

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:)

PCE/TCE Northeast Contamination Site)
York, Nebraska,)
EPA ID No. NEN000706105)

KROY INDUSTRIES, INC.,)

RESPONDENT.)

Proceeding Under Sections 104, 107, and)
122 of the Comprehensive Environmental)
Response, Compensation, and Liability Act,)
42 U.S.C. §§ 9604, 9607, and 9622.)

) Docket No. CERCLA-07-2017-0002

**ADMINISTRATIVE SETTLEMENT AGREEMENT
AND ORDER ON CONSENT FOR FOCUSED INVESTIGATION**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent is entered into voluntarily by the United States Environmental Protection Agency and Kroy Industries, Inc. (Respondent). This Settlement provides for Respondent's performance of certain focused investigative activities and the payment of certain response costs incurred by the United States at or in connection with the PCE/TCE Northeast Contamination site (the Site) generally located near several industrial facilities/businesses in the northeastern area of the City of York, York County, Nebraska.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607, and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). This authority was further redelegated by the Regional Administrator of EPA Region 7 to the Director of EPA Region 7's Superfund Division by Regional Delegation Nos. R7-14-014-C and R7-14-014-D.

3. EPA has notified the state of Nebraska of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (EPA's Findings of Fact) and V (EPA's Conclusions of Law and Determinations) of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

5. This Settlement is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement.

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

7. Respondent shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing Respondent 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 Settlement. Respondent or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the Work, including, but not limited to, the area depicted on Appendix 1.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXIX.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

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

“Oversight Costs” shall mean all costs, including, but not limited to (and except as otherwise specified in this Settlement), direct and indirect costs, that the United States incurs on or after the Effective Date in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce

access, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 81 (Work Takeover), Section XV (Dispute Resolution), and all litigation costs necessary to enforce this Settlement.

“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. Rates are available online at <http://www.epa.gov/superfund/superfund-interest-rates>.

“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.

“Non-Settling Owner” shall mean any person, other than a Respondent, that owns or controls any Affected Property. The clause “Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by Non-Settling Owner.

“NDEQ” shall mean the Nebraska Department of Environmental Quality and any predecessor or successor departments or agencies of the State.

“Owner Respondent” shall mean any Respondent that owns or controls any Affected Property, including Kroy Industries, Inc. The clause “Owner Respondent’s Affected Property” means Affected Property owned or controlled by Owner Respondent.

“Paragraph” shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA and Respondent.

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

“Respondent” shall mean Kroy Industries, Inc.

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

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXVIII (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the PCE/TCE Northeast Contamination site as herein defined and depicted generally on the map attached as Appendix 1.

“Special Account” shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“State” shall mean the state of Nebraska.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

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

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities and obligations Respondent is required to perform under this Settlement except those required by Section XI (Record Retention).

IV. EPA’S FINDINGS OF FACT

9. The PCE/TCE Northeast Contamination site is located near several industrial facilities/businesses in the northeastern area of York, Nebraska. The Site includes an industrial area in the vicinity of the intersection of North Lincoln Avenue and West 25th Street and extends southeastward into a residential area. Topography in the northern area of York is relatively flat, with a slight downward slope to the east. *See Appendix 1.*

10. The business located at the northwest corner of North Division Avenue and West 26th Street is Kroy Industries, Inc. (the Kroy Facility), which is located in the industrial portion of the Site. The Facility historically consisted of two buildings: Building 1, the twelve-inch pipe production plant, is located at the southwestern corner of the property, east of the rail spur; and Building 2, the ten-inch pipe production plant, is located at the northeastern corner of the property. *See Attachment 1.*

11. The Kroy Facility was known as Kroy Metal Products from 1956-1978. During that period the Facility was owned and operated by the Geis family. The Facility’s primary business was the manufacture of aluminum tubing and fittings. In 1978, the Geis family incorporated the business, which became known as Kroy Industries, Inc., a Nebraska corporation.

12. In 1988, Kroy Industries, Inc. was purchased by Alcan Aluminum Corporation (Alcan). Alcan's operation was known as Alcan Pipe, a division of Alcan. Alcan owned and operated the Kroy Facility from 1988 to 1994. Alcan ceased operations at the Kroy Facility in 1994, and the company's ownership of the real property continued until 1998.

13. The Facility reportedly used TCE and 1,1,1-TCA from an undetermined starting time until 1990.

14. In 1994, the assets of Alcan Pipe were purchased by Kroy Industries, Inc., a Delaware corporation. The Kroy Facility is currently owned and operated by Kroy Industries, Inc., a Delaware corporation (Kroy).

15. In January 1990, the Nebraska Department of Health and Human Services identified low concentrations of volatile organic compounds (VOC) in multiple York Public Water Supply (PWS) wells. Based on these findings, the Nebraska Department of Environmental Quality conducted a preliminary assessment (PA) in 1990 and site investigation (SI) in 1991. In 1996 EPA performed an Expanded SI, and NDEQ also performed an Expanded ESI in 2011. The results of these investigations identified numerous public and private drinking water supply wells that exhibited concentrations of TCE and PCE that exceed the Maximum Contaminant Levels (MCLs) established by EPA. The investigations also identified TCE and PCE in soil gas, soil, and groundwater at the Facility near the production areas located in Building 1; low levels of 1,1,1-TCA in soil and groundwater; and PCE in soil samples near Building 2.

16. In 1991, EPA conducted a removal action providing bottled water to residents exposed to contaminated drinking water.

17. In 1996, EPA completed an Expanded SI, which included collecting groundwater samples from the thirteen PWS wells, collecting soil samples from sixteen facilities, and issuing questionnaires to at least nine businesses regarding the chemicals used at facilities near the Site. Cis-1,2-dichloroethene, a degradation product of PCE and TCE, was detected in soil at the Kroy Facility 1 to 2 feet below ground surface (bgs) and 16 to 18 feet bgs at concentrations of 29 micrograms per kilogram ($\mu\text{g}/\text{kg}$) and 17 $\mu\text{g}/\text{kg}$, respectively.

18. From 1995 to 1998, Alcan conducted a Baseline Investigation and Exit Investigation at the Kroy Facility pursuant to a lease agreement. Soil and groundwater sampling was conducted during each investigation. PCE was detected at the Facility in three out of sixteen soil samples in 1995 and one out of sixteen soil samples in 1998. The 1995 Baseline Investigation noted that subsurface soils exhibited odors to a depth of 28 feet bgs at select borings in the area west of Building 1 and 22 feet bgs in the gravel parking lot area east of Building 1. The 1995 Baseline Investigation also documented that groundwater samples from five out of nine sampling locations contained 1,1-DCE, 1,1,1-TCA, and PCE. TCE was detected in four out of nine sampling locations during the 1995 Baseline Investigation. Similar results were documented in the 1998 Exit Investigation: Groundwater samples from five out of nine sampling locations had detections of 1,1,1-

TCA and PCE; four out of nine sampling locations also had detections of TCE; and three out of nine sampling locations had detections of 1,1-DCE. The groundwater table is approximately 65 feet bgs. Neither the Baseline Investigation nor the Exit Investigation reports addressed whether the source of groundwater impacts was from Kroy Facility operations.

19. Based on all the groundwater sampling conducted to date, groundwater containing elevated concentrations of TCE, 1,1,1-TCA, PCE, and related chemicals has been identified in the vicinity of the intersection of North Lincoln Avenue and East 25th Street and down-gradient toward the southeast. The source or sources of such groundwater impacts are not fully known or understood.

20. In March 2010, NDEQ sent a request for federal action letter to EPA. In this request and in following correspondence, NDEQ requested that EPA conduct a CERCLA removal action to reduce or eliminate unacceptable human exposures to contaminated groundwater at the Site.

21. In 2010, EPA began a time-critical removal action to continue sampling private drinking water wells and, where necessary, provide affected residences and businesses with either (1) a permanent connection to the York municipal water system, or (2) installation of whole-house filtration treatment units. The removal action is ongoing and consists of routine private well sampling and a vapor intrusion investigation.

22. The Site was proposed for inclusion on the National Priorities List (NPL) pursuant to CERCLA Section 105, 42 U.S.C. § 9605, in December 2013 and became final on the NPL in May 2014.

23. The contamination found at the Site includes Tetrachloroethylene (PCE), Trichloroethylene (TCE), 1,1-Dichloroethylene (1,1-DCE), Cis-1,2-Dichloroethylene (cis-1,2-DCE), and 1,1,1-Trichloroethane (1,1,1-TCA).

V. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

24. Based on the administrative record and Findings of Fact set forth above, EPA has determined that:

a. The PCE/TCE Northeast Contamination site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

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

d. Respondent is potentially a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondent is the “owner” and/or “operator” of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1)

e. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The actions required by this Settlement are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

25. Based upon EPA’s Findings of Fact, Conclusions of Law, and Determinations set forth above, and upon the administrative record, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATORS, AND REMEDIAL PROJECT MANAGER

26. Respondent has retained, and EPA has not disapproved, Arcadis U.S., Inc., and Olsson Associates as its contractors to perform the work.

27. Respondent has designated, and EPA has not disapproved, the following individuals as Project Coordinators:

Tina Lloyd
Arcadis, U.S. Inc.
8275 Rosehill, Suite 350
Lenexa, Kansas 66215
Phone: (913) 998-6916
tina.lloyd@arcadis.com

Jason Byler
Olsson Associates
601 P Street, Suite 200
Lincoln, Nebraska 68508
Phone: (402) 458-5078
jbyler@olssonassociates.com.

The Project Coordinators shall be responsible for administration of all actions by Respondent required by this Settlement. To the greatest extent possible, a Project

Coordinator shall be present on Site or readily available during Site work. All notices to Respondent provided for in this Settlement shall be delivered to the Project Coordinators with a copy to:

Austin McKillip
Cline Williams Wright Johnson & Oldfather, L.L.P.
233 S. 13th Street, Suite 1900
Lincoln, Nebraska 68508
Phone: (402) 474-6900
amckillip@clinewilliams.com.

28. EPA has designated Owens Hull of the Iowa/Nebraska Remedial Branch, Superfund Division, EPA Region 7, as its Remedial Project Manager (RPM). The contact information of EPA's RPM is as follows:

Owens Hull
Superfund Division
11201 Renner Boulevard
Lenexa, Kansas 66219
Phone: (913) 551-7226
Fax: (913) 551-9226
hull.owens@epa.gov

29. The RPM shall be responsible for overseeing Respondent's implementation of this Settlement. The RPM shall have the authority vested in an RPM by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other removal action undertaken at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

30. EPA and Respondent shall have the right, subject to Paragraph 27, to change their respective designated RPM or Project Coordinator(s). Respondent shall notify EPA 14 days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

31. Respondent shall perform the activities detailed in the Focused Investigation Work Plan (Work Plan), attached to this Settlement as Appendix 2. The attached Work Plan has been approved by EPA and shall be incorporated into and become fully enforceable under this Settlement.

32. Respondent shall commence implementation of the Work in accordance with the schedule included in the Work Plan. Respondent shall not commence any Work except in conformance with the terms of this Settlement.

33. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from EPA of the modification, amendment, or replacement.

34. Submission of Deliverables.

a. General Requirements for Deliverables.

(1) Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the RPM and to the State at:

Owens Hull
Superfund Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Phone: (913) 551-7226
Fax: (913) 551-9226
hull.owens@epa.gov

Laurie S. Brunner, P.G.
Land Management Division
Nebraska Department of Environmental Quality
1200 N Street
P.O. Box 98922, Lincoln Nebraska 68509-8922
Phone: (402) 471-2214
laurie.brunner@nebraska.gov

Respondent shall submit all deliverables required by this Settlement, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 34.b. All other deliverables shall be submitted to EPA in the form specified by the RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 11-by-17 inches, Respondent shall also provide EPA with paper copies of such exhibits.

(3) With exception of the Health and Safety Plan described at Paragraph 35, and subject to Section XV (Dispute Resolution), EPA may approve, disapprove, require revisions to, or modify all deliverables in whole or in part, provided that such disapprovals or required revisions or modifications are consistent with the scope of the Work Plan. If EPA requires revisions, Respondent shall submit a revised draft of the deliverable within 10 days after receipt of EPA's notification of the required

revisions. Respondent shall implement plans as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the deliverable, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

b. Technical Specifications for Deliverables.

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. The data should be compatible with Environmental Quality Information System (EQUIS) databases. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.

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

(4) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

35. Health and Safety Plan. Within 60 days after the Effective Date, Respondent shall submit to EPA a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall apply to the performance of the Work Plan and shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <http://www.epa.gov/nscep>, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at http://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning.

36. Quality Assurance, Sampling, and Data Analysis.

a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” EPA/240/B-01/003 (March 2001, reissued May 2006), “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. Sampling and Analysis Plan. Within 60 days after the Effective Date, Respondent shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the Work Plan, the NCP, and applicable guidance, including, but not limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissued May 2006), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Respondent shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency’s “EPA QA Field Activities Procedure,” CIO 2105-P-02.1 (9/23/2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA’s “Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions,” available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements>, and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in EPA’s Contract Laboratory Program (<http://www.epa.gov/clp>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<http://www3.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm>), “Standard Methods for the Examination of Water and Wastewater” (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, “Air Toxics - Monitoring Methods” (<http://www3.epa.gov/ttnamti1/airtox.html>).

d. Upon approval by EPA, after reasonable opportunity for review and comment by the State, Respondent may use other appropriate analytical methods, as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at

least as stringent as the methods listed above, and (iii) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods (e.g., EPA, ASTM, NIOSH, OSHA, etc.) Respondent shall ensure that all laboratories used for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs - Requirements with guidance for use” (American Society for Quality, February 2014), and “EPA Requirements for Quality Management Plans (QA/R-2)” EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e. Upon request, Respondent shall provide split or duplicate samples to EPA and the State or their authorized representatives, provided that an EPA and/or NDEQ representative is present in the field to receive the split or duplicate sample at the time the sample is taken and provides the requisite equipment for doing so. Respondent shall notify EPA and the State not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples, consistent with the work required under the Work Plan, that EPA or the State deems necessary. Upon request, EPA and the State shall provide to Respondent split or duplicate samples of any samples they take as part of EPA’s oversight of Respondent’s implementation of the Work.

f. Respondent shall submit to EPA and the State the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the implementation of this Settlement.

g. Respondent waives any objections to any data gathered, generated, or evaluated by EPA, the State or Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the Work, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 30 days after the monthly progress report containing the data, or within 30 days after the potential objected-to use of such data becomes known to Respondent, whichever is later.

37. Progress Reports. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement on a monthly basis, or on longer cycles as otherwise requested by EPA, until issuance of Notice of Completion of

Work pursuant to Section XXVII, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

38. Final Report. Within 60 days after Respondent's receipt of all validated data resulting from all field Work required by this Settlement, other than continuing obligations listed in Paragraph 102 (notice of completion), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of one or both of Respondent's Project Coordinators: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than 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."

IX. PROPERTY REQUIREMENTS

39. Agreements Regarding Access and Non-Interference. Respondent shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondent and the EPA, providing that such Non-Settling Owner: (i) provide the EPA, the State, Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 39.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the investigative action.

a. Access Requirements. The following is a list of activities for which access may be required regarding the Affected Property:

- (1) Monitoring the Work;
 - (2) Verifying any data or information submitted to the EPA or the State;
 - (3) Conducting investigations regarding contamination at or near the Site;
 - (4) Obtaining samples;
 - (5) Assessing the need for, planning, implementing, or monitoring response actions;
 - (6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as defined in the approved QAPP;
 - (7) Implementing the Work pursuant to the conditions set forth in Paragraph 81 (Work Takeover);
 - (8) At Owner Respondent's Affected Property, inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section X (Access to Information);
 - (9) Assessing Respondent's compliance with the Settlement;
- and
- (10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement.

40. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access as required by this Section, but only where such payment is necessary to compensate for an actual, out-of-pocket expense or loss directly attributable to the access or for property damage or actual economic loss reasonably expected to result from the grant of access. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify EPA and the State and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid (to the extent such consideration or payments are consistent with the definition of "best efforts," above, and otherwise consistent with "Entry and Continued Access Under CERCLA," OSWER

Directive 9829.2 (June 1987)) constitute Oversight Costs to be reimbursed under Section XIV (Payment of Oversight Costs).

41. Owner Respondent shall not Transfer its Affected Property unless it has first secured EPA's approval of, and transferee's consent to, an agreement that: (i) is enforceable by Respondent and EPA; and (ii) requires the transferee to provide access to and refrain from using the Affected Property to the same extent as is provided under Paragraph 39.a (Access Requirements).

42. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondent shall continue to comply with its obligations under the Settlement, including its obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

X. ACCESS TO INFORMATION

43. Respondent shall provide to EPA and the State, upon request, copies of all non-privileged records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as Records) within Respondent's possession or control or that of its contractors or agents relating to implementation of this Settlement, 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 regarding the Work.

44. Privileged and Protected Claims.

a. Respondent may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 44.b, and except as provided in Paragraph 44.c.

b. If Respondent asserts such a privilege or protection, it shall provide EPA and the State with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Work, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record generated to perform the Work that evidences

conditions at or around the Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement.

45. Business Confidential Claims. Respondent may assert that all or part of a Record provided to EPA and the State under this Section or Section XI (Record Retention) is business confidential 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). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified Respondent 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 Respondent.

46. Notwithstanding any provision of this Settlement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

47. Until 10 years after EPA provides Respondent with notice, pursuant to Section XXVII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent 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 Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (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 Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

48. At the conclusion of the document retention period, Respondent shall notify EPA and the State at least 90 days prior to the destruction of any such Records, and, upon request by EPA or the State, and except as provided in Paragraph 44 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA or the State.

49. Respondent certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. COMPLIANCE WITH OTHER LAWS

50. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

51. No local, state, or federal 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), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondent may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

52. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at (913) 281-0991 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of such

response action not inconsistent with the NCP pursuant to Section XIV (Payment of Oversight Costs).

53. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at (913) 281-0991, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

54. For any event covered under this Section, Respondent shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIV. PAYMENT OF OVERSIGHT COSTS

55. Payments for Oversight Costs. Respondent shall pay to EPA all Oversight Costs not inconsistent with the NCP.

a. Periodic Bills. On a periodic basis, EPA will send Respondent a bill requiring payment that includes an itemized summary of direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within 30 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 57 (Contesting Oversight Costs), and in accordance with Paragraphs 55.b (Instructions for Payment).

b. Instructions for Payment. All payments under this Section shall be made per instructions available at <https://www.epa.gov/financial/makepayment>. Payments shall be accompanied by a statement identifying the name and address of the party making the payment, the Site name, the EPA identifier "A7T6," and the EPA docket number that appears on the cover of this Settlement. At the time of payment, Respondent shall send notice that payment has been made to EPA's RPM.

c. Deposit of Oversight Costs Payments. The total oversight costs to be paid by Respondent pursuant to Paragraph 55.a (Periodic Bills) shall be deposited by EPA in the Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

56. Interest. In the event that any payment for Oversight Costs is not made by the date required, Respondent shall pay Interest on the unpaid balance. Oversight Costs shall begin to accrue on the date of Respondent's receipt of the bill. The Interest shall

accrue through the date of Respondent's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Paragraph 68 (Stipulated Penalties – Work).

57. Contesting Oversight Costs. Respondent may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Oversight Costs billed under Paragraph 55 (Payments for Oversight Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Oversight Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondent shall submit a Notice of Dispute in writing to the RPM within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Oversight Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Oversight Costs to EPA in the manner described in Paragraph 55, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Oversight Costs. Respondent shall send to the RPM a copy of the transmittal letter and check paying the uncontested Oversight 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. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 55.b. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 55.b. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Oversight Costs.

XV. DISPUTE RESOLUTION

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

59. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for Oversight Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within 10 days after such action. EPA and Respondent shall have 10 days from EPA's receipt of Respondent's

Notice of Dispute to resolve the dispute through informal negotiations (the Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

60. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the division director level or higher will issue a written decision on the dispute to Respondent that is consistent with the scope of the Work Plan. Such EPA decision shall be incorporated into and become an enforceable part of this Settlement. Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

61. Except as provided in Paragraph 57 (Contesting Oversight Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Except as provided in Paragraph 70, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue as provided in Section XVII (Stipulated Penalties). In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

62. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the reasonable control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercises "best efforts to fulfill the obligation" means exercising the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, and includes using such best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

63. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's RPM orally or, in his or her absence, the alternate EPA RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 7, within 7 days of when Respondent first knew that the event was reasonably likely to

cause a delay. Within 7 days thereafter, Respondent 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; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or reasonably should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 62 and whether Respondent has exercised its best efforts under Paragraph 62, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

64. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure 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 shall not, of itself, extend the time for performance of any other obligation unless performance of the delayed obligation is necessary to perform such other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

65. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent 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, 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 Respondent complied with the requirements of Paragraphs 62 and 63. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

66. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondent from meeting one or more deadlines under the Settlement, Respondent may seek relief under this Section.

XVII. STIPULATED PENALTIES

67. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 68 and 69 for failure to comply with the requirements of this Settlement specified below, unless excused under Section XVI (Force Majeure) and further provided that, with respect to the first instance Respondent would otherwise become liable for stipulated penalties, such penalties will be excused if Respondent cures the violation within 5 days of receipt of notice of such violation from EPA. "Compliance" by Respondent shall include completion of all activities and obligations, including payments, required under this Settlement, or any deliverable approved under this Settlement, in accordance with all applicable requirements of law, this Settlement and any deliverables approved under this Settlement and within the specified time schedules established by and approved under this Settlement.

68. Stipulated Penalty Amounts – Work (Including Payments and Excluding Deliverables). The following stipulated penalties shall accrue per violation per day for any noncompliance with this Settlement, or failure to perform the Work, except as provided in Paragraph 67:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$250 | 1st through 14th day |
| \$500 | 15th through 30th day |
| \$1,000 | 31st day and beyond |

69. Stipulated Penalty Amounts – Payments, Plans, Reports, and Other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate payment, reports, or other plans or deliverables pursuant to this Settlement or Work Plan:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$125 | 1st through 14th day |
| \$250 | 15th through 30th day |
| \$500 | 31st day and beyond |

70. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 81 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of \$100,000.

71. 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. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA Management Official at the division

director level or higher, under Paragraph 60 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

72. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. Stipulated penalties shall accrue as provided in the preceding Paragraph only once EPA has notified Respondent of a violation.

73. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 55 (Payments for Oversight Costs).

74. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 70 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 73 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

75. The payment of penalties and Interest, if any, shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement.

76. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 81 (Work Takeover).

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

XVIII. COVENANTS BY EPA

78. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Oversight Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement. These covenants extend only to Respondent and do not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

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

80. The covenants set forth in Section XVIII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. liability for failure by Respondent to meet a requirement of this Settlement;
- b. liability for costs not included within the definition of Oversight Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the Work;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

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

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

81. Work Takeover.

a. In the event EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (Work Takeover Notice) to Respondent. Any Work Takeover Notice issued by EPA (which writing may be transmitted by email to the contacts identified in Paragraph 27) will specify the grounds upon which such notice was issued and will provide Respondent a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in Paragraph 81.a, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (Work Takeover). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 81.b.

c. Respondent may invoke the procedures set forth in Paragraph 60 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 81.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 81.b until the earlier of (1) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 60 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANTS BY RESPONDENT

82. Respondent 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 the Work, Oversight Costs, and this Settlement, including, but not limited to:

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

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Nebraska Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

Nothing in this covenant shall be construed to relate to, and Respondent expressly reserves, any claim against any governmental entity or agency that may be liable for the Site under Section 107 or 113 of CERCLA, Section 7002(a) of RCRA, or other federal or state statute or common law.

83. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 80.a (liability for failure to meet a requirement of the Settlement), 80.d (criminal liability), or 80.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

84. Nothing in this Settlement 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).

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

XXI. OTHER CLAIMS

86. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents,

successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

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

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

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

89. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement 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).

90. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which the Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work and Oversight Costs.

91. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

92. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Respondent shall

notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

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

XXIII. INDEMNIFICATION

94. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and 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 Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent's behalf or under its control, in carrying out activities pursuant to this Settlement. Further, Respondent agrees 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 Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

96. Respondent covenants not to sue and agrees not to assert any claims or causes of action 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 Respondent 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, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement

between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

97. No later than 14 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVII (Notice of Completion of Work), commercial general liability insurance with limits of \$1 million, for any one occurrence, and automobile insurance with limits of \$1 million, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date until receipt of the Notice of Completion. In addition, for the duration of activities to perform the Work Plan, Respondent 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 Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XXV. MODIFICATION

98. The RPM may modify any plan or schedule in writing or by oral direction, consistent in scope with the Work Plan. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

99. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator(s) shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph 98.

100. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVI. ADDITIONAL INVESTIGATIVE ACTION

101. If EPA determines that additional investigative actions consistent in scope with the Work Plan are not included in the Work Plan or other approved plan(s), and that such additional investigative actions are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, and subject to Section XV (Dispute Resolution), within 30 days after receipt of notice from EPA that additional actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a work plan for the additional investigative actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the plan, Respondent shall implement the plan for additional investigative actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the RPM's authority to make oral modifications to any plan or schedule pursuant to Section XXV (Modification).

XXVII. NOTICE OF COMPLETION OF WORK

102. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including payment of Oversight Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies consistent in scope with the Work Plan, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Subject to Section XV (Dispute Resolution), Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement.

XXVIII. INTEGRATION/APPENDICES

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

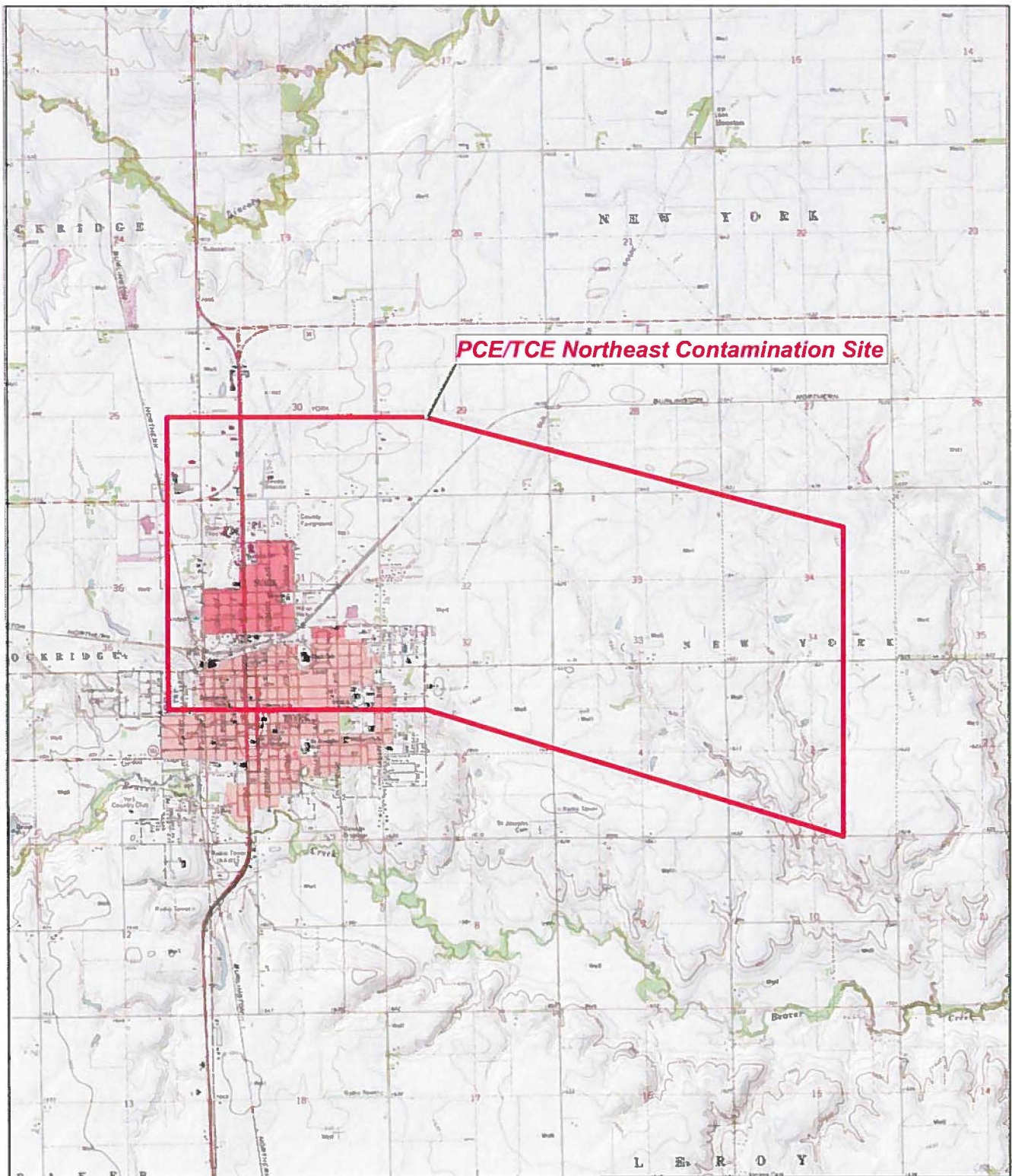
- a. "Appendix 1" is a map generally depicting the Site area.
- b. "Appendix 2" is the Focused Investigation Work Plan.

XXIX. EFFECTIVE DATE

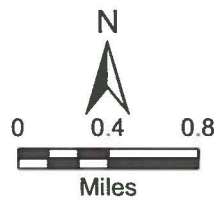
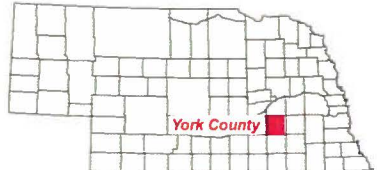
104. This Settlement shall be effective upon signature by the Division Director of the Superfund Division, EPA Region 7.

105. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into this Settlement and to bind Respondent to this Settlement.

106. Respondent's obligation to perform the Work will begin on the Effective Date of this Settlement.



PCE/TCE Northeast Contamination Site



| | |
|--|---------------------------------|
| <p>PCE/TCE Northeast Contamination Site York, Nebraska</p> | |
| <p>Appendix 1 Site Location Map</p> | |
| | |
| <p>Date: 1/30/2014</p> | <p>Drawn By: Nick Wederhoff</p> |
| <p>Project No: X9025 14 0055 000</p> | |

Source: USGS York North NE 7.5 Minute Topo Quad, 1980
USGS York South NE 7.5 Minute Topo Quad, 1978

*This figure is only a general depiction. It is not an indication of whether any hazardous substances or chemicals of potential concern are present at, under, or near any particular property, nor is it intended to define the Site boundaries or alter the scope of Work provided for in this Settlement.

IT IS SO AGREED AND ORDERED.

U.S. ENVIRONMENTAL PROTECTION AGENCY:

11/22/2016
Dated

Mary P. Peterson
Mary P. Peterson
Director
Superfund Division
U.S. Environmental Protection Agency, Region 7

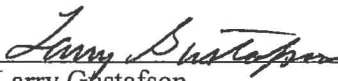
11/22/2016
Dated

Jared Pessetto
Jared Pessetto
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7

Signature Page for Settlement Regarding Northeast Contamination Superfund Site

KROY INDUSTRIES, INC.:

11-17-2016
Dated

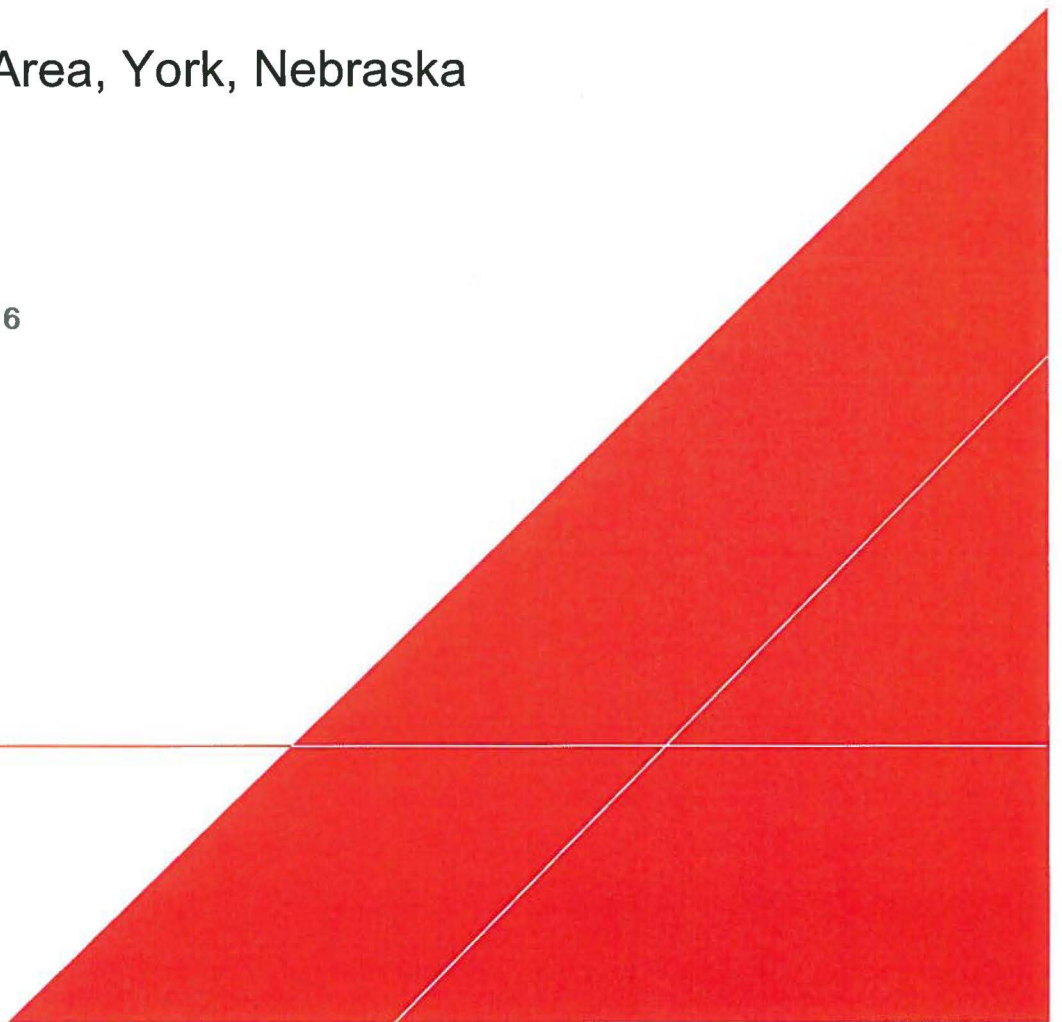


Larry Gustafson
Kroy Industries, Inc.
522 W. 26th Street
York, Nebraska 68467

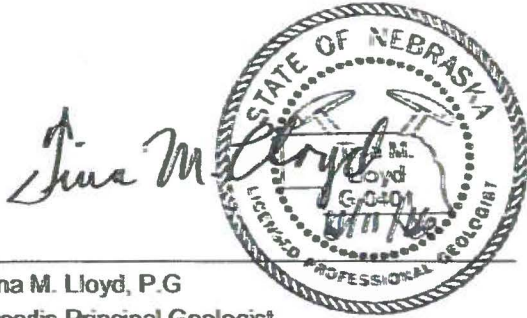
FOCUSED INVESTIGATION WORK PLAN

Northeast Area, York, Nebraska

November 11, 2016



FOCUSED INVESTIGATION WORK PLAN
Northeast Area, York, Nebraska



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**FOCUSED
INVESTIGATION WORK
PLAN**

Northeast Area, York, Nebraska

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Our Ref.:
KC001697.0001

Date:
November 11, 2016

FOCUSED INVESTIGATION WORK PLAN
Northeast Area, York, Nebraska

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FIGURES

- 1 Proposed Groundwater Sample Corridors

1 INTRODUCTION

Arcadis U.S., Inc. (Arcadis) and Olsson Associates (Olsson) (collectively, the “Consultants”) have prepared this Focused Investigation Work Plan (Work Plan) to be completed in the northern portion of York, Nebraska associated with the PCE/TCE Northeast Contamination Site (herein referred to as the “Study Area”) in contemplation of inclusion of this Work Plan as part of an Administrative Settlement Agreement and Order on Consent (AOC) for the Study Area (EPA Docket No. CERCLA-07-2017-0002).

This Work Plan outlines the technical scope of work (SOW) and rationale for the investigation approach. Specific sampling locations, data collection methods, and analytical testing requirements necessary to implement and document the Focused Investigation scope of work, and to ensure the data collected during the Focused Investigation can be used for future decision-making purposes will be provided in documents to be developed as described in Section 2.2.

For the purposes of the Focused Investigation, the following definitions are provided for clarification:

- PCE/TCE Northeast Contamination Site: USEPA designation for the area of groundwater impacts in the northern portion of York, Nebraska listed on the National Priorities List (NPL), EPA ID No. NEN000706105;
- Study Area: Location of the proposed Focused Investigation within a portion of the USEPA designated PCE/TCE Northeast Contamination Site;
- Kroy Property: Property addressed as 522 W. 26th Street owned and operated by Kroy Industries, Inc. (see Figure 1 for location);
- Consultants: Arcadis U.S., Inc. (Arcadis) and Olsson Associates (Olsson).
- NDEQ: Nebraska Department of Environmental Quality and any predecessor or successor departments or agencies of the State.

1.1 Objectives

The primary purpose of the proposed Focused Investigation is to identify and investigate data gaps associated with the available data set generated between 1990 and 2016, including to:

- Collect additional data to evaluate and further characterize the hydrogeology of the Study Area and prepare a conceptual site model (CSM),
- Evaluate constituents of potential concern (COPC) impacts to soil at the Kroy Property,
- Evaluate COPCs present in soil vapor in the Study Area, including the mapping of utility corridors in which soil vapor may be migrating and considering the potential for soil vapor to affect occupiable structures in the Study Area,
- Further characterize COPC impacts to groundwater in the Study Area,
- Evaluate whether and to what extent the Kroy Property is a contributing source to the observed groundwater impacts at the PCE/TCE Northeast Contamination Site, and

FOCUSED INVESTIGATION WORK PLAN
Northeast Area, York, Nebraska

- Evaluate the potential for other contributing sources to the observed groundwater impacts.

1.2 Technical Rationale

The technical rationale for completing the Focused Investigation is to investigate major data gaps identified for the Study Area, including:

- A CSM describing the hydrogeological system for the Study Area has not been developed. Hydrogeologic data about the aquifer is insufficient, so the fate and transport is not well understood. Shortcomings include that the influence of public water supply (PWS), local irrigation, and other pumping wells on the groundwater impacts is not defined or understood;
- The available data set is not sufficient to indicate likely source areas for the PCE/TCE Northeast Contamination Site. The historical data set does not contain temporally and spatially reproducible data, and there is a 10-year period where almost no data was collected;
- Historical data was primarily derived from private and public water wells that are often screened across several hydrostratigraphic units or for which little or no well construction information is available. Therefore, it is difficult to determine where the data came from within the aquifer (i.e. from shallow vs deep); and
- Source areas for the PCE/TCE Northeast Contamination Site cannot be identified with the existing data.
 - While USEPA has suggested that the Kroy Property is a likely source for the groundwater impacts, a connection between the Kroy Property and the PCE/TCE Northeast Contamination Site has not been established. In particular, no data exists connecting potential soil COPC impacts on the Kroy Property to shallow groundwater impacts. Soil sampling work will be completed throughout the vadose zone to identify potential COPC contributions to groundwater from soil impacts present at the Kroy Property; and
 - Other potential source areas have not been sufficiently identified or investigated.

2 FOCUSED INVESTIGATION SCOPE OF WORK

The Focused Investigation is proposed to be comprised of four primary elements; an information and data gathering task to identify potential source areas, preparing supporting planning documents, a field investigation task, and a data evaluation and reporting task.

2.1 Review and Evaluation of Potential Source and Available Data

This phase of the Focused Investigation is a review and evaluation of available data, and will include the following:

- Identify available information regarding reported spills, hazardous waste generation, waste disposal, current and historical regulatory information, and chemical storage and use at the Kroy Property and non-Kroy properties using commercial service(s) and open-record resources;
- Review investigation results from soil, soil gas, and groundwater sampling completed by USEPA and others at properties in the vicinity of or within the PCE/TCE Northeast Contamination Site obtained from USEPA and NDEQ;
- Obtain historical aerial photos, Sanborn fire insurance maps, city directories, and other available historical information using commercial and open-record resources;
- Identify underground utility corridors using the One-Call network and public utility maps. Information on utilities will be compiled into a figure to be considered in the selection of direct push investigation locations;
- Review files at USEPA Region 7, NDEQ, and local agencies (e.g. fire department) to identify additional information regarding potential sources;
- Identify additional well construction information for private wells in footprint of the groundwater impacts using Nebraska public databases;
- Identify local irrigation, PWS, and other pumping wells and the pumping regime to the extent available;
- Identify additional area geology and hydrogeology information using Nebraska public databases;
- Compile information into a geographic information system (GIS) database;
- Develop a preliminary CSM for the Study Area and refine the list of data gaps; and
- Determine any access needs at privately-owned properties and public rights-of way (ROW), and determine owners and contact information.

2.2 Field Investigation Plans

A Sampling and Analysis Plan (SAP), Quality Assurance Project Plan (QAPP), and Health and Safety Plan (HASP, submitted for reference only) (collectively "Plans") will be developed for the Focused Investigation concurrently with the review and evaluation task (see Section 2.1). The SAP will include a summary of the history of the Kroy Property and other non-Kroy properties, as appropriate, based on the

FOCUSED INVESTIGATION WORK PLAN
Northeast Area, York, Nebraska

data review and evaluation task identified in Section 2.1. In accordance with the terms of the AOC, the SAP and QAPP will be submitted to USEPA for review and approval prior to the start of field sampling activities. The HASP will be submitted for reference, but USEPA will not approve the HASP.

2.3 Field Investigation Coordination

Initial project coordination, subcontractor coordination, and access arrangements will be conducted concurrently with the Work Plan review period by USEPA. Final project and subcontractor coordination, and utility clearance will be conducted after USEPA Work Plan approval and prior to initiating the field sampling activities. These pre-mobilization activities are summarized below.

2.3.1 Coordination with USEPA and NDEQ

The USEPA and NDEQ will be notified at least 7 days before field mobilization(s) to facilitate the agencies' ability to be present and observe the field work.

USEPA and NDEQ may obtain a split sample of any sample collected under this scope of work, provided that USEPA has the necessary equipment and containers for the split sample and is present to obtain the split sample at the time the sample is taken.

2.3.2 Offsite Access

Access agreements, where required, will be negotiated with the relevant entities or persons, primarily the City of York and York County. For sampling points proposed on non-Kroy Property, the City and County ROW will be targeted for access. However, access to certain other private property may be requested. USEPA and NDEQ will be notified if access is denied.

2.3.3 Utility Clearance

The Diggers Hotline of Nebraska (1-800-331-5666 or 811) will be contacted to mark underground utility locations prior to any intrusive work; however, this system will not provide information about private utilities. Prior to mobilization, property owners will be consulted to provide additional information about utility locations if working outside of the ROW.

Upon arrival at the Study Area, the Consultants' field team will check the proposed sampling locations (specific sampling locations to be determined as described in the SAP) for marked underground utilities, other underground structures and above-ground utilities and adjust sampling locations as necessary. In addition, remote sensing, air-knife, or similar technology may be used to clear underground utilities at each location prior to starting intrusive subsurface work.

2.4 Field Investigation Sampling Activities

Sampling and other intrusive data collection during the Focused Investigation will be completed at a minimum of 30 locations and up to 50 locations. Direct-push technology (DPT) will be used and will be combined with direct sensing tools at select locations as described below. A mobile lab will be used to provide real-time data to identify and delineate potential source areas during the field event to maximize CSM inputs by adjusting subsequent DPT locations as necessary while minimizing time delays and/or

FOCUSED INVESTIGATION WORK PLAN

Northeast Area, York, Nebraska

additional mobilizations. The mobile lab will be used in conjunction with samples analyzed by a fixed-base laboratory.

DPT will be the primary investigative tool used during the Focused Investigation for the collection of groundwater, soil and soil vapor samples. The DPT borings will be advanced using a hydraulic and percussion probing unit mounted on a truck or a track-mounted vehicle. The method is ideal for this project because it is unobtrusive and provides for rapid sample acquisition in unconsolidated soils.

2.4.1 EC/HPT/MIP Logging

Electrical conductivity (EC) and hydraulic profiling tool (HPT) logging will be completed with a direct-push rig at target locations to collect lithologic data to refine or develop a hydrogeologic model (part of the CSM). The EC/HPT output will be used to determine the general lithology and relative permeability of unconsolidated sediments. The membrane interface probe (MIP) sensor will also provide a continuous plot of the distribution and relative total volatile organic compound (VOC) magnitude versus depth to identify areas of soil impacts in the unsaturated zone and layers that facilitate contaminant transport in the aquifer. Because the MIP logging does have certain detection limitations that may be relevant, the MIP logging is intended to be used in conjunction with other logging and sampling techniques to investigate subsurface impacts. EC/HPT/MIP logging will be completed at approximately 20 of the total 50 potential sampling locations. The approach for selecting the locations for such logging will be further described in the SAP.

Data collected as the Focused Investigation progresses will be considered in connection with subsequent collection of soil and groundwater during the Focused Investigation in order to direct the collection of soil and groundwater samples at locations and depths of interest from the standpoint of addressing data gaps.

2.4.2 Direct-Push Groundwater Sampling

Groundwater samples will be collected from the unconfined aquifer (above the clay confining layer) using DPT. Up to five groundwater samples will be collected at a minimum of 30 and up to 50 DPT locations. The criteria for the number and depths of samples collected for individual DPT locations will be provided in the SAP (to be submitted) based on the results of the data review (Section 2.1), and on lithologic and VOC magnitude data collected by the EC/HPT/MIP tooling (Section 2.4.1).

The anticipated areas of sample collection are generally depicted on Figure 1, and will be defined in the SAP (to be submitted). The groundwater sampling locations will include:

- Transects upgradient and downgradient of potential sources;
- Transect locations will be focused in City and County ROW; and
- Groundwater probes on the Kroy Property at locations selected based on historical use of the property and pre-existing soil results.

2.4.3 Direct-Push Soil Sampling

Soil samples will be collected from the vadose zone (approximately 65 feet thick) using DPT to determine if COPCs are present. Continuously sampled soil borings will be installed at a minimum of 10 and up to 15 locations at the Kroy Property and up to five other off-property locations as described below. Up to four soil samples will be collected from each soil boring locations, and a minimum of two soil samples will be collected from soil borings with no field observed evidence of soil impacts. The soil sampling is intended to provide soil profiling from the land surface to the top of the water table at the sampled location. The sample collection depths will be based on the results of the data review (Section 2.1), the EC/HPT/MIP logging (Section 2.4.1), and field screening results.

The borings will be continuously cored to the top of the saturated zone (approximately 65 ft bgs). Deeper soil sample depths will be adjusted if water levels encountered during the field activities differ from historic levels. Soil DPT cores will be screened in the field using a photoionization detector (PID) and visual and olfactory observations. The lithology of the soil cores will also be described using the Unified Soil Classification System (USCS).

The soil sampling locations will be defined in the SAP (to be submitted), and will include:

- Locations at the Kroy Property selected based on historical use of the property and previous soil and soil vapor results (a minimum of 10 and up to a total of 15 locations at the Kroy Property); and
- Potentially up to 5 other locations at selected non-Kroy locations based on access, MIP logging, and field screening data.

2.4.4 Targeted Direct-Push Soil Vapor Sampling

Targeted soil vapor sampling will be conducted in the Study Area at a subset of DPT locations in the ROW. Soil vapor samples are proposed to be collected from DPT locations based on the following criteria:

- Locations within 100 feet of either occupiable structures or identified substantial preferential pathways (including but not limited to underground utility corridors or shallow permeable lenses) that have indications of COPC impacts to soil and/or groundwater at a concentrations indicative of the potential for vapor intrusion using the USEPA Vapor Intrusion Screening Level (VISL) Calculator.
- Selected locations may be sampled based on the review of data from direct push soil and groundwater sampling results.
- Soil vapor samples will not be collected at the Kroy Property under this Work Plan.

Temporary sampling points will be installed using the Geoprobe® Post Run Tubing (PRT) system or similar tooling to reach the target depth. Utility clearing will not be completed using air knife, hand auger, or similar intrusive tooling due to the shallow soil sample depths and potential to disrupt soil vapors. Soil vapor samples will be collected between approximately 5 and 10 feet below ground surface as recommended by USEPA Region 7. After sample collection, soil vapor sample points will be removed and the borings will be plugged.

2.4.5 Direct-Push Boring Abandonment

Upon completion of each groundwater, soil, and soil vapor boring, the borings will be abandoned in accordance with State of Nebraska regulations.

2.4.6 Survey

The coordinates of each direct-push groundwater, soil, and soil vapor boring location will be collected using a global positioning system (GPS) unit or surveyed using a Nebraska registered land surveyor. Data will be incorporated into the project GIS database.

2.4.7 Analytical Program

Groundwater and soil samples will be analyzed in the field using a mobile laboratory, and will be analyzed for COPCs and other constituents, including at a minimum: PCE, TCE, 1,1,1-TCA, 1,1,2-TCA, cis-1,2-DCE, trans-1,2-DCE, 1,1-DCE, and vinyl chloride. Other VOCs (to be specified in the SAP) may be added to the mobile laboratory analyte list based on the data review and evaluation results. Other VOCs are anticipated to include carbon tetrachloride and chloroform. The list of analytes for the mobile laboratory analysis will be specified in the SAP.

If the mobile laboratory can not generate level 4 data packages, a minimum of 10% and up to 20% of the soil and groundwater samples analyzed using the mobile laboratory will be submitted to a fixed-base laboratory for confirmation analysis of the full suite of VOCs by method 8260. The selection of confirmation groundwater and soil samples for analysis by a fixed-base laboratory will be based on the following factors:

- COPC concentrations are not detected or low-level detections (such as detections below the applicable screening level) at key locations that define the edge of the groundwater or soil impacts; and
- High concentrations in the core of the groundwater impacts or near potential source areas; and
- High concentrations near potential source area.

Additional samples may be sent to a fixed-base laboratory beyond the confirmation samples at the discretion of the Respondent (as defined in the AOC). Also, where groundwater and soil samples are not analyzed by a mobile laboratory in the field, those samples will be analyzed by a fixed-base laboratory for the full suite of VOCs by method 8260. Other non-VOC constituents may also be added at the discretion of the Respondent to the analytical program and specified in the SAP, based on the data review and evaluation results.

Up to 5% of groundwater samples will also be analyzed by the fixed-base laboratory for geochemistry parameters to evaluate groundwater flow regimes in the upper unconfined zone. Geochemical constituents include; alkalinity, chloride, hardness, sulfate, pH, total and dissolved iron and manganese, calcium, magnesium, methane, sodium, nitrate and nitrite, total dissolved solids (TDS), total suspended solids (TSS), and total organic carbon (TOC).

Quality assurance/quality control (QA/QC) soil and groundwater samples will be collected and analyzed as follows:

FOCUSED INVESTIGATION WORK PLAN
Northeast Area, York, Nebraska

- 5% duplicates, or one per 20 primary samples;
- 5% equipment rinsate samples, or one per 20 primary samples or one per day;
- 5% field blanks, or one per 20 primary samples or one per day;
- 5% matrix spike/matrix spike duplicates, or one per 20 primary samples; and
- One trip blank per cooler of samples to be analyzed for VOCs.

Soil vapor samples will be collected in Summa canisters and submitted to a fixed-base laboratory for analysis of VOCs using method TO-15 or TO-17. Duplicate soil vapor samples will be collected at a rate of 5%, or one per 20 primary samples.

2.5 Data Evaluation and Reporting

Following the collection of field data and receipt of final laboratory data, the data will be reviewed and integrated into Environmental Quality Information System (EQulS) and GIS databases. A Focused Investigation Report documenting the field activities and discussing the investigation results will then be prepared and submitted to USEPA for review and approval.

The report will include a description of the geology and hydrogeology; summary of soil, soil vapor, and groundwater data; the CSM developed for the Study Area, identification of potential source areas, to the extent possible; and appropriate conclusions about the data. The report will also include as attachments: data summary tables, figures, geologic cross-sections, EC/HPT/MIP logs, laboratory reports and chain of custody forms, survey data, and boring and sample collection logs.

3 PROJECT TIMELINE

Assuming cooperative weather conditions and no unanticipated access or permitting issues, the performance of this scope of work is anticipated to occur in accordance with the following timelines:

- Completion of Data Review & Evaluation and submission of Plans to USEPA for review and approval: within approximately 60 days of the Effective Date of the AOC.
- Performance of field work: within approximately 150 days of the latter of USEPA approval of the SAP and QAPP or obtaining of access.
- Submission of Focused Investigation Report to USEPA for review and approval: within approximately 60 days of receipt of validated data from all field work.

The schedule is exclusive of regulatory review and comment periods.

FIGURES





DRAFT

NORTHEAST AREA
YORK, NEBRASKA

PROPOSED GROUNDWATER
SAMPLE CORRIDORS

ARCADIS | Design & Consultancy
for Agrivision and
Soil Assets

FIGURE
1

LEGEND

- Proposed Groundwater Sampling in Right-of-Way
- Kroy Property

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SCALE IN FEET

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