

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for David M. Peterson 10/1/15  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number CERCLA-01-2014-0007

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt: \_\_\_\_\_ This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Town of Bennington, VT  
205 South Street  
Bennington, VT 05201

Total Dollar Amount of Receivable \$ 174,000 Due Date: 12/31/15

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

1<sup>st</sup> \$ 50,000 on 10/1/15  
2<sup>nd</sup> \$ 124,000 on 12/31/15  
3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

Phone Number \_\_\_\_\_



**U. S. ENVIRONMENTAL PROTECTION AGENCY**

**REGION 1 - NEW ENGLAND**

5 Post Office Square, Suite 100 (OES 04-1)  
Boston, MA 02109-3912

OFFICE OF  
ENVIRONMENTAL STEWARDSHIP

DAVID M. PETERSON  
direct: (617) 918-1891

BY HAND

*October 1, 2015*

Wanda I. Santiago, Regional Hearing Clerk  
EPA Region 1 - New England  
5 Post Office Square, Suite 100 (ORA 18-1)  
Boston, MA 02109-3912

Re: Former Kocher Drive Dump Superfund Site, CERCLA 122(h) Settlement Agreement  
with the Town of Bennington, VT: Docket No.: 01-2014-0007

Dear Ms. Santiago:

Please find enclosed for filing in the above-entitled case a copy of the final settlement document, a copy of the Federal Register Notice announcing the 30 day comment period for the settlement, and the Responsiveness Summary. The signing of the Responsiveness Summary by EPA has established the October 1, 2015 effective date for the settlement.

Thank you for your assistance in this matter.

Sincerely,

David M. Peterson, Senior Enforcement Counsel  
Superfund Legal Office  
EPA Region 1

Enclosures

**RESPONSIVENESS SUMMARY**

**FOR THE ADMINISTRATIVE COST RECOVERY SETTLEMENT AGREEMENT; TOWN OF  
BENNINGTON, VT, EPA DOCKET # 01-2014-0007**

**FORMER KOCHER LANDFILL SUPERFUND SITE, BENNINGTON, VT**

Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9622(i), requires EPA to publish in the Federal Register notice of proposed administrative settlements entered under Section 122(h) of CERCLA, 42 U.S.C. § 6922(h), and, for a 30-day period beginning on the date of publication, to provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement. Section 122(i) further requires EPA to consider any comments filed during the 30-day period and permits EPA to withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

In accordance with Section 122(i) of CERCLA, EPA published notice of a proposed administrative settlement, EPA Docket No. 01-2014-0007, concerning the Former Kocher Landfill Superfund Site located in Bennington, Vermont in the Federal Register on August 26, 2015, 80 Fed. Reg. 51803. EPA did not receive any written comments on the proposed settlement during the 30-day period, and the proposed settlement is, therefore, final and effective upon the date of signature of the Acting Director, Office of Site Remediation and Restoration, EPA Region 1. In accordance with Paragraph 10 (Payment of Past Response Costs) of the settlement, the Town of Bennington will pay \$174,000, plus interest, on the following payment schedule:

- a. \$50,000 within ten (10) days of the Effective Date of this Settlement Agreement;
- b. \$75,000, plus interest on the amount of \$124,000 accruing from October 1, 2015 through the date of payment, on or before December 31, 2015; and
- c. the balance of \$49,000, plus interest on the amount of \$49,000 accruing from October 1, 2015 through the date of payment, on or before December 31, 2016.

In addition, Paragraph 16 (Response Obligations) of the settlement requires the Town of Bennington to comply with any Order or Request by the State of Vermont to carry out response work at the Site under State supervision.



Nancy Barmakian  
Acting Director, Office of Site Remediation and Restoration

10/01/15

Date

Use of the methods also should be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I," EPA/600/R-94/038a and "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program" EPA-454/B-08-003, December, 2008. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

Consistent or repeated noncompliance should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD-E205-01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Dated: August 18, 2015.

**Jennifer Orme-Zavaleta,**  
Director, National Exposure Research Laboratory.

[FR Doc. 2015-21203 Filed 8-25-15; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[9933-12-Region 1]

**Proposed CERCLA Administrative Cost Recovery Settlement; Town Of Bennington, Vermont, Former Kocher Drive Dump Site, Bennington, Vermont**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed settlement; request for public comments.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. Section 9622(i), notice is hereby given of a proposed administrative settlement for recovery of response costs under CERCLA Section 122(h) and 104(e), concerning the Former Kocher Drive Dump Superfund Site in Bennington, Vermont with the following settling party: Town of Bennington, Vermont. The settlement requires the Town of Bennington,

Vermont to pay \$175,000 to the Hazardous Substance Superfund, consisting of principal and interest, on the following payment schedule: (1) \$50,000 within 10 days of the Effective Date of the settlement; (2) \$75,000 on or before December 31, 2015; and (3) the balance of \$50,000 on or before December 31, 2016. The settlement also requires the Town to comply with any request or order from the Vermont Agency of Natural Resources relating to the Site.

For 30 days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 5 Post Office Square, Boston, MA 02109-3912.

**DATES:** Comments must be submitted by September 25, 2015.

**ADDRESSES:** Comments should be addressed to David Peterson, Senior Enforcement Counsel, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (OES04-1), Boston, MA 02109-3912 (Telephone No. 617-918-1891) and should refer to: In re: Former Kocher Drive Dump Superfund Site, U.S. EPA Docket No. 01-2014-0007.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed settlement may be obtained from Cindy Catri, Senior Enforcement Counsel, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (OES04-2), Boston, MA 02109-3912; (617) 918-1888; *Catri.Cynthia@epa.gov*.

**SUPPLEMENTARY INFORMATION:** This proposed administrative settlement for recovery of response costs under CERCLA Section 122(h)(1) and 104(e)(6), concerning the Former Kocher Drive Dump Superfund Site in Bennington, Vermont, requires the settling party, the Town of Bennington, Vermont to pay \$175,000 to the Hazardous Substance Superfund, consisting of principal and interest, on the following payment schedule: (1) \$50,000 within 10 days of the Effective Date of the settlement; (2) \$75,000 on or before December 31, 2015; and (3) the balance of \$50,000 on or before December 31, 2016. The settlement also requires the Town to comply with any request or order from the Vermont Agency of Natural Resources relating to the Site.

The settlement includes a covenant not to sue pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607; relating to the Site, and protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(h)(4). The settlement has been approved by the Environmental and Natural Resources Division of the United States Department of Justice.

Dated: August 13, 2015.

**Nancy Barmakian,**  
Acting Director, Office of Site Remediation and Restoration.

[FR Doc. 2015-21211 Filed 8-25-15; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9933-08-OECA]

**National Environmental Justice Advisory Council; Notification of Public Meeting and Public Comment**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92-463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering for public comment, please see **SUPPLEMENTARY INFORMATION**. Due to limited space, seating at the NEJAC meeting will be on a first-come, first-served basis.

**DATES:** The NEJAC meeting will convene Thursday, September 10, 2015, from 9:00 a.m. until 5:00 p.m. Eastern Standard Time.

One public comment period relevant to the specific issues being considered by the NEJAC (see **SUPPLEMENTARY INFORMATION**) is scheduled for Wednesday, September 9, 2015, starting at 4:00 p.m. Eastern Standard Time. Members of the public who wish to participate during the public comment period are highly encouraged to pre-register by Midnight, Eastern Standard Time, on Monday, August 31, 2015.

**ADDRESSES:** The NEJAC meeting will be held at the EPA Potomac Yard offices

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

IN THE MATTER OF:  
Former Kocher Drive Dump Superfund Site  
Bennington, Vermont

Town of Bennington, Vermont,

Settling Party

SETTLEMENT AGREEMENT FOR  
RECOVERY OF PAST COSTS

U.S. EPA Region 1  
CERCLA Docket No. 01-2014-0007

PROCEEDING UNDER SECTION  
122(h)(1) of CERCLA  
42 U.S.C. § 9622(h)(1)

## TABLE OF CONTENTS

I.	<u>JURISDICTION</u> .....	3
II.	<u>BACKGROUND</u> .....	3
III.	<u>PARTIES BOUND</u> .....	5
IV.	<u>DEFINITIONS</u> .....	5
V.	<u>PAYMENT OF PAST RESPONSE COSTS</u> .....	6
VI.	<u>RESPONSE OBLIGATIONS</u> .....	7
VII.	<u>FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT</u> ...	8
VIII.	<u>COVENANT NOT TO SUE BY EPA</u> .....	9
IX.	<u>RESERVATIONS OF RIGHTS BY EPA</u> .....	9
X.	<u>COVENANT NOT TO SUE BY TOWN</u> .....	10
XI.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION</u> .....	11
XII.	<u>ACCESS TO INFORMATION</u> .....	12
XIII.	<u>RETENTION OF RECORDS AND CERTIFICATION</u> .....	13
XIV.	<u>NOTICES AND SUBMISSIONS</u> .....	14
XV.	<u>INTEGRATION/APPENDICES</u> .....	15
XVI.	<u>PUBLIC COMMENT</u> .....	15
XVII.	<u>ATTORNEY GENERAL APPROVAL</u> .....	15
XVIII.	<u>EFFECTIVE DATE</u> .....	15

UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY  
REGION I

IN THE MATTER OF:	)	
Former Kocher Drive Dump Superfund Site	)	SETTLEMENT AGREEMENT FOR
Bennington, Vermont	)	RECOVERY OF PAST RESPONSE
	)	COSTS
Town of Bennington, Vermont	)	
	)	U.S. EPA Region I
	)	CERCLA Docket No. 01-2014-0007
Settling Party	)	
	)	PROCEEDING UNDER SECTION
	)	122(h)(1) of CERCLA
	)	42 U.S.C. § 9622(h)(1)
	)	

**I. JURISDICTION**

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and further delegated to the Director, Office of Site Remediation and Restoration by Regional Order dated September 3, 1996.

2. This Settlement Agreement is made and entered into by EPA and the Town of Bennington, Vermont (“the Town”). The Town consents to and will not contest EPA’s authority to enter into this Settlement Agreement or to implement or enforce its terms.

**II. BACKGROUND**

3. This Settlement Agreement concerns the Former Kocher Drive Dump Superfund Site (“Site”) located in Bennington, Bennington County, Vermont. EPA alleges that the Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). The Town is the “owner” of the Site, and formerly “operated” it as a municipal and industrial waste landfill from 1955 to 1969, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

4. In response to the release or threatened release of hazardous substances at and/or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. Specifically:

a. Based on information received from a resident of Bennington, Vermont, EPA initiated an investigation in July 2012 to determine if leachate and exposed landfill material from the Site, contained hazardous materials which may present a threat to public health and the environment.

b. In August 2012 and October 2012, EPA collected soil, sediment and groundwater samples at the Site in an area focused on the exposed southern slope of the Former Kocher Drive Dump along Memory Lane and at an observed leachate seep point and along a swale leading into Furnace Brook. Data from these samples confirmed the presence of volatile organic compounds ("VOCs"), semi-volatile organic compounds ("SVOCs"), metals and polychlorinated biphenyls ("PCBs") in soil and sediment and the presence of VOCs, SVOCs and metals in groundwater.

c. By letter dated April 23, 2013, EPA notified the Town of its status as a potentially responsible party ("PRP").

d. On June 10, 2013, EPA signed an Action Memorandum authorizing a time-critical removal action at the Site to address Site contamination and the potential for offsite migration of the contamination.

e. From June 10, 2013, through November 12, 2013, EPA performed removal activities at the Site, including site assessment, planning and design of a soil cover over the landfill slope, and measures to address landfill leachate, as necessary.

f. On October 4, 2013, the Vermont Agency of Natural Resources ("VTANR") requested to take over the cleanup of the Site, under the State's authority. EPA approved the request on November 12, 2013 and forwarded Site data, planning, design, and other technical documents that EPA had developed to date to assist the State with its efforts.

5. In performing the above response actions, EPA has incurred response costs at or in connection with the Site.

6. EPA alleges that the Town, as the current owner of the property containing the Site and past owner and operator of the Site at the time of the disposal of hazardous substances at the Site, is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.

7. EPA and the Town recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by the Town in accordance with this Settlement Agreement do not constitute an admission of any liability by the Town. The



Town does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

### **III. PARTIES BOUND**

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

### **IV. DEFINITIONS**

9. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, 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.
- c. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVIII.
- d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- e. "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.
- f. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

g. “Response Obligations” shall mean the Town’s obligations under the State Order or Request described in Section VI.

h. “Parties” shall mean EPA and the Town.

i. “Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through the Effective Date of this Settlement Agreement.

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

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

l. “Site” shall mean the Former Kocher Drive Dump Superfund Site, located adjacent to Memory Lane in Bennington, Bennington County, Vermont, and depicted generally on the two maps attached as Appendix A.

m. “State Order or Request” shall mean any order or request issued to the Town pursuant to State authority relating to the Site and executed by the Vermont Agency of Natural Resources, including, without limitation, a letter from Chuck Schwer, Chief, VTDEC Sites Management Section, to Stuart Hurd, Town Manager, Town Of Bennington dated March 3, 2014 (the “SMS March 3 First Letter regarding SI/RP”)(Appendix B).

n. “Town” shall mean the Town of Bennington, Vermont.

o. “VTANR” shall mean the Vermont Agency of Natural Resources.

p. “United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

#### **V. PAYMENT OF PAST RESPONSE COSTS**

10. The Town shall pay to EPA \$174,000, plus Interest, on the following payment schedule:

a. \$50,000 within ten (10) days of the Effective Date of this Settlement Agreement;

b. \$75,000, plus Interest on the amount of \$124,000 accruing from October 1, 2015 through the date of payment, on or before December 31, 2015; and

c. the balance of \$49,000, plus Interest on the amount of \$49,000 accruing from October 1, 2015 through the date of payment, on or before December 31, 2016.

11. In the event of the Town's failure to make any payment pursuant to Paragraph 10 on the date such payment is due, EPA may, without notice or demand, declare the entire unpaid balance and any accrued Interest and stipulated penalties then unpaid immediately due and payable.

12. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") to the U.S. EPA lockbox bank, referencing the Site name (Former Kocher Drive Dump Superfund Site), EPA Region I and Site/Spill ID Number 01KN, and the EPA docket number (01-2014-0007) for this action. Payment shall be made by EFT to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

Any Electronic Funds Transfers received at the EPA lockbox after 10:30 a.m. (Eastern Standard Time) will be credited to the next business day.

13. At the time of payment, the Town shall also send notice that payment has been made to EPA and to the Regional Financial Management Officer in accordance with Section XIV (Notices and Submissions), by email to [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), and to EPA's Cincinnati Financial Office, 26 Martin Luther King Drive, Cincinnati, OH 45268. Such notice shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region I and Site/Spill ID Number 01KN, and the EPA docket number (01-2014-0007) for this action.

14. The total amount to be paid pursuant to Paragraph 10 shall be deposited in the EPA Hazardous Substance Superfund.

## **VI. RESPONSE OBLIGATIONS**

15. The Parties agree that a State Order or Request provides for oversight by VTANR of the Town's response action obligations at the Site.

16. The Town shall comply with the terms and conditions of any State Order or Request, collectively referred to herein as Response Obligations.

#### **VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

17. Interest on Late Payments. If the Town fails to make any payment required by Paragraph 10 by the required due dates, Interest shall begin to accrue on the unpaid balance through the date of payment.

18. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 10 are not paid by the required dates, the Town shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 10, \$500.00 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the Town and its address, the Site name (Former Kocher Drive Dump Superfund Site), EPA Region I and Site Spill ID Number 01KN, and the EPA Docket No. 01-2014-0007 for this action. The Town shall send the check (and any accompanying letter) to:

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

c. At the time of payment, Settling Parties shall send notice that payment has been made as provided in Paragraph 13, above.

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

19. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of the Town's failure to comply with the requirements of this Settlement Agreement, if the Town fails or refuses to comply with

the requirements of this Settlement Agreement it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, the Town shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse the Town from payment as required by Section V or from performance of any other requirements of this Settlement Agreement.

### **VIII. COVENANT NOT TO SUE BY EPA**

21. Covenant Not to Sue by EPA. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against the Town pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VII (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the satisfactory performance by the Town of its obligations under this Settlement Agreement, including the obligation to comply with the State Order or Request as provided in Section VI. This covenant not to sue extends only to the Town and does not extend to any other person.

### **IX. RESERVATIONS OF RIGHTS BY EPA**

22. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against the Town with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 21. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against the Town with respect to:

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

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

#### **X. COVENANT NOT TO SUE BY THE TOWN**

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

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Vermont, 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; and

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

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

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

27. The waiver in Paragraph 26 shall not apply with respect to any defense, claim, or cause of action that the Town may have against any person meeting the above criteria if such

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

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

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

#### **XI. EFFECT OF SETTLEMENT/CONTRIBUTION**

28. Except as provided in Paragraph 26 (Waiver of Claims Against De Micromis Parties), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section X, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto, including, without limitation, the Town's pending demands against the State of Vermont Agency of Transportation. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

29. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Town is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are Past Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Town, as of the Effective Date, resolved its liability to the United States for Past Response Costs.

30. The Town agrees that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. The Town also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, the Town shall notify EPA 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, for matters related to this Settlement Agreement.

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

32. Effective upon signature of this Settlement Agreement by the Town, the Town agrees that the time period commencing on the date of its signature and ending on the date EPA receives from the Town the payment(s) required by Section V (Payment of Response Costs) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 29, and that, in any action brought by the United States related to the "matters addressed," the Town will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to the Town that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

## **XII. ACCESS TO INFORMATION**

33. The Town shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

### **34. Confidential Business Information and Privileged Documents.**

a. The Town may assert business confidentiality claims covering part or all of the records submitted to EPA under the Settlement Agreement to the extent permitted by and



in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B, if no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified the Town that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to the Town.

b. The Town may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Town asserts such a privilege in lieu of providing records, they shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. The Town shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Town's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

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

### **XIII. RETENTION OF RECORDS AND CERTIFICATION**

36. Until 10 years after the Effective Date of this Settlement Agreement, the Town shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any governmental retention policy to the contrary.

37. After the conclusion of the 10-year document retention period in the preceding Paragraph, the Town shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, the Town shall deliver any such records to EPA. The Town may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Town asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. The Town shall retain all

records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Town's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

38. The Town hereby certifies 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, reports, or information 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 Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

#### **XIV. NOTICES AND SUBMISSIONS**

39. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and the Town.

**As to EPA:**

Tina Hennessy  
Enforcement Coordinator, Emergency Response & Removal Section 1  
U.S. Environmental Protection Agency  
5 Post Office Square, Suite 100 (OSRR02-2)  
Boston, MA 02109-3912

**As to the Regional Financial Management Officer:**

Shannon Schofield  
U.S. Environmental Protection Agency  
5 Post Office Square, Suite 100 (OARM16-1)  
Boston, MA 02109-3912

**As to the Town:**

Stuart A. Hurd  
Town Manager, Town of Bennington  
205 South Street, P.O. Box 469  
Bennington, VT 05201

with a copy to:

Peter D. Van Oot Esq.  
Downs Rachlin Martin PLLC  
8 South Park Street  
P.O. Box 191  
Lebanon, NH 03766-0191

#### **XV. INTEGRATION/APPENDICES**

40. This Settlement Agreement and its appendices constitute the final, complete and exclusive Settlement Agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, Settlement Agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices is attached to and incorporated into this Settlement Agreement: "Appendix A" consists of two maps of the Site and "Appendix B" consists of a letter from Chuck Schwer, Chief, VTDEC Sites Management Section, to Stuart Hurd, Town Manager, Town Of Bennington dated March 3, 2014 (the "SMS March 3 First Letter regarding SI/RP").

#### **XVI. PUBLIC COMMENT**

41. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

#### **XVII. ATTORNEY GENERAL APPROVAL**

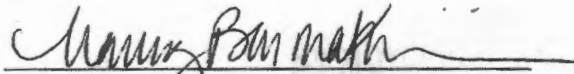
42. The Attorney General or his designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

#### **XVIII. EFFECTIVE DATE**

43. The Effective Date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 41 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

In re: Former Kocher Drive Dump Superfund Site  
Docket No. CERCLA-01-2014-0007

IT IS SO AGREED:  
U.S. Environmental Protection Agency (Region I)

By:   
Nancy Barmakian, Acting Director  
Office of Site Remediation & Restoration

08/13/15  
Date

Effective Date: October 1, 2015

*In re: Former Kocher Drive Dump Superfund Site  
Docket No. CERCLA-01-2014-0007*

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of CERCLA Docket No. 01-2014-0007, relating to the Former Kocher Drive Dump Superfund Site, Bennington, Vermont:

FOR SETTLING PARTY: Town of Bennington, VT

By:

*Stuart A. Hurd*  
*Stuart A. Hurd*  
*Town Manager*

Town of Bennington  
205 South Street, P.O. Box 469  
Bennington, VT 05201

*27 July 2015*  
Date

*In re: Former Kocher Drive Dump Superfund Site  
Docket No. CERCLA-01-2014-0007*

**APPENDIX A**

**SITE MAPS**

**FORMER KOCHER DRIVE DUMP SUPERFUND SITE  
BENNINGTON, VERMONT**






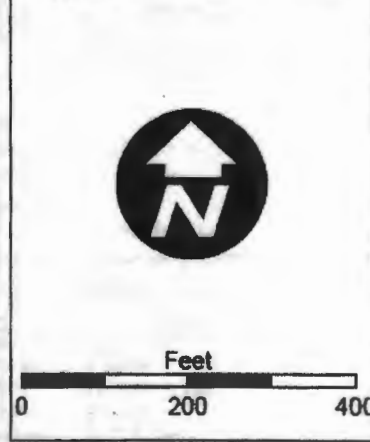
**Site Map**  
**Former Kocher Drive Dump Site**  
**Memory Lane**  
**Bennington, Vermont**

**EPA Region I**  
**Superfund Technical Assessment and**  
**Response Team (START) III**  
**Contract No. EP-W-05-042**

TDD Number: 01-12-07-0005  
 Created by: Eric D. Ackerman  
 Created on: 23 March 2012  
 Modified by: S.Bitzas  
 Modified on: 18 February 2013

**Legend**

 Parcel Boundary  
 Approximate Site Boundary  
 Approximate Dump Boundary



**Data Sources:**  
 Imagery: Bing Maps Aerial (Microsoft Corp)  
 All other data: EPA/START





**Figure 4**  
**Sample Overview**  
**Location Map**  
 Former Kocher Drive Dump Site  
 Memory Lane  
 Bennington, Vermont

EPA Region I  
 Superfund Technical Assessment and  
 Response Team (START III)  
 Contract No. EP-W-05-042  
 TDD Number: 01-12-07-0005  
 Created by: S. Bitzas  
 Created on: 4 September 2012  
 Modified by: S. Bitzas  
 Modified on: 21 February 2013

**Legend**

- Groundwater Samples/ Soil Boring Locations
- Soil Samples (Field Analysis only)
- Soil Samples
- Soil Sample submitted to NERL
- Sediment/Surface Water Sample
- Sediment Sample

Note: Samples submitted to the EPA New England Regional Laboratory (NERL) were only analyzed for polychlorinated biphenyls (PCB) and metals. All soil and sediment samples were screened for metals and PCBs by the EPA Mobile Laboratory before being submitted to a Contract Laboratory Program (CLP) Laboratory for PCB, volatile organic compounds (VOC), semivolatile organic compounds (SVOC), metals, and cyanide analyses.

0 25 50 100 150  
 Feet

Data Sources:  
 Imagery: Bing Maps Aerial (Microsoft Corp)  
 Topos: MicroPath  
 All other data: START





*In re: Former Kocher Drive Dump Superfund Site  
Docket No. CERCLA-01-2014-0007*

## APPENDIX B

Letter from Chuck Schwer, Chief, VTDEC Sites Management Section, to Stuart Hurd, Town Manager, Town Of Bennington dated March 3, 2014 (the "SMS March 3 First Letter regarding SI/RP")



State of Vermont  
Department of Environmental Conservation  
Waste Management & Prevention Division  
1 National Life Drive – Davis 1  
Montpelier, VT 05620-3704  
(802) 249-5324  
chuck.schwer@state.vt.us

March 3, 2014

Stu Hurd, Town Manager  
Town Of Bennington  
205 South Street  
Bennington, VT, 05201

RE: FIRST LETTER: Kocher Drive Dump, Bennington (SMS Site #770031)

Dear Mr. Hurd:

This letter is a follow up to our telephone conversation on February 6, 2014, regarding the Kocher Drive Dump located in Bennington. Since US EPA (EPA) has deferred its site authority to the State of Vermont, this letter represents the first formal correspondence between the Sites Management Section (SMS) and the town on developing a site investigation and remediation plan for this site. As we discussed, a determination needs to be made that the entire footprint of the Kocher Drive Dump does not pose a threat to public health and the environment now and in the future. Below is a list of response actions that the SMS believes is needed to address the site.

**Southern slope and swale:** Previous investigations by EPA focused on the southern slope and swale of the property and not necessarily the entire footprint of the landfill. The data collected by EPA indicated the presence of hazardous substances within the slope soils and sediments in the drainage area. Most immediate was the high lead levels within a footpath connecting the adjacent school to the recreation fields. As a temporary measure, the town capped the footpath with fill, erected a snow fence to block the path, and coordinated with the adjacent school to no longer use this path to access the recreation fields.

**Response Action:** A long term remediation plan will need to be implemented to address the slope and the potential for future exposure. The SMS would like to revisit the town's alternative proposal *Hot Spot Stabilization and Cover with Security Fencing* that was prepared to address EPA's Action Memo. The SMS believes implementing this plan will provide a long term solution to minimize direct contact threat (to the users of the recreation field) along the slope and swale and minimize any surface contaminant runoff impacting the swale and unnamed tributary.

**Surface Water/Sediments:** Surface water and sediment sampling from the drainage area indicates the detection of a number of parameters analyzed. Sediment data indicates exceedances of ANR Sediment Quality Guidelines of the Probable Effects Concentrations (PECs) for lead, cadmium, benzo(a)anthracene and dibenzo(a,h)anthracene. Aroclor 1248 exceeded the Threshold Effect Concentrations (TEC). Bis(2-ethylhexyl)phthalate has also been detected at a significant concentration. The ANR does not have a sediment value for this compound, however in comparing to the State of Florida's PEL, levels measured were significantly exceeded in a number of samples including by almost 300 times at sample location SD-A3-06B. Visually the swale and drainage area are orange in color with some sheening noted suggesting the presence of iron oxide deposits and iron bacteria, typical of landfill leachate. No samples have been collected to date to confirm the presence of iron and manganese.

**Response Action:** A long term monitoring plan needs to be established to document the ongoing condition of sediments and surface water within the swale and drainage area. Three to four surface water and sediment samples should be collected every other year starting in 2014. Surface water samples should be collected and



analyzed for Target Analyte List (TAL) metals, total hardness (for hardness dependent metals) and pH. The TAL metal list includes additional metals that were not included in the EPA sampling. Sediments should be collected 0-6" at depth (preferably fines) and analyzed for the presence of total PCBs, VOCs, TAL metals, Total Organic Carbon and grain size. This sampling should occur during the low flow season (summer months) and should not be conducted shortly after a rain event.

**Groundwater:** Limited groundwater data exists to characterize the entire 27 acres of the site. Groundwater samples collected from shallow geoprobe wells (4' to 8') in 2012 did detect benzene above Vermont groundwater enforcement standards. As this area was once a wetland, the concern is that the buried waste in portions of the site is likely disposed at and below the water table with the assumption that groundwater is flowing southwest towards Furnace Brook.

**Response Action:** A determination needs to be made whether the existing geoprobe wells represent groundwater beneath the buried waste that could potentially be a transport mechanism. Existing (onsite and offsite) wells and/or additional wells may need to be installed to establish background conditions, groundwater flow and gradient. Groundwater should be resampled on an annual basis and analyzed for VOCs using EPA Method 8260; SVOCs using EPA Method 8270, and Target Analyte List metals (TAL). Samples should be collected using low flow sampling techniques.

**Condition of Cap:** A determination needs to be made on the condition of the cap (cover material) on the recreation field. The town has mentioned that as recently as 2012 additional fill has been placed on the recreation field. The goal is to make sure the cap has at least 2 feet of adequate cover material over the recreation field.

**Response Action:** Provide information to the SMS which confirms there is an adequate cap over the landfill.

**Site Survey:** The SMS has various site sketches of the site and is unclear on where the actual site boundaries are located.

**Response Action:** Submit a site map outlining where the town believes is the site boundaries. This will help determine the compliance points and where we may have offsite impacts.

At this time, the SMS requests that you have your environmental consultant prepare a site investigation work plan to address the above response actions. This work plan should be in accordance with the Agency's "Investigation and Remediation of Contaminated Properties Procedure". The SMS is already in receipt of the *Hot Spot Stabilization and Cover with Security Fencing* proposal so no additional submittal is needed, unless modifications are proposed. A long term management and monitoring plan will be needed for routine inspections of the fence, fallen trees and any erosion on the slope.

The SMS looks forward to working with you and your environmental consultant on the cleanup of the Kocher Drive Dump. Please have your consultant submit a work plan within 60 days of receipt of this letter, so it may be approved prior to the initiation of onsite work. The SMS is open to working with the town and school on scheduling of these response actions.

Please feel free to contact either myself or Linda Elliott with any questions you may have.

Sincerely,



Chuck Schwer, Chief  
Sites Management Section

c: via electronically  
Dan Monks, Town of Bennington  
Muriel Robinette, Terracon