOJ charges become part of U.S. EPA's allocation base, from which U.S. EPA determines the proper region-wide annual percentage rate for indirect costs for a U.S. EPA region. *Id.* Also, as direct costs, the U.S. DOJ costs become part of U.S. EPA's allocation base, which is multiplied by the pertinent annual indirect costs percentage to determine U.S. EPA's indirect cost for a site. *Id.* This is the method U.S. EPA uses to calculate the annual U.S. EPA region-wide allocation base, and the method U.S. EPA uses to calculate indirect costs for the Site. *Id.* Total U.S. DOJ costs, direct and indirect, incurred in connection with U.S. DOJ's work for the Site are used as part of the allocation base for the affected U.S. EPA region, and these costs are charged to U.S. EPA as direct costs for the Site. (U.S. EPA SOP, Exhibits 13 at ¶ 22, 19 at ¶ 4). The Court in W.R. Grace approved of this method of billing:

> It is appropriate for EPA to include in its allocation base the indirect costs of those who have performed services for EPA, such as other agencies and contractors, because all of these costs are considered necessary to cleaning up contaminated sites, and they are included in the total direct cost of the activity at the site.

W.R. Grace, 280 F. Supp. 2d at 1186.

U.S. EPA did calculate the September 3, 2009 bill in accordance with its guidance, also referred to as the U.S. EPA 2000 Guidance. (U.S. SOP, Exhibit 18). The debate between U.S. EPA and the Settling Defendants boils down to Attachment 2 of the U.S. EPA 2000 Guidance, regarding instructions for applying indirect rates: "[t]o apply these rates to an individual site, identify the total direct site-specific costs of that site (including any DOJ costs but excluding any ATSDR costs) and multiply that total by the appropriate region's indirect cost rate." (Exhibit 18 at 35,345). The Settling Defendants assert that "DOJ indirect costs are not 'direct site-specific costs'" and so it was an accounting error to apply Region 5's indirect cost rate to any DOJ costs that were not 'direct site-specific costs.'" (Settling Defendants SOP, p. 5). However, as U.S. EPA explained, "[t]otal U.S. DOJ costs, direct and indirect, incurred in connection with U.S. DOJ's work for the Site are used as part of the allocation base for the affected U.S. EPA region, and these costs are charged to U.S. EPA as direct costs for the Site." (U.S. EPA SOP, Exhibits 13 at ¶ 22, 19 at ¶ 4). As direct costs, the U.S. DOJ costs become part of U.S. EPA's allocation base, which is multiplied by the pertinent annual indirect costs percentage to determine U.S. EPA's indirect cost for a site. (U.S. EPA SOP, Exhibit 13 at ¶ 22). So, U.S. EPA identified the total direct Site-specific costs for Wauconda Sand & Gravel, including any U.S. DOJ costs, and multiplied by the appropriate indirect cost rate for the particular year. U.S. EPA followed the 2000 Guidance in correctly calculating the September 3, 2009 bill.

The Settling Defendants argue that U.S. EPA's practice violates basic accounting principles. (Settling Defendants SOP, p. 5). What those basic principles are the Settling Defendants do not say. Nor do they provide any evidence that these basic accounting principles apply to a government agency's requirement to identify its costs, including indirect costs. As Mr. Osborne explained, U.S. EPA is required by federal law to comply with Standard No. 4, which sets forth the cost accounting principles for the Federal government. (U.S. EPA SOP, Exhibit 13 at ¶ 14). U.S. EPA's indirect cost methodology has been reviewed and deemed to be in compliance with Standard No. 4 by KPMG, the GAO, and the W.R. Grace Court. (U.S. EPA SOP, p. 8, Exhibit 13 at ¶ 17). The Settling Defendants have no refutation.

The Settling Defendants argue that U.S. EPA's practice is "contrary to Congress's mandate precluding any parties from obtaining windfalls as a result of the Superfund process." (Settling Defendants SOP, p. 5). The Settling Defendants cite to CERCLA § 107(r) to stand for the argument that "[j]ust as a private party should not receive a windfall benefit as a result of EPA's work at a Superfund site, EPA should not be entitled to obtain a windfall itself by charging private parties for direct or indirect costs it did not incur." (Settling Defendants SOP, p. 5-6). CERCLA § 107(r) is applicable to bona fide prospective purchasers of property being cleaned up or having been cleaned up by U.S. EPA's Superfund process. CERCLA § 107(r) is not applicable to this dispute. Nor is CERCLA § 107(r) an expression of a Congressional mandate that the Settling Defendants suggest. Most importantly, the Settling Defendants provide no proof that U.S. EPA is reaping some sort of windfall or surplus by using its full cost indirect cost methodology.

In a similar argument, the Settling Defendants argue that the U.S. EPA indirect costs are so high as to be fundamentally wrong. (Settling Defendants Reply, p. 1). However, Mr. Osborne concludes that "EPA's methodology results in a fair and equitable allocation of indirect costs to an individual Superfund site, such as the Wauconda Sand & Gravel Superfund Site." (U.S. EPA SOP, Exhibit 13 at ¶ 39). Mr. Osborne bases his opinion upon, among other things, his twenty-seven years of experience as an accountant, auditor, and analyst. *Id.* The Settling Defendants offer no evidence that either Mr. Osborne is incorrect or that the indirect costs are fundamentally wrong.

Last, the Settling Defendants argue that they should not have to pay nearly $2,000,000 based on a policy as opposed to a regulation having had the benefit of notice, public comment and an opportunity for judicial review. (Settling Defendant SOP, p. 6). The Settling Defendants argue that a rulemaking is necessary when an agency makes a change in policy having a substantial impact on the public. *Id.* The Settling Defendants do not request that the methodology be struck down and I saw no proof of the alleged "substantial impact on the public" in the Settling Defendants' submissions. U.S. EPA followed the 2000 Guidance, using its enforcement discretion to enter into a Consent Decree for the recovery of Future Response Costs, including indirect costs. The Consent Decree was entered more than eight years after U.S. EPA's 2000 Guidance was published in the Federal Register. (U.S. EPA SOP, p. 10). The Settling Defendants entered into the Consent Decree willingly and at least should have been aware of the current methodology at the time the Consent Decree was negotiated and lodged.

Having entered into the Consent Decree, it is now the Settling Defendants' responsibility to reimburse U.S. EPA for Future Response Costs.

Final Decision

It is the final decision of the Director of the Superfund Division that the Settling Defendants are to submit payment of the amount in dispute, plus interest, pursuant to Paragraph 54 of the Consent Decree.

Sincerely,

for Richard C. Karl, Director
Superfund Division

bcc: Steven Ellis, U.S. DOJ (via email)
Richard Hackley (MF-10F)
Mark Koller (C-14J)
Sheri Bianchin (SR-6J)
Eric Runkel, Illinois EPA (via email)

VEDDERPRICE

VEDDER PRICE P.C.
222 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
312-609-7500
FAX: 312-609-5005

PETER J. KELLY
312-609-7875
pkelly@vedderprice.com

CHICAGO • NEW YORK CITY • WASHINGTON, D.C.

August 30, 2010

BY FEDERAL EXPRESS

Richard Karl, Director
Superfund Division
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Mark J. Koller, Esq.
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Re: Reply to U.S. EPA's Statement of Position
U.S. v. BFI et al., Case No. 07 C 4499 (N.D. IL)

Dear Gentlemen:

This Reply amplifies Settling Defendants' previous arguments. We will not repeat the statements in our previous submissions to EPA. See Exhibits 4, 6, 7, 8, 9 and 11 to EPA's August 16 Statement of Position.

In the world of project management it is usual for a General Contractor to mark-up a subcontractor's invoice to account for the overhead charges devoted to managing the subcontractor's work. Usually the mark-up is in the 5-10% range and rarely above 15%. In the case of Wauconda, EPA spreads its overhead (the mark-up) under the guise of indirect costs over its contractors' invoices and its own direct costs. Generally, EPA's indirect costs were in the vicinity of 60%—well beyond any mark-up in the private sector. Nonetheless, we assume EPA does in fact supervise and direct its contractors and other agencies it enlists to aid with site specific work. EPA does not supervise or manage DOJ. Moreover, DOJ's invoices already carry a substantial mark-up. For the years FY05 through FY09 DOJ's indirect costs were 190% of its direct costs. See EPA Exhibit 3. Settling Defendants object to an EPA mark-up on DOJ's already marked-up costs. DOJ had direct costs of $140,690.58 from FY05 to FY09. See EPA Exhibit 3. To this DOJ added $266,104.43 (or 190%) in indirect costs. Then EPA added $165,531.43 of its own indirect costs. See EPA Exhibit 6. So, for every dollar of DOJ direct costs EPA and DOJ added on more than 3 dollars of indirect costs. Settling Defendants think that is fundamentally wrong.

In the closing pages of its Statement of Position, EPA repeats earlier policy statements that the indirect cost methodology "did not impose binding dictates on how U.S. EPA should use its enforcement discretion." Even if EPA believes its methodology is applied correctly here (which Settling Defendants dispute), the result is outrageous and cries out for correction.

Settling Defendants respectfully request a decision on this dispute in their favor.

Sincerely,

Peter J. Kelly

PJK/jab
cc: S. Ellis
WTG II+

U.S. ENVIRONMENTAL
PROTECTION AGENCY

AUG 31 2010

OFFICE OF REGIONAL
COUNSEL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVSION

UNITED STATES OF AMERICA Plaintiff, v. BFI WASTE SYSTEMS OF NORTH AMERICA, INC., BORDEN CHEMICAL, INC., AS SUCCESSOR IN INTEREST TO IB DISTRIBUTORS, INC. EXXON MOBIL CORPORATION, GIDDINGS & LEWIS MACHINE TOOLS, LLC, AS SUCCESSOR IN INTEREST TO BASIC ELECTRONICS MFG. CORP., H. B. FULLER COMPANY, HONEYWELL, INC., JENSEN DISPOSAL SERVICE, INC. MAIL-WELL ENVELOPE CO., MORTON INTERNATIONAL, INC., MUNDELEIN DISPOSAL SERVICE, INC., VILLAGE OF WAUCONDA, ILLINOIS, WASTE MANAGEMENT OF ILLINOIS, INC., WAUCONDA SAND & GRAVEL, CO., and WEBER FOREIGN MANUFACTURING, INC., f/k/a INK SPECIALTIES COMPANY, INC. Defendants.	)	CIVIL ACTION NO. 07 C 4499 Judge Lefkow

CONSENT DECREE
FOR REMEDIAL ACTION/COST RECOVERY
WAUCONDA SAND & GRAVEL SUPERFUND SITE
WAUCONDA, ILLINOIS

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607, and to Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6973.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Wauconda Sand & Gravel Superfund Site in Wauconda, Illinois (the "Site"), together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Illinois (the "State") on December 16, 2005, of negotiations with potentially responsible parties regarding the completion and integration of ongoing remedial obligations under the various Records of Decision and Orders as well as the implementation of the future remedial design and remedial actions for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), on November 7, 2005, EPA notified the United States Department of the Interior (DOI), as the Federal natural resource trustee, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under

Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

E. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that there have been releases or threatened releases of hazardous substance(s) at or from the Site, nor do they acknowledge that such alleged releases constitute an imminent or substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983 (48 Fed. Reg. 40658).

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced in June 1983 a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

H. EPA completed a Remedial Investigation ("RI") Report on August 29, 1984 and EPA issued a Remedial Investigation Analysis/Development of Alternatives Report on November 1, 1984.

I. Following additional sampling, EPA issued a Remedial Investigation Supplement on July 15, 1985, and a Feasibility Study on August 1, 1985.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. EPA held a public meeting in the Wauconda Township Hall, 505 Bonner Road, on August 14, 1985.

Approximately 25 people attended and questions posed during the meeting are addressed in the Community Relations Responsiveness Summary. EPA issued a Record of Decision, which includes the Community Relations Responsiveness Summary, on September 30, 1985.

K. A second Supplemental Remedial Investigation/Feasibility Study ("SRI/FS") was prepared by a group of potentially responsible parties, known as the Wauconda Task Group ("WTG"), pursuant to an Administrative Consent Order ("AOC1") issued by EPA on July 28, 1986. (Docket # V-W-86-C-0006). The WTG completed the final SRI/FS in November 1987. EPA and the State prepared an Amendment to the final SRI/FS in April of 1988. This Amendment along with the November 1987 report constitutes the complete SRI/FS. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, on April 25, 1988, EPA published notice of the completion of the SRI/FS and of the Proposed Plan for remedial action in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. EPA held public meetings in the Wauconda Township Hall, 505 Bonner Road, on May 11, 1988, and on December 14, 1988. Copies of the transcripts of the public meetings are available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

L. The decision by EPA on the remedial action to be implemented at the Site is embodied in two Records of Decision ("RODs"); the first ROD (ROD1), an interim ROD, was executed on September 30, 1985, on which the State has given its concurrence, and the second ROD (ROD2) was executed on March 31, 1989, on which the State has also given its concurrence. The RODs include a responsiveness summary to the public comments. Notice of

the final plan was published in accordance with Section 117(b) of CERCLA.

M. The WTG, together with BFI Waste Systems of North America, Inc., has been and continues to implement the work required under the RODs pursuant to an Administrative Order on Consent ("AOC2") issued on September 30, 1988 (requiring work up to May 31, 1989), and pursuant to a Unilateral Administrative Order ("UAO1"), issued on December 10, 1989.

N. On April 20, 1994, a Consent Decree (the "1994 Consent Decree") was entered in the United States District Court for the Northern District of Illinois, between the United States and certain parties in which the settling defendants to the 1994 Consent Decree agreed to reimburse the United States for certain past costs and future costs the United States had incurred and would incur in overseeing the implementation of the remedial action set forth in ROD1 and ROD2.

O. Additional testing, beginning in September 2003, has found the existence of vinyl chloride, a hazardous substance, in the groundwater at locations east and southeast of the landfill.

In response to the discovery of vinyl chloride in the groundwater, on September 27, 2004, EPA issued a second Unilateral Administrative Order ("UAO2") to certain respondents, including most of the Settling Defendants, to conduct further investigation at the site. UAO2 requires certain additional sampling and monitoring of residential drinking water wells, the performance of additional remedial investigations, including hydrogeologic and water quality characterizations, and an additional Feasibility Study to evaluate remedial alternatives. UAO2 also requires the reimbursement of EPA's response costs for overseeing respondents'

implementation of the UAO.

P. By letter dated November 19, 2004, Settling Defendants proposed, inter alia, to provide bottled water to all residents not currently on municipal water in the Hillcrest, Lakeview Villa, and North Shore subdivisions until a public water system was available to the residents. In their letter, the Settling Defendants requested that EPA suspend the effective date of UAO2 while the Settling Defendants developed a proposal to provide permanent public water connections to residents in the Hillcrest, Lakeview Villa, and North Shore subdivisions. The bottled water and permanent public water connections plan was also subsequently expanded to include the Wellsmere, Spencer Highlands, and Elmcrest subdivisions and homes on Garland Road south of Bonner Road.

Q. By letter dated November 22, 2004, EPA agreed to consider the Settling Defendants' proposal, authorized proceeding with development of a plan for providing public water, and suspended the effective date of UAO2 to allow the Settling Defendants to develop their proposal.

R. The Settling Defendants to this Consent Decree agree to effect an extension of and connections to the Village of Wauconda public water system to provide residences in the public water supply service area with public water pursuant to the Remedial Action Work Plan.

S. Based on the information presently available to EPA, EPA believes that the Work already performed pursuant to RODs 1 and 2, AOCs 1 and 2, and UAO1, and to be performed as described in this Consent Decree will be properly and promptly implemented by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

T. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, Section 7003 of RCRA, 42 U.S.C. § 6973, and Sections 106, 107, and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor

hired by the Settling Defendants to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

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

"Consent Decree" or **"Decree"** shall mean this Decree and all appendices hereto. In the event of a conflict between this Decree and any appendix, the Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day.

"Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next Working Day.

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 103.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Settling Defendants' performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, inter alia: the costs incurred by the United States pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls), XV (Emergency Response), and Paragraph 85 (Work Takeover) of Section XXI (Covenant Not to Sue by Plaintiff), or the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XIX (Dispute Resolution) and all litigation costs.

"Future Response Costs" shall mean all costs incurred following the date of entry of this Consent Decree, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree,

verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 85 of Section XXI. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Settling Defendants have agreed to reimburse under this Consent Decree that have accrued pursuant to 42 U.S.C. § 9607(a) up to and including the date of entry of this Consent Decree. For the purpose of this Paragraph, Interest on Past Response Costs which the Settling Defendants have agreed to pay under this Consent Decree, began to accrue on July 7, 2005.

"Interest," shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of Interest shall be the rate in effect at the time the Interest accrues. The rate of Interest is subject to change on October 1 of each year.

"Interim Response Costs" shall mean all response costs, including direct and indirect costs, (a) paid or incurred by the United States in connection with the Site from May 1, 2005 up to and including the date of entry of this Consent Decree, or (b) incurred up to and including the date of entry of this Consent Decree but paid after that date.

"National Contingency Plan" or **"NCP"** shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42

U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Operation and Maintenance" or **"O & M"** shall mean all activities required to maintain or monitor the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved by EPA and the Remedial Action Work Plan.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and the Settling Defendants.

"Past Response Costs" shall mean all response costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through April 30, 2005, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date that are not otherwise reimbursed to the United States under the 1994 Consent Decree.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in RODs 1 and 2 and the Remedial Action Work Plan.

"Plaintiff" shall mean the United States.

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

"Records of Decision" or **"RODs"** shall mean the two EPA Records of Decision relating to the Wauconda Site. The first ROD, or ROD1, was executed on September 30, 1985, and the second ROD, or ROD2, was executed on March 31, 1989.

"Remedial Action" shall mean those activities, except for Operation and

Maintenance, to be undertaken by the Settling Defendants to implement ROD 1 and ROD 2 in accordance with this Consent Decree and the final Remedial Action Work Plan and other plans approved by EPA.

"Remedial Action Work Plan" or **"RAWP"** shall mean Appendix A to this Consent Decree and approved by EPA, and any amendments thereto.

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

"Settling Defendants" shall mean those Parties identified as Defendants in the Caption to this Consent Decree.

"Site" shall mean the Wauconda Sand & Gravel Superfund Site, encompassing parcels 09-24-100-001; 09-24-102-001; and 09-24-102-002, located in Lake County, Illinois, north of the Village of Wauconda, and all areas where contamination disposed of at the Site has migrated.

"State" shall mean the State of Illinois, acting through the Illinois Environmental Protection Agency.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"Unilateral Administrative Order" or **"UAO"** shall mean the two UAO's issued by EPA relating to the Site. The first UAO, or UAO1, was signed by the Director of the Waste Management Division, EPA Region 5 on December 19, 1989. The second UAO, or UAO2, was signed by the Director of the Superfund Division, EPA Region 5 on September 27, 2004. The

effective date of UAO2 was suspended until the effective date of this Consent Decree.

"United States" shall mean the United States of America.

"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), 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. **Objectives of the Parties.** The objectives of the Parties in entering into this Consent Decree are to enter into a complete settlement of specified claims by the United States with regard to the Site designed to protect public health, welfare, and the environment at the Site by the design and implementation of response actions and a public water system at the Site by the Settling Defendants, to reimburse the Plaintiff's response costs, to resolve the Plaintiff's claims under RCRA and CERCLA against Settling Defendants as provided in this Consent Decree, and to incorporate all prior requirements and obligations under AOC1, AOC2, UAO1, and the 1994 Consent Decree in one document to ensure consistency, compliance, and enforceability.

6. **Recognition of Settling Defendants' Performance.** EPA hereby recognizes and acknowledges that Settling Defendants have in the past complied with administrative orders issued by EPA which have become effective with respect to the Site. EPA recognizes that Settling Defendants have, by their early implementation of portions of the Work required by this

Consent Decree, acted proactively to protect human health and the environment.

7. **Commitments by Settling Defendants.**

a. Settling Defendants shall finance and perform, or cause to be financed and performed, the Work in accordance with this Consent Decree, the RODs, the RAWP, and all other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants regarding the financing and performing of the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

8. **Compliance With Applicable Law.** All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the RODs and the RAWP. The activities conducted pursuant to this Consent Decree, if approved by EPA, either expressly or tacitly, shall be considered to be consistent with the NCP. Upon entry of this Consent Decree, UAO2 is withdrawn. Compliance with this Consent Decree is deemed compliance with AOC1, AOC2, UAO1, and the 1994 Consent Decree.

9. **Permits.**

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

10. **Selection of Supervising Contractor.**

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 10 days after the lodging of this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Defendants 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), 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) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling

Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

11. **Remedial Action Work Plan.** The Remedial Action Work Plan ("RAWP") is attached to this Consent Decree as Appendix A. It is incorporated into this Consent Decree and is enforceable as part of the Consent Decree.

12. **Other Plans.** The Health and Safety Plan ("HASP"), Quality Assurance Project Plan ("QAPP"), Operation and Maintenance Plan ("O& M Plan") and the Sampling, Analysis, and Monitoring Plan ("SAMP"), have been submitted by the Settling Defendants for EPA approval in accordance with the provisions of Paragraph 36 of this Consent Decree.

13. **Modification of the RAWP or Related Work Plans.**

a. If EPA determines that modification to the work specified in the RAWP and/or in other plans developed pursuant to the RAWP is necessary to achieve and maintain the effectiveness of the remedy set forth in the RODs, EPA may require that such modification be incorporated in the RAWP and/or such plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the RODs.

b. For the purposes of Paragraphs 13, 48, and 49 only, the "scope of the remedy selected in the RODs" is understood by the Parties to include all "remedial" work, as those terms are defined in CERCLA and the NCP, performed by and/or to be performed by the Settling Defendants with regard to the Site pursuant to ROD 1 and ROD 2, AOC 1 and AOC 2, UAO1, and the work described in this Consent Decree, including the RAWP and those contingent actions specified in the RAWP.

c. If Settling Defendants object to any modification determined by EPA to be

necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 66 (record review). The RAWP and other plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendants shall implement any work required by any modifications incorporated in the RAWP and other plans in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

14. Settling Defendants acknowledge and agree that nothing in this Consent Decree or the RAWP constitutes a warranty or representation of any kind by the Plaintiff that compliance with the work requirements set forth in the RAWP will achieve the Performance Standards.

15. a. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. 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.

(1) The Settling Defendants shall include in the written notification the following information, where available:

(a) the name and location of the facility to which the Waste Material is to be shipped;

(b) the type and quantity of the Waste Material to be shipped;

(c) the expected schedule for the shipment of the Waste Material; and

(d) the method of transportation.

The Settling Defendants 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.

(2) The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 15.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Settling Defendants 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. Settling Defendants 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 regulations cited in the preceding sentence.

VII. REMEDY REVIEW

16. **Periodic Review.** Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct additional reviews of whether the Remedial Action is protective of human health and the environment, which EPA will conduct at least every five years as required by Section 121(c), 42 U.S.C. § 9621(c) of

CERCLA and any applicable regulations.

17. **EPA Selection of Further Response Actions.** If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

18. **Opportunity To Comment.** Settling Defendants and, if required by Section 7003 of RCRA and Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

19. **Settling Defendants' Obligation To Perform Further Response Actions.** If EPA selects further response actions for the Site, the Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 81 or Paragraph 82 (concerning the United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 81 or Paragraph 82 of Section XXI (Covenants Not To Sue by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 66 (record review).

20. **Submissions of Plans.** If Settling Defendants are required to perform further

response actions pursuant to Paragraph 19, they shall submit a plan for such work to EPA for approval within 30 days of notice by EPA of the need for additional response actions, and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

21. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated May 1999, and any amendments made thereto during the

course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Settling Defendants may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA equivalent QA/QC program. Settling Defendants shall only use laboratories that have a documented Quality System which 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), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

22. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendants shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Defendants to take split or duplicate samples of any samples they take as part of the Plaintiff's oversight of the Settling Defendants' implementation of the Work.

23. Settling Defendants shall submit to EPA two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

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

IX. ACCESS AND INSTITUTIONAL CONTROLS

25. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, and the other Settling Defendants, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States;

(3) Conducting investigations relating to contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 85 of this Consent Decree;

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);

(9) Assessing Settling Defendants' compliance with this Consent Decree; and

(10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures performed pursuant to ROD 1 or ROD 2 or to be performed pursuant to this Consent Decree.

26. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall use best efforts to secure from such persons an agreement to provide access thereto for Settling Defendants, as well as for the United States

on behalf of EPA and the State as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a of this Consent Decree;

27. For purposes of Paragraph 26 of this Consent Decree and in light of the specific circumstances of this Site, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, and land/water use restrictions. If (a) any access or land/water use restriction agreements required by Paragraph 26 of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, or (b) any access easements required by Paragraph 26 of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of entry of this Consent Decree, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 26 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access and/or land/water use restrictions, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

28. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the RODs, ensure the integrity and protectiveness thereof, or ensure

non-interference therewith, Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls.

29. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State written progress reports that:

(a) describe the actions which have been taken toward achieving compliance with this Consent Decree for the previous month (and changing to the previous quarter 2 years after the effective date of the Consent Decree unless otherwise directed by EPA) during construction of the public water system and monitoring thereafter;

(b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous period;

(c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous period;

(d) describe all actions, including, but not limited to, data collection and implementation of work plans that are scheduled for the next reporting period and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts;

(e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;

(f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and

(g) describe all activities undertaken under EPA's supervision pursuant to Section XXX (Community Relations) during the previous period and those to be undertaken in the next reporting period. Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every reporting period following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 49.b of Section XIV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

31. The Settling Defendants shall notify EPA of any change in the schedule described in the periodic progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

32. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project

Coordinator is available, the Emergency Response Section, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

33. Within 20 days of the onset of any event described in the previous Paragraph, Settling Defendants shall furnish to the Plaintiff and the State a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

34. Settling Defendants shall submit to EPA a copy of all plans, reports, and data required by the RAWP or any other approved plans in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit a copy of all such plans, reports and data to the State. Upon request by EPA, Settling Defendants shall submit in electronic form all portions of any report or other deliverable Settling Defendants are required to submit pursuant to the provisions of this Consent Decree.

35. All reports and other documents submitted by Settling Defendants to EPA (other than the periodic progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and

comment by the State, 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 the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within 30 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 and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 36(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 36(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

38. **Resubmission of Plans.**

a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendants shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 30-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 39 and 40.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

39. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (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 upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

41. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

42. Within 20 days of lodging this Consent Decree, Settling Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

43. The Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the National Contingency Plan, 40

C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

XIII. PERFORMANCE GUARANTEE

44. Each year on the anniversary of the entry of this Consent Decree and continuing until EPA issues a Certification of Completion of the Remedial Action pursuant to Section XIV of this Consent Decree, Settling Defendants shall submit to the United States and the State an audited financial statement for one of the Settling Defendants demonstrating that the Settling Defendant has 1) a net worth of not less than $1,000,000,000; 2) a debt to equity ratio of not more than 4.0; and 3) ninety percent (90%) of the assets and liabilities which are used to calculate items 1 and 2 are located in the United States.

In the event no Settling Defendant is able to make a demonstration as required above, Settling Defendants shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of $2,923,980.00 in one or more of the following forms:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State

agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration by one or more Settling Defendants that each such Settling Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Settling Defendant or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of Work that it proposes to guarantee hereunder.

45. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 44.f of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part

264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 44.e or 44.f, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within 30 days of 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 44 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

46. If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 44 above after entry of this Consent Decree, Settling Defendants may, on any anniversary date of entry of this Consent Decree, 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. Settling Defendants 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 upon approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

47. Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendants

may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

48. **Completion of the Remedial Action.**

a. Within 90 days after Settling Defendants conclude that the Remedial Action has been fully performed, the Settling Defendants shall submit to EPA, with a copy for the State, a written report requesting certification for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). In the report, a registered professional engineer shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or by the professional engineer:

> To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree, EPA will notify the Settling Defendants in writing of the activities that must be undertaken by the Settling Defendants pursuant to this Consent Decree to complete the Remedial Action, provided, however, that EPA may only require the Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the RODs," as that

term is defined in Paragraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the RAWP or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). The Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion, and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

49. **Completion of the Work.**

a. Within 90 days after Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this

Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

> To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the RODs," as that term is defined in Paragraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the RAWP or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants, and after a reasonable opportunity to review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XV. EMERGENCY RESPONSE

50. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 51, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA Emergency Response Unit, Region 5. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the RAWP. In the event that

Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA all costs of the emergency response action undertaken by EPA not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

51. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site; or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or

minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiff).

XVI. PAYMENTS FOR RESPONSE COSTS

52. **Payments for Past Response Costs.**

a. Within 30 days of the Effective Date, Settling Defendants shall pay to the United States $31,045.84, in payment for Past Response Costs. Payment pursuant to this Paragraph shall be by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2007V00949, EPA Site/Spill ID Number 0581, and DOJ Case Number 90-11-2-153/1. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Illinois following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. The total amount to be paid by Settling Defendants pursuant to Subparagraph 52.a shall be deposited in the Wauconda Sand & Gravel 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.

53. **Payments for Future Response Costs.**

a. Settling Defendants shall reimburse to the EPA Hazardous Substance Superfund all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Settling Defendants a bill requiring payment that includes an Itemized Cost Summary (ICS) Statement which includes direct and indirect costs incurred by EPA, DOJ and their contractors. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 54. Settling Defendants shall make all payments required by this Paragraph according to the following procedures:

(i) If the payment amount demanded in the bill is more than $10,000, payment shall be made to U.S. EPA by Electronics Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to the Settling Defendants by U.S. EPA Region 5. Payment shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number 0581, and the Court docket number for this action.

(ii) If the amount demanded in the bill is $10,000 or less, the Settling Defendants may in lieu of the procedures in Subparagraph 53(a)(i) make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 0581, and DOJ Case Number 90-11-2-153/1. Settling Defendants shall send the check(s) to:

U.S. EPA - Region 5
P.O. Box 371531

Pittsburgh, PA 15251-7531

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. The total amount to be paid by Settling Defendants pursuant to Subparagraph 53.a shall be deposited in the Wauconda Sand & Gravel 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.

54. Settling Defendants may contest payment of any Future Response Costs under Paragraph 53 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP or the provisions of this Consent Decree. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 53. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Illinois and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), 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, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 53. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 53; Settling Defendants 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 XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

55. In the event that the payments required by Paragraph 53 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph

70. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 53.

XVII. INDEMNIFICATION AND INSURANCE

56. **Settling Defendants' Indemnification of the United States.**

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States all costs it incurs 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 Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 56, and shall consult with Settling Defendants prior to settling such claim.

57. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

58. As of the date of lodging of this Consent Decree, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Subparagraph 48.b of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of $3 million dollars, combined single limit, and automobile liability insurance with limits of $1 million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of

this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

59. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's

Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 5 days of when Settling Defendants first knew that the event might cause a delay. Within 10 days thereafter, Settling Defendants shall provide in writing to EPA 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; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants 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. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

61. 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 Consent Decree 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 the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

62. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 59 and 60, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

63. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

64. Any dispute which arises under or with respect to this Consent Decree shall in the

first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

65. **Statements of Position.**

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 66 or Paragraph 67.

b. Within 15 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 66 or 67. Within 15 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 66 or 67, the parties to the dispute shall follow

the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 66 and 67.

66. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the RODs' provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 66.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 66.b shall be

reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 66.a.

67. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 65, the Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

68. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 76. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

69. Settling Defendants shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 70 and 71 for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the RAWP, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

70. **Stipulated Penalty Amounts - Work.**

a. The following stipulated penalties shall accrue per violation per day for failure